

HIGH HEDGES (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament's Standing Orders, the following documents are published to accompany the High Hedges (Scotland) Bill introduced in the Scottish Parliament on 2 October 2012:

- Explanatory Notes;
- a Financial Memorandum;
- the Presiding Officer's Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 16–PM.

EXPLANATORY NOTES

INTRODUCTION

2. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section, or part of a section, does not seem to require any explanation or comment, none is given.

3. These Explanatory Notes have been prepared by Mark McDonald MSP, with the assistance of the Scottish Government, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

SUMMARY OF THE BILL

4. The Bill provides for applications to be made to a relevant local authority where a high hedge on neighbouring land is considered to be having an adverse effect on the reasonable enjoyment of domestic property. The Bill gives the local authority powers to settle disputes between neighbours related to high hedges. If the local authority, having taken all views into account, finds that the hedge is having an adverse effect, it could issue a high hedge notice requiring the hedge owner to take action to remedy the problem and prevent it recurring. Failure to comply with such a notice would allow the authority to go in and do the work itself, recovering the costs from the hedge owner. There is a right of appeal to the Scottish Ministers against decisions of an authority and any high hedge notice issued by it.

COMMENTARY ON SECTIONS

Meaning of “high hedge”

Section 1 – Meaning of “high hedge”

5. This section defines a “high hedge” as being one which is being formed wholly or mainly by a row of two or more evergreen or semi-evergreen trees or shrubs which exceed two metres in height and which forms a barrier to light. Semi-evergreens are trees or shrubs which generally have some live foliage during the winter, depending on weather conditions.

6. Subsection (2), however, makes it clear that the density of the hedge is relevant. It provides that a hedge is not to be regarded as forming a barrier to light when the row of trees or shrubs contains gaps, which significantly reduce its overall effect as a barrier to light at heights of over two metres.

7. Subsection (3) makes it clear that the roots of the hedge are not relevant.

High hedge notices

Section 2 – Application for high hedge notice

8. This provision allows an owner or occupier of a domestic property to apply to the relevant local authority for a high hedge notice, if that person feels that the occupier’s reasonable enjoyment of the property has been adversely affected by the height of the hedge on land

occupied by another person. This land does not necessarily need to share a boundary with the domestic property affected by the hedge, nor does it exclusively refer to other domestic properties.

Section 3 – Pre-application requirements

9. This section places a responsibility on a potential applicant to take all reasonable steps to resolve the high hedge dispute before making an application for a high hedge notice. It also provides that in doing so, applicants must have regard to any guidance published by the relevant local authority on this issue. Guidance issued by the relevant local authority may, for example, require applicants to have attempted to resolve matters through mediation before making an application.

Section 4 – Fee for application

10. This section gives the local authority the power to charge a fee for applications. It provides that applications must be accompanied by any fee set by the relevant local authority. The fee must not exceed an amount which the local authority considers represents the reasonable costs of deciding an application. This would include administration costs.

11. Subsection (2) allows different fees to be charged for different types of applications. This ensures that the local authority has the scope to alter any charging regime according to factors it considers appropriate other than simply amending the price of all applications. The local authority is given the power in subsection (4) to refund fees as it may determine.

Section 5 – Dismissal of application

12. This section provides that the local authority must dismiss an application if it considers the applicant has not taken all reasonable steps to resolve the high hedge dispute without involving the authority, or if it considers that the application is frivolous or vexatious. Whether an application is frivolous or vexatious will turn on the particular circumstances, but may include the situation where someone has repeatedly applied (unsuccessfully) to the local authority without there being any change in circumstances which would affect the local authority's decision.

13. If the local authority dismisses an application it must, under subsection (2), inform the applicant as soon as is reasonably practicable, giving reasons for its decision.

Section 6 – Consideration of application

14. This section applies where the local authority does not dismiss an application under section 5 and proceeds to consider the application. It must give a copy of the application to every owner and occupier of the neighbouring land. A notice must also be given informing such owners and occupiers of the matters set out in subsection (3).

15. Subsection (3) lists the matters that must be included in the notice provided in subsection (2)(b). These include informing such owners and occupiers of their right to make representations

within a period of 28 days and letting them know that a copy of such representations will be given to the applicant.

16. Subsection (4) requires the local authority to take any representations made into account when making a decision in relation to the high hedge.

17. Subsection (5) requires that, after the period of 28 days, the local authority must take a decision on the application. It must decide in the first place whether the height of the high hedge is adversely affecting the enjoyment of the property that an occupant of the property could reasonably expect to have. The test, therefore, is an objective occupier's enjoyment and not the enjoyment that the particular applicant has, or expects, if they were to live in the property. If the local authority concludes that there is an adverse effect, it must then decide what, if any, action should be required to be taken, and by when, in relation to the hedge in order to remedy the adverse effect or to prevent it recurring. This is referred to as "initial action".

18. If a local authority decides that initial action should be taken, subsection (6) requires it to decide a reasonable period of time for this action to be taken, the "compliance period". It must also decide whether or not any preventative action should be taken following the end of the compliance period so as to prevent the recurrence of the adverse effect. An example of "preventative action" would be annual maintenance of the hedge.

19. Subsection (7) makes it clear that in considering whether any action is required, the local authority must have regard to all the circumstances of the case, including in particular, the effect of the high hedge on the amenity of the area and whether the high hedge is of cultural or historical significance. This is to ensure protection for ancient trees and hedgerows, as well as any hedges that may have an effect on the amenity of the area.

Section 7 – Notice of decision where no action to be taken

20. This section requires that, as soon as reasonably practicable after deciding there is no adverse effect, or that no action should be taken in relation to the high hedge, the local authority must notify the applicant and every owner and occupier of the land on which the high hedge is situated of its decision, giving reasons and notifying the recipients of the right to appeal.

Section 8 – High hedge notice

21. This section provides that where the local authority decides that initial action should be taken it must issue a high hedge notice. The high hedge notice should be issued as soon as reasonably practicable after the decision.

22. Subsection (2) lists what a high hedge notice must state. This includes identification of the hedge and the date on which the notice is to take effect. This must be at least 28 days after the date on which the notice is issued, so as to allow time for an appeal under section 12 to be made.

23. The notice must also specify the initial action and the compliance period for that action and any preventative action following that period required to be carried out.

24. The notice must also outline the right of appeal and the consequences of failure to comply with the notice. These are that the local authority has power to go in and take action itself, recovering the expenses of that action from the hedge owner.

25. Subsections (4) and (5) require the local authority to send a copy of the high hedge notice to the applicant and every owner and occupier of the neighbouring land, giving reasons for its decision.

Section 9 – Effect of high hedge notice

26. This section provides that a high hedge notice is binding on every person who is for the time being an owner of the neighbouring land specified in the notice. This provision makes it clear that a notice is binding not only on whoever is the owner at the time it is issued but also on subsequent owners.

Section 10 – High hedge notice: withdrawal and variation

27. This section provides that a local authority can, having regard to all the circumstances of the case, withdraw or vary a high hedge notice. “Vary” is defined in section 33(1). Before making any withdrawal or variation, regard must be had in particular to (a) whether, after the withdrawal or variation, the height of the high hedge would adversely affect the enjoyment of the domestic property that an occupant could reasonably expect to have and (b) all of the circumstances of the case, including the effect of the high hedge on the amenity of the area and whether it is of cultural or historical significance.

28. Under subsections (3) and (4), where a local authority withdraws a high hedge notice it must notify each owner and occupier of the domestic property identified in the notice and each owner and occupier of the neighbouring land of its action giving reasons for the decision and notifying the recipient of the right to appeal.

29. Subsection (5) allows the local authority to issue another high hedge notice if it has withdrawn a previous high hedge notice. A later application may be made in respect of the same hedge.

30. Subsections (6) to (8) relate to the issuing of a revised high hedge notice. Where a local authority varies a notice, it must issue a revised notice containing the date on which it is to take effect. This must be at least 28 days after the date on which the revised notice is given, so as to allow time for an appeal under section 12 to be made. The same notification requirements apply as in respect of a withdrawal of a notice. A revised notice can be withdrawn or further varied.

Section 11 – Tree preservation orders

31. This section applies where a high hedge notice relates to a high hedge which includes a tree or forms part of a group of trees subject to a tree preservation order. Section 33(1) provides that a tree preservation order has the meaning given by section 160(1) of the Town and Country Planning Act 1997. Such an order can be made by a planning authority providing for the

preservation of trees or groups of trees or woodlands where it is expedient in the interests of amenity or that the trees, groups of trees or woodlands are of cultural or historical significance.

32. Subsection (2) provides that a tree preservation order has no effect in relation to any initial or preventative action done to any tree or group of trees specified in a high hedge notice. However, under section 6(7) the local authority must have regard (amongst other things) to the effect of the high hedge on the amenity of the area and whether the high hedge is of cultural significance in determining an application for a high hedge notice.

Appeals

Section 12 – Appeals

33. This section provides rights of appeal to Scottish Ministers against decisions made by local authorities.

34. Under subsection (1), applicants may appeal against decisions made by the local authority that there is no adverse effect or that no action should be taken on the hedge.

35. Under subsections (2) and (3), owners and occupiers of the domestic property and owners and occupiers of the neighbouring land may appeal against the issue of a high hedge notice or a withdrawal or variation of a high hedge notice.

36. Subsection (4) provides that any appeal must be made before the end of the period of 28 days, beginning with the date of the notification by the local authority of the decision or the high hedge notice or the withdrawal of the notice or the revised high hedge notice as the case may be.

Section 13 – Effect of appeal

37. This section provides that, where an appeal has been made against a high hedge notice, the notice has no effect until the appeal is either determined, withdrawn or abandoned. The section also provides that where an appeal has been made against the withdrawal or variation of a notice, the withdrawal or variation has no effect until the appeal is either determined, withdrawn or abandoned.

Section 14 – Determination of appeal

38. This section sets out how Scottish Ministers may determine an appeal. It allows Scottish Ministers to confirm the decision or high hedge notice, quash the decision or high hedge notice, vary a notice or issue a high hedge notice, depending on circumstances.

Section 15 – Person appointed to determine appeal

39. As with appeals under the Town and Country Planning (Scotland) Act 1997, this section enables Scottish Ministers to appoint a person to hear and determine an appeal. Under subsection (2), the appointed person will have, in relation to the appeal, the same powers and duties

provided for Scottish Ministers under the Bill. Under subsection (3), the decision of the appointed person is to be treated as that of the Scottish Ministers.

Section 16 – Notice of determination

40. This section sets out the notification requirements once an appeal has been determined.

Section 17 – Period for taking initial action following appeal

41. This section sets out the relevant time period in which the initial action must be taken (“the compliance period”), following appeals.

Powers of entry

Section 18 – Power to enter neighbouring land

42. Subsection (1) gives local authorities the power to enter neighbouring land for the purpose of obtaining information required to consider an application for a high hedge notice, or required to consider the withdrawal or variation of a notice or for determining whether a high hedge notice has been complied with.

43. The Scottish Ministers and any person appointed to determine an appeal under section 15 have a similar power under subsection (2) for the purpose of obtaining information required in relation to an appeal.

44. The power to enter land includes a power to enter buildings (including houses) by virtue of the definition of “land” in the Interpretation and Legislative Reform (Scotland) Act 2010, which includes buildings and other structures. This power may be used for entry where the building is occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

Section 19 – Supplementary powers

45. This section sets out what additional persons, materials and equipment can be taken onto the land in question and allows certain samples of trees or shrubs to be taken. It requires 14 days’ notice of intended entry to be given and requires unoccupied land to be left secured against unauthorised entry. Notice must be given, by either the local authority, the Scottish Ministers or the person appointed to determine an appeal under section 15, depending on who authorised the person to enter the land under section 18.

Section 20 – Warrant authorising entry

46. This section enables a sheriff or justice of the peace to grant a warrant to any person entitled to exercise a power of entry under section 18 to do so. A warrant allows the person authorised to use reasonable force but does not allow the use of force against individuals (see subsections (1) and (3)).

47. Subsection (2) describes the circumstances in which a warrant may be granted. These are (a) that there are reasonable grounds for exercising the right of entry, (b) that entry to the land has been refused or a refusal is reasonably expected or the land is unoccupied, and (c) that the local authority has complied with the 14 day notice requirements imposed under section 19(2). The warrant must not authorise entry to a building being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge.

Section 21 – Offence

48. Subsection (1) makes it an offence for a person to intentionally obstruct or prevent an authorised person from doing anything which that person is authorised to do by virtue of the Bill. The offence is punishable on summary conviction up to a maximum fine of level 3 (currently £1000) on the standard scale.

Local authority enforcement action

Section 22 – Power to take action

49. This section gives the local authority the power to enter neighbouring land and take the action specified in the high hedge notice, where the owner or occupier of the land fails to comply with the notice. The costs of this work can be recovered from the owner under section 25.

50. The section also sets out what additional persons, materials and equipment can be taken onto the land in question. When exercising these powers the local authority must give 14 days' notice of its intended entry on to the land and must leave unoccupied land secured against unauthorised entry. This power may be used for entry where the building is occupied as a residence only if there is no other reasonably practicable means of access to the high hedge.

Section 23 – Warrant authorising entry by local authority

51. This section contains similar provisions to those found in section 20, but relates to the right of the local authority to enter land to take action. The warrant must not authorise entry to a building being occupied as a residence unless there is no other reasonably practicable means of access to the high hedge.

Section 24 – Local authority action: offence

52. This section creates a similar obstruction offence (punishable in the same way) to that created in section 21 except it relates to the power to enter neighbouring property for the purpose of the local authority taking initial or preventative action required under a high hedge notice.

Expenses of enforcement

Section 25 – Recovery of expenses from owner of land

53. Subsection (1) enables the local authority to recover expenses incurred in taking the action required under a high hedge notice from the owner of the neighbouring land. The expenses can also be recovered from subsequent owners. Associated reasonable administrative expenses may also be recovered. Interest is also recoverable.

54. Subsection (2) provides that each owner of the neighbouring land is jointly and severally liable for the expenses. Each owner is equally liable for the full amount with a right of relief against the other owners.

Section 26 – Notice of liability for expense of local authority action

55. This section enables a notice of liability for expenses to be registered in the appropriate property register against neighbouring land. Subsection (2) sets out the information the notice must contain.

Section 27 – Recovery of expenses from new owner of land

56. This section deals with the liability of an incoming or “new” owner of the neighbouring land. It provides that a new owner, as well as the former owner, is liable for any expenses and interest for which the former owner is liable, under the terms of section 25. However, this is only the case where subsection (2) applies.

57. Subsection (2) provides that a new owner is liable only if a notice of liability for expenses is registered in the property registers (on or before a date 14 days prior to the new owner becoming the owner). If no such notice is registered then the new owner is not liable.

Section 28 – Continuing liability of former owner

58. This section provides that an owner of the neighbouring land does not cease to be liable if they are no longer the owner of that land. If the new owner has paid the expenses and interest to the local authority, the new owner may recover that amount paid from the former owner, if the former owner is liable. This remains the case even if another person takes ownership of the land.

Section 29 – Notice of discharge

59. This section applies where the expenses and interest to which a registered notice of liability for expenses relates has been discharged. It states that the relevant local authority must register a notice (“a notice of discharge”) in the appropriate property register. Subsection (3) sets out the information the notice must contain.

60. Subsection (5) provides that the notice of liability for expenses is discharged as soon as the notice of discharge has been registered.

Section 30 – Receipt of notices by the Keeper

61. This section makes it clear that the Keeper of the Registers of Scotland is not required to investigate or determine whether or not the information contained in either a notice of liability for expenses or a notice of discharge is accurate.

General

Section 31 – Guidance

62. This section places a duty on local authorities to have regard to any guidance issued by the Scottish Ministers when carrying out their functions under the Act and when issuing guidance on the duty imposed under section 3 (relating to pre-application requirements) and any other provision of the Act.

Section 32 – Service of documents

63. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 regarding service of documents will apply to notices sent under the Bill. The application of the 2010 Act enables those documents to be served either by person, by registered post, recorded delivery or by being sent by way of electronic communication (where agreed in writing with the recipient).

64. Section 32 supplements that with additional ways in which notices may be served when the name and address of the recipient is unknown.

Section 33 - Interpretation

65. Section 33 defines terms that are used frequently in the Bill. In particular, “domestic property” means any part of a building occupied or intended to be occupied as a separate dwelling, including a yard, garage or outbuilding belonging to or usually enjoyed with the building, and located in Scotland.

66. “Owner” means a person who has right to the property whether or not that person has completed title. This is someone who is entitled to take entry under a conveyance of the property. It will not be necessary for the person to have completed title by registering it in the property registers before a person is considered an owner. If more than one person comes within the description of an owner then the “owner” is the person who has most recently acquired that right to take entry under a conveyance.

67. “Neighbouring land” means the land on which the hedge is situated. There is no restriction on where the hedge is situated. The hedge does not have to be next door to the domestic property affected by the hedge. In addition, the hedge could be growing on commercial property or on parkland.

Section 34 – Power to modify meaning of “high hedge”

68. This section provides Scottish Ministers with the power to modify the definition of a “high hedge”, as defined by section 1, by regulations. Subsections (2) and (3) specify that those regulations may also make other appropriate changes to this and other Acts and that they are subject to affirmative procedure.

Section 35 – Ancillary provision

69. This section provides Scottish Ministers with the power to make, by order, such supplementary, incidental, consequential, transitional, transitory or saving provision as they consider appropriate. It provides that an order under this Bill may modify this, or any other, enactment.

70. Subsections (3) and (4) make it clear that an order made under subsection (1), which adds to, replaces or omits any part of the text of this Bill or another Act is subject to the affirmative procedure. Any other order is subject to the negative procedure.

Section 36 – Crown application

71. Under section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Bill applies to the Crown in Scotland. However, subsection (1) absolves the Crown of any criminal liability, should it be in contravention of the provisions of this Bill.

72. Subsection (3) provides that the powers in sections 18 (power to enter neighbouring land), 19 (supplementary powers) and 22 (power to take action) are exercisable in relation to Crown land, but only if the appropriate authority gives its consent.

Section 37 – Commencement

73. Section 37(1) provides for certain provisions of the Bill to come into force on the day after Royal Assent. Subsection (2) gives power to the Scottish Ministers to appoint a day for the coming into force of the other provisions of the Bill. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.

FINANCIAL MEMORANDUM

INTRODUCTION

74. This document relates to the High Hedges (Scotland) Bill introduced in the Scottish Parliament on 2 October 2012. It has been prepared to satisfy Rule 9.3 of the Parliament's Standing Orders. The Financial Memorandum should be read in conjunction with the Bill. It has been prepared by Mark McDonald MSP, with the assistance of the Scottish Government, in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

75. The purpose of the Financial Memorandum is to set out, as far as possible, the responsibility for costs associated with the Bill's provisions, which give local authorities new powers to deal with disputes relating to high hedges through the provision of an application, decision and enforcement process, with provision for an appeal to be made to Scottish Ministers.

76. The Bill acknowledges that the individuals involved in a dispute should have the primary responsibility for resolving disputes over high hedges and requires that they should have taken all reasonable steps to resolve the matter before applying for a high hedge notice. That approach is reflected in the responsibility for costs of local authorities exercising their new powers, which will fall primarily upon the individuals involved in the dispute. There will be minor costs to the Scottish Government arising from appeals and the issuing of guidance.

Overview of the Bill

77. The intent of the Bill's provisions is to put in place an effective mechanism for the resolution of disputes relating to high hedges. It provides local authorities with new powers to address these problems and enables them to recover the costs of doing so, ensuring that the cost to the public purse of resolving these private disputes is minimised, with the costs falling principally on those involved in such disputes.

Details of the Bill

78. The objective of this Bill is to provide a solution to the problem of high hedges which interfere with the reasonable enjoyment of domestic property. It aims to provide an effective means of resolving disputes over the effects of a high hedge where the issue has not been able to be resolved amicably between neighbours. It does so by giving home owners and occupiers a right to apply to a local authority for a high hedge notice, where they believe that a high hedge is adversely affecting the reasonable enjoyment of their property, and empowers local authorities to make and enforce decisions in relation to high hedges. A fee will be payable by the applicant towards the cost to the authority of making the decision. The proposals will provide a remedy to such problems which in some cases have affected people's lives for a number of years.

79. A high hedge notice, if issued, will require action to be taken by the hedge owner, at their own expense. Where a high hedge notice is not complied with within the specified time, a local authority can do the work and recover costs from the hedge owner. The Bill provides for appeals to Scottish Ministers against a decision to award, or not to award, a high hedge notice.

80. Full details of the Bill's provisions are set out in the accompanying Policy Memorandum.

COSTS ON LOCAL AUTHORITIES

81. The Bill provides new powers for local authorities to resolve disputes relating to high hedges. The Bill enables local authorities to recover the costs of exercising those powers from those individuals, so the costs will ultimately fall on those involved in the dispute; both the applicant and the hedge owner.

82. The provisions of the Bill are intended to be largely cost-neutral with respect to local authorities. It provides that local authorities may set a fee to be paid by those applying for a high hedge notice and explicitly enables local authorities to set that fee with regard to the cost of reaching a decision on the issue of a high hedge notice. It also provides that local authorities may

recover the costs of any enforcement action from a hedge owner, where the hedge owner has failed to comply with a high hedge notice within the specified time.

83. COSLA has been consulted on the new local authority powers proposed by the Bill and the provisions made by the Bill for local authorities to recover the costs involved in exercising those powers. COSLA has advised that the Bill is broadly welcomed and councils do not anticipate a financial burden arising from the powers currently specified in the Bill. It has also indicated that it will monitor the Bill's progress in case any of the provisions are amended in a way that might place an additional burden on local authorities.

84. Discussion has been had with the Scottish Tree Officers Group (STOG) which represents local authority tree officers to discuss the proposed new powers. This has made clear that some local authority staff are already engaged on high hedge issues with members of the public. There is currently a non-recoverable cost attached to this. The expectation is that the introduction of new powers will assist local authority handling and resolution of such cases and that it will be largely cost-neutral for local authorities. Savings may actually accrue as a result of the introduction of a statutory procedure and the additional powers provided to local authorities to enforce action, which is anticipated will avoid protracted correspondence with no solution, as can be the case at present.

85. Most local authorities in Scotland already employ staff dealing with tree issues as they have parks and gardens to maintain, and have the responsibility for the protection of certain trees. In light of experience of the level of applications to local authorities across England and Wales under largely similar legislation, there is no expectation that additional administrative or technical staff will require to be recruited to implement the Bill's provisions.

86. It will ultimately be a matter for local authorities how much – if anything – they decide to spend on guidance accompanying the Act. However, it is anticipated that local authorities will initially do what has been done extensively in England and Wales where they have simply provided links from their own websites to the guidance produced by central government. This guidance covers all aspects of the Act and offers guidance to hedge owners, their neighbours, and decision makers within local authorities alike. It is likely that any guidance will largely mirror the guidance produced in England and Wales on both scope and content. However, over time, local authorities may wish to adapt their guidance in light of experience.

87. An applicant for a high hedge notice will be required to pay a fee at the time of making a formal application. The Bill provides that each local authority may set an appropriate fee, based upon its anticipated costs of handling such applications up to and including the point where a decision regarding the application for a high hedge notice is made. Local authorities will be able to fix different levels of fees for different applications or types of applications. Details of the expected range of such fees are set out later in this Memorandum. The Bill intends that the fees imposed by a local authority will be commensurate with the costs of the work it is expected to undertake to make a decision and issue a high hedge notice. As a result, it is anticipated that local authorities' ability to levy such fees will avoid any increase in funding required by local authorities from Government to undertake such work.

88. The power to charge a fee for this purpose is not regarded as a new means of raising revenue. The Bill limits the level of fee that can be charged by specifying that it cannot exceed an amount which the local authority considers represents the reasonable costs to an authority in deciding an application for a high hedge notice. It is intended that the fee will be set to reflect what the local authority considers to be a reasonable amount required for it to make a decision in a case, rather than reflect the actual cost of the specific decision in question as the actual cost would only be known after the decision was made. The Bill's approach to setting fees is intended to enable local authorities to recover their costs, while effectively limiting the upper level of the fee in a way which retains the flexibility necessary for local authorities to respond to local circumstances, which might be lost by setting a cap on the fee level.

89. The requirement to pay a fixed fee at the time an application is made by an individual should act to discourage vexatious or frivolous applications. That will be reinforced by the Bill's requirement that applicants must have taken all reasonable measures to resolve the issue before making an application. Indeed, the experience of the operation of similar legislation in England and Wales indicates that the creation of a formal mechanism for resolving high hedge disputes will itself encourage the resolution of most cases without the need for local authority involvement. The low level of formal complaints, set against the number of enquiries, appears to show it encourages disputes to be resolved.

90. Experience in England and Wales also indicates that enforcement action will rarely need to be taken. The Bill intends that the costs of undertaking the work specified in a high hedge notice should fall on the owner of the high hedge. Should the hedge owner fail to do this work within the specified time, a local authority will be able to enter the property and undertake the work itself. The Bill provides that the costs of doing so, including administration costs and interest, can be recovered from the owner of the hedge. It is anticipated that local authorities will apply their usual debt management procedures to the recovery of enforcement costs relating to high hedge notices although, as noted above, that is likely to be necessary only in exceptional cases. The ability to charge interest should also act as an additional incentive for prompt payment.

91. Consultation with COSLA has indicated that local authorities would welcome a formal power to facilitate the recovery of such debts. The Bill therefore provides that a local authority may register a 'notice of liability for expenses' in the Land Register of Scotland or the Register of Sasines, as appropriate, against the land on which the hedge is situated. The effect of registering a 'notice of liability for expenses' will be that any new owner of the land will also become liable for expenses specified in the notice. In practice, that is likely to result either in the debt being settled by the seller prior to completion of the agreement or a suitable adjustment being made to the purchase price to ensure that the purchaser may do so. Where such informal arrangements do not result in the settlement of the debt, it will remain open to a local authority to pursue the seller or the buyer since they are severally liable, and a hedge owner remains liable for enforcement expenses even after they have sold the land. The Bill also provides that a new owner who pays enforcement expenses incurred by the previous owner can recover that amount from the previous owner. A new owner maintains the right to recover those costs even if they themselves sell or otherwise dispose of the land.

Results of enquiries made to local authorities in England

92. Figures provided by the National Association of Tree Officers (NATO) across England and Wales in respect of the English and Welsh legislation on high hedges indicates that local authorities in England and Wales received on average 204 enquiries between 2005 and 2011, resulting in an average of about 10 formal applications per authority in that period, and an average of 6.5 high hedge notices being issued over this same time, per local authority.

93. We would expect similar or lower levels of formal applications in Scotland, based on the relative levels of responses to consultations on high hedges legislation either side of the border (full details of those consultations are set out in the Policy Memorandum).

94. Following this general picture provided by NATO, a number of local authorities across England were engaged directly, and two were visited for more detailed discussions on their experience. From the returns and information obtained from those authorities, the following table gives an indication of the level of enquiries individual local authorities in England received after the English legislation was enacted, and the subsequent level of activity that this generated for those local authorities. The formal applications are those where the individual has made an application and included a fee in order for the authority to assess the case. Enforcement action is where local authorities have had to undertake action where the owner of the hedge has not done so within a certain time after being issued with a high hedge notice.

Local Authority	Enquiries	Formal Applications (2005-11)	Enforcement Action (where Council has had to cut back hedge, not just issue high hedge notices)	Fees (£)
New Forest (nr Southampton)	Not Known	14	Not given	507
Royal Borough of Windsor and Maidenhead	300+	20	0 – Council does not take remedial action but prosecutes via courts and has not done so	600
Croydon (London)	100	22	None stated beyond high hedge notices	300
Hillingdon (London)	250+	13	None stated beyond high hedge notices	500
Ashford (Kent)	Not Known	11	0	400
South Tyneside	100+	28	1	350
Hartlepool	170	7	0	150
Sandwell (West Midlands)	300+	10	0	No fee for applications
Medway (Kent)	Not Known	Not Known	0	420
North Somerset	Not Known	22	0	420
Dover	Not Known	14	0	350

95. The table demonstrates that experience of the operation of the high hedge legislation for England and Wales has been that a potentially large number of disputes (as indicated by the number of enquiries) has generated a relatively low level of formal applications, and that there is a need for enforcement action only in exceptional cases. While there can be no evidence at this stage, there is no reason to believe that experience in Scotland will be very different. It should be noted however that no definitive information is held by the Scottish Government on the number of high hedges disputes in Scotland, other than the level of correspondence on the issue (in 2010-11 the Scottish Government received 79 letters or emails from individuals about high hedges and 118 in 2011-12; but correspondence is not held in a searchable form which can provide any authoritative data). Neither are we aware of local authorities holding such information. The consequence of this position, at both a local and national level, provides a margin of uncertainty on the final costs associated with this Bill.

96. Scottish Government staff time is already committed to addressing the issue of high hedges. The issue of high hedges attracts a significant amount of correspondence and with the increases in correspondence appearing to occur when there has been a significant development. This requires a considerable amount of staff time. Thus far, the role of Scottish Government staff has been confined to encouraging correspondents that disputes between neighbours be resolved through discussion and /or mediation given the absence of existing powers on this issue. While we might expect a “spike” in correspondence as the Bill progresses, we would expect correspondence on high hedges to fall over the longer term as the focus of individuals and groups moves away from lobbying Government and requiring it to take action; to individuals resolving their own problems.

Projected costs associated with making a decision

97. Following discussion with one of Scotland’s tree officers, a cost of £50 per hour for a tree officers time as a starting point has been assumed. This results in the following range of timings, costs and resultant fee levels.

Activity	Estimated Time	Projected Costs
Initial Visit	1 - 2 hours	£50 - £100
Travel Time	0.5 – 1 hour	£25 - £50
Land Check	0.5 – 2 hours	£25 - £100
Report from Visit	2 hours	£100
Follow Up Visit	1 hour	£50
Travel Time (2 nd visit)	0.5 – 1 hour	£25 - £50
General Administration	1 hour	£50
	6.5 – 10 hours	£325 - £500

[source: discussion with a Scottish tree officer]

98. These figures are only indicative and local authorities will be expected to set fee levels that reflect their own circumstances and issues.

99. Local authorities, while able to charge a fee which reflects the costs of making a decision, will also be able to charge reduced rates if they so wish in circumstances that they consider appropriate.

Costs once a high hedge notice has been issued

100. Once the local authority has decided that action should be taken in respect of a high hedge, it will issue a “high hedge notice” to every owner and occupier of the land on which the hedge is situated. This notice will outline the action required to be taken and the period in which it must be taken. The owner of the hedge is ultimately responsible for compliance with the notice and it will be up to them to take such action at their own cost.

101. Should a high hedge notice not be complied with within the specified time, then the authority will be able to enter the owner’s property and carry out the necessary works itself. The local authority will be able to recover the costs of undertaking this work. As indicated above, it is expected that this will be necessary only in exceptional cases.

102. It is not possible to be definitive about the costs of enforcing a high hedge notice as the actual costs incurred will depend on a number of factors. These would include how high the hedge is, which in turn might dictate whether workers with particular expertise in working at height and using ropes are required; how accessible the hedge is both for manpower and equipment; the volume of cuttings etc. The range of costs below was provided by an arboricultural firm.

Workers	Costs
Labourer	£50 - £60 per day
Ground Worker	£80 - £100 per day
Climber	£120 per day
Additional Equipment	
Wood Chipper	£10-15 per hour
Mobile Elevating Work Platform	£120+ per full working day dependent on what kind of platform

[sources: return from an arboricultural firm, plus internet searches on tool hires]

103. One local authority contacted during consultation with COSLA estimates that enforcement costs are likely to be in the range of £500-£700 per day. Its estimate is based on the cost of two operatives skilled at doing this type of work, access to and from the address, suitable welfare facilities (a van for shelter when having breaks as well as to transport the equipment, access to toilets and washing facilities (probably the time cost to travel to and from)), safety clothing, equipment and fuel as well as the cost to remove the debris. The authority estimates that the costs would rise to around £700 per day if the work is likely to take longer and higher access platforms are required as well as chipping plant and/or if mobile access platforms are to be required at higher daily charges.

COSTS ON THE SCOTTISH ADMINISTRATION

104. The Bill allows for an appeal against a decision to issue, or not to issue, a high hedge notice to be made to the Scottish Ministers. An appeal can also be made against a decision to vary or withdraw a high hedge notice. It is intended that the Scottish Government’s Directorate for Planning and Environmental Appeals¹ would provide this function. The Bill does not provide

¹ <http://www.dpea.scotland.gov.uk/>

for a fee to be charged for appeals and it is anticipated that the primary cost of dealing with appeals will fall on the Scottish Government.

105. The Planning Inspectorate in England has provided figures for the number of high hedges appeals it considered over the last three years. We understand in the first year following enactment (2005) there were approximately 300 appeals. More recently, the level of appeals is as indicated below.

Appeals in England

	2008/09	2009/10	2010/11
Received	142	119	111
Withdrawn	13	16	13
Decided	105	128	93

[source: The Planning Inspectorate Statistical Report – England 2010/11²]

Appeals in Wales

	2008/09	2009/10	2010/11
Appeals	4	9	5

[source: Welsh Assembly Government³]

106. Estimated on the basis of 10% of the appeals heard under the England and Wales legislation, we might reasonably expect around 30 appeal cases to be heard in Scotland in the first year. The cost of an appeal, based on appeals currently being handled by the Directorate for Planning and Environmental Appeals, is estimated to be around £600 each, or £18,000 in total for the first year. We would expect the number of appeals and the cost to the Scottish Government to reduce below that level in subsequent years, and fairly quickly to around a third of that level, based on the latest information on the level of appeals in England and Wales.

107. Appeals in England dropped by some 30% after the first year; and a further 30% in the second year to the figures noted above. In Wales appeal figures dropped by over 50% in the first year, and 50% again the following year. We might therefore expect the cost of appeals in year 2 to be in the range of £9,000 - £12,000 and in year 3 to be in the range of £4,500 - £8,000.

108. The Bill provides that Scottish Ministers may issue guidance to local authorities in respect of the Bill. It is anticipated that the cost of producing any guidance will be met from existing budgets and will not be greater than £10,000. The guidance will be made available free of charge in electronic form on the Scottish Government's website. It is not anticipated that there will be a need for a public information campaign as the level of correspondence received by the Government on this issue indicates that there is already a significant level of awareness of the Bill and the lobby group "Scothedge" is very active in informing its membership and will help to ensure that the Bill and its provisions are well known amongst those with concerns over high hedges.

² http://www.planningportal.gov.uk/uploads/pins/statistics_eng/10_11/stats_report_final_2010_2011.pdf

³ http://www.planningportal.gov.uk/uploads/pins/statistics_wales/2010_2011/stats_2010_2011_welsh.pdf

Future costs

109. The Bill aims to ensure that the costs of the legislation ultimately fall mainly on those who are involved in disputes over high hedges, other than minor costs falling on the Scottish Government as a result of appeals. In looking at the English experience it appears that both applications and appeals, after an initial flurry once the legislation is enacted, will likely settle down to a much lower level, which will decline further over time. Future costs are, therefore, expected to be minimal.

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES

110. As is set out in detail above, the main costs arising from this Bill largely fall on those who are involved in disputes over high hedges, as the Bill provides that an application fee may be set by local authorities to cover the costs of them exercising the new powers granted to them by the Bill to make decisions on high hedge disputes and issue high hedge notices requiring action to be taken. Similarly, where a local authority uses the powers it is granted under the Bill to step in to enforce a high hedge notice with which the hedge owner has failed to comply within the specified time, the local authority can recover the enforcement costs from the hedge owner.

111. Full details of those processes and estimates of the potential costs are set out above in the section dealing with costs to local authorities.

PRESIDING OFFICER'S STATEMENT ON LEGISLATIVE COMPETENCE

112. On 2 October 2012, the Presiding Officer (Tricia Marwick MSP) made the following statement:

“In my view, the provisions of the High Hedges (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

These documents relate to the High Hedges (Scotland) Bill (SP Bill 16) as introduced in the Scottish Parliament on 2 October 2012

HIGH HEDGES (SCOTLAND) BILL

EXPLANATORY NOTES (AND OTHER ACCOMPANYING DOCUMENTS)

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