

HIGH HEDGES (SCOTLAND) ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Powers of entry

Section 18 – Power to enter neighbouring land

44. 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.
45. 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.
46. 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

47. 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

48. 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 if necessary but does not allow the use of force against individuals (see subsections (1) and (3)).
49. 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

50. 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 Act. The offence is punishable on summary conviction up to a maximum fine of level 3 (currently £1000) on the standard scale.