

HIGH HEDGES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

General

Section 31 – Guidance

65. 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. Both the Scottish Ministers and the local authority must consult such persons as considered appropriate before issuing guidance under this section.

Section 32 – Report on operation of Act

66. This section places a duty on the Parliament to make arrangements for a committee or sub-committee of the Parliament to report to the Parliament on the operation of the Act during the review period.
67. Subsection (2) provides that the review period begins when section 2 (relating to applications for high hedge notices) comes into force and ends 5 years after that date, or on such earlier date as either the committee or sub-committee may determine.
68. Subsection (3) provides that a report must be made no later than 18 months after the end of the review period and may be in such form and manner as the committee or sub-committee considers appropriate. Subsection (4) provides that the report must be published.

Section 33 – Service of documents

69. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 regarding service of documents will apply to notices sent under the Act. 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).
70. [Section 33](#) supplements that with additional ways in which notices may be served when the name and address of the recipient is unknown.

Section 34 - Interpretation

71. [Section 34](#) defines terms that are used frequently in the Act. 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.
72. “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.

73. “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 35 – Power to modify meaning of “high hedge”

74. This section provides Scottish Ministers with a power to modify, by regulations, the definition of a “high hedge”, as defined by section 1 by adding or removing a type of tree or shrub from section 1(1)(a); increasing or reducing the height above ground level specified in section 1(1)(b) and (2); and modifying or adding to the effect of a hedge specified in section 1(1)(c). 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 36 – Ancillary provision

75. 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 Act may modify this, or any other, enactment.
76. 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 Act or another Act is subject to the affirmative procedure. Any other order is subject to the negative procedure.

Section 37 – Crown application

77. Under section 20 of the Interpretation and Legislative Reform (Scotland) Act 2010, the Act 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 Act.
78. 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 38 – Commencement

79. Under section 38(1) certain provisions of the Act came into force on 3 May 2013. Subsection (2) gives power to the Scottish Ministers to appoint a day for the coming into force of the other provisions of the Act. Subsection (3) provides that a commencement order may include transitory, transitional or saving provision.