

HIGH HEDGES GUIDANCE FOR APPLICANTS AND HEDGE OWNERS



The Hedge

A good hedge offers many benefits to a property as a garden boundary which can act as a useful weather and dust filter and be a useful landscape. It is inexpensive to create and can be long-lasting if maintained and cut regularly. It offers privacy and security; it can also encourage wildlife and it can be a feature of beauty and interest. However, the wrong selection of a fast-growing plant, used for quick results, can produce a hedge that may bring problems if allowed to grow uncontrollably. It can also develop into a dispute with neighbours if the hedge is allowed to grow to an excessive height or width and it is blocking out daylight.

Use this guide to help you:

- understand what can be done to resolve hedge problems informally;
- understand what a council's responsibilities are if a high hedge application is lodged with it under the High Hedges (Scotland) Act 2013; and
- understand what is - and importantly what is not - covered by the legislation.

This is intended to be a straightforward guide in a question and answer form, not a statement of the law. Where appropriate, Fife Council will offer its impartial view on the particular matters in each case.

Q. What is a Hedge?

- A.** A hedge is defined by dictionary definition as a boundary formed by closely growing bushes or shrubs



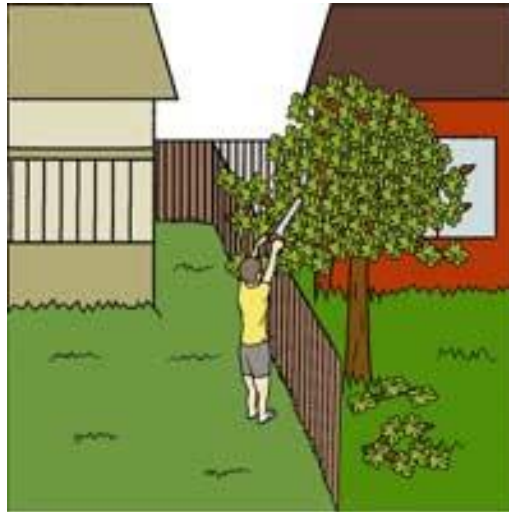
A typical boundary hedge well maintained

Q. Does the new law stop me from planting trees and hedges in my garden or on my land?

- A.** It is not an offence for a hedge of any particular height or species (variety) to be grown and planning law that governs the height of boundary walls and fences does not apply to hedges. You do not normally need permission to plant a hedge in your garden (unless there are title restrictions or planning conditions in place relating to “open plan” layouts) and there are no laws that limit the height you can grow your hedge. Problems can however occur if a hedge is allowed to grow unchecked, particularly without considering its effect on neighbours.

Q. My neighbours hedge or tree overhangs my property or my tree overhangs a neighbour’s property. What am I or my neighbour allowed to do, to limit its impacts?

- A.** Common law rights entitle neighbours to cut overhanging branches and roots back to the boundary line (unless legal restrictions, such as a Tree Preservation Order (TPO) or being located in a Conservation Area, apply). These require the offer of the return of cut foliage or roots to the owner. These abatement measures by a neighbour, where they have resulted in the death of a tree or hedge, open up a neighbour to the claim of criminal damage. These common law rights do not extend to allowing a neighbour to reduce the height of a hedge or tree without the owner’s agreement.



FIFE Council's View: - Responsible hedge owners will look after any hedge on their property and make sure it is not a nuisance to anyone else. This normally means trimming the hedge regularly, both its top and all sides and ensuring that it does not pose a danger to people or property.

Where trees or hedges block sightlines on road Fife Council, as Roads Authority, has separate powers under the Roads (Scotland) Act 1984 to require them to be cut back.

If you have an issue about a neighbour's hedge, or a neighbour has approached you because they have an issue with your hedge, it is best to talk to them about it and to try and sort things out amicably.

Caution: - If you have been approached to voluntarily address a high hedge problem and the hedge contains one or more trees protected by a TPO, then you must seek the appropriate permission from Fife Council to carry out works to the tree(s).

The High Hedges (Scotland) Act 2013

The High Hedges (Scotland) Act 2013 (The Act) now provides a legal basis for taking action over a problem high hedge. The legislation is intended to help people in Scotland who are adversely affected by high hedges bordering their domestic property by introducing a formal complaints system that will be operated by local authorities. The Act should however only be used as a last resort. Neighbours are required to attempt to resolve the problem themselves. Such efforts are required to be provided as evidence with any application for the service of a High Hedges Notice. The legislation will not mean that all hedges above 2-metres in height will need to be cut down, nor will people need council permission to grow or retain a hedge along the boundary of their property.

Q. Are all Trees and Shrubs Covered by the Act?

A. No. The Act only relates to high hedges. To constitute a "high hedge" the trees and/or shrubs must firstly constitute a hedge. If the trees or shrubs that are causing you a problem are not a hedge then you cannot make an application under the Act. It will be for the investigating case officer to decide whether trees planted closely together form a hedge, or not. If they are not a hedge then you cannot apply for a High Hedge Notice. The Act specifically states that a single tree or shrub cannot constitute a high hedge.

Q. What is a High Hedge?

A. A high hedge is defined for the purposes of the High Hedges (Scotland) Act 2013 as being formed wholly or mainly by a row of 2 or more trees or shrubs that rise to a height of more than 2 metres above ground level, and forms a barrier to light. A hedge is not to be regarded as forming a barrier to light if it has gaps which significantly reduce its overall effect as a barrier at heights of more than 2 metres.



This is not a Hedge



This is a hedge

The row of trees on the left whilst reasonably in a row and over 2 metres in height does not form a barrier to light due to the gaps between each tree.

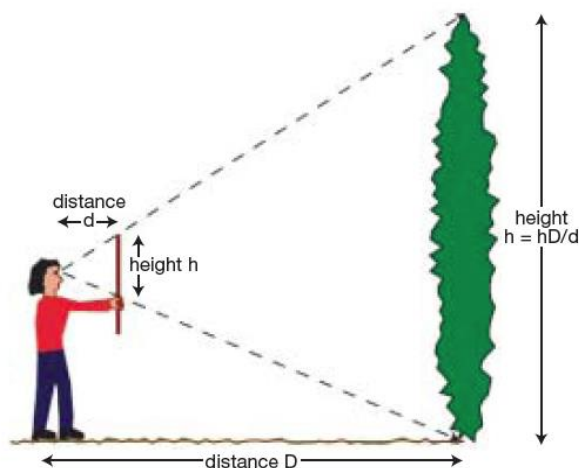
Q. I've heard that only hedges made up of certain types of trees will be covered, is this true?

A. No. All types of hedge – whether they are made up of evergreen, semi-evergreen or deciduous species are covered by the Act. However, the hedge must be over 2 metres tall before it can begin to be considered a high hedge. However, not all hedges over 2 metres will automatically be termed a 'high hedge'.

Q. How do I measure the height of the hedge?

A. A hedge will be measured from the point the hedge emerges from the ground. Where a hedge is planted on a boundary which is stepped, the height of the hedge will be measured from the point the hedge emerges from the ground and not from the base of any wall behind which it is planted

Estimating hedge height using a vertical rod



Q. How do I find out if the hedge is a high hedge?

- A. The Act only applies to problems experienced because the hedge is too tall and obstructs light. The 2 or more trees or shrubs to form a hedge do not have to form a straight line, as long as they are roughly in line. A hedge can consist of a line of 2 or more trees and shrubs of any species combination.

In order that a hedge can be the subject of a complaint under the Act, if the answer to all these questions below is 'yes', then it is likely to be a high hedge for the purposes of the Act.

- does the hedge impact upon a residential property?
- does it act as a barrier to light?
- even though there are gaps in the foliage or between the trees, is the hedge still capable of obstructing light?
- is the hedge - or the portion that is causing problems - made up of a line of 2 or more trees or shrubs?
- is the hedge more than 2 metres above ground level?

Q. The tree or shrub is a large single specimen which has a large spread, much more than most hedge specimens.

- A. A complaint cannot be made under the Act against single trees or shrubs, whatever their size or a tree or shrub that has multiple stems, all growing from the same trunk or root plate despite it potentially having a considerable spread. This is a single tree or shrub and so falls outside the scope of the Act.



A single specimen whatever its size is not a hedge!

Q. The tree roots affect my property, the branches overhang and affect my guttering and cause a loss of satellite signal or view.

A. The council will not deal with complaints made about roots of trees, single trees or the width of a hedge and the loss of view? Satellite signals cannot be considered either.

Q. I have woodland to the rear of my property; it is like a big deep hedge can I get it reduced in height?

A. Woodlands are excluded from the Act. If the woodland is enclosed by a hedge along its edge, it is only the hedge that will be considered under the Act.



A woodland edge not a hedge

Q. What constitutes an Affected Property under the Act?

A. An affected property is a domestic property which is impacted on by a high hedge is situated on land owned or occupied by another person. The hedge must be a barrier to light and adversely affects the enjoyment of the said domestic property which an occupant of that property could reasonably expect to have. The Act defines “domestic property” as any part of a building in Scotland which is occupied or intended to be occupied as a separate

dwelling, and a yard, garden, garage or outhouse in Scotland which belongs to such a building or is usually enjoyed with it. This would exclude properties that might be in a residential area but wholly occupied by a non-domestic use.

Q. The hedge impacts on the light reaching my garden.

- A.** The Act applies to hedges that, despite any gaps that occur above the 2 metre mark, acts as a barrier to light. This is about the physical appearance of the trees and shrubs in question - and whether or not they form what we might commonly consider to be a hedge. Only what they look like above 2 metres counts. This is consistent with the fact that complaints cannot be brought against hedges at 2 metres high or lower.



Hedges forms a barrier to light

Q. The hedge is not located in a garden.

- A.** The Act says that the hedge must be on neighbouring land that is owned by someone other than the applicant. Otherwise, there is no restriction on where the hedge is situated. It is the effect of the hedge on a domestic property that is important, rather than where it is located. Neighbouring land, does not have to be next door, it could, in theory, be several gardens down the road, though, in practice, the farther away a hedge is, the less its impact and the less chance that an application will be successful. Nor does the hedge have to be wholly on a single neighbour's property, the hedge could equally extend over several properties. In addition, the problem hedge does not have to be growing in someone else's garden, it could, for instance, be on parkland that backs onto a garden or yard, or on commercial premises.

Q. I live in a property which suffers from lack of light due to a high hedge, but the hedge is not on land immediately adjoining my property. Can I still make an application?

- A.** Yes. The hedge does not have to be on land immediately neighbouring the property of the person making the application. It just needs to be a significant barrier to light affecting the reasonable enjoyment of the property.

Q. What if I do not know who owns the land on which the hedge is situated?

A. You must take all reasonable steps to identify the owner of the land and record these in any application you make. These steps could include contacting [Registers of Scotland](#) and/or [Companies House](#).

Q. Do I need to go on my neighbours land to measure the Hedge if I am submitting an application?

A. Neither the legislation nor the guidance suggests that the complainant should enter a neighbour's land to take any measurements – this will be the responsibility of the council if a formal application is made.



You do not need to measure your neighbours hedge

Making an Application

Q. Do I need to do anything before I make an application to the Council?

A. Yes. An application to the Council is seen as a **last resort**. Before making an application, you must be able to provide evidence to demonstrate to the Council that you have tried to reach a solution with the hedge owner. The Council will expect this evidence to include a **recent** attempt at negotiation in the light of the coming into force of the Act (the coming into force of the Act may encourage hedge owners to take a more accommodating stance). It is difficult to state what evidence will be sufficient but exchanges of letters/emails and/or attempts at mediation would constitute such evidence. It is not sufficient to simply state that your neighbour is unapproachable and provide no evidence of reasonable attempts to resolve the situation.



Before you make an application you have made an attempt to resolve the hedge issue

Q. What is considered reasonable attempts to resolve the problem?

- A.** Fife Council will reject the application if it cannot be demonstrated that they have tried to reach a solution. If a hedge owner refuses to either talk or correspond with the potential applicant, this will not make the problem go away, nor will it stop the application process.

Fife Council's View: - Fife Council encourages you to reach an amicable solution with your neighbour regarding the hedge, as the hedge if causing a problem as defined by the Act **WILL** be reduced in height, by Fife Council if necessary.

If you are a hedge owner and you are contacted by your neighbour, you should consider how the hedge affects them and what they want done to the hedge. When arranging a time to discuss the problem with them, allow some time to think about their concerns but do not purposefully extend the process out of malice as this can be counter-productive to an amicable outcome. It is better to speak face-to-face rather than just pushing a note through the door. Ask to see the hedge from their side this may help you understand their problem.

If face to face contact is not possible, and your contact is in writing, think carefully about what you write. Don't be rude or abusive. Put yourself in the other person's position and think how you would feel if you received the letter; write or type the letter neatly, a scrappy note pushed through the door suggests that you don't really care. You should keep a record of these discussions as this may form part of your representation should an agreement not be reached and a formal application is lodged.

If past history between you and your neighbour makes a discussion difficult, you may wish to consider the use of mediation. You could ask a community representative or a mutual acquaintance to intervene or alternatively, you can ask for the help of an independent mediator, although there may be a cost associated with this. The mediator's job is not to make a decision but to help the people concerned to understand each other's point of view, without apportioning blame. Fife Council staff dealing with a high hedge application cannot act as a mediator.

Q. I have tried to reach an agreement with my neighbour, but haven't been able to. What do I do next?

A. If you've been unable to reach an agreement over the hedge, at that point you will be able to submit an application to the Council. You will need to submit a completed application form, details of the hedge and how it affects you and evidence of attempts to resolve the situation along with a fee of £385. If you cannot demonstrate that you have taken all reasonable steps to resolve the dispute or the Council considers that the application is frivolous or vexatious then the Act obliges the Council to dismiss the application.



Making an application

Q. On what grounds can an application for a high hedge notice be lodged?

A. If the reasonable enjoyment of your residential property is adversely affected by a High Hedge acting as a barrier to light, as defined by The Act, then a High Hedge application can be lodged with Fife Council. The grounds of application must relate to the impact of the hedge on a residential property and garden. The reference to "reasonable" enjoyment of the property is significant as it affects the way that Fife Council will determine complaints as it requires them to assess the impact of the hedge, acting as a barrier to light, on the enjoyment that a person might expect from their home and garden, thereby introducing a degree of objectivity to the decision-making process.

Q. Who can submit an application for a High Hedge Notice?

A. To make an application you must be the owner or occupier of a **domestic** property and you must consider that the high hedge, on land owned by another person, adversely affects the reasonable enjoyment of your property. Where there is both an owner and an occupier (e.g. landlord and tenant), each is entitled to make an application, although only one application is required to start the formal process. There is no minimum period before you can make an application, however it is unlikely that you would be in a position to fully assess the adverse effects of the high hedge or demonstrate you have attempted to arrive at an amicable solution with your

neighbour if you have just moved into the property. There is no requirement to obtain the property owner's consent. It is however good practice for an occupier to inform the owner before an application is submitted as the owner may have already sought a High Hedge Notice. This is particularly important if someone is occupying a property for only a short time, especially where the owner is temporarily absent and intends to return to the property. If the High Hedge is on a Fife Council owned land or property a separate process which does not incur an application fee can be pursued.

Q. What happens when an application is submitted to Fife Council?

- A.** If an application is received by Fife Council, a Fife Council appointed officer will carry out a site visit to assess the impact of the hedge and is empowered by the Act to enter to the land on which the High Hedges are located. The Council can only require works to the hedge that address any problem it is causing and cannot require the hedge to be removed. Fife Council can also reject an application if it feels that the hedge falls outside the scope of the legislation.

Q. Who decides the application?

- A.** Under its Scheme of Delegation the Council has decided that applications which are submitted under this Act which are recommended for the approval of the Service of a High Hedges Notice will be presented to the relevant Area Committee for approval. Applications which are resulting in a refusal to serve a High Hedge Notice are delegated to the Head of Economy, Planning and Employability Services.

Fife Council's View: - The assessment of an application by Fife Council may differ from the applicant's or hedge owner's expectations. The Council, however, will have regard to what is a reasonable amount of sunlight for people to receive in their property. The Council's view should however not come as a surprise due to the methods it employs for assessment. Fife Council must take account of all relevant factors, including the opinions of the complainant and hedge owner and the contribution that the hedge makes to the wider amenity of the area. They will not look solely at the applicant's concerns. Fife Council must look at each case on its particular individual merits.

Fife Council may reject an application if it believes that it is frivolous (not serious) or vexatious (intended to harass) or falls outside the scope of the legislation.

Q. Are there any circumstances where the fee will be refunded?

- A.** Yes, if your application is incomplete or dismissed because you cannot demonstrate that you have taken all reasonable steps to resolve the dispute or the Council considers that the application is frivolous or vexatious, or if the application is for a group of trees or shrubs not considered to form a hedge, then any application fee paid will be refunded.



The Council's Role

The role of Fife Council is to act as an independent and impartial third party. Fife Council will only intervene in circumstances where an application for a High Hedge Notice is made which identifies a High Hedge which results in a loss of light to a residential property or reduces the reasonable enjoyment of the residential property or garden. Where the High hedge is on Fife Council owned land the respective Fife Council Service which holds title to the land in question will be sent details of the complaint, and advise them of your concerns.

In disputes with private land owners, Fife Council will not negotiate or mediate but will adjudicate on whether the hedge, by forming a barrier to light, is adversely affecting the reasonable enjoyment of a property. In doing so, Fife Council will take account of all opposing representations and relevant factors, including the hedge-owner's amenity and that of the wider neighbourhood. Each case will be assessed on its own particular merits and whether or not the hedge meets the criteria of the Act.

If an application is considered as valid, Fife Council will formally acknowledge the receipt of the application and inform every owner and occupier of the neighbouring land on which the hedge the subject of request of notice is located of by providing them with a copy of the application, and details of the powers conveyed to Fife Council by virtue of the High Hedge (Scotland) Act 2013 and their right to make within 28 days of notification representations to Fife Council in relation to the application.

If representations are received, Fife Council will provide the applicant with any such representations made against their request for a Notice to be served.

A Fife Council appointed officer will carry out a site visit to assess the impact of the hedge and is empowered by the Act to enter to the land on which the High Hedges are located. The purpose of the visit is not to facilitate mediation or negotiation between the people in dispute, but simply to establish the facts.

After the end of the period of 28 days Fife Council must, taking due account of those representations received, decide if the height of the high hedge adversely affects the enjoyment of the domestic property which an occupant of that property could reasonably expect to have, and if so, whether any action to remedy the adverse

effect or to prevent the recurrence of the adverse effect (or both) should be taken by the owner in relation to the high hedge.

If Fife Council thinks the hedge is a high hedge by forming a barrier to light, then it will issue a High Hedge Notice requiring the hedge owner to remedy the problem by, for example, reducing the height of the hedge and maintaining it at the lower level. The notice is binding on the owner or occupier of the land where the hedge is situated.

Q. What happens after I've paid the fee and the application is lodged?

A. The Council will notify the hedge owner that an application has been made, invite them to make representations (which will be copied to you) and then someone from the Council will go out to the property to assess the hedge, and its impact on the reasonable enjoyment of your property.

Once they have made a decision, they will notify both parties of their decision.

Q. Can Fife Council seek the complete removal of a hedge?

A. The Council can only require works to the hedge that address any problem it is causing and cannot require the hedge to be removed.



A High hedge Notice cannot seek complete removal of a hedge

Q. Will the hedge be reduced to 2 metres in height if a High Hedge Notice is approved?

A. Not all hedges will be reduced to 2 metres in height. The impact of the hedge will be measured against many criteria, but on a case by case basis. The distance of the hedge from the affected property the hedge is?, the area of the

applicant's garden, the overall length of the hedge and the angle of the hedge to an affected window in the applicant's property will all serve to determine the height the hedge should be reduced to.

Q. What does Fife Council have to consider in an application?

A. The legal and environmental factors to be considered when Fife Council is assessing an application in deciding the application for a High Hedge Notice are:-

- Protected trees

When considering a high hedge complaint, the Council will need to know if any trees that form part of the hedge are protected, either by a tree preservation order or because they are in a conservation area.

- Planning conditions

Some hedges must be retained under the terms of a condition attached to a planning permission. Planning conditions can be removed or varied only by making a further planning application.

- Historic, wildlife and landscape value

Fife Council must also take account of other factors such as:

- whether the hedge is part of or within the boundaries of a listed building, registered park or garden or other site of archaeological interest
- whether it has historic associations or contains veteran trees;
- whether it is situated in an Area of Outstanding Natural Beauty, or forms an important link with other landscape features;
- whether it is within a designated nature conservation site such as an Area of Special Scientific Interest
- whether any protected birds, animals or plants are present in the hedge and how they would be affected by any works, having regard not only to relevant legislation but also to local Biodiversity Action Plan policies;
- whether appropriate advice needs to be taken to ensure that the proposed remedial action will not result in the hedge dying. However the Act does not place any obligation on the Council to ensure its actions do not kill a tree or shrub forming part of a hedge. or
- the potentially seasonal nature of the work since hedge cutting should be avoided during the bird nesting season (March – August) if birds are nesting in the hedge.

- Farm hedges

Hedgerows are a characteristic feature of the landscape and many form field boundaries which are valuable for wildlife, attractive in the landscape and are an important part of our heritage. If a problem hedge is on farm land and is aimed at protecting nesting birds and securing a supply of food for a range of wildlife, Fife Council may discuss the matter with Scottish Natural Heritage before deciding the contents of a remedial notice, particularly in relation to the timescale within which the remedial works should be completed.

- General amenity

Some hedges can provide an attractive feature within an area which has no special protection or designation, and their loss or substantial reduction may be detrimental to the overall visual amenity of an area. Fife Council will have to take due account of the benefits and dis-benefits of the reduction in height of a hedge within each locale.

- Loss of a view

Where a development has been purposefully designed to give all properties a view or outlook, then an interruption to that view or outlook by a later addition of a hedge, the loss of the view or outlook can be considered in such circumstances to affect the material enjoyment of the property.

Q. What decisions can Fife Council take on an application?

- A.** Fife Council can decide if the hedge subject of the notice request forms a barrier to light and as a result interferes with the reasonable enjoyment of the applicant's domestic property. Alternatively Fife Council can view that the hedge has no detrimental impact on the applicant's property.

Fife Council will advise the owner(s) of any offending hedge of the initial action that should be taken, giving a reasonable period of compliance within which the initial action is to be taken. Fife Council will also detail any further preventative action to be taken to prevent the recurrence of the adverse effects of the high hedge while the hedge remains on the land.



Fife Council can request a reduction in height of the hedge or no action is required to the hedge

Q. What if the hedge includes a tree which is protected by a Tree Preservation Order?

- A.** Where a high hedge which includes a tree which is subject to a tree preservation order (TPO), or forms part of a group of trees or woodland which is subject to a TPO, the existence of a TPO does not prevent action being taken but it will be taken into account by the Council in determining the application.

Q. The Council has determined that action should be taken. What happens next?

A. The Council will communicate their decision to both parties, and the hedge owner will be given a deadline by which to meet the terms of the high hedge notice. If they fail to take the remedial action on the hedge in that time, the Council can arrange for the work to be carried out. The Council will have the power to recover the cost of any work carried out from the hedge owner.

Q. The Council has decided to take no action either because it considers that there is no adverse impact or that there is an adverse impact but no action should be taken but I disagree. What can I do next?

A. If you disagree with the decision of the Council, you will have the right of appeal to the Directorate of Planning and Environmental Appeals within 28 days of being notified of the decision.

APPEALS



Both the applicant and the Hedge owner have a right of appeal

Where Fife Council decides there is no adverse effect from the hedge subject of the request to serve a high hedge notice, the applicant may appeal to the Scottish Ministers against the decision. The applicant can also appeal to the Scottish Ministers against the withdrawal or variation of a notice by Fife Council. The appeal must be made before the end of the period of 28 days beginning with the date the applicant is notified of the Fife Councils decision.

The owner(s) of the high hedge which is the subject of a high hedge notice are also able within 28 days beginning with the date the applicant is notified of the Fife Councils decision to appeal the decision to the Scottish Ministers.

Both applicant's and notified neighbours will receive full details of their rights of appeal and where and how to appeal.

Q. I am the hedge owner. The Council has said my hedge needs to be cut back but I disagree. Can I appeal?

A. Yes. Both sides have the same right of appeal to the Directorate of Planning and Environmental Appeals within 28 days of being notified of the decision. Both parties can only appeal once.

Q. I won't let Fife Council or the Scottish Government onto my Land!

A. It is an offence to intentionally to prevent or obstruct a person authorised by Fife Council to enter land acting in accordance with the High Hedges (Scotland) Act 2013. The person authorised by Fife Council may enter the land for the purpose of obtaining information required to determine the application, and to determine whether initial action or preventative action set out in a high hedge notice has been carried out. The person is authorised by the Scottish Ministers to determine an appeal are also authorised to enter land. Both may also enter a building which is for the time being occupied as a residence if there is no other reasonably practicable means of access to the high hedge. Fife Council is also authorised to enter land and may take onto the land such other persons and such materials and equipment (including vehicles) as may be reasonably required for the purposes of assisting it to fulfil the requirements of a High Hedge Notice,



Q. Fife Council has cut my hedge but I don't intend to pay the costs incurred!



A. Fife Council may recover from any person who is an owner of the land on which the high hedge subject to a notice was located any expenses reasonably incurred by the authority in taking action. The recovery will include any administrative expenses (including registration fees) reasonably incurred by it in connection with recovering those expenses, and interest, at such reasonable rate as it may determine, in respect of the period beginning on a date specified by the authority until the whole amount is paid. Where a high hedge is owned by 2 or more persons, each owner of the neighbouring land is jointly and severally liable for the expenses and interest. Fife Council may also apply to register a “notice of liability for expenses” which is likely to give the owner of the land an ongoing burden for the expenses.

Q. Does the Act cover issues such as problems caused by pine needles blocking drains, leaf fall and root damage?

A. No. Where plant life is causing damage to a property, there are existing civil methods which exist to address these issues. This Act is designed to deal with the problems resulting specifically from hedges creating a significant barrier to light.



Only the height of a hedge can be the subject of a high hedge application

Q. Will the Act be reviewed?

A. Yes. The Act contains specific measures to ensure that it will be reviewed within five years. This includes a review of the definition of a high hedge, so that changes can be made if required.

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