

## POLICY NOTE

### THE ALLOTMENTS (COMPENSATION) (SCOTLAND) REGULATIONS 2017

#### SSI 2017/457

The above instrument was made in exercise of the powers conferred by sections 133(4) and (5), 134(4) and (5) and 135(3) and (4) of the Community Empowerment (Scotland) Act 2015 and all other powers enabling them to do so.

#### Policy Objectives

Part 9 of The Community Empowerment (Scotland) Act 2015 (“the Act”) brought forward provisions about allotments, as defined in section 107 of the Act. Sections 133, 134 and 135 make provision about compensation payable when the lease of an allotment ends in certain circumstances. Those sections require secondary legislation to be made, by way of regulations, for further provision in connection with compensation. This instrument makes those regulations, to come into force on 1<sup>st</sup> April in line with the other provisions of Part 9.

1. Compensation for disturbance: Section 133(5) of the Act requires that regulations must in particular provide for the procedure to be followed in determining whether a local authority is liable to pay compensation to the tenant for disturbance as a result of termination of the lease in certain circumstances and in assessing any amount of compensation to be paid above the minimum requirement, if the lease does not make provision about the procedure for assessing the amount.
2. Compensation for deterioration of allotment: Section 134(5) of the Act requires that regulations must in particular provide for the procedure to be followed in determining whether a tenant is liable to pay compensation to the landlord for deterioration of the allotment. This happens when it is determined that the deterioration of the allotment occurred during the tenant’s lease and was caused by the fault or negligence of the tenant. Regulations must also in particular make provision about the procedure to be followed in assessing the amount of compensation due where the lease does not make that provision.
3. Compensation for loss of crops Section 135(4) provides that regulations must in particular make provision about the procedure to be followed in determining whether a local authority is liable to pay compensation to the tenant where the allotment is resumed and the tenant loses crops. Regulations must also in particular make provision about the procedure to be followed in assessing the amount of compensation due where the lease does not make that provision.

The policy objective of the instrument is therefore to set out the further provision that is required in relation to compensation for disturbance, deterioration and loss of crops where these apply under the Act at the end of the lease of an allotment.

#### PART 1: General

Part 1 of the instrument provides that it comes into force on 1<sup>st</sup> April 2018 and defines a number of terms used on the instrument.

## **PART 2: Compensation for disturbance**

Regulation 2 of the instrument sets out how an applicant seeking compensation for disturbance must submit a notice of claim to the local authority. This includes what must be stated in and provided with the claim and sets the timeframe for submission.

Regulation 3 provides that when an authority receives a notice of claim, it must decide whether it has sufficient information and evidence to determine the claim, and the time frame for this. It also allows local authorities to seek further information and evidence from the applicant if required and sets a timeframe for this to be provided.

Regulation 4 provides that the authority must make a decision on its liability for the claim for compensation for disturbance and the amount of compensation due. The matters the authority must take into account in making this decision and the steps it must take are set out. The authority must give reasons for its decision and include that the applicant has the right to appeal its decision in cases where it does not accept the whole of the claim. Regulation 4 also establishes the timeframe for paying compensation to the applicant for disturbance.

## **PART 3: Compensation for deterioration of allotment**

Regulation 5 of the instrument sets out that where a the tenant may be liable for deterioration of an allotment, the local authority must inspect the allotment and, if the allotment appears to have deteriorated due to the tenant's fault or negligence, give the tenant a deterioration notice. Regulation 5 sets out the timescales for this process.

Regulation 6 sets out the information and evidence the deterioration notice must contain.

Regulation 7 allows the tenant the opportunity to make representation to the authority about any of the matters in the deterioration notice.

Regulation 8 sets out that the authority must, after the period for making representations, decide whether or not the allotment has deteriorated during the tenant's lease due to the fault and negligence of the tenant. If so, it must determine the amount of compensation due, based on the cost of rectifying the deterioration and evidence of this in the deterioration notice, or based on the procedure set out in the lease if the lease makes that provision. The authority's decision must take into consideration any representations from the tenant. Notice of the decision must be given, including notice of the tenant's right of appeal. Timeframes are set for the steps to be taken under regulation 8.

Regulation 9 sets a minimum timeframe the tenant has for paying compensation for deterioration to the local authority. It also enables an extension to the minimum timeframe, should this be agreed by both parties.

It is expected that local authorities will inspect allotment sites for deterioration over the course of the lease, and the tenant would have had opportunities to rectify this before the end of the lease.

Part 3 outlines the procedure for determining compensation for deterioration of an allotment at the end of the tenant's lease and where this has not been rectified prior to the end of the lease.

#### **PART 4: Compensation for loss of crops**

Regulation 10 of the instrument sets out the steps an applicant must take when submitting a notice of claim to the local authority for compensation for loss of crops. This includes setting the timeframe, what must be included in the notice and accompanying evidence.

Regulation 11 sets out that when a local authority receives a notice of claim for compensation for loss of crops, it must decide whether it has enough information and evidence to enable it to determine the claim. Regulation 11 also allows local authorities to seek further information or evidence related to the claim and enables an extra period of time in which to obtain this.

Regulation 12 outlines the timeframe and steps a local authority must take in order to make a decision on whether it accepts liability for the claim and the amount of compensation due. The matters the authority must take into account in making this decision are set out. . Under this regulation, the local authority must give notice of its decision with reasons for its decision and include that the applicant has the right to appeal its decision. The timeframe for paying compensation is also set out.

#### **Consultation**

In accordance with sections 133(6), 134(6) and 135(5) of that Act the Scottish Ministers have consulted with local authorities and other persons appearing to the Scottish Ministers to have an interest.

The Scottish Government "Consultation on Allotments Compensation: Secondary Legislation under the Community Empowerment (Scotland) Act 2015" ran from 20 August 2015 to 16 October 2015: <https://consult.gov.scot/food-and-drink/allotments/>

Three stakeholder engagement events were also organised for Glasgow, Edinburgh and Inverness.

Building on the responses from 2015, the Scottish Government Food, Drink & Trade Division conducted a supplementary consultation that ran for 5 weeks (from 18 August 2017 to 22 September 2017) and focussed specifically on the procedures to be followed in determining liability and assessing the amount of compensation, and noting that procedures for determining the amount of compensation due only apply in cases where the lease does not make provision for this.

The results of this further consultation have been used to inform the development of the procedures for determining liability and assessing the amount of compensation for disturbance, deterioration and loss of crops set out in this instrument.

Emerging themes from the consultation process included the need for sufficient time for local authorities to investigate claims for compensation, the recognition that there could be legitimate circumstances where deterioration of an allotment may have arisen due to circumstances beyond the tenant's control and compensation for loss of crops should be

determined as being the cost of replacing like for like, and/ or the cost of relocating these to new sites. These have been taken into consideration when developing these regulations.

### **Impact Assessment**

No impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen. However, an Equality Impact Assessment (EQIA) was carried out at for the Bill which covered Part 9 and can be found here:

<http://www.gov.scot/Topics/People/engage/eiapt4>

### **Financial Effects**

The Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no Business and Regulatory Impact Assessment is necessary as this Order has no financial effects on the Scottish Government, Local Government or on business. However, please see Financial Memorandum that was carried out for the Bill and which covers Part 9:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/83231.aspx>

Scottish Government  
Directorate for Economic Development  
Food, Drink and Trade Division  
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