

HIGH HEDGES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

High hedge notices

Section 2 – Application for high hedge notice

7. 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

8. 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

9. 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.
10. 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 and subsection (5) provides that it must publish details of the circumstances in which and the extent to which it is considered appropriate for refunds to be made. When publishing this information, the local authority must, under subsection (6), have regard to any guidance on the matter issued by Scottish Ministers.

Section 5 – Dismissal of application

11. 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.

12. 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

13. 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).
14. These matters 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.
15. Subsection (4) requires the local authority to take any representations made into account when making a decision in relation to the high hedge.
16. 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".
17. 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.
18. 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.
19. Subsection (8) ensures that where a high hedge is situated on land which has been designated as a National Park, the local authority must, before making a decision under subsection (5)(b) consult the relevant National Park authority for that National Park, and take into account any representations made by that authority.

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.
21. Subsection (4) provides that where a high hedge is situated on land which has been designated as a National Park and the local authority has decided under section 6(5)(b) that no action should be taken in relation to the high hedge it must also inform the relevant National Park authority of its decision.

Section 8 – High hedge notice

22. 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.
23. 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.
24. 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.
25. 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.
26. 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.
27. Subsection (6) requires a local authority, where a high hedge is situated on land which has been designated as a National Park, to send a copy of the high hedge notice to the relevant National Park authority.

Section 9 – Effect of high hedge notice

28. 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

29. 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 34(1). Before making any withdrawal or variation, subsection (2) states that 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.
30. 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.
31. 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.
32. Subsections (6) to (9) 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. Subsection (8) provides that where a high hedge is situated on land designated as a National Park the local authority must, where

it withdraws or varies a high hedge notice, give notice of such withdrawal or variation to the relevant National Park authority.

Section 11 – Tree preservation orders

33. 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 34(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.
34. 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 or historical significance in determining an application for a high hedge notice.