

HIGH HEDGES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

High hedge notices

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.