

COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 9: Allotments

Power to remove unauthorised buildings from allotment sites

410. The regulations regarding allotment sites to be made under section 115(1) must include provision for buildings and structures that are permitted on allotments, including modifications that may be made and the materials that may or may not be used in connection with such structures. The regulations may also include provision for buildings or structures that are permitted on land mentioned in paragraph (b) of the definition of “allotment site”, being communal areas within the site, including permitted modifications and materials. If a building or structure is not permitted under regulations made under section 115(1), and at the time it was erected or modified, that erection or modification was prohibited by such regulations, section 122 confers power on a local authority to remove the building or other structure.
411. Subsection (2) provides that a local authority may:
 - remove the building or other structure from the site;
 - dispose of the materials that formed the building or other structure; and
 - recover the cost of the removal and/or disposal of the materials from a “liable tenant”, being the tenant from whose allotment it is removed or, if on a part of the site that is not an allotment, from the tenant or tenants responsible for its erection (subsection (3)).
412. In cases where more than one tenant has consented to the erection of an unauthorised building or structure, each such tenant shall be jointly and severally liable for the recoverable costs (subsection (4)).
413. Prior to exercising this power to remove unauthorised buildings, a local authority must follow the procedure set down in subsection (5). Firstly, notice must be given to every tenant who may be affected by the removal of the building or structure. Secondly, the tenant(s) must be given the opportunity to make representations about the proposed action and there is a duty placed on the local authority to give appropriate consideration to these representations. Once a decision is reached, the local authority must notify this decision to the affected tenant(s) in writing, specifying the date on which the action is to take place, if applicable. Upon receipt of a notice under subsection (5)(d) a tenant has 21 days to appeal to a sheriff against the decision of the local authority.
414. A limitation placed on this power is that where a local authority leases an allotment site, it cannot remove buildings or other structures if this removal is in breach of a provision of the lease (subsection (8)).

415. Subsection (7) allows the Scottish Ministers to make regulations regarding the procedure to be followed in relation to the exercise of the power to remove buildings or structures, dispose of the materials and recover the costs of removal and disposal.