

HIGH HEDGES LEGISLATION

Report by Head of Communities and Economy

1 PURPOSE OF REPORT

- 1.1 This report updates the Committee with regard to the introduction of the High Hedges (Scotland) Act 2013.

2 BACKGROUND

- 2.1 The High Hedges (Scotland) Act 2013 (here after referred to as the 'Act') was passed by the Scottish Parliament on 28 March 2013, received Royal Assent on 2 May 2013 and came into force on 1 April 2014.
- 2.2 The Act aims to provide a solution to the problem of high hedges, where neighbours have not been able to resolve the issue amicably, by providing an effective means of resolving disputes over the effects of high hedges which interfere with the reasonable enjoyment of residential properties.
- 2.3 The Scottish Government has also issued guidance to local authorities outlining the procedures with regard the assessment of a request from an applicant to resolve a high hedge dispute.

3 THE NEW REGULATIONS

- 3.1 The Act allows the owner or occupier of a domestic dwelling to make an application to the local authority where a high hedge on neighbouring land is considered to be having an adverse effect on the reasonable enjoyment of the domestic property.
- 3.2 The Act gives the local authority the power to issue a 'High Hedge Notice' on a land owner, if it is considered, following the assessment of an application, that their hedge is having a detrimental impact on the reasonable enjoyment of a neighbouring domestic property.
- 3.3 The Act defines a 'High Hedge' as being formed wholly or mainly by a row of two or more trees or shrubs which grow to a height of more than two metres above ground level and form a barrier to light. The Act does not cover individual trees, woodland fringes or trees spaced apart in a linear alignment.

4 PROCEDURES

Making an application

- 4.1 While the Act provides a means of resolving high hedge disputes, it is intended to be a last resort for the minority of cases where such disputes cannot be resolved between the parties themselves. The Act emphasises this by requiring that potential applicants “must take all reasonable steps to resolve the matters in relation to the high hedge” before making an application. Discussions and correspondence between neighbours must be evidenced and submitted with an application.
- 4.2 The Act gives the local authority the right to dismiss an application where reasonable steps have not been taken to resolve matters in relation to the high hedge or where the Council considers that the application is frivolous or vexatious.
- 4.3 In assessing an application the local authority will consult the owner of the hedge and any other interested parties. The Council must take into account any representations received and other material considerations. The existence of a Tree Preservation Order (TPO) or other legal restriction does not prevent the local authority finding in favour of the applicant and issuing a high hedge notice to mitigate the impact of the hedge. However, a TPO or a planning condition will be a material consideration in the assessment.
- 4.4 In reaching a decision the primary consideration is whether the effects of a high hedge interfere with the reasonable enjoyment of a residential property in terms of its impact on overshadowing and loss of light. This is to be balanced with the potential privacy afforded by the hedge, the amenity value of the hedge and any cultural, historical or environmental value it has.
- 4.5 An application for a high hedge notice must be accompanied by an appropriate fee. The Act allows the local authority to set the fee level for applications and allows different fees to be fixed for different types of applications. The Act requires the implementation of the high hedges legislation to be cost neutral to the local authority. The fee must not exceed the amount which the Council considers to represent the reasonable costs incurred in deciding the application. The Act also enables the local authority to refund an applicant if the fee exceeds the cost of determination.
- 4.6 It is proposed to set the fee at £300. The fee will cover all the administrative costs including the hourly rates for officers involved in the process. This will cover the validation and registration of an application, consultation with interested parties, the undertaking of a site visit, history checks, negotiations with interested parties, the assessment of the issues and possible enforcement. The fee range across Councils in Scotland varies from £192 to £600. To put this into context a planning application to extend a residential property is £192,

an application to erect a single dwelling house or to change the use of a building costs £382. The fee for larger scale developments increases as the number of dwellings proposed increases or the size of the site increases. However, it is worth noting that the cost of processing a local application, as described, is not cost neutral.

High Hedge Notice

- 4.7 If the local authority considers a high hedge interferes with the reasonable enjoyment of a residential property it can issue a high hedge notice on the owner of the hedge.
- 4.8 The notice must specify the action required to be taken to remedy the unacceptable interference caused by the high hedge, the time period to undertake any remedial works and any future preventative action to follow, in order to prevent recurrence of the dispute.
- 4.9 The Act also makes provision for local authorities to undertake any necessary work where owners fail to comply with the terms of a high hedge notice, with any costs incurred being recoverable from the hedge owner (both present and future owners).

Appeals

- 4.10 Appeals can be made to the Scottish Ministers in respect of a high hedge notice. The hedge owner may appeal the issuing of a notice and the applicant may appeal against a decision that there is no adverse effect from the high hedge or that no action is required to be taken.

5 RECOMMENDATION

- 5.1 It is recommended that the Committee:
 - a) Notes the terms of the high Hedges (Scotland) Act 2013 and the associated statutory obligations on the Council;
 - b) Agrees that the implementation and enforcement of the Act be undertaken by the Director of Education, Communities and Economy;
 - c) The Council's Scheme of Delegation be amended to delegate to officers the determination of any application arising under the Act; and
 - d) Agrees a fee of £300 per application subject to annual review.

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Background Papers: High Hedges (Scotland) Act 2013 and the Guidance to Local Authorities 2014