

From: [REDACTED]
Safer Communities Division
13 April 2017

Minister for Local Government and Housing

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE – POST-LEGISLATIVE SCRUTINY OF THE HIGH HEDGES (SCOTLAND) ACT 2013 – SUMMARY OF WRITTEN EVIDENCE

Purpose

1. To provide an update on the Local Government and Communities Committee's call for written evidence as part of its post-legislative scrutiny of the High Hedges (Scotland) Act 2013.

Priority

2. Routine.

Background

3. The High Hedges Act (the Act) received Royal Assent on 2 May 2013. The Act contains a provision that places a duty on the Scottish Parliament to make arrangements for one of its committees or sub-committees to report to Parliament on the operation of the Act during the "review period". The review period began when section 2 (relating to applications for high hedge notices) came into force (on 1 April 2014) and ends 5 years after that date, or on such earlier date as either the committee or sub-committee may determine. On 6 February 2016, the Local Government and Communities Committee announced it had agreed to undertake post-legislative scrutiny of the Act to determine whether it is working effectively.

4. The aim of the Act is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property and gives the relevant local authority powers to settle disputes between neighbours related to high hedges. Under the Act an owner or occupier of a domestic property may apply to the relevant local authority for a high hedge notice to be enacted to restrict the height of a high hedge which directly impacts on their enjoyment of their property or dwelling. The Act leaves it for individual local authorities to determine whether the hedge referred to by the applicant should be defined as a high hedge under the terms of the Act.

5. If the local authority agrees that the hedge referred to by the applicant is a high hedge in terms of the Act, they must then take all views into account to determine whether the hedge is having an adverse effect and, if so, it could issue a high hedge notice requiring the hedge owner to take action to remedy the problem and prevent it recurring. Failure to comply with such a notice would allow the authority to go in and do the work itself, recovering the costs from the hedge owner. There is a right of appeal to the Scottish Ministers (handled by the Planning and

Environmental Appeals Division, DPEA) against decisions of an authority and any high hedge notice issued by it.

Call for written evidence

6. The Committee's call for written evidence invited all interested parties to provide written submissions, setting out their views on how the Act is working. The following questions were posed:

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

7. The call for views closed on 20 March 2017 and 62 responses were received with 45 (around 73%) from individuals and 17 from organisations. A short summary of the main points raised is provided at **Annex A**.

8. The Committee has stated that it will consider the written submissions received before agreeing its next steps.

9. The Scottish Government has not been asked to submit any evidence, however, we have contacted the clerk of the committee and informed them that we are happy to cooperate with the committee should they wish anything from us as part of the evidence gathering process. As the comments and opinions received by us are covered by the contributions made directly to the committee, there is little we can offer in addition.

Next steps

10. We will consider any recommendations made by the committee and provide further advice on how we can best respond to these and any actions we would recommend.

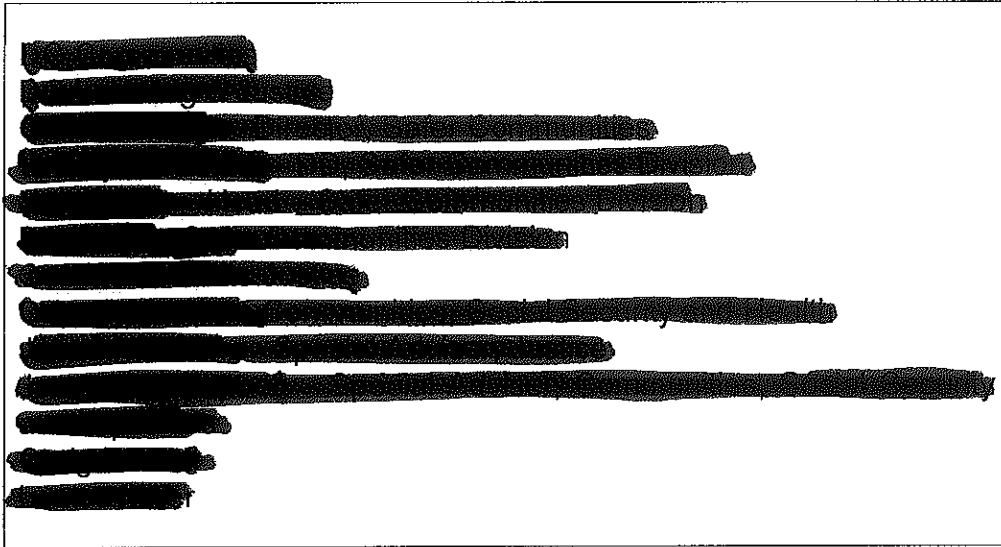
Recommendation

11. [REDACTED]

[REDACTED]
Safer Communities Division
[REDACTED]

13 April 2017

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Communities, Social Security and Equalities					X



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE – POST-LEGISLATIVE SCRUTINY OF THE HIGH HEDGES (SCOTLAND) ACT 2013 – SUMMARY OF WRITTEN EVIDENCE

1. The summary of evidence was divided into 5 categories – Definition; Appeals procedure; Enforcement procedures; Fees and costs; and Other issues.

Definition

2. A number of respondents, both individuals and local authorities, highlighted issues with the definition of a hedge, as set out in the Act.

3. Angus Council questioned whether the definition of a high hedge applied to high trees, Stirling Council felt the definition was too general and East Dunbartonshire Council felt it had to be improved. North Ayrshire Council called for more clarity in cases where trees not initially planted or maintained as a hedge but which have become over grown and taken on the form of a hedge, as these cases attract a lot of complaints. Glasgow City Council also felt more clarity was needed and said it should be emphasised that a hedge needs to have been planted as a boundary treatment hedge rather than a collection of trees to meet the definition. Aberdeen City Council stated that *“future clarification should clearly state that the Act only applies to hedges and that any group of trees and/or shrubs needs to firstly be considered to constitute a hedge”*.

4. Where the vegetation consisted of mixed trees and shrubs, it was highlighted that local councils have differing interpretations of the definition of a high hedge. One individual suggested that local authorities and the DPEA Reporters were misinterpreting the meaning of the term high hedge leading to many applications being dismissed as ineligible.

5. The subjective nature of defining *‘reasonable enjoyment of a domestic property’* was also raised with Perth & Kinross Council and Angus Council both saying greater clarity was needed on what this meant as it could be quite subjective and hard to quantify.

6. One individual commented that trees and hedges which have existed for a long time can provide an ideal habitat for wildlife and problems can arise when new houses are built in adjacent land. They recommended that the planning process should be updated to ensure any new building will not create a contravention of the Act by being sited too closely to well established hedges and trees.

Appeals procedure

7. A number of respondents argued that the legislation should allow individuals to appeal to the DPEA on local authority decisions where it is deemed that the vegetation is not a hedge. Currently, if a local authority rejects an application because they do not believe it relates to a hedge, the application is deemed as being ineligible and there is no right of appeal. Scothedge, a leading campaign group said

that having no right of appeal in these circumstances constitutes a breach of natural justice.

8. East Dunbartonshire Council complained that appeals decisions could sometimes be inconsistent whilst North Ayrshire Council highlighted inconsistencies between planning decisions and appeals decisions stating that *“a property may have been built or bought to benefit from a coastal view; it would therefore be ‘reasonable’ to expect that view to be maintained and this should be taken into account. In planning cases, it is long established that loss of a specific view is not a material consideration”*.

Enforcement procedures

9. Respondents did not believe that full compliance with high hedge notices was being enforced appropriately by local authorities. East Renfrewshire Council explained that enforcement can be difficult and frustrating and suggested that in cases where the Council is required to undertake the works due to no action being taken, the Council should have the ability to serve a fixed penalty notice for non-compliance with the notice.

10. Edinburgh City Council felt there should be a requirement to register a High Hedge Notice with the Registers of Scotland as the presence of a Notice does not appear in title searches and may be unknown to prospective purchasers yet the Notice affects future owners who are bound by it and could face enforcement action.

Fees and Costs

11. The differing costs across council areas (from £200 to £500) were raised by many respondents, particularly the lack of explanation provided by councils for the level set in an area. South Lanarkshire Council and Perth & Kinross Council both felt the fee charged should be set nationally.

12. Many respondents also suggested that the fee associated with applying should be paid by the hedge owner, not the complainant where a council upholds the complaint. East Ayrshire Council suggested that applicants should be able to recover the costs as part of the enforcement process. Some respondents suggested waiving fees for those who were unable to pay, giving access to the legislation to all, not just those that can afford to apply.

13. One respondent suggested that the fees were reasonable saying “it does encourage people to think twice before submitting an application”.

14. Royal Town Planning Institute (RTPI) highlighted the current financial constraints in the planning service and said that the fees charged are unlikely to be at a level that would compensate for planners being diverted from their primary duties. Glasgow City Council responded saying that it set the fee for a High Hedge Notice at £500, the same as the fee for a planning application, because the same amount of processing and consideration is required for a High Hedge Notice but with a higher potential for appeal related work given the rights of appeal available to the applicant and the recipient.

Other issues

15. Other issues raised by some respondents included:

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