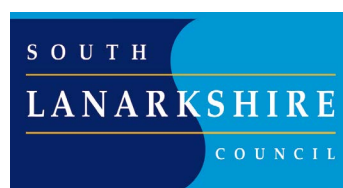


# Planning and Economic Development **GUIDANCE**



## **Guidance for The High Hedges (Scotland) Act 2013**

January 2017



Community and  
Enterprise Resources

## 1.0 The High Hedges (Scotland) Act 2013

### Do you have problems caused by a high hedge on someone else's land?

The High Hedges (Scotland) Act 2013 took effect on 1st April 2014.

The new legislation provides a legal basis for taking action over a problem high hedge. It will help people who are adversely affected by high hedges bordering their domestic property. It deals with hedges that are more than two metres high which affect light from reaching a neighbouring domestic property. It allows someone who feels that their property is adversely affected by a high hedge to make a formal application to the Council who will consider whether action needs to be taken to reduce the impact of the hedge. However, making an application should only be used as a last resort as neighbours are encouraged to resolve the problem themselves.

The legislation will not mean that all hedges above two metres in height will need to be cut down. Nor will people need council permission to grow or keep a hedge along the boundary of their property. We will only get involved in cases where a High Hedge application is made to us. Applicants must show that they have tried to resolve the issue with the owner of the hedge before making a formal application. After that, the Council will make a judgement on whether a notice needs to be served on the hedge owner, requiring them to carry out works to reduce the adverse effect of the hedge.

An application cannot be made about single trees or single shrubs, whatever their size.

### What is a high hedge?

In terms of the High Hedges (Scotland) Act 2013, a high hedge is a hedge which is

- formed wholly or mainly by a row of two or more trees or shrubs,
- rises to a height of more than two metres above ground level, and
- forms a barrier to light.

A hedge is not to be regarded as forming a barrier to light if gaps in the vegetation significantly affect its overall effect as a barrier, at heights of more than two metres above ground level.

### What can I do if I feel that a high hedge is affecting my property?

If there is a high hedge which you feel is affecting your enjoyment of your house or flat, before the council can get involved you must firstly take all reasonable steps to solve the problem.

For example:

- speak to the hedge owner about your concerns
- write to the owner if they will not talk to you about the hedge
- seek the help of an independent mediator who can help you find a way forward.

You must remember to keep a record of letters you have sent or conversations that you have had. The council cannot accept a high hedges application if you have no evidence that shows you tried to resolve the problem. We also recommend that before submitting a High Hedges application to us, that you let your neighbour know that you intend to submit an application if the high hedge problem cannot be resolved between you. The Scottish Government advise that 'reasonable steps' to try to settle the matter would be two formal approaches to the neighbour within a six month period before applying for a high hedge notice to the Council. We will not accept an application if you have not done this.

## How do I complain to the Council about a high hedge that affects me?

If you have tried to resolve the problem of a neighbour's high hedge but with no success, then you can complete a high hedges application form and send it to the council. You can get the form from the Planning and Economic Development offices or online at [www.southlanarkshire.gov.uk](http://www.southlanarkshire.gov.uk)

Before submitting the application, you must be able to provide evidence that you have tried to resolve the problem with your neighbour (including the two formal approaches in the last six months) and must be able to answer 'yes' to all of the following questions:

- are you the owner or occupier (e.g. tenant) of the property affected by the hedge?
- is your property residential?
- is the hedge growing on land owned by someone else?
- is the hedge – or the part of it that is causing problems – made up of a line of two or more trees or shrubs which are more than two metres tall? [please note that we cannot take action against an individual tree that is causing you problems]
- does the hedge affect your reasonable enjoyment of your home or garden because it is too tall?
- is the hedge capable of obstructing light at a height above two metres, even although there may be gaps in the vegetation or between the trees or shrubs?

## Fees

You must submit a fee of £401 to the council with your application for a High Hedge notice.

## What will the council do with my application?

When we receive a high hedges notice application, we will check that:

- the form has been filled in correctly
- the correct fee has been provided
- you have already taken reasonable steps to resolve the problem (including the two formal approaches to your neighbour in the last six months)
- you have stated on the form that the hedge about which you are concerned is a high hedge.

If you have not done all of the above, the Council will not accept the application and will explain why.

If the application is accepted by us, we will review the information you have provided to ensure that you have taken all reasonable steps to resolve the high hedge issue, check that the application is not frivolous or vexatious and that the hedge is covered by the High Hedges legislation. This may require an initial site visit. If following this review the Council decides that your application does not meet one or more of these requirements, you will be advised of the reasons why. In these cases the Council cannot issue a High Hedge notice.

If we are satisfied that the application is one that requires the Council to decide if the hedge is affecting your amenity, we will give every owner and occupier of the land on which the hedge is situated:

- a copy of the application, and
- a notice telling them that the council has to decide whether
- the height of the hedge is adversely affecting your (the applicant) reasonable enjoyment of your property; and if so,
- whether any action needs to be taken by the hedge owner to remedy the adverse effect or to stop this happening again in the future (or both).

The owner/occupier of the high hedge has 28 days to make any comments to the council about the application. Any comments must also be given to you (the applicant).

## Making a decision on the application

We will carry out a site visit and may ask for comments from the occupiers of other properties who might be affected by the hedge, as they may be affected by our decision on the application. We will also take into consideration any comments made by the hedge owner.

After 28 days we must decide if the hedge is adversely affecting enjoyment of the property. We will consider the following questions:

- is the hedge a barrier to light?
- does it obstruct light to windows or gardens?
- does it provide privacy or shelter?
- does it have gaps that allow light through?
- does a planning condition or environmental designation such as a Tree Preservation Order seek retention of the hedge?
- does the hedge have a historic or landscape value?

If the hedge does have an adverse affect, we will consider whether there are any reasons why action should not be taken, or should be moderated, having regard to:

- any interference with the hedge owner's enjoyment of their own property, taking into account any comments received from them;
- the impact on the character and amenity of the hedge on both the immediate and wider area; and
- whether the high hedge is of cultural or historical significance or has a wildlife value.

## The decision on the application

We will prepare a report to explain how any comments have been taken into account and the reasoning behind the decision. The decision on the high hedge notice application will usually be taken under delegated powers given to officers. The possible decisions are listed below:

### 1. No action to be taken

If we decide that a hedge has little adverse effect, we will not issue a high hedge notice. We may also decide that although the hedge is adversely affecting your property, that on balance, the amenity that it provides generally is more important than the amenity it takes away from you (the applicant).

We must notify you and every owner and occupier of the land on which the high hedge is situated of our decision, giving reasons and notifying you of the right to appeal to the Scottish Ministers.

### 2. Action to be taken – high hedge notice to be served

If we decide that action should be taken, we will issue a high hedge notice. The notice will set out:

- the "initial action" (the action required to solve the problem i.e. reduce the height of the hedge) and
- the "preventative action" (the ongoing maintenance works to prevent the problem happening again), to be taken by the owner of the hedge.

The high hedge notice will also include the following information:

- the date on which the notice will take effect, which will have to be at least 28 days after the date on which the notice is given;
- the initial action that is to be taken by the owner of the land on which the high hedge is situated and how long is to be given to carry out the works to comply with that action ;
- state any action that is to be taken to prevent the problem happening again in the future;
- inform the owner of the right to appeal;
- inform the owner of the right of the Council to take initial or preventative action and recover the costs of so doing; and
- inform the owner that it is an offence to obstruct us from taking action.

We will send a copy of the high hedge notice to you (the applicant) and to every owner and occupier of the land on which the hedge is situated, giving reasons for our decision.

The notice applies not only to whoever is the owner at the time that we issue it, but also on subsequent owners.

### **Withdrawal and variation of high hedge notice**

We have the power to withdraw or vary a high hedge notice.

Where we do this, we must notify you and the owner and occupier of the land on which the hedge is situated of our action, giving reasons for the decision and notifying you of the right to appeal.

### **Right of appeal**

The right to appeal our decision can be made by both yourself (the applicant) and the person who has had a high hedge notice served upon them. Appeals are made to the Scottish Ministers and will be decided by a reporter from the Directorate for Planning and Environmental Appeals (DPEA).

You (the applicant) may appeal to the Scottish Ministers against:

- a decision by us that there is no adverse effect or that no action should be taken in relation to the high hedge.

Where we have issued a high hedge notice requiring the size of a high hedge to be reduced, someone can appeal if:

- they submitted the high hedge application to the Council; and
  - they think the required works do not go far enough.
- they are the owner or occupier of the land where the hedge is located, and:
  - they think that no notice should have been issued; or
  - they think that the required works go too far; or
  - they think that the Council has not given them enough time to complete the required works.

The works in the high hedge notice do not have to be carried out until a decision is made on the appeal.

## How to appeal

The appeal must be made by completing a high hedges appeal form which you can get from:

- the DPEA website [www.dpea.scotland.gov.uk](http://www.dpea.scotland.gov.uk) or
- by phoning 01324 696400 or
- by writing to DPEA, Unit 4, Callendar Business Park, Falkirk, FK1 1XR.

The appeal form must be accompanied by a copy of our decision and where we have issued one, a copy of the high hedge notice.

The appeal must be made within 28 days beginning with the date when the Council notified you of its decision. No appeal can be made until the Council has issued a decision.

## Appeal decision

The reporter may allow or dismiss an appeal, either in total or in part. Depending on the circumstances of the appeal, the end result could be that:

- the high hedge notice is quashed and the works do not need to be carried out to the hedge;
- the works to the hedge set out in the high hedge notice are changed in some way;
- a new high hedge notice is issued (this can happen only in cases where the Council decided not to issue a notice in the first place); or
- the works to the hedge set out in the original high hedge notice stay as they are.

DPEA will notify us, the high hedge owner/occupier and you (the high hedge applicant) of the reporter's decision as soon as possible after it is made. Decisions will also be posted on the DPEA website.

## Enforcement Action

If a hedge owner does not carry out the works set out in a High Hedges notice, we may carry them out and recover any expenses (including interest) reasonably incurred in carrying out the required works. To recover funds, we may register a "Notice of Liability for Expenses" against the title of the hedge owner's land. This has the effect of making all future owners severally liable (subject to the ability of a new owner to recover expenses from a former owner).

## **Planning and Building Standards Contacts**

If you need a High Hedges application form or have any questions about the High Hedges (Scotland) Act 2013, please contact the Planning and Building Standards office:

## **Planning and Economic Development**

Montrose House,  
154 Montrose Crescent  
Hamilton ML3 6LB  
Planning and Building Standards  
Phone: 0303 123 1015  
email: [planning@southlanarkshire.gov.uk](mailto:planning@southlanarkshire.gov.uk)

Opening times: Monday to Thursday 8:45am - 4:45pm; Friday 8:45am - 4:15pm

Disabled access: Parking bays for disabled users to front of building. Ramped access to automatic door. Lift and toilet facilities for disabled users.

## **Further information**

For further information please contact Planning and Building Standards Services on 0303 123 1015 or email [planning@southlanarkshire.gov.uk](mailto:planning@southlanarkshire.gov.uk).

If you need this information in another language or format, please contact us to discuss how we can best meet your needs. Phone 0303 123 1015 or email: [equalities@southlanarkshire.gov.uk](mailto:equalities@southlanarkshire.gov.uk).