

MINISTERIAL BRIEFING ON HIGH HEDGES

1400 to 1430 – Thursday 16 September 2010
Committee Room 4, Parliament Building

Overview

1. The Minister for Community Safety Fergus Ewing MSP had arranged for an informal briefing to be held with elected members to discuss the issue of high hedges and trees. The Minister was supported by Scothedge in this briefing. A list of attendees is attached to the end of this minute.
2. The briefing session was both positive and constructive. The Minister clearly outlined his desire to create an enforceable legal right that victims of high hedge disputes could resolve through a court should they need to.
3. All those present were content with the Minister's outline of such a legal remedy to address the problem of high hedges and nuisance vegetation. The Minister committed to circulating a written note of the briefing session afterwards to both those elected members present and those unable to attend.

Legislative Solution

4. The Minister for Community Safety explained his preference for creating a legal remedy for those suffering from the ill-effects of high trees and hedges, via use of Summary Cause. The creation of a legal right could for example protect one's reasonable enjoyment of property, as alluded to by Lord McGhie. This approach should negate the need to define a high tree or hedge in legislation.
5. The Minister stated that neither a local authority solution, nor the creation of a new public authority, were favourable options to him.
6. The Minister felt that any new legislation should be short, and could possibly contain order making powers or powers to produce a set of guidance or a code of practice. Production of such guidance would enable individuals to accurately assess whether any claim is likely to succeed.
7. The Minister advised that Scottish Government officials will now take forward work in preparation for a draft Bill. The Minister explained that because of the time needed, high hedges legislation was unlikely prior to the election next year but reiterated that his intention was to leave a legacy which could enable speedy introduction of legislation. In doing this preparatory work now the Minister believed that a legacy could be left for an incoming Government which would enable it to lodge a Bill quickly should it decide to do so. The Minister advised that this preparatory work would be taken forward in time for the elections in May 2011. He committed to keeping elected members informed of progress.

Comments from Scothedge

8. Scothedge advised it was delighted with the Minister and his officials for the work done so far; and also thanked elected members for their great support to a

solution, and for the comfort and support they have afforded to constituents in disputes.

9. Whilst welcoming the minister's preference for a legal remedy Scothedge felt that a lack of official intervention prior to a meeting of protagonists in court could prove daunting in some cases. However Scothedge understands the minister's aversion to a local authority solution or the creation of a new public authority and was happy to await the detailed proposals in the draft Bill.

Comments from Elected Members

Code of Practice

10. A code of practice as proposed by the Minister could enable the creation of "precedent" rather than waiting until enough case law made its way through the courts. Other members agreed that such a code of practice was vital. The Minister agreed that Government officials would continue to work with Scothedge on developing this.

11. Members requested that a copy of Lord McGhie's comments and the minutes of the Minister's meeting with the Chief Executive of the Scottish Court Service be circulated along with this minute.

Scottish Court Service & Enforcement of Court Orders

12. Concern was expressed at the possibility of an initial influx of cases coming to court and the impact this could have on the Scottish Court Service. A further concern was that, due to the build-up of angst between individuals, the enforcement of court orders might prove problematic.

13. The Minister advised that such a mechanism is already in place to ensure enforcement of court orders and this would apply to orders given in relation to high hedges. The Minister also commented that he did not think the Scottish courts would see a considerable increase in workload, as the very existence of a legal right would act as a suitable focus to resolve disputes, and would in all likelihood lead to out-of-court settlements instead. It was considered that up to 90% of high hedge and nuisance vegetation complaints would be resolved prior to reaching court.

Issues to be considered

14. One of the members commented on the need to include guidance on light loss in any forthcoming code of practice or legislation. Mr Ewing confirmed that all aspects relating to high hedges and nuisance vegetation would be considered in the preparatory work and referred to Scothedge's publication, "A Growing Problem" in relation to the problems caused by high hedges which outlines problems that can be caused by high hedges and nuisance vegetation.

15. Members wanted to ensure that the creation of a legal right is not solely attributable to individuals but also should extend to any group of individuals, corporate bodies and tenants that experience problems with high hedges and nuisance vegetation. The Minister agreed that in principle the right should not exclude particular groups or individuals.

16. Elected members discussed the fee structure for resolving disputes in this way. The Scottish Government would be consulting the Scottish Court Service on this matter as it took forward the work.

17. The Minister ended the briefing and agreed to circulate a copy of the submissions made by Lord McGhie; and the minutes of his meeting with the Chief Executive of the Scottish Court Service; along with the record of this briefing.

Action

18. Scottish Government officials to start preparatory work in order to enable a draft Bill to be introduced shortly after the election should any incoming Government decide to do so.

19. Elected members and other stakeholders will be kept informed of the progress made on this work.

Community Safety Unit
September 2010

LIST OF ATTENDEES

Fergus Ewing MSP	Minister for Community Safety	SNP
Karen McKeown	Private Secretary to Minister	
Colin Watson	Scotledge	
Derek Park	Scotledge	
David Stewart MSP	Highlands & Islands	Labour
Jackson Carlaw MSP	West of Scotland	Conservative
Andrew Welsh MSP	Angus	SNP
Helen Eadie MSP	Dunfermline East	Labour
John Park MSP	Mid Scotland & Fife	Labour
Trish Godman MSP	West Renfrewshire	Labour
David McLetchie MSP	Edinburgh Pentlands	Conservative
Margaret Smith MSP	Edinburgh West	Liberal Democrats
Michael Pringle MSP	Edinburgh South	Liberal Democrats
Iain Smith MSP	North East Fife	Liberal Democrats
John Scott MSP	Ayr	Conservative
Mary Scanlon MSP	Highlands & Islands	Conservative
Richard Simpson MSP	Mid Scotland & Fife	Labour
Murdo Fraser MSP	Mid Scotland & Fife	Conservative
Kenneth Gibson MSP	Cunninghame North	SNP
Marlyn Glen MSP	North East Scotland	Labour
Bill Wilson MSP	West of Scotland	SNP
Robin Harper MSP	Lothians	Green Party
David Whitton MSP	Strathkelvin & Bearsden	Labour
Nanette Milne MSP	North East Scotland	Conservative
Julia McIntyre	Researcher	
Jenny Duncan	Researcher	
Craig Wilson	Researcher	
Alan Cowan	Researcher	
R. Eric Swanepoel	Researcher	
Sheena Cleland	Researcher	
Iain Ramage	Researcher	
Miles Briggs	Researcher	
Murray Cheek	Researcher	
John Brownlie	Scottish Government	
Rob Knight	Scottish Government	

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LORD McGHIE – COMMENTS ON PROPOSED HIGH HEDGES SOLUTION

Lord McGhie is the Chair of the Lands Tribunal for Scotland. He made the following comments which we included in the consultation paper on high hedges and nuisance vegetation last year. **These are the selected comments that were published from correspondence with Lord McGhie.**

As I see it the problem, at present, is that the owner of the plants in question is usually acting entirely within his or her rights as proprietor. The affected person has no rights in the matter. He can ask for change but if the hedge, bush or tree owner declines to act, there is nothing to argue about. There is no proper “dispute” and no basis for “complaint”. Unless there are private title conditions, the hedge owner is simply exercising his right of property.

As I see it, the real question is not primarily a matter of finding the right machinery to resolve the “dispute” but of creating a right which can be enforced. I may be over optimistic but I tend to think that the very existence of a right to force the owner to do something would be likely to resolve most of the problem situations.

I have several reasons for thinking this. The obvious is that the very existence of a sanction is enough to ensure compliance in most cases. Actual court proceedings are just the tiny tip of a very large iceberg. Most people conduct their affairs “in the shadow” of the law rather than by direct involvement with courts. This is a fundamental truism of civil rights.

Once the neighbour has a right to do something, whatever that is and whatever the procedure, the owner will be compelled to think about the problem. In most cases that will lead to discussion and compromise. The parties may incur a bit of expense consulting lawyers but that is up to them. The risk of expense is an important factor in the negotiation procedures. Whenever parties come to realise that any difficulties arising from compromise are more tolerable than the risk of an adverse award of expenses, negotiation is likely to succeed.

However, another important consequence of giving the neighbour a positive right, is that it helps cut out the feelings of frustrated irritation which so often boil over in current disputes. When people cannot go to law they tend to get angry. They come to see the hedge owner as all that is bad. They may end up picking quarrels over other issues. If they had a legal remedy there would be discussion. If it could not be resolved there would be a dispute with a focus. It might be resolved by legal advice. It is only if that failed that the matter would have to go to some decision maker. In short, if you have a right to ask a neighbour to cut down his hedge or tree, both parties are likely to approach the problem as one to be solved rather than one to be fought over.

MINUTES OF MEETING BETWEEN MINISTER FOR COMMUNITY SAFETY AND ELEANOR EMBERSON

Thursday 10 June 2010

Attendees:

Fergus Ewing MSP, Minister for Community Safety
Eleanor Emberson, Chief Executive of the Scottish Courts Service
Marilyn Riddell, Scottish Court Service
Andrew Pope, Policy Support Officer, Community Safety Unit,

Mr Ewing outlined the discussions had so far with Scothedge and Lord McGhie. He stated he felt the most appropriate home for high hedges would be in the Sheriff Court. Eleanor agreed with this, and **did not believe that would be a huge burden for SCS, given the general estimates of 6 to 12 cases per year.** This would depend however on the process.

Mr Ewing suggested a small claims approach but Marylyn suggested that for practical reasons summary cause would be more appropriate. This raised the issue of fees to resolve disputes.

Mr Ewing suggested an application fee and another fee if a site visit would be required. This may require a new fee structure. Site visits would also be costly due to the Sheriff's time and the need to appoint a suitably qualified expert to attend. The Sheriff could also be in a position to pass this to the Lands Tribunal.

Mr Ewing outlined the following:

He intends to hold an informal meeting with MSPs on this issue and write to the Public Petitions Committee explaining his solution. At present, the Minister wants to focus all efforts on producing a solution for presentation to Parliament in the Autumn and gain cross-party support in order to make this a manifesto commitment for all parties.

The Scottish Courts Service indicated that they would be happy to help with the creation of a financial memorandum on the costs involved for individuals when bringing an action in court.