

High Hedges (Scotland) Act 2013

Revised Guidance to local authorities

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2016

Ministerial Foreword



Disputes about high hedges are fairly rare, but when they happen they can spiral out of control and be a source of great concern for those involved. Unlike boundary fences or walls, which need planning permission if they are more than two metres high, there is no such restriction when planting trees or shrubs to form a hedge, even though they can grow higher than two metres. So, it is not surprising that problems can arise with hedges if they are planted in unsuitable places or are not maintained properly.

In 2009 a Scottish Government consultation asked whether disputes such as those over high hedges were a matter for the Government to get involved in, or best left for individuals to sort out themselves. Of those who responded to that question, 95% believed that the Government should take action. The Scottish Government supported Mark McDonald MSP to bring a High Hedges Bill before Parliament, and officials and Mr McDonald consulted with a broad range of people and organisations with an interest in hedges as the Bill passed through the Scottish Parliament. The High Hedges (Scotland) Act 2013 was given Royal Assent (approval) on 2 May 2013 and I congratulate Mark McDonald for all of his work to make this happen.

The aim of the Act is to provide a solution to the problem of high hedges if they interfere with people's right to 'reasonable enjoyment' of their house or flat, and gardens if this applies, and if neighbours have not been able to resolve the issue amicably. It does this by giving homeowners and occupiers the right to apply to a local authority for a high hedge notice and gives local authorities the power to make and enforce decisions relating to high hedges in their local area.

In dealing with applications, local authorities should act as independent and impartial adjudicators and aim to strike a balance between the competing rights of neighbours to enjoy their house and the rights of the community in general. Local authorities need to make the decisions on what action should be taken, because individual circumstances will differ and any action needed to settle the dispute should take account of the facts and circumstances of each case.

I hope that this Act will provide a solution to many of the long-standing disputes between neighbours over high hedges. This will help to improve people's lives and help them enjoy their house in an amicable way and make sure that we live in communities where we promote positive behaviour and good neighbour relations.

A handwritten signature in black ink, which appears to read 'Derek Mackay'.

Derek Mackay MSP

Minister for Local Government and Planning

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1: Introduction

This document provides guidance from the Scottish Government to local authorities on the High Hedges (Scotland) Act 2013¹ (the ‘Act’). As set out in Section 31 of the Act, local authorities must consider this guidance when carrying out their duties under the Act and when issuing any guidance of their own on the Act².

If neighbours have not been able to amicably settle a problem relating to high hedges, the Act aims to provide a solution by providing an effective method to settle the dispute. A high hedge is defined by the Act as a hedge that is formed mainly or fully by a row of two or more trees or shrubs, is over two metres high and blocks out light³.

This guidance is not a statement of the law, which is set out in the Act itself. It is meant to support the Act by providing extra advice to local authorities on meeting their obligations under the Act, and makes clear to everyone with an interest in this issue, including hedge owners and those affected by high hedges, how we expect the Act will work in practice.

The guidance needs to be fairly general as the effects of a hedge on a neighbouring property will vary from case to case. The main role the Act gives to local authorities is to act as an independent third party to consider the circumstances of each case to identify whether a high hedge is having a negative effect on neighbours’ reasonable enjoyment of their house. The Act allows local authorities to issue their own guidance on the Act⁴, which is likely to be more specific about how that authority will carry out their duties under the Act. However, Section 31 of the Act states that local authorities must consider this guidance when issuing their own guidance on the Act.

¹ <http://www.legislation.gov.uk/asp/2013/6/contents>

² [Section 31 of the Act \(Guidance\)](#)

³ [Section 1 of the Act \(Meaning of “high hedge”\)](#)

⁴ [Section 31\(2\) of the Act](#)

2: Applying for a high hedge notice

Although the Act provides a way of settling disputes relating to high hedges, it is intended to be a last resort for the minority of cases where the people involved cannot settle such disputes themselves. The Act emphasises this by stating that potential applicants 'must take all reasonable steps to resolve the matters in relation to the high hedge' before making an application⁵. The Act also allows local authorities to issue their own guidance on what people must do before applying for a high hedge notice (pre-application requirements)⁶.

What should people do before applying for a high hedge notice?

Anyone considering applying for a high hedge notice must have tried to settle the issue with their neighbour before making an application. If a local authority receive an application where there is no evidence that the applicant has tried to do this, they must reject it. The steps people should have taken before applying to the local authority will depend on the circumstances of the case. However, it is not enough for an applicant to simply claim that their neighbour is unapproachable.

Discussion with neighbour

Usually the first step for an applicant to take is to discuss the issue with their neighbour to try to settle the problem amicably. They should keep records of all attempts to settle the issue, for example a diary of conversations held or a series of receipts for postage, and should include these with their application. The attempts should show that the applicant has made a reasonable effort to settle the dispute in a reasonable timescale before applying for a notice (it is not possible to specify what is a reasonable timescale as this will depend on the circumstances of the case).

If a hedge problem has been going on for some time, it may date back to well before the Act came into force. During this time the person may have made several unsuccessful attempts to settle the matter through negotiation. Despite this, it is reasonable for a local authority to expect them to have made another recent attempt to settle the dispute with their neighbour now that the Act is in place, before making a formal application for a high hedge notice. A definition of 'reasonable steps' to try to settle the matter without referring the case to the local authority would be two formal approaches to the neighbour within a six-month period before applying for a high hedge notice. The applicant should keep a copy of any letters they have sent to their neighbour, with a record of their delivery, as the local authority will normally ask to see these letters as reasonable evidence of the applicant's own attempts to settle the dispute.

Mediation

Another option for settling high hedge disputes without involving the local authority is mediation. This is a way of settling differences by working with everyone involved in

⁵ [Section 3 of the Act \(pre-application requirements\)](#)

⁶ Sections [3\(2\)](#) and [31\(2\)\(a\)](#) of the Act

the dispute. Mediation can be carried out by various people, such as a member of the local community or a professional mediator. In many parts of the country, the Scottish Mediation Network⁷ provides low-cost access to mediation services. In some local authority areas, mediation services may be provided free of charge. People should check with their local authority about the availability and cost of local mediation services, although local authority officials dealing with high hedge applications do not provide mediation themselves.

It is important to remember that although mediation can be an effective way to settle disputes, cases can still be considered without it. It is possible to make an application that shows the applicant has made an effort to solve the high hedge issue amicably, without using mediation. The local authority will decide whether the evidence they provide proves that they have made reasonable efforts to settle the dispute. If the person who owns the hedge refuses to take part in mediation, this could be used as evidence that the applicant has made a reasonable attempt to settle the matter, although the local authority should consider the cost and availability of mediation when deciding whether this is a truly reasonable attempt.

Approaching the local authority

People may contact their local authority informally to discuss a possible application. In these situations, the local authority should ask about the nature of the problem and explain the Act states that the person must take all reasonable steps to try to settle the issue themselves before making a formal application to the local authority under the Act. The applicant can then make a formal application for a high hedge notice to be served if their reasonable attempts fail to deal with the problem.

The Act allows local authorities to issue their own guidance on the Act⁸. The local authority should tell people about any guidance they have produced, and may also refer them to this guidance to local authorities⁹ (updated summarised guidance is also available on the Scottish Government website on the following link: <http://www.gov.scot/Topics/Justice/law/High-Hedges>).

Applications where it is not clear who owns the land

There are special conditions in the Act for cases where it is difficult to establish who owns the land a hedge is on. If an applicant is unclear about who owns the land, they should take reasonable steps to identify the owner of the land and should record these steps in the application before sending it to the local authority. Applicants can contact Registers of Scotland¹⁰ to find out if the land is registered. Companies House¹¹ may be able to provide information on land owned by a business. In exceptional circumstances, if it is not possible to trace the owner of land, it passes to the Queen's and Lord Treasurer's Remembrancer¹².

⁷ <http://www.scottishmediation.org.uk/>

⁸ [Section 31\(2\) of the Act](#)

⁹ [Section 31\(3\) of the Act](#)

¹⁰ <https://www.ros.gov.uk/>

¹¹ <https://www.gov.uk/government/organisations/companies-house>

¹² <http://www qltr.gov.uk/>

Deciding whether an application is eligible

The Act states¹³ that an owner or occupier of a domestic property can apply to their local authority for a high hedge notice if they consider ‘that the height of a high hedge situated on land owned or occupied by another person adversely affects the enjoyment of the domestic property which an occupant of that property could ‘reasonably expect to have’ ’ (see page 20 for more information).

Dismissing an application

A local authority must dismiss an application¹⁴ if, after giving due consideration to the Act, they consider that the applicant has not taken all reasonable steps to sort out the situation, or if they consider that the application is frivolous (that it is not a reasonable application and it has no reasonable chance of succeeding) or vexatious (that is, the application is intended to harass, annoy or cause frustration or financial loss to the other person despite there being little justification for a complaint in the first place).

If the local authority decide to dismiss an application on the grounds of being frivolous or vexatious, they must tell the applicant as soon as possible, giving full and detailed reasons for doing so. Whether the local authority consider an application to be frivolous or vexatious will depend on the particular circumstances of that application. An example might be where someone repeatedly applies (unsuccessfully) to the local authority for a high hedge notice without any significant change in circumstances that would affect the local authority's decision.

Local authorities should consider whether there has been any change in circumstances before dismissing an application on the grounds that it is frivolous or vexatious. If the local authority dismiss an initial application but the situation later changes, for example because the applicant extends their house or there have been changes to the high hedge, the applicant is entitled to make a new application for a high hedge notice, drawing attention to the change in circumstances.

Withdrawing an application

The applicant may withdraw their application at any time before the local authority make their decision on a high hedge notice. Discussion and negotiation between the people involved in the dispute can continue while the local authority are considering a formal application. If all people concerned can agree a way forward, the applicant should withdraw their application.

The scope of the Act

When a local authority receive a formal application for a high hedge notice, they should make sure that the applicant has filled in all parts of the application form and paid the appropriate fee (if any).

¹³ [Section 2 of the Act \(application for high hedge notice\)](#)

¹⁴ [Section 5 of the Act \(dismissal of application\)](#)

The local authority must also consider whether an application is eligible by confirming that:

- they are the correct local authority to deal with the application;
- the applicant is the owner or occupier of the domestic property specified in the application;
- the hedge specified in the application is on land owned or occupied by another person;
- the hedge specified in the application is a high hedge; and
- the applicant has paid the appropriate fee.

The local authority do not need to decide whether the applicant's reasonable enjoyment of their house is being negatively affected by the height of a high hedge until they have confirmed that the application is eligible. See chapter 3 of this guidance (Deciding whether a high hedge notice should be issued) for more information.

Local authority responsibility for dealing with applications

Applications must be made to the local authority responsible for the area where the hedge is located. For example, if a hedge is on land within the boundaries of local authority A but the applicant lives in the area of local authority B, the application should be sent to local authority A. When the local authority receive the application, after confirming that it is eligible, they should send a copy of the application to every owner and occupier of the property the hedge is on, regardless of which local authority area the owner or occupier lives in.

Affected property

An applicant can only apply for a high hedge notice if domestic property is negatively affected by a high hedge¹⁵. The Act defines domestic property¹⁶ as 'any part of a building in Scotland which is occupied, or intended to be occupied, as a separate dwelling' and 'a yard, garden, garage or outhouse in Scotland which belongs to such a building or is usually enjoyed with it'. For example, this would include a flat that is used as a home even if it is part of a tenement that contains a mix of homes and businesses, but would not include properties that are in a residential area but are used for business purposes only, for example, a dental practice or a doctor's surgery.

Location of the hedge

The Act states that the hedge must be on land that is owned by someone other than the applicant. There are no other restrictions on where the hedge must be located. It is the effect the hedge has on a domestic property that is important, rather than where the hedge is located. As part of the application, the applicant should normally provide a map showing all the main features such as the location of the high hedge, the boundaries of gardens and the location of buildings. In some circumstances, a detailed written description of the situation may be enough.

¹⁵ [Section 2\(1\) of the Act](#)

¹⁶ [Section 34 of the Act \(interpretation\)](#)

Although the Act uses the term ‘neighbouring land’ to describe where the hedge is growing, the hedge doesn’t have to be next door to the applicant’s property. This means that a hedge on ‘neighbouring land’ could be several gardens down the road or across the street, as long as the applicant can show that it has a negative effect on their enjoyment of their house.

The hedge does not have to be on one property only. It could extend over several properties, and it doesn’t have to be growing in a garden. It could, for example, be on parkland that backs onto a garden or yard, or on business premises.

Crown land

The Act also applies to Crown land¹⁷. This means that local authorities are able to investigate and decide applications relating to high hedges on land owned by the Crown (for example, a hedge on land owned by some government departments).

Meaning of ‘high hedge’

For trees and shrubs to be considered as a ‘high hedge’, they must be a high hedge as defined by the Act.

Section 1 of the Act defines a ‘high hedge’¹⁸ as:

- being formed completely or mainly by a row of two or more trees or shrubs;
- rising to a height of more than 2 metres above ground level; and
- forming a barrier to light (unless gaps in the hedge significantly reduce its overall effect as a barrier to light at heights of more than 2 metres above ground level).

It is not necessary for the whole of a hedge to fall within the definition. If parts of a hedge qualify, the hedge will be eligible for an application for a high hedge notice.

Hedges

The Act does not make it illegal to grow leylandii and other fast-growing plants. Simply growing a hedge itself is not illegal. The Wildlife and Countryside Act 1981 controls where non-native plants can be planted and states that no non-native plant may be planted in the wild. Parliament has approved a code of practice¹⁹ for non-native species to further explain this subject, and you can also find exceptions approved by Parliament on the Scottish Government webpages²⁰.

Other factors under the terms of the Wildlife and Countryside Act 1981 may have to be considered too. This includes whether there are any protected birds, animals or plants in the hedge and how they would be affected by any work; legislation which

¹⁷ [Section 37 of the Act \(Crown application\)](#)

¹⁸ [Section 1 of the Act \(meaning of high hedge\)](#)

¹⁹ <http://www.gov.scot/Publications/2012/08/7367>

²⁰ <http://www.gov.scot/Topics/Environment/Wildlife-Habitats/InvasiveSpecies>

protects wildlife; and whether any work should be carried out, or avoided, at a particular time of year (for example, if birds are nesting in the hedge, hedge cutting should be avoided during the nesting season).

The Act applies to hedges and is not designed to affect woodland and forests, which may not always be planted as hedges. For example, well-spaced tree lines are not generally considered as a hedge, even if the trees join to form a canopy. It is not normally expected that trees planted between properties would be classified as either woodland or forests, so local authorities should consider whether the trees and shrubs were planted with the intention of forming a boundary between two gardens in order to separate neighbouring properties.

Line of two or more trees or shrubs

An application cannot be made under the Act against single trees or shrubs, whatever their size. Two or more trees or shrubs do not have to form a precisely straight line to qualify as a hedge. As long as they are roughly in line, they may be considered as a hedge under the Act.

A tree or shrub that has several stems, all growing from the same trunk or root plate, is a single tree or shrub and so is not covered by the Act. This applies even though the tree or shrub may grow to be large and cover a considerable area.

More than 2 metres above ground level

Local authorities cannot accept applications relating to hedges less than 2 metres high. The 2 metres should be measured from the ground where the hedge is growing - that will usually be on the hedge owner's side. Even if the property affected is on a lower (or higher) level than the land where the hedge is located, the 2 metres should still be measured from the ground where the hedge is growing. For these purposes, ground level means the natural level of the ground where the hedge is growing. Normally, any measurements should be taken from the ground at the base of the trunks or stems of the trees or shrubs in the hedge. An exception might be where the hedge has been planted on a mound, or in a flower bed or other container that is raised above the ground, in which case the height should be measured starting from the base of the trunk - including the mound, flower bed, or other raised position.

Applicants should not have to provide a precise measurement of a hedge in order to make an application about a high hedge. The legislation does not give the applicant permission to enter their neighbour's land to take any measurements. It should be enough for them to estimate the height of the hedge when working out whether the hedge is covered by the Act.

When a local authority are considering an application for a high hedge notice, they will need to consider the height of the hedge on the applicant's side to assess the effect on their property. They will also need to confirm that the height of the hedge is more than 2 metres from ground level, and so are likely to need to measure the hedge on the owner's side.

Barrier to light

The Act applies to hedges that, despite any gaps above the 2-metre mark, act as a barrier to light. This issue is about the physical appearance of the trees and shrubs in question and whether or not they form a hedge. The local authority must decide whether a particular hedge meets this condition by considering the trees or shrubs that make up the hedge, including its shape, its growth habit, and, most importantly, what it looks like above 2 metres. Even though there might be gaps in the foliage or between the trees or shrubs, the local authority must consider whether the hedge is obstructing light.

The trees or shrubs in the hedge may have been closely planted and become so entangled that they appear as a solid green wall. In these circumstances, the matter may be straightforward as the hedge is evidently capable of blocking light. Other cases may be more difficult to judge. The trees or shrubs may be more widely spaced so their branches are not touching. Branches may have fallen off or been removed so the canopy is lifted or the growth might be straggly, with few leaves or greenery. Local authorities must assess each case individually. If individual trees or shrubs are so widely spaced, or the gaps in the leaves are so big that it is possible to see what lies behind them, the hedge may not be covered by the Act, but this decision must be based on the circumstances of each case.

In some cases, it may be possible to tell from photographs or other evidence whether a hedge forms a barrier to light. In other cases, a local authority may need to visit the property to see the hedge before making a decision. There is guidance on this in chapter 3 (Deciding whether a high hedge notice should be issued).

This guidance does not specify limits for light levels, and local authorities are free to measure light levels using any methods they consider reasonable and suitable for their needs. An example of a method of measuring light levels is the Hedge Height and Light Loss (March 2004)²¹ guidelines which were developed by the Building Research Establishment (BRE). These guidelines were created to help local authorities in England and Wales make decisions under the Anti-Social Behaviour Act 2003. However, the method set out in the 2004 guidelines was designed to apply only to evergreen hedges, but the High Hedges (Scotland) Act 2013 covers all types of hedges and so that method cannot be applied in all cases. Whichever method the local authority decide to use to help them make their final decision as to whether a hedge is a barrier to light, they must consider the circumstances of each case.

Application fee

The Act gives local authorities the right to charge a fee²² for dealing with applications for high hedge notices but it does not set a standard fee. Instead it allows local authorities to set different fees to take account of different circumstances and to

²¹

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9408/hedgeheight.pdf

²² [Section 4 of the Act \(fee for application\)](#)

refund fees when necessary. Examples of circumstances that may be taken into account include applicants who are low earners or pensioners, situations where several applicants apply for a notice relating to a single hedge or where a single applicant applies for more than one high hedge notice at the same time because more than one hedge is affecting their property.

Applicants must send the appropriate fee with their application for a high hedge notice. We recommend that local authorities publish a list of their fees so it is clear how much applications cost.

Setting fees

The Act states that any fees local authorities charge for an application for a high hedge notice should aim to cover the reasonable costs of considering the application²³. The legislation is not intended to generate an income for local authorities.

Refund of fees

The Act allows local authorities to refund fees under certain circumstances, where they consider a refund to be appropriate. Local authorities must publish information about circumstances under which they will refund fees²⁴.

²³ [Section 4\(3\) of the Act](#)

²⁴ [Section 4\(5\) of the Act](#)

3: High hedge notices

When a local authority receives an eligible application, they should send a letter of acknowledgement to the applicant, giving the name and contact details of the officer who will be dealing with the case. The letter should also explain briefly the procedure that the local authority will follow, including telling the hedge owner about the application. In particular, it should make it clear that the local authority will ask the owner and occupier of the land where the hedge is situated for comments, and will share those comments with the applicant. Everyone involved should stick to the facts of the case and not try to include any other sources of disagreement, and no-one should use offensive or abusive language in their correspondence.

Inviting representations from hedge owners

The local authority should then write to everyone who owns and occupies the land where the hedge is situated, telling them formally that they are considering an application for a high hedge notice relating to their hedge²⁵. The local authority should include a copy of the application²⁶ with their letter, but they should remove the applicant's personal email address, phone number and signature. The approach from the local authority should not be a surprise to the hedge owner, since the applicant will have already made reasonable attempts to settle the issue. The Act also makes allowances for cases where there is difficulty confirming who owns the land²⁷.

The letter should explain the procedure that the local authority will follow to make a decision on an application for a high hedge notice, including that the local authority may visit the site. In particular, it should²⁸:

- invite the owner and occupier of the land the hedge is on to comment on the points the applicant has raised and to provide any extra information they want the local authority to consider, and explain that they have 28 days to do this;
- make it clear that the local authority must send copies of any comments or information the owner or occupier provides to the applicant; and
- tell the owner or occupier that the local authority has the right to enter the land the hedge is on, and explain the penalties that will apply if they try to prevent this.

If the local authority receive any information or comments from the hedge owner within the 28-day period, they must give the applicant a copy of these and must take them into account when making a decision on the application for a high hedge notice²⁹. If the high hedge is growing within a national park, the local authority must consult the National Park Authority and take into account their comments before making a decision on whether to take 'initial action'³⁰. The local authority may take into account other information and comments they receive (including any received outwith the 28-day period), but they do not have to under the Act.

²⁵ [Section 6 of the Act \(consideration of application\)](#)

²⁶ [Section 6\(2\)\(a\) of the Act](#)

²⁷ [Section 33 of the Act \(service of documents\)](#)

²⁸ [Sections 6\(2\)\(b\) and 6\(3\) of the Act](#)

²⁹ [Section 6\(4\) of the Act](#)

³⁰ [Section 6\(8\) of the Act](#)

At the end of the 28-day period³¹, the local authority must decide whether the height of the high hedge has a negative effect on the applicant's reasonable enjoyment of their property³². If the local authority decide that there is a negative effect, they must then decide whether the owner should take 'initial action' to put right the negative effect and prevent it from happening again³³. If the local authority decide that the applicant should take 'initial action', they must specify a reasonable period of time for that action to be taken and decide whether the applicant should take further action in the future to prevent the problem from happening again³⁴.

Although the Act does not set specific time limits on decisions, we expect that local authorities will process high hedge applications as soon as reasonably possible. Because the facts and circumstances are likely to be different in each case, individual local authorities must decide on appropriate timescales in each case.

Other interested parties

Most cases are unlikely to raise wider neighbourhood issues so local authorities do not have to publicise applications for high hedge notices. However, in some cases the local authority may also ask for views from the occupiers of properties that may be affected by the hedge and so could be affected by the local authority's decision on the application. For example, properties that lie between the applicant's property and the land with the hedge, other occupiers within a tenement block or, if a single hedge borders several properties, the owners and occupiers of those properties. Also, local authorities may want to consult specialist organisations or individuals whose expertise and knowledge will help them make a decision on the application. When the local authority are asking for information and comments from anyone, they should make it clear that they will send a copy of any comments they receive to the applicant and the hedge owner.

Site visits

After the local authority has received the application and given the relevant people the chance to provide information and comments, they should normally arrange to visit the site to consider the evidence. The purpose of the visit is not to encourage mediation or negotiation between the people involved, so there should be no discussion about the application.

It may be necessary for both the applicant and the owner or occupier of the land the hedge is on to be present during the site visit so the officer can gain access to the site and look at the hedge from both sides. A local authority should, wherever possible, try to get the agreement of the owner or occupier to enter the land to look at the hedge. During the site visit, the local authority will need to gather all relevant information, for example the height of the hedge and how far it has spread, its position on the property and, in general terms, the type of trees or shrubs it is made up of, so they can accurately describe it in any high hedge notice. It may also be

³¹ [Section 6\(5\) of the Act](#)

³² [Section 6\(5\)\(a\) of the Act](#)

³³ [Section 6\(5\)\(b\) of the Act](#)

³⁴ [Section 6\(6\) of the Act](#)

useful for local authority officers to take photographs of the hedge. In some cases, a local authority will decide to carry out a site visit to decide whether a hedge forms a barrier to light (see chapter 2 'Application for a high hedge notice').

In cases where the owner or occupier of the land the hedge is on does not give the local authority permission to carry out the site visit, and the local authority cannot get the information they need in any other way (for example, from the applicant's property), the Act gives the local authority officer power to enter the land where the hedge is growing in order to carry out a site visit³⁵. They may take onto the land any materials and equipment they need to carry out their duties and can also take away samples from the hedge where appropriate³⁶.

The local authority must give all the owners and occupiers of the land at least 14 days' notice³⁷ of the site visit and should be prepared to produce, if asked, evidence of their authority to enter the land in question³⁸.

It is an offence, punishable by a level 3 fine (the maximum amount is currently set at £1,000³⁹), to deliberately prevent an authorised person from entering the land where a high hedge is growing⁴⁰. In extreme cases, a sheriff or justice of the peace may issue a warrant authorising the officer to enter the land and, if necessary, use of reasonable force to do so⁴¹.

Negative effect on the applicant's enjoyment of their house

A local authority must decide whether the height of the hedge has a negative effect on the applicant's reasonable enjoyment of their house⁴². If so, the local authority must then decide whether the owner of the hedge should take action to put right the effect or to prevent it from happening again (or both)⁴³. This action is called 'initial action'.

When deciding whether the owner needs to take action, the local authority should consider all relevant factors and assess each case individually. It will normally be necessary to consider how serious the effect of the hedge is on the applicant's enjoyment of their property against the value of the privacy it provides to the hedge owner.

The local authority must also consider whether there are any other facts they should take into account when making a decision on whether the owner should take action. They should pay particular attention to:

- the results of any consultation with interested parties and the National Park Authority;

³⁵ [Section 18 of the Act \(power to enter neighbouring land\)](#)

³⁶ [Section 19 of the Act \(supplementary powers\)](#)

³⁷ [Section 19\(2\) of the Act](#)

³⁸ [Section 19\(4\) of the Act](#)

³⁹ <http://www.gov.scot/Topics/archive/law-order/17305/8036/8043>

⁴⁰ [Section 21 of the Act \(offence\)](#)

⁴¹ [Section 20 of the Act \(warrant authorising entry\)](#)

⁴² [Section 6\(5\)\(a\) of the Act](#)

⁴³ [Section 6\(5\)\(b\) of the Act](#)

- whether the high hedge is of cultural or historical significance;
- the effect the hedge has on the character and features of both the immediate area and the wider area; and
- any other legal or environmental restrictions that might apply.

If a local authority consider that a hedge has little negative effect, they may decide not to issue a high hedge notice. Even if a local authority find that a hedge is having a negative effect on the applicant's enjoyment of their house, after properly and reasonably considering any other relevant factors, they may decide that no action should be taken in relation to the high hedge.

Reasonable enjoyment of property

The Act applies to high hedges which are acting as a barrier to light and affecting a person's reasonable enjoyment of their house.

The reference to 'reasonable enjoyment' is important as it affects the way local authorities decide the outcome of applications. Local authorities must assess the effect that the hedge has on the applicant's reasonable enjoyment of their house and garden, so introducing a degree of objectivity to the decision-making process. The level of enjoyment the local authority consider reasonable may be different from what the applicant considers reasonable.

For example, the applicant might feel that the loss of sunlight at a particular time of year has a significant effect on their enjoyment of their house. The local authority will, however, consider what is a reasonable amount of sunlight for people to get in their property at that time of year. They may also consider whether the effect lasts for a limited time.

The local authority must also consider what is reasonable in the circumstances of the application. This means the local authority must:

- take account of all relevant factors, including the opinions of the hedge owner and the applicant and any wider considerations (they will not look only at the applicant's concerns); and
- look at each case individually.

If a local authority decide that a high hedge does have a negative effect on the applicant, the Act states that they must take account of 'the effect of the hedge on the amenity of the area' and 'whether the hedge is of cultural or historical significance' when deciding whether the owner should take any initial action⁴⁴.

Other factors

Local authorities may feel that several factors are relevant when considering all the circumstances of the case. The following factors may be considered relevant (this is not a full list and other factors may also be relevant).

⁴⁴ [Section 6\(7\) of the Act](#)

Ancient and long-established hedgerows

Under the Act, when making a decision as to whether or not the owner of the hedge must take initial action following an application for a high hedge notice, local authorities must consider all the circumstances of the case and, in particular, the effect on the local area and whether or not the high hedge is of cultural or historical significance. This should make sure that ancient and long-established hedgerows are treated appropriately when making decisions on high hedges.

Damage to plants

If an applicant claims that a hedge is affecting the growth of their plants, it could be difficult to confirm that the height of the hedge is causing this. In general, it is not reasonable to expect to grow particular plants in certain places or situations. Whether a hedge interferes with a vegetable patch, or growing competition plants or bedding plants, the type of plant involved will not normally be a main consideration. The local authority may consider these problems more seriously if, for example, the height of the hedge affects the growth of plants across a large portion of the garden, and so reduces the applicant's overall enjoyment of the property.

Effect of gaps

The local authority should take into account the effect of any gaps in a hedge, where relevant. The extent of any gaps and their position in the hedge could be important. In some cases, the depth of the hedge might mean that gaps have little effect. In other cases, the gaps could have a significant effect above two metres where there are gaps in the foliage (leaves).

Farm hedges

Hedgerows are a characteristic feature of the landscape and many form field boundaries which are valuable for wildlife, look attractive in the landscape, and are an important part of our culture and heritage. If a problem hedge is on farmland which may also be covered by other legislation (aimed at protecting nesting birds and securing a supply of food for a range of wildlife), the local authority should discuss the matter with countryside management staff at Scottish Natural Heritage before deciding the contents of a high hedge notice, particularly in relation to the timescale within which the work should be completed.

For more information, please contact Scottish Natural Heritage, Silvan House, 231 Corstorphine Road, Edinburgh, EH12 7AT (phone 0131 316 2600). Or you can use the [online enquiries service](#).

Obstruction of light: domestic premises

The British Standard Lighting for buildings: Code of Practice for daylighting (BS 8206-2: 2008)⁴⁵ sets out the standard for what is a reasonable amount of daylight and sunlight for people to get in their house. It works on the basis that properties

⁴⁵ <http://shop.bsigroup.com/ProductDetail/?pid=00000000030157088>

should receive enough natural light during daylight hours to allow the people living there to carry out normal household tasks without eye strain. We suggest local authorities should use this as a guideline as to what the applicant should expect.

The BRE used that code of practice in the Hedge Height and Light Loss⁴⁶ (March 2004) document as a method to calculate the height of an evergreen hedge. The local authority must decide how useful this will be in any given circumstances. The guidelines are intended to be used when a local authority are looking at the effect a hedge has on the main rooms of the applicant's house (including living rooms, dining rooms, kitchens and bedrooms) and apply whether a hedge is opposite or to one side of the window, or at an angle to it. They also suggest suitable adjustments if the land is sloped or if the hedge is set back from the boundary.

Obstruction of light: gardens

The British Standard Lighting for buildings: Code of practice for daylighting⁴⁷ does not apply to gardens, and local authorities cannot rely on it when considering how a hedge is affecting a person's reasonable enjoyment of their garden. In their guidance on Hedge Height and Light Loss⁴⁸, the BRE based their approach on the daylight and sunlight received in the garden as a percentage of that on ground not affected by a high hedge over the whole year. The code of practice makes allowances for existing obstructions, such as the house and boundary fences, which could increase the effect of a hedge. It suggests making suitable adjustments to take account of sloping sites or situations where a hedge is set back from the boundary – although the guidance applies only to evergreen hedges.

Obstruction of light: passive solar properties

Local authorities should also give consideration to properties that have been specifically designed to use passive solar energy, rather than those which just happen to have large windows. Properties using passive solar energy do not use mechanical or electrical devices. Instead, they would normally have a main window wall facing within 30 degrees of due south, they will also have significantly larger windows on the south-facing wall compared with the north-facing wall and heating controls to make sure the solar energy is utilised. Also, they will usually be built from materials that store heat well. There may also be solar panels to capture solar energy which can then be used to heat the property or water, or to generate electricity. Normally these panels will be on the roof.

Overhanging branches

The Act deals only with applications that relate to the height of a hedge and does not deal with overhanging branches or the width of the hedge. Common law already gives people the right to cut back branches that are hanging over onto their property (but not to reduce the height without the owner's permission), as long as they offer

⁴⁶ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9408/hedgeheight.pdf

⁴⁷ <http://shop.bsigroup.com/ProductDetail/?pid=00000000030157088>

⁴⁸

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/9408/hedgeheight.pdf

the cuttings to the owner (this is not necessary if the owner gives the person permission to cut the overhanging branches). Although the Act does not apply to overhanging branches or the width of a hedge, the local authority may want to consider them when deciding on the content of a high hedge notice.

Privacy

On a level site, a hedge with a height of 2 metres will usually provide privacy from a neighbouring ground-floor window. A higher hedge might be justified in special cases, for example where one property can be seen into more easily than the other, and local authorities will need to look at each case individually.

Protected trees

When considering an application for a high hedge notice, a local authority will consider the cultural and historical significance of any trees that form part of the high hedge. It may be that the trees are protected, either by a tree preservation order (TPO) or because they are in a conservation area. This test may also help a local authority to identify any trees forming part of a high hedge that should have the protection of a TPO but currently do not have. Circular 1/2011: Tree Preservation Orders⁴⁹ explains the TPO procedures and requirements relating to trees in conservation areas. The planning authority must normally give permission before any work can be carried out on protected trees. However, if a local authority issues a high hedge notice, neither a TPO nor being part of a conservation area prevents the work from being carried out⁵⁰. However, local authorities must consider whether there is a TPO in place or whether a hedge is in a conservation area when making their decision.

Shelter

A hedge can be an effective windbreak and will usually provide good shelter from the wind for a distance of 8 to 10 times its height (these hedges are known as 'shelter belts'). A hedge that is 2 metres high should provide good shelter for a distance of 16 to 20 metres. The size of the garden that is protected by the hedge might be one factor in considering what is reasonable in any particular case. Other landscape features and the local climate may also be relevant, for example, a higher hedge height may be justified if the garden is in an exposed position in an area where there are often high winds blowing in the direction of the hedge owner's property.

It might not be reasonable to expect to use a hedge to provide full protection from the wind if it would have a disproportionate effect on neighbouring properties, for example if the hedge owner's garden is much larger than the applicant's garden and the hedge acts as a significant barrier to light to neighbouring properties. So, a shelter belt can still be considered as a high hedge as long as it meets the conditions set out in section 1 of the High Hedges (Scotland) Act 2013.

⁴⁹ <http://www.gov.scot/Resource/Doc/340230/0112643.pdf>

⁵⁰ [Section 11 of the Act \(tree preservation orders\)](#) and the [Town and Country Planning \(Tree Preservation Order and Trees in Conservation Areas\) \(Scotland\) Amendment Regulations 2014](#)

Veteran or notable trees

When carrying out a site visit to assess a high hedge, local authority officers should be aware of the effects any action might have on veteran or notable trees which form part of the hedge. A 'veteran tree' is usually in the second or mature stage of its life and has important wildlife and habitat features, including hollowing or associated decay fungi, holes, wounds, and large dead branches. It will generally include old trees but also younger, middle-aged trees with premature aging characteristics.

A tree of local importance, or of personal significance to the owner, is called a 'notable tree'. This includes specimen trees or those considered to be potential veteran trees. More advice is available from the Woodland Trust Scotland website⁵¹.

Other factors that local authorities may take into account

Where relevant, these include:

- whether the hedge is part of or within the boundaries of a listed building, inventory garden or designed landscape (gardens or grounds designed for artistic effect), or other site of archaeological or historic importance and the effect that removing it may have on the site;
- whether the hedge is in a National Scenic Area, or forms an important link with other landscape features;
- whether the hedge is within a designated nature conservation site such as a Site of Special Scientific Interest;
- whether there are any protected birds, animals or plants in the hedge and how they would be affected by any work (local authorities must consider local biodiversity action plan policies as well as relevant legislation);
- legislation which protects wildlife (for example, it is against the law to kill, injure or disturb nesting wild birds); and
- whether any work should be carried out, or avoided, at a particular time of year (for example, if birds are nesting in the hedge, hedge cutting should be avoided during the nesting season).

Recording the decision and reasons for it

The Act states that local authorities must tell the applicant and every owner and occupier of the neighbouring land about their decision and their reasons for making it. However, it may also be useful to tell other interested people about the decision, such as local conservation groups. Local authorities should keep a clear record of how they reach their decisions. They may decide to prepare a report that they can send with their decision letter. This report would confirm that they have fully considered any comments and information they received in response to the application, and show how they assessed the application. The report could include the following.

- A description of the hedge and its surroundings

⁵¹ <http://www.woodlandtrust.org.uk/about-us/where-we-work/scotland/>

- Relevant policies or other legislation that might apply (for example, tree preservation orders, conservation area, local biodiversity action plan)
- The case for the applicant
- The case for the owner or occupier of the land the hedge is on
- Information and comments the local authority have received from anyone else and the results of any consultations carried out
- Appraisal of the evidence
- Conclusion and recommendation

Telling everyone involved about the decision

The local authority must tell the applicant and every owner and occupier of the land the high hedge is on (including the National Park Authority, if the hedge is in a national park) of their decision and the reasons for it as soon as reasonably possible⁵². If they decide to issue a high hedge notice, they must also send a copy of the notice to all of these people.

The local authority should also explain the rights these people have to appeal against the decision⁵³ and may want to refer them to the section of this guidance about appeals. The reasons for the local authority's decision should be clear, precise and as full as possible to help people decide whether to appeal. The local authority should normally send a copy of their decision letter to anyone else who has shown an interest in the case or who has been involved.

Uncommon cases

Applications may not always involve one application, one hedge and one hedge owner. Some applications might result in more than one decision letter or high hedge notice being issued.

Several applications, single hedge, one owner

A hedge around a large garden could affect several neighbouring properties. A local authority must consider separately and individually the effect the hedge has on each property that an application has been made for. They should also issue separate decision letters and high hedge notices, if they decide this is the appropriate outcome.

If a local authority receive several applications relating to the same hedge at the same time, they may link the applications when they process them to allow them to consider the relationship between the applications and the practical implications for the hedge owner (and may make special allowances in such cases when setting fees). Any high hedge notices issued should specify the section of hedge and the action the owner should take to deal with the effects of the hedge on the property named in each individual application.

One applicant, single hedge, several owners

⁵² [Sections 7 \(notice of decision where no action to be taken\)](#) and [8 \(high hedge notices\)](#) of the Act

⁵³ [Sections 12 to 17 of the Act](#)

Several people may own a hedge that forms a barrier to light and affects a single property.

In these circumstances, every owner and occupier of the properties where the hedge is growing would have an interest in the application. The local authority should ask for comments from every owner of the hedge and take these into account when deciding on the application. The fact that the hedge has several owners is, in itself, unlikely to be relevant when considering the effect of the hedge on the affected property, but the local authority may want check that the applicant has attempted to negotiate a solution with every owner of the hedge.

The local authority may issue either a single decision letter and high hedge notice and send copies to the applicant and every owner and occupier of the properties where the hedge is growing, or they could issue separate letters and notices to each owner, if they decide this is a more appropriate outcome. In these circumstances, it is important that the high hedge notice makes clear to each hedge owner what they need to do to meet the requirements of the notice.

One application, several hedges, one owner

A single application may cover more than one hedge that affects the applicant's property. When deciding on this type of application, the local authority should consider the effect of each hedge individually as well as their combined effect.

The local authority should send a single decision letter to the applicant and the owner and occupier of the land where the hedges are growing, but may need to issue separate high hedge notices for each hedge or part of hedge that meets the legal definition and is affecting the applicant's property.

One application, several hedges, several owners

A single application may cover more than one hedge with more than one owner if the hedges affect a single property. The local authority should invite every owner and occupier of the properties where the hedges are growing to comment on the application, and should tell them the outcome. They could send a single decision letter to the applicant and every owner and every occupier of the land where the hedges are growing, but would need to issue separate high hedge notices for each hedge or part of hedge that meets the legal definition and is affecting the applicant's property, making clear what action each owner needs to take to meet the requirements of the notice.

Change in the ownership of the neighbouring land

If ownership of the land the hedge is on changes while the application is being considered, the application should continue. However, the local authority might consider suggesting that some extra time is allowed to settle the dispute amicably. If this attempt fails, the local authority should make sure that the new owner has all the relevant papers and is given a chance to provide information and comments on the case.

Local authority are the high hedge owner

There are no special procedures for dealing with applications where the local authority is the hedge owner. However, we hope that in cases where a problem hedge is owned by a local authority, the dispute will be settled without the need to make a formal application.

If a local authority receives an application relating to a high hedge which they own, they should process it in the normal way. It is important that the process for deciding such applications is seen to be fair and impartial. A local authority should consider possible conflicts of interest when setting up their procedures for dealing with applications for high hedge notices. Each local authority should consider this issue separately to create a system that works within their organisation. If an official who has been involved in earlier negotiations about the hedge is a part of the decision-making process, they should declare this conflict of interest and should no longer be involved in considering the application.

4: High hedge notices

Once the local authority has decided that the owner needs to take action regarding a high hedge, they must issue a high hedge notice⁵⁴. This notice enforces the local authority's decision and sets out the action the hedge owner must take to restore a suitable balance between the applicant's and the hedge owner's enjoyment of their house, and also the needs of the wider community.

A high hedge notice will specify the initial action the owner must take, and also any action they must take to prevent the problem happening again in the future. A high hedge notice remains in force for as long as the hedge is on the land⁵⁵ or until a local authority withdraws it⁵⁶.

A high hedge notice should normally be a separate document, issued with the local authority's decision letter. The local authority must provide a copy of a high hedge notice to the applicant and every owner and occupier of the land the hedge is growing on, and must tell them the reasons for their decision⁵⁷. If the high hedge is growing on a national park, they must also send a copy of the high hedge notice to the National Park Authority⁵⁸.

Contents of a high hedge notice

A high hedge notice must⁵⁹:

- identify the high hedge it relates to and where it is growing;
- identify the domestic property it is having a negative effect on;
- state the date on which the notice will take effect, which must be at least 28 days after the date on which the notice is given⁶⁰;
- state the initial action⁶¹ the hedge owner must take and the time limit⁶² for taking that action;
- state any action the hedge owner must take to prevent the problem from happening again (preventative action)⁶³ following the time limit for the initial action;
- tell the person receiving the notice about their right to appeal⁶⁴; and
- tell the person receiving the notice about the local authority's power to carry out the work set out in the initial or preventative action if the owner does not meet the conditions⁶⁵ of the high hedge notice and recover the costs⁶⁶ of

⁵⁴ [Section 8 of the Act \(high hedge notice\)](#)

⁵⁵ [Section 9 of the Act \(effect of high hedge notice\)](#)

⁵⁶ [Section 10 of the Act \(high hedge notice: withdrawal and variation\)](#)

⁵⁷ [Section 8\(4\) of the Act](#)

⁵⁸ [Section 8\(6\) of the Act](#)

⁵⁹ [Section 8\(2\) of the Act](#)

⁶⁰ [Section 8\(3\) of the Act](#)

⁶¹ [Section 6\(5\)\(b\) of the Act](#)

⁶² [Section 6\(6\)\(a\) of the Act](#)

⁶³ [Section 6\(6\)\(b\) of the Act](#)

⁶⁴ [Section 12\(2\)\(a\) of the Act](#)

⁶⁵ [Section 22 of the Act \(power to take action\)](#)

⁶⁶ [Section 25 of the Act \(recovery of expenses from owner of land\)](#)

doing this, and explain that it is an offence⁶⁷ to obstruct a person authorised to carry out the work on behalf of the local authority.

Most high hedge notices will contain both initial action and preventative action. Ongoing maintenance requirements will also be included so there should be no need for an applicant to make further applications about the same hedge.

Description of the hedge

The hedge should be described in enough detail so that there is no doubt what the notice relates to. The position of the hedge within the property should be specified and, wherever possible, should be shown on a map or plan attached to the notice. A general description of the type of trees or shrubs in the hedge should also be included so it will be clear whether a replacement hedge has been planted.

Date on which the notice will take effect

This marks the start of the compliance period (see below), during which the owner must take the initial action set out in the notice. The notice will take effect at least 28 days after the date on which it is issued. This allows time for the hedge owner to make the necessary arrangements to carry out the action.

Initial action

The initial action covers the one-off work the owner must carry out to the hedge within the compliance period to put the problems right. This can include:

- action to remove the negative effect; or
- action to prevent the problems from happening again;

or a mixture of both.

These actions allow local authorities to state that a hedge must be cut below the height that is necessary to remove the negative effect if this will help to prevent the problems from happening again, although the height to which the hedge is cut to remove the negative effects may not always be exactly 2 metres. The Act does not prevent local authorities from deciding that a hedge should be removed completely if they consider that to be the most appropriate way to deal with the negative effect, although removing part of the hedge without reducing its overall height would not be considered as meeting the conditions of a high hedge notice if the notice orders a reduction in the height of the hedge.

If the local authority has not decided that it is necessary to completely remove the hedge, but the action needed to deal with the negative effect of the hedge results in the hedge looking unsightly, the owner may consider removing the hedge. In these cases, the local authority should remind the hedge owner to make sure they are keeping to any other legislation or conservation area requirement.

⁶⁷ [Section 24 of the Act \(local authority action: offence\)](#)

Compliance period

The high hedge notice must set a time limit for carrying out the initial action. This is known as the 'compliance period' and starts from the date when the notice takes effect. Even though there may be pressure from the applicant for early action, the compliance period needs to reflect what can reasonably be achieved, bearing in mind other legal requirements.

When setting the compliance period, local authorities should take account of how much work is involved and other factors such as whether specialist equipment or professional help will be needed. The compliance period should also take account of any special circumstances that limit when the action can be taken, such as the need to protect nesting birds.

Preventative action

'Preventative action' covers work that needs to continue after the compliance period to make sure that the hedge does not cause problems in the future. The initial action set out in the notice (the one-off work to the hedge) is likely to provide only short-term relief from its negative effects and a high hedge notice will normally need to include longer-term action to prevent problems from happening again in the future.

As with initial action, preventative action should not include removing part of the hedge if the hedge is later allowed to grow above the height set out in the 'preventative action' section of a high hedge notice.

How long a high hedge notice lasts for

The high hedge notice remains in force until the local authority formally withdraw it. The notice would have no practical effect, however, if the hedge was removed or there was some other change in circumstances. An example of changing circumstances would be if the property affected by the hedge was no longer used for domestic purposes.

Specifying the action in the notice

Both the initial action and preventative action need to be carefully specified in the high hedge notice so it is clear what the owner must do to meet the conditions of the notice. Concentrating on the end result, rather than specifying the method to be used in carrying out the work, may be the most effective way of achieving this. In deciding what work must be carried out under the high hedge notice, local authorities may want to follow a three-step approach.

Step 1: taking care of the problem

First, the local authority must decide what action is necessary to remove the negative effect the high hedge is having on the applicant's reasonable enjoyment of their house (initial action). The action the local authority say is needed must be in proportion to the effect the hedge is having on the applicant's reasonable enjoyment

of their house. This means striking a balance between considering any problems the hedge causes to the applicant against the possible benefits and enjoyment the hedge brings to the hedge owner and the wider community. The same principles apply when deciding what initial action might be appropriate in a particular case.

The work needed will depend on the severity of the problems the hedge is causing to the applicant and whether it is simply a matter of reducing the height of the hedge or whether other action would be more effective. It is possible that reducing the height of selected trees forming the hedge to open up gaps, or removing lower branches (known as 'crown lifting') may be effective. In some cases, appropriate action might include reducing the width of the hedge as well as the height. The owner may need to take action along the whole length of the hedge, although work focusing on a shorter section may sometimes be enough to deal with the problem. In particular, the local authority may decide that the owner needs to take action on only part of a long hedge if the hedge borders other properties besides the applicant's.

The local authority will also need to consider whether the proposed work is likely to affect the way the hedge grows, which could harm the applicant's enjoyment of their house in the future and so might need further action. For example, reducing the height of some types of trees might result in hedges becoming wider. Also, the work is likely to affect other people and the local authority will have to consider the hedge owner and other residents, especially in relation to the character and general appearance of the area. They should only consider general factors such as how the work will affect the appearance of the hedge if they are relevant to the particular case, for example, if it is important to preserve the contribution that the hedge makes to the wider appearance of the area or to retain its function as a screen or shelter. Otherwise, it might be more appropriate for local authorities to deal with these factors by giving advice on good practice. They must also consider legal restrictions such as whether the hedge is in a conservation area, or whether any tree preservation orders, or covenants (restrictions) within the conservation area, apply.

Step 2: allowing for regrowth

Having decided what action is needed to deal with the effect of the hedge, a local authority should consider whether the owner should take any further 'initial action' to prevent problems coming back, particularly if the hedge consists of fast-growing trees or shrubs. If appropriate, a local authority may decide that a hedge should be reduced below 2 metres in height to allow for regrowth. This might allow the hedge to grow between yearly (or more frequent) trimming and still not cause significant problems.

Step 3: ongoing maintenance

The local authority should decide whether long-term maintenance of the hedge is needed to prevent future problems (preventative action). The preventative action needed will depend on the nature of the initial action. However, it will usually take the form of continuing to maintain the hedge at its new height or shape, by regular trimming.

Safety and good practice

Local authorities should encourage safe working on and around trees and should consider providing, with the high hedge notice, practical advice on how the hedge might be cut safely and maintained so that it remains attractive. Even with smaller trees, there is a risk of crushing or falling injuries, particularly if working at height or with chainsaws is involved. The Arboriculture and Forestry Advisory Group set up by the Health and Safety Commission has published a number of tree safety guides⁶⁸. If an owner is likely to need specialist equipment or professional help to carry out the work, the local authority may want to refer them to the Arboricultural Association's list of approved contractors⁶⁹. Local authorities should also consider sources of expert advice, such as BS 3998: 'Recommendations for Tree Work'⁷⁰. If the local authority provide any safety or other advice, other than the initial and preventative action set out in the notice, this is for information only and cannot be enforced.

Varying or withdrawing a high hedge notice

The Act allows a local authority to vary or withdraw a high hedge notice⁷¹. Before varying or withdrawing a notice, the authority must consider how this would affect the applicant's reasonable enjoyment of their house. They must also consider all the circumstances of the case, including any cultural or historical significance of the high hedge and its effect on the local area.

Depending on the circumstances of the case, a local authority might also need to get arboricultural, horticultural, ecological, landscape or conservation advice or consult specialist organisations before deciding to vary or withdraw a high hedge notice.

If the local authority decide to vary or withdraw a high hedge notice, they must tell every owner and occupier of both the domestic property affected by the high hedge and the land the high hedge is growing on, tell them the reasons for the decision and about their right to appeal, and give them a copy of any varied high hedge notice.

If there is a change in the circumstances of a case, any person involved in the case can approach the local authority at any time to ask them to consider varying or withdrawing the high hedge notice. In some cases, it may be more appropriate to vary an existing high hedge notice rather than ask for a new application.

Change in circumstances

Over time, circumstances might change to the extent that meeting the terms of the high hedge notice could have a negative effect on the applicant's or hedge owner's reasonable enjoyment of their house. This might apply, for example, if development (such as new housing being built) on either the affected property or the land the hedge is on means that the hedge is no longer an adequate wind screen or does not provide enough privacy. Another example of a possible change would be change of

⁶⁸ <http://www.hse.gov.uk/pubns/forindex.htm>

⁶⁹ <http://www.trees.org.uk/>

⁷⁰ <http://shop.bsigroup.com/ProductDetail/?pid=00000000030089960>

⁷¹ [Section 10 of the Act \(high hedge notice: withdrawal and variation\)](#)

use or increased activity on either the affected property or the land where the hedge is growing, if the hedge does not screen this out.

Correcting errors

If the local authority make a mistake in the notice, they may vary it and issue a revised notice as soon as they become aware of the mistake. Revising the notice will mean consequential changes to the date on which the revised notice takes effect and, possibly, the compliance period.

The applicant and the owner or occupier agree a different solution

It is possible that the applicant and the owner or occupier of the land where the hedge is growing (or anyone who moves into either property) might agree different one-off work (initial action) or different longer-term maintenance (preventative action) to the work set out in the high hedge notice. If the work that is agreed goes further than the requirements of the notice (for example, keeping the hedge trimmed to a lower height than stated in the notice), there is no need to make the arrangement formal. The owner or occupier of the site the hedge is on can, at any time, do more than the notice requires, unless other legal restrictions apply.

If the agreed solution does not go as far as the work set out in the high hedge notice (for example, allowing a hedge to remain higher than stated in the notice), the hedge owner would need to apply to the local authority for the notice to be varied to reflect this agreement. The aim of the Act is to settle disputes about high hedges and encourage the people involved to communicate and negotiate with each other, so a local authority should allow an agreed solution if it is appropriate considering their other obligations and the circumstances of the case.

Cases not covered by the Act

Changes in the particular circumstances of a case might mean that the Act no longer applies to the hedge, and so the high hedge notice can no longer be enforced (for example, if the affected property is no longer classed as a domestic property).

5: Meeting the conditions of a high hedge notice

High hedge notices should include a clear statement that the owner or occupier of the land the hedge is growing on must carry out the work stated in it. Whether this is the owner or occupier will depend on who is legally responsible for managing the hedge according to the contractual arrangements between them. The decision letter sent by the local authority should also explain that the notice does not give the applicant the right to step in and take the necessary action themselves.

What happens if an owner or occupier does not meet the conditions of a high hedge notice?

Informal action

A local authority might want to encourage the hedge owner or occupier to meet the conditions of the high hedge notice by sending them a letter formally warning them of what will happen if they do not take the necessary action. If investigations show that the owner or occupier was not aware there was a high hedge notice, the local authority should provide them with a copy and should normally give them more time to meet the requirements in it.

Enforcing a high hedge notice

The high hedge notice should make clear that the local authority can, if necessary, enter the land to carry out the work⁷² and recover any expenses⁷³ reasonably involved in doing this, if the owner or occupier of the land fails to meet the conditions of the notice. Unlike the hedge owner, the local authority cannot do more than the work set out in the high hedge notice.

Local authorities must consider whether to carry out the work set out in the high hedge notice and, if so, when to do this. Local authorities do not have to carry out the work, and so applicants should not expect them to step in immediately if the owner or occupier fails to meet the conditions of a high hedge notice.

If the local authority decide to take action, they should plan, organise and carry out the work carefully. The local authority may take onto the land any people, materials, and equipment that they need and can do anything else that is reasonably necessary to carry out the work. Local authorities need to consider the following when preparing to take action.

- What exactly do they need to do to enforce the requirements of the high hedge notice?
- What equipment will they need?
- What are the physical characteristics and limits of the site?
- Are there any risks to the people carrying out the work and how can they meet relevant health and safety regulations?

⁷² [Section 22 of the Act \(power to take action\)](#)

⁷³ [Section 25 of the Act \(recovery of expenses from owner of land\)](#)

- How long is the work likely to take and what is the best time of day to do it?
- Who has the necessary skills? The local authority's own staff or a private contractor?

Entry to land

A local authority must give the owner or occupier of the land which the hedge is on 14 days' notice⁷⁴ if they plan to enter their property and do the necessary work. The Act gives local authorities the power to enter a property only if there is no other way of carrying out the work to the high hedge⁷⁵. Besides the local authority giving notice, the officers carrying out the work must, if asked, provide evidence that they are authorised to enter the land in question⁷⁶. If the land is unoccupied, they must leave it as effectively secured as they found it⁷⁷.

Criminal offence

It is good practice for a local authority to warn the people concerned that they could face criminal prosecution if they try to prevent their officers from carrying out their duties when coming to carry out work on the hedge.

Anyone who deliberately tries to prevent an officer, or other person authorised by the local authority, from entering the site in question and carrying out the work is guilty of an offence⁷⁸ which, if they are convicted, is punishable by a fine of up to level 3 on the standard scale⁷⁹ (currently up to £1,000).

Warrants authorising entry

If the owner refuses to allow the local authority to enter their land (or if the local authority expect to be refused entry), or if the land is unoccupied, the local authority may apply to the court for a warrant⁸⁰ authorising them to enter the land. Warrants may allow local authorities to use reasonable force, if necessary, to enter the land and allow them to enter buildings, which may include the owner's or occupier's house, if there is no other reasonable way to access the high hedge. If the local authority are concerned that this could lead to a 'breach of the peace', the local authority should consider whether to involve the local police.

Recovering the local authority's expenses

The Act states that a local authority can recover from the hedge owner any expenses reasonably involved in enforcing a high hedge notice, including administrative expenses and interest⁸¹.

⁷⁴ [Section 22\(2\) of the Act](#)

⁷⁵ [Section 22\(3\) of the Act](#)

⁷⁶ [Section 22\(4\) of the Act](#)

⁷⁷ [Section 22\(5\) of the Act](#)

⁷⁸ [Section 24 of the Act \(local authority action: offence\)](#)

⁷⁹ <http://www.gov.scot/Topics/archive/law-order/17305/8036/8043>

⁸⁰ [Section 23 of the Act \(warrant authorising entry by local authority\)](#)

⁸¹ [Section 25 of the Act \(recovery of expenses from owner of land\)](#)

Notice of liability for expenses

To make sure the local authority can recover their expenses, they can register a notice of liability for expenses with Registers of Scotland⁸². By registering the notice, local authorities tell any prospective owners of the property about any outstanding debt and so make sure that the debt is settled if the property is sold.

If the local authority register a notice for liability of expenses⁸³ in the Land Register or General Register for Sasines⁸⁴ at least 14 days before a new owner takes over the right to the land, the new owner will be liable for any expenses the previous owner owed. The new owner⁸⁵ will be responsible for paying the expense, but will have the right to claim the money back from the original owner⁸⁶. When the local authority receive the expenses they are owed, they should register a notice of discharge⁸⁷ with Registers of Scotland.

Enforcement procedures

Each local authority must decide its own policy and approach to enforcing high hedge notices. Most enforcement action is likely to be reactive, mainly responding to neighbours' complaints that the owner or occupier of the relevant land has not met the conditions of a high hedge notice. Local authorities should consider developing a set of priorities to help manage cases effectively. The degree of harm caused by failing to meet the conditions of the notice might be one factor the local authority should consider when deciding whether to take action. For example, failing to carry out the initial one-off work to deal with the negative effect of the hedge within the time allowed might be considered more serious than allowing the hedge to grow just above the specified height between yearly trims.

Local authorities should also consider whether the owner or occupier has properly met the terms of a high hedge notice, for example in some cases the hedge owner has removed part of the hedge rather than cutting the hedge down to the height specified in the high hedge notice. In these cases the owner has not met the notice, since the work carried out did not match the work set out in the notice.

When local-authority officers are assessing whether enforcement action is necessary and deciding what action to take, they should do the following.

- Acknowledge the complaint that the owner or occupier has not met the requirements of a high hedge notice
- Investigate the current facts and the case history
- Prepare a situation report, which includes any legal advice on issues raised by the investigation
- Send the relevant decision-maker within the local authority a considered recommendation on the enforcement action to be taken

⁸² <https://www.ros.gov.uk/>

⁸³ [Section 26 of the Act \(notice of liability for expense of local authority action\)](#)

⁸⁴ <https://www.ros.gov.uk/services/registration/sasine-register>

⁸⁵ [Section 27 of the Act \(recovery of expenses from new owner of land\)](#)

⁸⁶ [Section 28 of Act \(continuing liability of former owner\)](#)

⁸⁷ [Section 29 of Act \(notice of discharge\)](#)

- Record this decision and take the relevant action
- Report the outcome to the person who brought the matter to the local authority's attention
- Monitor the practical effects of taking enforcement action
- Review the need for possible further enforcement action

Keeping a record of the case

Throughout the enforcement process it is essential to maintain a complete, accurate, and up-to-date record of all investigations carried out and an assessment of the results. This record is important even in cases where the initial decision is not to take formal enforcement action. If it is necessary to return to the case in the future, officers dealing with the case will quickly be able to find the relevant facts and history. The case record should contain the following information.

- Details of the complaint claiming that the owner or occupier has not met the conditions of the high hedge notice
- The date the local authority received the complaint
- The name of the person making the complaint
- The address of the land the hedge is on
- The name of the owner and any separate occupier of the land in question
- A brief description of the hedge, including any relevant photographs
- Details of how the owner or occupier has not met the conditions of the notice as established by the local authority's officers following initial investigations
- A summary of the factual evidence
- A summary of the case history
- A summary of any enforcement action recommended by the local authority
- Details of any enforcement action taken

The local authority's decision notice will vary according to the circumstances, but might include:

- the date they told the owner or occupier of the land the hedge is on about their decision;
- a summary of the action the owner or occupier must take;
- the time limit within which action must be taken;
- the result of the action taken by the local authority;
- any other powers granted by the Act;
- details of any costs the local authority have recovered; and
- a summary of any monitoring of the situation.

6: Appeals

Right of appeal

People with an interest in the case can appeal against a decision made by a local authority to issue a high hedge notice (or not) following a formal application about that high hedge.

The Act states that people can appeal to Scottish Ministers⁸⁸ and those appeals will be decided by people appointed by Scottish Ministers⁸⁹. The Government have decided that the Directorate for Planning and Environmental Appeals (DPEA) will manage appeals. Appeals will be decided by a reporter from DPEA.

A person can appeal if they made the application about the high hedge to the local authority in the first place (referred to as the 'high hedge neighbour' in the appeal process) or if they are the owner or occupier of the land where the high hedge is growing (referred to as the 'high hedge owner/occupier' in the appeal process). If the property has changed hands since the application, anyone who has taken over from either of these people may also appeal.

There is no right of appeal against a local authority's decision to dismiss an application for a high hedge notice, either because the people involved in the dispute have not taken reasonable steps to settle the matter before applying to the local authority or because the application is frivolous or vexatious (that is, it has no reasonable chance of succeeding, or would bring hardship on the other person to defend something which cannot succeed). Also, people cannot appeal in cases where the application is not valid (that is, because the hedge the application relates to is not a hedge as set out by the terms of High Hedges (Scotland) Act 2013⁹⁰).

Types of appeal

1. Appeals against a high hedge notice normally happen in the following cases.

If a local authority have issued a high hedge notice requiring the height of a high hedge to be reduced, someone can appeal in the following circumstances⁹¹.

- They are the owner or occupier of the domestic property that made the high hedge application to the local authority (the 'high hedge neighbour'), and the work set out in the notice does not go far enough.
- They are the owner or occupier of the land the hedge is on, as identified in the notice (the 'high hedge owner/occupier'), and think that:
 - no notice should have been issued;
 - the work set out in the notice goes too far; or
 - the local authority haven't given them enough time to carry out the work.

⁸⁸ [Section 12 of the Act \(appeals\)](#)

⁸⁹ [Section 15 of the Act \(person appointed to determine appeal\)](#)

⁹⁰ [Section 1 of the Act \(meaning of "high hedge"\)](#)

⁹¹ [Section 12\(2\) of the Act](#)

The high hedge notice is suspended while an appeal is being decided⁹².

2. If no high hedge notice issued

If a local authority decide not to issue a high hedge notice, someone can appeal in the following circumstances⁹³.

- They applied to the local authority for a high hedge notice (they are the 'high hedge neighbour'), and they think that:
 - the local authority are wrong to decide that the hedge is not having a negative effect on their reasonable enjoyment of their house; or
 - the local authority, having agreed that the hedge does have a negative effect, should have issued a high hedge notice.

3. If a high hedge notice is withdrawn

If a local authority have decided to withdraw a high hedge notice, someone can appeal in the following circumstances.

- They are the owner or occupier of the domestic property identified in the high hedge notice (the 'high hedge neighbour'), and:
 - they did not agree to the notice being withdrawn; or
 - the local authority have not issued a new high hedge notice.

The local authority's decision to withdraw a high hedge notice is suspended while an appeal is being decided, as is the original high hedge notice⁹⁴.

4. If a high hedge notice is varied

If a local authority vary a high hedge notice by setting aside, adding to or changing some of its requirements, someone can appeal in the following circumstances.

- They are the owner or occupier of the domestic property identified in the high hedge notice (the 'high hedge neighbour'), and they:
 - did not agree to the changes to the notice;
 - think that the work set out in the revised notice does not go far enough; or
 - have some other complaint about the high hedge notice.
- They are the owner or occupier of the land the hedge is on, as identified in the notice (the 'high hedge owner/occupier'), and they:
 - did not agree to the changes to the notice;
 - think the work set out in the revised notice goes too far; or
 - have some other complaint about the high hedge notice.

⁹² [Section 13 of the Act \(effect of appeal\)](#)

⁹³ [Section 12\(1\) of the Act](#)

⁹⁴ [Section 13\(3\) of the Act](#)

The local authority's decision to vary a high hedge notice is suspended while an appeal is being decided, as is the original high hedge notice⁹⁵.

How to appeal

The person making the appeal must fill in a high hedges appeal form, which they can get from the DPEA website⁹⁶, by phoning 01324 696400, or by writing to DPEA, Unit 4, Callendar Business Park, Falkirk, FK1 1XR. They must send a copy of the local authority's decision and a copy of the high hedge notice, if one has been issued, with the appeal form.

The appeal must be made within 28 days of the date when the local authority sent their decision to everyone involved. This is the date of notification given by the authority (the date of notification, as defined by section 12 of the Act means the date on which the authority issued their decision letter)⁹⁷. The DPEA cannot consider appeals made after the end of this 28-day period.

The person making the appeal must give a full explanation of the reasons why they disagree with the local authority's decision. It is not enough to state that they do not agree with or accept the decision. The local authority's decision letter will contain the reasons for their decision. Someone considering whether or not to appeal may want to ask the local authority to explain the reasons for their decision before deciding whether to go ahead with their appeal.

The appeal form and the explanation it contains will be treated as the 'statement of case' in the appeal and it may not be possible to add to the explanation later. However, the reporter dealing with the appeal may ask for more information.

The person making the appeal can withdraw it at any time before they receive a decision on the appeal, by writing to the DPEA. If an appeal is withdrawn, any high hedge notice that has been suspended will become effective from the date on which it is withdrawn⁹⁸.

There is no charge for making an appeal, but the person appealing will have to pay their own costs if they choose to use a professional advisor to help with their appeal.

People involved in an appeal

The following people or organisations will be involved in the appeal procedure, whether or not they made the appeal.

- The local authority who made the decision about the high hedge
- The person who complained to the local authority about the high hedge or the person now living in that property if the occupier has changed (the 'high hedge neighbour')

⁹⁵ [Section 13\(3\) of the Act](#)

⁹⁶ <http://www.dpea.scotland.gov.uk/>

⁹⁷ [Section 12\(4\) of the Act](#)

⁹⁸ [Section 13\(1\) of the Act](#)

- The owner or occupier (or both) of the land where the hedge is growing (the 'high hedge owner/occupier')

The people involved in the appeal are known as 'the parties', and all play an equal part in the appeal and see all the relevant papers. The reporter dealing with the appeal cannot consider any document unless it has been seen by everyone else involved in the appeal. Other people who may have made comments to the local authority about the case, such as other neighbours or local interest groups (such as conservation groups), have no direct role in the appeal. However, the local authority will send any comments these other parties make to the DPEA so that the reporter can take them into account when making the appeal decision.

It is possible for more than one appeal to be made against the same decision. For example, the 'high hedge neighbour' might appeal against a high hedge notice because they think it doesn't go far enough. On the other hand, the 'high hedge owner/occupier' may appeal against the same notice because they think the hedge height should not be reduced at all.

It is important for the 'high hedge owner/occupier' and the 'high hedge neighbour' to communicate after the appeal has been made. This is because they may reach agreement on an alternative solution to the one set out in the high hedge notice. If they do, they may make a joint application to the local authority to cancel or relax the requirements of the notice and withdraw the appeal.

What happens to an appeal?

When the DPEA receive an appeal, they will send a copy of the appeal form and any supporting documents to the local authority that made the original decision (which is being appealed).

Most appeals will be dealt with through a written procedure. When telling the local authority that they have received an appeal, the DPEA will ask the local authority for all the relevant papers from their case file, including copies of the original complaint or request the local authority received, all the information and comments they received on it, any reports prepared by officers dealing with the matter, and their decision letter.

The DPEA will also tell the party affected by the appeal (the 'high hedge owner/occupier' if the appeal is made by the 'high hedge neighbour', or the 'high hedge neighbour' if the appeal is made by the 'high hedge owner/occupier') that they have received an appeal. The local authority and the other party may make comments on the appeal within 21 days of receiving notice of it. If they do this, the person making the appeal will be given another 14 days to respond.

In exceptional circumstances, the reporter dealing with the appeal may ask for more information (usually more written information). Very occasionally the reporter may decide to hold a hearing, which is a structured discussion, led by the reporter, about the issues in the appeal. Very rarely, the reporter may decide that an inquiry session is necessary, where evidence is provided and cross-examined by the other party. In

these circumstances the reporter will follow the procedures set out in the Town and Country Planning (Appeals) (Scotland) Regulations 2013 (see guidance note 8)⁹⁹.

The reporter dealing with the appeal will usually visit the property to look at the hedge and the property affected by it. This is known as a site visit. A representative from the local authority, the 'high hedge owner/occupier' and the 'high hedge neighbour' will usually be present during the site visit. The DPEA expect everyone to co-operate to make sure that their reporter can make a full inspection of the site so they can fully consider all the information they receive from all parties. The people attending the site visit are not able to discuss the main issues in the appeal with the reporter, but the reporter may ask them to explain the facts. The people responsible for deciding an appeal under the Act have the right to enter the property¹⁰⁰ and to take onto the land any people and equipment they reasonably need to carry out their duty¹⁰¹.

The DPEA will give at least 14 days' notice of the site visit to the local authority, the 'high hedge owner/occupier' and the 'high hedge neighbour', inviting them to attend¹⁰².

To help them make a decision on the appeal, the reporter will weigh up all the information gathered from the paperwork and at the site visit. They will consider the advice on dealing with applications contained in this guidance. The decision notice will give the DPEA's decision on the appeal and the reasons for it. The DPEA aim to issue a decision notice on an appeal within 12 weeks of receiving the appeal, although this may take longer in exceptional circumstances.

The reporter may allow or dismiss an appeal, either in full or in part. Depending on the circumstances of the appeal, the end result could be as follows¹⁰³:

- The high hedge notice is cancelled
- The work needed to the hedge, as set out in the high hedge notice, is changed (high hedge notice is varied)
- A high hedge notice is issued (this can happen only in cases where the local authority decided not to issue a notice in the first place)
- The work to the hedge, as set out in the original high hedge notice, stays the same

Whatever the appeal decision, the reporter might change the date when the high hedge notice comes into force. The time allowed for carrying out the work to the hedge would start again from this date.

The DPEA will tell the local authority, the 'high hedge owner/occupier' and the 'high hedge neighbour' the reporter's decision as soon as possible after it is made. Decisions will also be posted on the DPEA website.

⁹⁹ <http://www.gov.scot/Topics/Built-Environment/planning/Appeals/howwework/guidanceforreporters/reportersguidancenote8>

¹⁰⁰ [Section 18\(2\) of the Act](#)

¹⁰¹ [Section 19 of the Act \(supplementary powers\)](#)

¹⁰² [Section 19\(2\) of the Act](#)

¹⁰³ [Section 14 of the Act \(determination of appeal\)](#)

If the reporter decides to change a high hedge notice or issue a new one, the local authority are responsible for making sure that the owner or occupier of the land the hedge is on meets the terms of the notice.

The appeal decision should be the end of the matter. There is no right for the person who made the appeal, or anyone affected by it, to appeal to the Court of Session against a reporter's decision, although they can apply for a judicial review on a point of law. Anyone considering applying for a judicial review should get legal advice on the procedures involved and the likely costs, particularly if the review were to be unsuccessful.

Data protection

We are committed to an open, transparent and accessible process for reaching decisions on high hedges and other appeals. In most cases, the information provided to Scottish Ministers is published on the internet. The DPEA's case file publication protocol¹⁰⁴ gives more information on the publication policies for particular case types. In general, it means that the DPEA will publish forms, correspondence, any associated documents (including maps and drawings) they receive, and any correspondence that was previously sent to the local authority. This includes the content of any letters of objection or support relating to the case.

You can see details of all DPEA casework on the DPEA website. The DPEA aim to keep to the Data Protection Act 1998 and remove personal email addresses, phone numbers and signatures before publishing information on the internet. Most documents are removed from the internet 12 weeks after the decision is made.

The DPEA try to make sure that anything that is abusive, indecent or unlawful, or could damage someone's reputation, is not displayed. However, people must take personal responsibility for the comments they make and send to the DPEA.

If anyone wants to raise an issue or complain about the way their personal information has been handled, request access to their personal information or raise any other issue about the DPEA, they can contact the DPEA¹⁰⁵.

¹⁰⁴ <http://www.gov.scot/Topics/Built-Environment/planning/Appeals/PublicationProtocol>

¹⁰⁵ <http://www.gov.scot/Topics/Built-Environment/planning/Appeals/ourrole/contactus>



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