

# COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 9: Allotments**

##### **Meaning of “allotment”**

377. Earlier legislation on allotments does not provide a clear definition of “allotment”. Section 107 of the Act defines “allotment” for the purpose of this Part. Paragraph (a) provides that an allotment is land that is either owned or leased by a local authority. Privately leased or owned allotments are not covered by this Part of the Act. Additional requirements for land being an allotment under Part 9 of the Act are that the land is leased, or intended to be leased, by a person from the local authority and that the land is used wholly or mainly for the non-commercial cultivation of vegetables, fruit, herbs or flowers (subsection (c)(i)) otherwise than with a view to making a profit (subsection (c)(ii)).

##### **Meaning of “allotment site”**

378. No specific definition of “allotment site” has been included in earlier allotment legislation. Section 108 defines “allotment site” for the purpose of Part 9 as an area of land consisting wholly or partly of “allotments”, as defined in section 107. An “allotment site” also includes other local authority land that allotment tenants use in connection with their allotments, such as communal buildings, and environmental areas.

##### **Request to lease allotment**

379. [Section 109](#) makes provision relating to requests to lease allotments. Subsection (1) provides that a resident of a local authority area may make a request to lease an allotment from that local authority or sublease an allotment from a tenant of the authority to whom the authority has leased an allotment site.
380. Subsection (2) provides that this request must be in writing and include the name and address of the applicant. Regulations may also set out further information that must be included in the request. Subsection (8) provides that, before making these regulations, the Scottish Ministers must consult local authorities and any other person appearing to have an interest.
381. Subsection (3) provides that the person making the request must specify the area of allotment sought if it is less than 250 square metres.
382. Subsection (4) makes provision for requests for allotments by disabled persons and allows details of any additional requirements regarding access to and adaptation of the allotment or site to be provided in the request. For example, a need for adaptations such as raised beds and wider paths should be specified.

383. Subsection (5) provides that a request for an allotment may be made even if the local authority does not currently provide allotments in their area. A joint request for an allotment may also be made by two or more persons provided that each of the applicants are all resident in the relevant local authority area (subsection (6)).
384. Once a request is received, the local authority is under a duty to acknowledge the request in writing within 14 days (subsection (7)).

### **Offer to lease allotment**

385. [Section 110](#) provides an entitlement to wait for an allotment of 250 square metres or a smaller size if it is requested. Subsections (2) and (3) apply where a person specifies an allotment of an area less than 250 square metres in a request made under section 109(1). If a person requests a particular size smaller than 250 square metres and is offered this size then the request is treated as having been agreed for the purpose of maintaining the waiting list under section 111(3)(a)(i) (subsection (2)). The person's name will be removed from the waiting list. If a person is offered and accepts an alternative size of allotment then the request is treated as having been agreed to for the purpose of section 111(3)(a)(i) and the person's name will be taken off the list. Should that person not agree to the offer of an alternative size, the request is treated as not agreed to (subsection (3)). The person is therefore entitled to remain on the list until the particular size requested is offered.
386. Subsections (5) and (6) apply where a person does not specify an area of allotment sought (of less than 250 square metres) in their request made under section 109(1). The request is treated as agreed for the purpose of section 111(3)(a)(i) when an allotment of approximately 250 square metres is offered (subsection (5)). The person's name will then be removed from the waiting list. If the person is offered and accepts an allotment of other than approximately 250 square metres, the request is treated as agreed to for the purpose of section 111(3)(a)(i) and the person's name will be removed from the list. Should a person be offered an allotment that is not approximately 250 square metres and rejects the offer the request is treated as not agreed and the person's name remains on the waiting list (subsection (6)).

### **Duty to maintain list**

387. [Section 111](#) imposes an obligation on local authorities to establish and maintain a waiting list of residents who have requested an allotment (subsection (1)).
388. Subsection (2) provides that there is no set format for such lists and local authorities may manage them as they see fit. They may, for example, wish to split the list into applicants' preferred geographical areas. Subsection (3) provides that a person's details must be removed from the list when their request to lease an allotment is agreed to or if the person withdraws their request.

### **Duty to provide allotments**

389. [Section 112\(1\)](#) imposes a duty on local authorities to take reasonable steps to provide sufficient allotments to keep the list referred to in section 111 at no more than half the authority's current number of allotments, and to ensure that a person entered on the list does not remain on it for a continuous period of more than five years.
390. Where a local authority does not on the date that section 112 comes into force own or lease allotments, subsection (2) sets out that this duty is triggered when there are 15 people on the local authority waiting list maintained under section 111(1). However, where a local authority already owns or leases allotments, subsection (3) sets out that the duty arises when only one person is on the waiting list.

391. Subsection (4) requires local authorities, when taking reasonable steps to meet the duty in subsection (1), to take into account the desirability to provide allotments in reasonable proximity to where people on the waiting list reside.
392. The Scottish Ministers may by order amend the number of people on the waiting list that triggers the requirement on the local authority to take reasonable steps to provide more allotments, or the maximum proportion of persons on the waiting list as compared to the number of allotments owned or leased by the local authority (subsections (5) and (6)).

### **Duty of tenant of allotment site to grant sublease**

393. [Section 113](#) provides that where a local authority has leased an allotment site to a tenant, e.g. an allotment association, the tenant must grant a sublease of an unoccupied allotment to a person who has made a request for an allotment and is on the authority's waiting list when requested to do so by the local authority.

### **Access to allotment and allotment site**

394. Under section 114 where a local authority leases an allotment to a tenant the authority must provide reasonable access to the allotment and any allotment site. Where an authority leases an allotment site to a tenant the authority must provide reasonable access to the site and to allotments on it.

### **Allotment site regulations**

395. An obligation is placed on each local authority under section 115(1) to make allotment site regulations for their area within two years of this section coming into force.
396. The matters set out in subsection (3) must be included in the regulations.
397. In addition to the mandatory requirements under subsection (3), subsection (4) sets out other matters local authorities may include in the regulations.
398. Local authorities are permitted to vary the regulations for different areas or different allotment sites in order to take account of local circumstances (subsection (5)).

### **Allotment site regulations: further provision**

399. [Section 116](#) sets out the process that local authorities must undertake to make allotment site regulations, or to vary or revoke them. Subsection (2) provides that local authorities must at least one month before making regulations advertise their intention to do so, the purpose of the regulations, where they may be inspected and details about making representations. They must also make copies of the proposed regulations available. A person who objects to the regulations may make representations to the local authority and must be allowed an opportunity to be heard and his or her representations taken account of before the local authority makes its final decision (subsections (3) and (4)). Where regulations contravene the local authority's lease of the site, the provision in the lease is to prevail (subsection (11)).

### **Disposal etc. of allotment sites owned by local authority**

400. [Section 117](#) applies where an allotment site is owned by a local authority.
401. If a local authority wishes to change the use of or dispose of the whole or part of an allotment site it owns, before doing so it must obtain the consent of the Scottish Ministers (subsection (2)). Subsection (3) requires the Scottish Ministers to consult both the local authority and other persons with an interest before granting consent. The Scottish Ministers may consent subject to conditions (subsection (4)), and in particular may only grant consent if they are satisfied that each of the allotment tenants from the site or the part of the site affected is to be offered an alternative allotment of an area the same or similar to that of the tenant's allotment, on the same site or within a

reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practicable in the circumstances (subsection (5)). Subsection (6) sets out that a purported transfer of ownership without the Scottish Ministers' consent is of no effect.

### **Disposal etc. of allotment sites leased by local authority**

402. [Section 118](#) applies where a local authority leases an allotment site.
403. Subsection (2) provides that the local authority may not renounce (terminate voluntarily) its lease of an allotment site without the consent of the Scottish Ministers. In addition, even where a change of use is permitted by the lease, the local authority may not change the use of the allotment site unless the Scottish Ministers consent (subsection (3)). Subsection (4) requires the Scottish Ministers to consult both the local authority and other persons with an interest before granting consent.
404. As with section 117, the consent of the Scottish Ministers may be subject to conditions (subsection (5)), and the Scottish Ministers may not grant consent unless they are satisfied that the tenants of the site or part of the site affected by the proposed renunciation or change of use are to be offered an alternative allotment, of the same or similar size to that of the tenant's allotment, on the same site or within a reasonable distance, or that the provision of an alternative is unnecessary or not reasonably practicable in the circumstances (subsection (6)). Subsection (7) sets out that a purported renunciation of a lease without the Scottish Ministers' consent is of no effect.

### **Duty to prepare food-growing strategy**

405. [Section 119](#) places a duty on every local authority to prepare a food-growing strategy which must be published within two years of this section coming into force. Subsection (3) provides that the food-growing strategy must identify land in the local authority area which could be used by a community to grow vegetables, fruit, herbs or flowers, as well as land that could be used for allotments, and must describe how the authority intends to increase the provision of allotments or other land for community growing, should there be an identified need. Subsection (4) requires a local authority, when detailing how it intends to increase the provision of allotment sites and community growing areas of land in its area, to describe whether and how this will apply to communities which experience socio-economic disadvantage. The Scottish Ministers may also prescribe by regulations other information to be included in a food-growing strategy.
406. Once complete, the local authority must publish the food-growing strategy on a website or by other electronic means (subsection (5)).

### **Duty to review food-growing strategy**

407. Each local authority is under a duty to review its food-growing strategy under section 120. This must be done 5 years after the date of initial publication and every 5 years thereafter (subsection (1)). Where the local authority makes changes to its food-growing strategy following a review, the revised strategy must be published on a website or by other electronic means (subsection (2)).

### **Annual allotments report**

408. Under section 121, every local authority is under a duty to prepare and publish an annual allotments report. This requires to be done as soon as is reasonably practicable after the end of each reporting year (as defined in subsection (4)). Publication must be on a website or by other electronic means (subsection (3)).

409. Subsection (2) sets out the matters which require to be detailed in the annual allotments report and allows other information to be required in the report by regulations made by the Scottish Ministers.

### **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.

### **Delegation of management of allotment sites**

416. [Part 9](#) of the Act imposes certain management functions on local authorities in relation to allotment sites. Section 123 allows a local authority to delegate certain functions to a person who represents the interests of all or the majority of the tenants of the allotments on a particular site. Usually, this “person” will be an allotment association.
417. Only the functions set out in subsection (3) may be delegated by the local authority.
418. In order for functions to be delegated, a written application must be made by the person wishing to take over the functions of the local authority. The application must include

the name and address of the applicant, in addition to such other information as the Scottish Ministers set out in regulations (subsection (4)).

419. Upon receipt of an application the local authority has 14 days in which to request from the applicant such further information as it requires in order to make a decision as to whether to agree or refuse the request. The applicant must provide this information within 14 days of it being requested (subsection (5)).
420. There are time limits by which the local authority must make and notify a decision on an application and these are set out in subsection (6). Where no further information has been requested from the applicant, the decision must be notified to the applicant within 28 days of receipt of the application. Where further information has been requested, this time limit is increased to 56 days.
421. If the request is refused, the local authority must send the applicant a decision notice which sets out the reasons for the refusal of the application (subsection (7)).
422. If the request is agreed, the local authority must decide which of its functions mentioned in subsection (3) it is delegating to the applicant and when the delegation will be reviewed (subsection (8)). Prior to the decision on which functions to delegate, the local authority is under an obligation to consult with the person who has made the request (subsection (9)).
423. In cases where the local authority considers that the person to whom they have delegated functions is not carrying out these functions satisfactorily, or where there is a disagreement between this person and the local authority, the local authority has the power to recall any of the functions it has delegated under this section (subsection (10)).
424. It is also set out in subsection (11) that where the local authority is leasing an allotment site from another person, any delegation of its functions must not contravene the head-lease.

### **Promotion and use of allotments: expenditure**

425. Section 124(1) permits a local authority to incur expenditure for the purpose of promoting allotments in its area and providing training by or on behalf of the local authority to tenants and potential tenants about the use of allotments. Local authorities must take into account the desirability of exercising this power in relation to communities which experience socio-economic disadvantage (subsection (2)).

### **Use of local authority and other premises for meetings**

426. Under section 125 a tenant of an allotment site or a person who represents the interests of all or the majority of tenants on an allotment site may make a request to the local authority to use certain premises, free of charge, for holding a meeting about allotment site related business. The premises are a public or grant-aided school or other premises within the area that are;
  - maintained by the local authority;
  - maintained by a person other than the authority and used for or in connection with the delivery of services that have been delegated to that person by the authority; or
  - maintained and managed by a person other than the authority on behalf of the authority
427. This request must be made in writing at least one month before the date of the proposed meeting and include the name and address of the person making the request as well as information about the particulars of the meeting. The local authority must respond to the request within 14 days either granting or refusing the request or offering alternative arrangements for the meeting.

### **Termination of lease of allotment or allotment site**

428. [Section 126](#) confers a power on a local authority to terminate the lease of whole or part of an allotment or an allotment site.
429. Where a tenant has been complying with allotment site regulations made under section 115, the minimum notice of termination the local authority is required to give is one year (subsection (2)). This applies where the Scottish Ministers have consented to disposal of the site, change of its use, or renunciation of the lease of the site under section 117 or 118. Where there has been a breach of allotment site regulations by a tenant, the notice of the proposed termination that must be given by the local authority to the tenant is one month (subsection (2)).
430. A local authority must write to any tenant to inform them of its intention to give notice to terminate a lease no later than one month in advance of serving such a notice (subsection (5)). The local authority is also required to allow the tenant any opportunity to make representations to the authority in relation to the proposed termination and must take account of such representations. After considering these representations the local authority must write to the tenant to inform them of their intention to no longer proceed or to give notice (subsection (5)(d)). A tenant who is aggrieved by a notice may appeal to the sheriff within 21 days of the date of the notice (subsection (6)). A notice served under this section does not take effect until the appeal period has expired or, where there is an appeal, the appeal has been withdrawn or finally determined (subsection (8)).
431. The written notice must specify the termination date of the lease (subsection (1)) If, however, the local authority has given notice under section 128 where its lease of the site has been terminated by its landlord, it does not require to also give notice under this section (subsection (11)).

### **Resumption of land by local authority**

432. If allotment land is required by the local authority for building, mining or other industrial purpose (or for the construction, maintenance or repair of roads or sewers necessary in connection with these purposes), the local authority can, in certain circumstances, resume the whole or part of an allotment or allotment site, under section 127. This power can only be exercised with the consent of the Scottish Ministers and where the tenant has been given notice in accordance with subsection (3). The Scottish Ministers may grant consent subject to such conditions as they think fit (subsection (4)) and may only grant consent if they are satisfied that each of the allotment tenants from the site or part of the site affected has been offered an alternative allotment of the same or similar size within a reasonable distance, or that the provision of an alternative allotment is not necessary or reasonably practical in the circumstances (subsection (5)).
433. Subsection (3) provides that written notice of the resumption must be given to allotment tenants and this notice must specify the date on which the resumption is to take place. The minimum notice period is 3 months and the notice must therefore be served in accordance with this prescribed time limit.

### **Notice of termination: sublease by local authority**

434. Where an allotment site is leased to a local authority and then the authority sub-leases either the site or particular allotments on the site to subtenants, it is possible that the local authority's landlord may terminate the head lease granted to the local authority in whole or in part. The effect of this is that the sublease(s) granted by the local authority in relation to that site or part of site will come to an end on the date that the head lease between the landlord and the local authority comes to an end. Section 128 applies in these circumstances.

435. Subsection (2) places an obligation on the local authority to send a copy of the notice of termination of the head lease to each subtenant and inform them that the effect of the termination of the head lease will be the termination of the sublease(s).

#### **Notice of termination: sublease by allotment association etc.**

436. Where a person, such as an allotment association, leases an allotment site from a local authority and is given notice by the local authority in relation to the whole or part of that site, section 129 provides that that person must give notice to each subtenant of that whole or part site informing them that the effect of termination of the head lease will be termination of the sublease(s) on the same date.

#### **Prohibition against assignation or subletting**

437. [Section 130](#) requires that a tenant of an allotment must not assign the lease of whole or part of the allotment without the consent of the local authority which granted the lease of either the allotment or the site on which the allotment is situated (subsection (1)). A tenant of an allotment must not sublet the whole or part of the lease (subsection (2)). Should the tenant undertake either of these actions, the action is of no effect (subsections (3) and (4)).

#### **Sale of surplus produce**

438. [Section 131](#) sets out that, subject to any regulations made by local authorities under section 115(1), allotment tenants may sell produce grown on their allotments provided this is not with a view to making a profit (e.g. it may be sold for charity).

#### **Removal of items from allotment by tenant**

439. [Section 132](#) provides that before the expiry or termination of a tenant's allotment lease a tenant may remove certain items from their allotment. These items are any buildings or other structures erected by or on behalf of or acquired by the tenant, or any produce, trees or bushes acquired by the tenant or planted by or on behalf of the tenant.

#### **Compensation for disturbance**

440. Where an allotment lease is terminated, in whole or part, on the grounds of termination mentioned in subsection (1)(a), section 133 provides tenants with a right to be compensated by the local authority for damage caused by the disturbance of the enjoyment of the allotment (subsections (1) and (2)). The grounds of termination mentioned under subsection (1)(a) are:- (i) notice under section 126(2)(b)(ii); (ii) as a result of notice of termination of the lease of the allotment site on which the allotment is situated under section 126(2)(b)(ii); (iii) as a result of notice of resumption of the allotment, or the allotment site on which it is situated, under section 127(2); or (iv) as a result of a notice mentioned in section 128(1)(c).
441. Subsection (3) provides that the minimum amount of compensation is one year's rent or a proportion of that where the termination of the lease relates to part of an allotment. Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. Before these regulations are made, the Scottish Ministers must consult local authorities and any other person with an interest. There is a right of appeal to the sheriff against a local authority's decision in respect of compensation for disturbance (subsection (7)).

#### **Compensation for deterioration of allotment**

442. Under section 134, where a lease of an allotment has ended and the allotment has deteriorated during the tenant's tenancy due to the tenant's fault or negligence, the sum required to remedy the deterioration is due in compensation from the tenant

to the landlord (subsections (1), (2) and (3)). Subsections (4) and (5) require the Scottish Ministers to make further provision in regulations about the process involved in determining liability for, and the amount of, compensation. Before these regulations are made the Scottish Ministers must consult local authorities and any other person with an interest (subsection (6)). A tenant has a right of appeal to the sheriff against a decision of a local authority in respect of compensation for deterioration (subsection (7)).

### **Compensation for loss of crops**

443. [Section 135](#) provides that where an allotment lease is terminated by way of resumption and the tenant loses crops due to the resumption, the local authority is liable to compensate the tenant for the loss of crops (subsections (1) and (2)). The Scottish Ministers are required to make regulations about determining liability for, and the amount of, compensation (subsection (3) and (4)). Before these regulations are made the Scottish Ministers must consult with local authorities and any other person with an interest (subsection (5)). A tenant has a right of appeal to the sheriff against a local authority decision in respect of compensation for loss of crops (subsection (6)).

### **Set-off compensation etc.**

444. Where a lease is terminated, section 136(1) allows local authorities who are liable to compensate a tenant or subtenant for disturbance or loss of crops to deduct from the sum due any sum due by the tenant in connection with the lease.
445. Subsection (2) provides that where a tenant is liable to pay a sum to the local authority in connection with the lease, the tenant can deduct any sum due to them by the local authority by way of compensation for disturbance or loss of crops.

### **Guidance**

446. [Section 137](#) requires local authorities to have regard to guidance issued by Scottish Ministers when carrying out the functions provided in Part 9. Before this guidance is issued, the Scottish Ministers must consult local authorities and any other person with an interest.