

Social Research**Research Findings
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<p>Consultation on High Hedges and other Nuisance Vegetation</p>

<p>An Analysis of Responses John Scott, ODS Consulting</p>
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This report summarises the responses to the Scottish Government's consultation document *High Hedges and other Nuisance Vegetation*. The consultation paper set out, and sought views on, a number of policy options to address high hedge disputes and, where appropriate, consider potential delivery mechanisms. The consultation invited responses to nine issues, structured around 10 open and 10 closed questions.

Main Themes

- An overwhelming majority of respondents favoured Government intervention. Nearly 95 per cent of all respondents indicated their preference for this option. However, the proportion of respondents other than private individuals favouring government intervention was lower, representing 66 per cent of respondents who answered the question.
- Of the four options outlined in the consultation paper ranging from 'do nothing' to 'providing a legislative solution', the overwhelming number of respondents indicated their preference was for a legislative solution. Only five respondents indicated that it was their least preferred option. The most significant opposition was to 'do nothing' and the least was 'providing a legislative solution'.
- The vast majority supported the creation of a legal right of enjoyment of property. A small number of respondents were opposed with some suggesting that such a right did not sit comfortably with existing laws of property and nuisance.
- Respondents were asked to indicate their preference for a number of options identified to deliver legislative change if introduced. Over two-thirds of private individuals and two-fifths of 'other respondents' favoured the replication or modification of the English and Welsh legislation as the preferred delivery mechanism. The second most popular choice was the introduction of Statutory Nuisance powers.
- The views of local authorities were more diverse with broadly equal support for legislation, the use of Statutory Nuisance powers, the Lands Tribunal for Scotland and civil action.
- Private individuals were most likely to oppose civil actions – although sizeable numbers indicated their opposition to Statutory Nuisance powers and the Lands Tribunal for Scotland. Other respondents were equally opposed to the use of civil actions, Statutory Nuisance powers and the Lands Tribunal for Scotland.
- Nearly half of all respondents supported the definition of high hedges and other nuisance vegetation being set down in legislation. Around one third felt it should be left to the discretion of an adjudicator. Views were more evenly spread among 'other respondents' than private individuals, with the latter least favouring the introduction of a code of practice.
- Overall, views were relatively evenly spread as to whether the definition of a high hedge used in English and Welsh legislation was appropriate for Scotland. Many highlighted the limitation of the definition used, with some suggesting that it should be based on the impact of the hedge rather than trying to define the hedge itself.
- Just over half of all respondents indicated that they did not know whether the legislation in force in England and Wales had been effective.

Background to the consultation

There is currently no legislation in Scotland covering the definition or remedies for high hedges or other nuisance vegetation. The issue has been subject to a previous (Scottish Executive) consultation, an MSP's proposal to the Scottish Parliament for legislation on a number of occasions, and ongoing campaigning leading to petitions to the Scottish Parliament's Public Petitions Committee.

Following the conclusion in March 2009 of a comprehensive review of national anti-social behaviour strategy, the Minister for Community Safety agreed to prepare a consultation paper as a way of collecting and assessing views on the options open to the Scottish Government.

The response

A total of 617 responses were received to the consultation. Ninety-three per cent came from private individuals, nearly 60 per cent of whom were or had been involved in a dispute with a neighbour. The remaining seven per cent came from a range of organisations, the largest group being 13 local authorities. The majority of organisations invited to respond to the consultation did not do so.

In a number of cases more than one response was received from a local authority or campaigning organisation. There was also evidence of six cases of campaigning involving 57 responses. For the purpose of analysis these were treated as single responses.

Options

Respondents were asked to indicate whether high hedge disputes are a matter for government intervention. Nearly 90 per cent of all respondents and 95 per cent of those who responded to the question indicated that this was their preference.

Whilst the overwhelming majority of private individuals favoured government intervention, the proportion of other respondents favouring this approach was lower at 66 per cent.

Respondents were asked to rank their preference for up to four policy options. These ranged from 'doing nothing' to 'providing a legislative solution'.

The vast majority favoured a legislative solution. The second most favoured option was

strengthening and supplementing existing remedies. Very few respondents favoured doing nothing.

Support for a legislative solution was justified on the grounds that, without a legal remedy, voluntary measures were less likely to be successful.

When asked to indicate any of the options they were opposed to, the largest group of respondents indicated doing nothing.

A large number of respondents suggested that replicating the current arrangements operating in England and Wales was the appropriate way of creating a new legal right.

One local authority suggested that the concept of reasonability is already enshrined in existing legislation and could be replicated. However, another respondent felt that, if intervention is justified, adjusting existing laws would be more appropriate than creating new ones.

The consultation paper outlined five options to deliver legislative change. A large majority of respondents suggested that the Scottish Government should replicate or modify English and Welsh legislation. This allows local authorities to determine complaints made by residential property owners or occupiers adversely affected by evergreen high hedges over two metres in height. However, only four local authorities favoured this option.

The introduction of Statutory Nuisance powers was the next most favoured option. There was less support for the other options of civil action or the Lands Tribunal for Scotland.

Nearly half of private individuals responding felt that the definition of a high hedge should be set down in legislation. Around one third felt it should be left to the discretion of an adjudicator. Views among other respondents were more evenly spread between a legal definition, the introduction of a code of practice or being left to the discretion of an adjudicator.

Views were relatively evenly spread as to whether the definition of a high hedge used in English and Welsh legislation was appropriate for Scotland.

A number of respondents who did not support the definition used suggested that it should be based on the impact of the vegetation rather than a description of it.

There was little information provided by respondents on the financial costs associated with any of the delivery options.

Whilst around two-fifths of private individuals and one quarter of other respondents suggested that the legislation in force in England and Wales had been successful, the evidence base was largely anecdotal and second hand.

Three local authorities were able to provide some evidence of the scale of the problem. However, a number of respondents suggested that the perceived lack of remedy may influence the extent to which it is reported.

Others suggested that a stronger evidence base of the extent of the problem and the effectiveness of remedies elsewhere was required before the Scottish Government agreed a course of action.

This document, along with full research report of the project, and further information about social and policy research commissioned and published on behalf of the Scottish Government, can be viewed on the Internet at: <http://www.scotland.gov.uk/socialresearch>. If you have any further queries about social research, or would like further copies of this research findings summary document or the full research report, please contact us at socialresearch@scotland.gsi.gov.uk or on 0131-244 7560.