

## Legal Offices

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# Hotspots

## May 2013



### Dredging Burns – Farmers Beware

An Angus farming company was recently fined £500 by Sheriff Paterson at Arbroath Sheriff Court after being found guilty of carrying out dredging work at a time of fish spawning. The Sheriff accepted there was no intention to interfere with the fish in the burn, but took the view the breach was a technical one.

A spokesman for SEPA (Scottish Environmental Protection Agency) has stressed that dredging carried out in the wrong way can cause serious environmental harm, damage to fisheries and increased flooding downstream. He added, however, that SEPA does not want to impede farmers or landowners who wish to improve field drainage.

SEPA does not require an application to authorise activities such as the removal of in-stream or bank-side vegetation. However, other activity such as sediment removal from dry gravel or upstream and downstream of bridges requires registration, which can be acquired online.

It is therefore clear that farmers and landowners should always approach SEPA for advice before commencing any dredging activities in order to avoid the possibility of incurring fines in the future.

### RICS Small Business Retail Lease

The Royal Institution of Chartered Surveyors in Scotland has recently published a Scottish version of their Small Business Retail Lease. This follows the release of the English and Welsh version last year. The document, along with guidance for use, is available for downloading from their website [www.rics.org](http://www.rics.org).

The lease is intended for use where:-

- the leased subjects form part of a building which can be shown on a plan;
- the length of the lease is no more than five years; and
- there is no rent review.

The intention is to make the leasing process shorter and less complicated for small/new businesses and is a laudable attempt to arrest the decline of the High Street.

However, a lease is a legally binding contract between a landlord and tenant and can involve significant financial commitment. Care should always be taken when drafting a lease to ensure it is suitable for the premises let and reflects the terms agreed between the parties.

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## High Hedge Remedy in Sight

New remedies will soon be available to those householders whose enjoyment of their homes have been adversely affected by trees and shrubs on neighbouring land.

The High Hedges (Scotland) Bill, passed recently by the Scottish Parliament, allows residents to apply to their Local Authority for a "High Hedge Notice", compelling landowners to cut back offending "high hedges".

Three tests must be satisfied for a plant or tree to qualify as a "high hedge", as follows:-

1. The hedge must be formed wholly or mainly by a row of two or more trees or shrubs. This covers deciduous as well as evergreen or semi-evergreen trees or shrubs;
2. The hedge must rise to a height of more than two metres above ground level. This restriction is relatively low and leaves many species vulnerable to enforcement action. It remains to be seen how strictly local authorities will choose to interpret this provision; and
3. The hedge must form a barrier to light. It is therefore unclear whether larger deciduous plants that may have no leaves for much of the year would qualify as a "high hedge" under the new rules.

It is anticipated that the High Hedges (Scotland) Act 2013 will come into force next year.

## Recent Changes to Statutory Payments

The following changes to statutory payments recently took effect:-

- On 6 April, the weekly rate of statutory sick pay increased from £85.85 to £86.70;
- On 7 April, the prescribed weekly rate of statutory maternity pay, statutory paternity pay and statutory adoption pay went up from £135.45 to £136.78; and
- On 8 April, the weekly rate of maternity allowance also increased to £136.78.

**For further information on these or other legal issues please contact either Alistair Duncan in our Dundee Office on (01382) 200000 or James Andrew in our Perth Office on (01738) 637311**

**These comments are provided for guidance only. Each situation must be looked at in its own right so you cannot rely on these points in relation to any particular matter without first taking specific advice**

**Miller Hendry provides a wide legal and estate agency service across Tayside and Strathearn.  
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