

# Community Empowerment (Scotland) Act 2015

2015 asp 6

## PART 9

### ALLOTMENTS

#### *Local authority functions*

#### **111 Duty to maintain list**

- (1) Each local authority must establish and maintain a list of persons who make a request to it under section 109(1).
- (2) The list may be established and maintained by the local authority in such form as the authority thinks fit.
- (3) The duty to maintain a list under subsection (1) includes a duty to remove from the list—
  - (a) the name of any person—
    - (i) whose request under section 109(1) is agreed to, or
    - (ii) who withdraws such a request before it is agreed to, and
  - (b) any other information relating to any such person.

#### **112 Duty to provide allotments**

- (1) Where subsection (2) or (3) applies, each local authority must take reasonable steps to ensure—
  - (a) that the number of persons entered in the list maintained under section 111(1) is no more than one half of the total number of allotments owned and leased by the authority, and
  - (b) that a person entered in the list does not remain in the list for a continuous period of more than 5 years.
- (2) This subsection applies where—

- (a) on the commencement date, a local authority does not own or lease any allotments, and
  - (b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is 15 or more.
- (3) This subsection applies where—
- (a) on the commencement date, a local authority owns or leases allotments, and
  - (b) at any time after that date, the number of persons entered in the list mentioned in subsection (1) is one or more.
- (4) A local authority must, in taking reasonable steps as mentioned in subsection (1), have regard to the desirability of making available allotments that are reasonably close to the residence of persons in the list mentioned in that subsection.
- (5) The Scottish Ministers may by order amend subsection (1) by substituting for the proportion for the time being specified there such other proportion as they think fit.
- (6) The Scottish Ministers may by order amend subsection (2) or (3) by substituting for the number of persons for the time being specified there such other number of persons as they think fit.
- (7) Where a request under section 109(1) is made jointly by two or more persons, the persons making the request are to be treated as one person for the purposes of calculating the number of persons referred to in—
- (a) subsection (1),
  - (b) subsection (2) (including that subsection as amended by an order under subsection (6)),
  - (c) subsection (3) (including that subsection as amended by an order under subsection (6)),
  - (d) section 121(2)(j) or (p).
- (8) In this section, “commencement date” means the date on which this section comes into force.

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

- (1) Subsection (2) applies where an allotment site is let by a local authority.
- (2) If the local authority requests that the tenant of the allotment site grant a sublease of an unoccupied allotment on the site to a person entered in the list maintained under section 111(1), the tenant must grant such a sublease.

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

- (1) Where a local authority leases an allotment to a tenant, it must provide reasonable access to the allotment and any allotment site on which the allotment is situated.
- (2) Where a local authority leases an allotment site to a tenant, it must provide reasonable access to the allotment site and allotments on the site.

### **115 Allotment site regulations**

- (1) Each local authority must make regulations about allotment sites in its area.

- (2) The first regulations under subsection (1) must be made before the expiry of the period of two years beginning with the date on which this section comes into force.
- (3) Regulations under subsection (1) must in particular include provision for or in connection with—
  - (a) allocation of allotments,
  - (b) rent, including a method of determining fair rent that takes account of—
    - (i) services provided by, or on behalf of, the local authority to tenants of allotments,
    - (ii) the costs of providing those services, and
    - (iii) circumstances that affect, or may affect, the ability of a person to pay the rent payable under the lease of an allotment,
  - (c) cultivation of allotments,
  - (d) maintenance of allotments,
  - (e) maintenance of allotment sites,
  - (f) buildings or other structures that may be erected on allotments, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,
  - (g) the keeping of livestock (including poultry), and
  - (h) landlord inspections.
- (4) Regulations under subsection (1) may in particular include provision for or in connection with—
  - (a) buildings or other structures that may be erected on land mentioned in paragraph (b) of the definition of “allotment site” in section 108, the modifications that may be made to such structures and the materials that may or may not be used in connection with such structures,
  - (b) access by persons (other than allotment tenants) and domestic animals,
  - (c) liability for loss of or damage to property,
  - (d) acceptable use of allotments and allotment sites,
  - (e) sale of surplus produce.
- (5) Regulations under subsection (1) may make different provision for different areas or different allotment sites.

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

- (1) Before making regulations under section 115(1), a local authority must consult persons appearing to the local authority to have an interest.
- (2) At least one month before making regulations under section 115(1), a local authority must—
  - (a) place an advertisement in at least one newspaper circulating in its area giving notice of—
    - (i) the authority’s intention to make the regulations,
    - (ii) the general purpose of the proposed regulations,
    - (iii) the place where a copy of the proposed regulations may be inspected,
    - (iv) the fact that any person may make written representations in relation to the proposed regulations,
    - (v) the time within which a person may make representations, and

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- (vi) the address to which any representations must be sent, and
- (b) make copies of the proposed regulations available for inspection by the public without payment—
  - (i) at its offices, and
  - (ii) if it considers it practicable, at the allotment site to which the regulations are to apply.
- (3) Any person may make a representation in writing in relation to the proposed regulations no later than one month after the last date on which notice under subsection (2)(a) is given.
- (4) Before making the regulations, the authority must—
  - (a) offer any person who makes a representation under subsection (3) the opportunity to make further representations in person, and
  - (b) take account of any representations received by it by virtue of subsection (3) and paragraph (a).
- (5) The regulations are executed by being signed by the proper officer of the authority.
- (6) The regulations—
  - (a) come into force on the day after the day on which they are executed or such later date specified in the regulations, and
  - (b) continue in force unless revoked.
- (7) Subsections (1) to (4) apply in relation to—
  - (a) a proposed amendment,
  - (b) a proposed revocation,
  - (c) an amendment, or
  - (d) a revocation,
 of regulations under section 115(1) as they apply in relation to proposed regulations, or (as the case may be) the making of proposed regulations, under that section.
- (8) Subsections (5) and (6) apply in relation to an amendment, or a revocation, of regulations under section 115(1) as they apply in relation to regulations under that section (but subsection (6)(b) does not apply in relation to such a revocation).
- (9) A copy of the regulations must be displayed at the entrance to an allotment site to which they apply.
- (10) A local authority must provide a copy of the regulations without charge to any person following a request.
- (11) In the case where an allotment site is leased by a local authority, the regulations are subject to any provision of such a lease which is contrary to, or otherwise inconsistent with, the regulations.

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

- (1) This section applies where a local authority owns an allotment site.
- (2) A local authority may not dispose of the whole or part of the allotment site or change the use of the whole or part of the allotment site without the consent of the Scottish Ministers.

- (3) Before deciding whether to grant consent, the Scottish Ministers must—
  - (a) seek the views of the local authority on the proposed decision, and
  - (b) consult such other persons appearing to them to have an interest in the proposed disposal or change of use.
- (4) The Scottish Ministers may make the granting of consent subject to such conditions as they think fit.
- (5) The Scottish Ministers may not grant consent unless they are satisfied that—
  - (a) the tenant of each allotment on the whole or part of the allotment site is to be offered a lease of another allotment of an area the same as or similar to that of the tenant's allotment—
    - (i) on the allotment site, or
    - (ii) in the area of the local authority within a reasonable distance of the allotment site, or
  - (b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.
- (6) Any transfer of ownership of the whole or part of the allotment site, and any deed purporting to transfer such ownership, without the consent of the Scottish Ministers is of no effect.

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

- (1) This section applies where a local authority leases an allotment site.
- (2) A local authority may not renounce its lease of the whole or part of the allotment site without the consent of the Scottish Ministers.
- (3) In the case where a change of use of the whole or part of the allotment site proposed by the local authority is permitted by the lease, the local authority may not change the use of the allotment site without the consent of the Scottish Ministers.
- (4) Before deciding whether to grant consent mentioned in subsection (2) or (3), the Scottish Ministers must—
  - (a) seek the views of the local authority on the proposed decision, and
  - (b) consult with such other persons appearing to them to have an interest in the proposed renunciation or change of use.
- (5) The Scottish Ministers may make the granting of consent mentioned in subsection (2) or (3) subject to such conditions as they think fit.
- (6) The Scottish Ministers may not grant consent mentioned in subsection (2) or (3) unless they are satisfied that—
  - (a) the tenant of each allotment on the whole or part of the allotment site is to be offered a lease of another allotment of an area the same as or similar to that of the tenant's allotment—
    - (i) on the allotment site, or
    - (ii) in the area of the local authority within a reasonable distance of the allotment site, or
  - (b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

- (7) Any renunciation of the local authority's lease of the whole or part of the allotment site, and any deed purporting to renounce the lease, without the consent of the Scottish Ministers is of no effect.

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

- (1) Each local authority must prepare a food-growing strategy for its area.
- (2) A local authority must publish the food-growing strategy before the expiry of the period of two years beginning with the day on which this section comes into force.
- (3) A food-growing strategy is a document—
- (a) identifying land in its area that the local authority considers may be used as allotment sites,
  - (b) identifying other areas of land in its area that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers,
  - (c) describing how, where the authority is required to take reasonable steps under section 112(1), the authority intends to increase the provision in its area of—
    - (i) allotments, or
    - (ii) other areas of land for use by a community for the cultivation of vegetables, fruit, herbs or flowers, and
  - (d) containing such other information as may be prescribed.
- (4) The description required by paragraph (c) of subsection (3) must in particular describe whether and how the authority intends to increase the provision of the types of land mentioned in paragraph (a) or (b) of that subsection in communities which experience socio-economic disadvantage.
- (5) The authority must publish the food-growing strategy on a website or by other electronic means.

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

- (1) Each local authority must review its food-growing strategy before the end of—
- (a) the period of 5 years beginning with the day on which the strategy is first published under section 119(2), and
  - (b) each subsequent period of 5 years.
- (2) If, following a review under subsection (1), the authority decides that changes to its food-growing strategy are necessary or desirable, the authority must publish a revised food-growing strategy on a website or by other electronic means.

### **121 Annual allotments report**

- (1) As soon as reasonably practicable after the end of each reporting year, each local authority must prepare and publish an annual allotments report for its area.
- (2) An annual allotments report is a report setting out in respect of the reporting year to which it relates—
- (a) the location and size of each allotment site,
  - (b) the number of allotments on each allotment site,

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- (c) where the whole of an allotment site is leased from the authority by one person, the proportion of land on the allotment site (excluding any land falling within paragraph (b) of the definition of “allotment site” in section 108) that is not subleased from the tenant of the allotment site,
  - (d) where allotments on an allotment site are leased from the authority by more than one person, the proportion of land on the allotment site (excluding any land falling within paragraph (b) of the definition of “allotment site” in section 108) that is not leased from the authority,
  - (e) where an allotment site is leased by the local authority—
    - (i) the period of the lease of each allotment site, and
    - (ii) the rent payable under the lease by the authority,
  - (f) the period of any lease between the authority and the tenant of an allotment site,
  - (g) the rent payable under any lease between the authority and the tenant of an allotment site,
  - (h) the rent payable for each allotment in the area of the authority,
  - (i) how, in the opinion of the authority, such rents are decided by reference to the method of determining fair rent provided for in regulations under section 115(1),
  - (j) the number of persons entered in the list maintained under section 111(1) on the final day of the reporting year to which the report relates,
  - (k) the number of persons mentioned in paragraph (j) who, on the final day of the reporting year to which the report relates, have been entered in the list mentioned in that paragraph for a continuous period of more than 5 years,
  - (l) the steps taken by the authority to comply with the duty imposed by section 112(1),
  - (m) reasons for any failure to comply with that duty,
  - (n) the number of allotments on each allotment site that are accessible by a disabled person,
  - (o) the number of allotments on each allotment site adjusted by the authority during the reporting year to meet the needs of a tenant who is a disabled person,
  - (p) the number of persons entered in the list maintained under section 111(1) during the reporting year whose request under subsection (1) of section 109 included information under subsection (4) of that section,
  - (q) the income received, and expenditure incurred, by the authority in connection with allotment sites, and
  - (r) such other information as may be prescribed.
- (3) The authority must publish the annual allotments report on a website or by other electronic means.
- (4) In this section, “reporting year” means—
- (a) the period of a year beginning with any day occurring during the period of a year after the day on which this section comes into force, and
  - (b) each subsequent period of a year.

## **122 Power to remove unauthorised buildings from allotment sites**

- (1) This section applies where—

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- (a) a building or other structure that is not permitted by, or does not comply with, a provision of regulations made under section 115(1) is erected on an allotment site, and
  - (b) at the time the building or other structure was erected or, as the case may be modified, regulations made under section 115(1) prohibited such erection or modification.
- (2) The local authority within whose area the allotment site is situated may—
- (a) remove the building or other structure from the allotment site,
  - (b) dispose of the materials that formed the building or other structure as it thinks fit, and
  - (c) recover the cost of the removal, and the disposal of the materials, of the building or other structure from a liable tenant.
- (3) “Liable tenant” means, where the building or other structure was erected by or on behalf of a tenant—
- (a) on the tenant’s allotment, that tenant, or
  - (b) on other land as mentioned in paragraph (b) of the definition of “allotment site” in section 108, and the building or other structure on that other land was erected—
    - (i) without the consent of the tenants of other allotments on the allotment site of which that other land forms part, that tenant, or
    - (ii) with the consent of any tenants of such other allotments, that tenant and any other tenant who consented.
- (4) A liable tenant mentioned in subsection (3)(b)(ii) is jointly and severally liable with other liable tenants mentioned in that subsection.
- (5) Where a local authority proposes to take any action in exercise of a power conferred by subsection (2), it must—
- (a) no later than one month before taking such action, give notice in writing of the authority’s proposed action to each tenant who would be affected by such action,
  - (b) allow each such tenant the opportunity to make representations to the authority in relation to the proposed action,
  - (c) take account of any representations received by it by virtue of paragraph (b), and
  - (d) give notice in writing to each tenant mentioned in paragraph (a) to inform them of the authority’s decision in relation to the proposed action and, if applicable, the date on which the proposed action is to take place.
- (6) If the authority decides to take the proposed action, any tenant who was notified under subsection (5)(a) may appeal to the sheriff against the decision of the authority before the expiry of the period of 21 days beginning with the day on which the notice mentioned in subsection (5)(d) is given.
- (7) The Scottish Ministers may by regulations make further provision for or in connection with the procedure to be followed in relation to the exercise of the powers conferred by subsection (2).
- (8) In the case where an allotment site is leased by a local authority, the authority may not exercise a power conferred by subsection (2) if such exercise would contravene a provision of the lease.



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

- (1) This section applies where—
  - (a) a local authority owns or leases an allotment site, and
  - (b) one or more allotments on the allotment site are leased to tenants.
- (2) A person who represents the interests of all or a majority of the tenants may make a request to the local authority that the authority delegate to the person any of the authority's functions mentioned in subsection (3) in relation to the allotment site.
- (3) The functions are—
  - (a) the functions under—
    - (i) section 109(7) (request to lease allotment),
    - (ii) section 111(1) (duty to maintain list),
    - (iii) section 116(9) and (10) (display and copies of allotment site regulations),
    - (iv) section 124 (promotion and use of allotments: expenditure),
  - (b) the giving of notice under—
    - (i) section 126(1) (notice of termination of lease of allotment or allotment site),
    - (ii) section 127(2)(b) (notice of resumption),
    - (iii) section 128(2) (notice of termination: sublease by local authority).
- (4) A request under subsection (2) must—
  - (a) be made in writing, and
  - (b) include—
    - (i) the name and address of the person making the request, and
    - (ii) such other information as may be prescribed.
- (5) The authority may, within 14 days of receiving the request, ask—
  - (a) the person making the request for such further information as it considers necessary in connection with the request, and
  - (b) that the information be supplied within 14 days of the authority's request.
- (6) The authority must give notice to the person making the request of its decision to agree to or refuse the request—
  - (a) where further information is requested by the authority under subsection (5), before the expiry of 56 days beginning with the date on which the request is received by the authority, or
  - (b) in any other case, before the expiry of 28 days beginning with the date on which the request is received by the authority.
- (7) If the decision is to refuse the request, the notice referred to in subsection (6) must include reasons for the authority's decision.
- (8) If the decision is to agree to the request, the authority must decide—
  - (a) which of its functions that are mentioned in subsection (3) are to be delegated to the person making the request, and
  - (b) the timing of any review of the delegation of those functions by the authority.
- (9) Before making a decision under subsection (8), the authority must consult the person who made the request.

- (10) The authority may recall the delegation of any of its functions delegated under this section if—
- (a) it considers that the person to whom the functions are delegated is not satisfactorily carrying out a function, or
  - (b) there is a material disagreement between the authority and the person to whom the functions are delegated about the carrying out of the functions.
- (11) In the case where an allotment site is leased by a local authority, the authority must not delegate any functions under this section to the person making the request where the delegation would contravene a provision of the lease.

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

- (1) A local authority may incur expenditure for the purpose of—
- (a) the promotion of allotments in its area, and
  - (b) the provision of training by or on behalf of the authority to tenants, or potential tenants, of allotments about the use of allotments.
- (2) In deciding whether to exercise the power conferred by subsection (1), a local authority must have regard to the desirability of promoting allotments, or providing training, as mentioned in that subsection in relation to communities which experience socio-economic disadvantage.

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

- (1) In relation to an allotment site, the persons mentioned in subsection (2) may make a request to the local authority in whose area the site is situated to use free of charge the premises mentioned in subsection (3) for the purpose of holding a meeting of the tenants of allotments on the site about the site.
- (2) The persons are—
- (a) a tenant of the allotment site,
  - (b) a person referred to in section 123(2).
- (3) The premises are—
- (a) premises in a public school or grant-aided school within the area of the local authority,
  - (b) other premises within the area of the local authority which are—
    - (i) maintained by the authority,
    - (ii) maintained by a person other than the authority and used for or in connection with the delivery of services the provision of which is delegated by the authority to that person, or
    - (iii) maintained, and whose use is managed, by a person other than the authority in accordance with arrangements between the authority and that person.
- (4) The request must—
- (a) be made in writing,
  - (b) include the name and address of the person making the request,
  - (c) include information about the proposed date, time, location and purpose of the proposed meeting,

- (d) be made at least one month before the date on which the meeting is proposed to take place.
- (5) The local authority must, before the end of the period of 14 days beginning with the day on which it receives the request, write to the person who made the request to—
  - (a) grant the request,
  - (b) offer the person an alternative date, time or location for the proposed meeting, or
  - (c) refuse the request.
- (6) In this section, “public school” and “grant-aided school” have the meanings given by section 135(1) of the Education (Scotland) Act 1980.