



# Community Empowerment (Scotland) Act 2015

2015 asp 6

## PART 9

### ALLOTMENTS

#### *Key definitions*

#### **107 Meaning of “allotment”**

In this Part, “allotment” means land that—

- (a) is owned or leased by a local authority,
- (b) is leased or intended for lease by a person from the authority, and
- (c) is used or intended for use—
  - (i) wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers, and
  - (ii) otherwise than with a view to making a profit.

#### **108 Meaning of “allotment site”**

In this Part, “allotment site”—

- (a) means land consisting wholly or partly of allotments, and
- (b) includes other land owned or leased by a local authority that may be used by tenants of allotments in connection with their use of allotments.

#### *Request and offer to lease allotment*

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

- (1) Any person may make a request to the local authority in whose area the person resides—
- (a) to lease an allotment from the authority, or

- (b) to sublease an allotment from a tenant of the authority.
- (2) A request must be made in writing and include—
  - (a) the name and address of the person making the request, and
  - (b) such other information as may be prescribed.
- (3) The person making the request must, if the area of the allotment sought is less than 250 square metres, specify the area in the request.
- (4) Where the person making the request is a disabled person, the request may include information about the person's needs on the grounds of disability relating to—
  - (a) access to an allotment site or an allotment,
  - (b) possible adjustments to an allotment site or an allotment.
- (5) A request may be made to a local authority even if the authority does not own or lease any allotments.
- (6) A request may be made jointly by two or more persons if each person resides in the area of the local authority to which the request is made.
- (7) The local authority must give written notice to a person who made a request under subsection (1) confirming receipt of the request before the expiry of the period of 14 days beginning with the date on which the request is received by the authority.
- (8) Before making regulations under subsection (2)(b), the Scottish Ministers must consult—
  - (a) local authorities, and
  - (b) any other person appearing to the Scottish Ministers to have an interest.

## **110 Offer to lease allotment**

- (1) Subsections (2) and (3) apply where a person specifies an allotment of an area of less than 250 square metres (a “specified area”) in a request to a local authority under section 109(1).
- (2) If the local authority offers to grant a lease of an allotment of the specified area to the person, the request is to be treated as having been agreed to for the purpose of section 111(3)(a)(i).
- (3) If the local authority offers to grant a lease of an allotment that is not of the specified area to the person, the request is to be treated as not having been agreed to for that purpose unless the person accepts the offer.
- (4) Subsections (5) and (6) apply where a person does not specify an allotment of an area of less than 250 square metres in a request to a local authority under section 109(1).
- (5) If the local authority offers to grant a lease of an allotment of an area of approximately 250 square metres to the person, the request is to be treated as having been agreed to for the purpose of section 111(3)(a)(i).
- (6) If the local authority offers to grant a lease of an allotment that is not of an area of approximately 250 square metres to the person, the request is to be treated as not having been agreed to for that purpose unless the person accepts the offer.
- (7) In subsections (2), (3), (5) and (6), references to the local authority offering to grant a lease include references to a tenant of the local authority offering to grant a sublease.

*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
    - (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,
  - (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—
- (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.

*Termination of lease***126 Termination of lease of allotment or allotment site**

- (1) Despite any provision to the contrary in the lease of an allotment or an allotment site, a local authority may terminate the lease of the whole or part of the allotment or allotment site on a specified date; but may do so only if the authority has given the tenant of the allotment or the allotment site notice of the termination in accordance with subsection (2).
- (2) Notice is given in accordance with this subsection if—

- (a) it is in writing, and
  - (b) it is given—
    - (i) if subsection (3) applies, at least one month before the specified date,
    - (ii) if subsection (4) applies, at least one year before the specified date.
- (3) This subsection applies if, following the expiry of the period of 3 months beginning with the date on which the lease commenced, the tenant has failed to a material extent to comply with any provision of the regulations made under section 115(1).
- (4) This subsection applies if the Scottish Ministers have consented to—
  - (a) the disposal of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 117,
  - (b) the change of use of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 117 or 118,
  - (c) the renunciation by the local authority of its lease of the allotment site subject to the lease or, as the case may be, the allotment site on which the allotment is situated under section 118.
- (5) Before sending any notice under subsection (1), a local authority must—
  - (a) no later than one month before giving any notice under that subsection, write to the tenant to inform the tenant that the authority is proposing to give notice of termination under that subsection and give reasons for the authority's proposal,
  - (b) allow the tenant the opportunity to make representations to the authority in relation to the authority's proposal,
  - (c) take account of any representations received by it by virtue of paragraph (b), and
  - (d) either—
    - (i) write to the tenant to inform the tenant that the authority no longer proposes to give notice under subsection (1) for the reasons referred to in paragraph (a), or
    - (ii) give notice under subsection (1) for those reasons.
- (6) A tenant who is aggrieved by a notice given under subsection (1) may appeal to the sheriff within 21 days of the date of the notice.
- (7) If subsection (4) applies, an appeal under subsection (6) may be made on a point of law only.
- (8) A notice under subsection (1) has no effect until—
  - (a) the period within which an appeal may be made under subsection (6) has elapsed without an appeal being made, or
  - (b) where such an appeal is made, the appeal is withdrawn or finally determined.
- (9) The decision of the sheriff on appeal under this section is final.
- (10) The Scottish Ministers may by regulations make further provision as to the procedure to be applied in connection with the exercise of the power conferred by subsection (1).
- (11) Where, under subsection (2) of section 128, a local authority sends a copy of the notice mentioned in that subsection to a person, the authority need not also send a notice under subsection (1) of this section.

(12) In this section, “specified” means specified in the notice under subsection (1).

## **127 Resumption of allotment or allotment site by local authority**

- (1) This section applies where a person leases an allotment or an allotment site from a local authority.
- (2) Despite any provision to the contrary in the lease, the authority may resume possession of the whole or part of the allotment or the allotment site; but may do so only if—
  - (a) the resumption is required for building, mining or any other industrial purpose or for the construction, maintenance or repair of any roads or sewers necessary in connection with any such purpose,
  - (b) the authority has given the tenant notice of the resumption in accordance with subsection (3), and
  - (c) the Scottish Ministers have consented to the notice given under paragraph (b).
- (3) Notice is given in accordance with this subsection if—
  - (a) it is in writing,
  - (b) it is given at least three months before the date on which the resumption is to take place, and
  - (c) it specifies that date.
- (4) The Scottish Ministers may make the granting of consent mentioned in subsection (2) 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 the whole or part of the allotment, or (as the case may be) the tenant of each allotment on the whole or part of the allotment site, is to be offered a lease of another allotment which is—
    - (i) of an area the same as or similar to that of the tenant’s allotment, and
    - (ii) in the area of the local authority within a reasonable distance of the allotment site or the allotment site on which the allotment is situated,
 or
  - (b) the provision of another allotment for the tenant is unnecessary or not reasonably practicable.

### *Notice of termination: sublease*

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

- (1) Subsection (2) applies where—
  - (a) an allotment site is leased to a local authority,
  - (b) the authority has granted a sublease of—
    - (i) the allotment site, or
    - (ii) an allotment on the allotment site,
  - (c) the authority receives notice of termination of the lease of the whole or part of the allotment site, and
  - (d) the sublease is of land that is the same as, or forms part of, the land to which the notice relates.

- (2) The authority must—
- (a) send a copy of the notice to the subtenant of the sublease, and
  - (b) notify the subtenant of the sublease—
    - (i) of the date on which the lease of the whole or part of the allotment site is terminated, and
    - (ii) that the subtenant's sublease is terminated on that date.

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

- (1) Subsection (2) applies where—
- (a) the local authority gives notice under section 126(1) or 127(2), or sends a copy of a notice under section 128(2)(a), to the tenant of the whole or part of an allotment site,
  - (b) the tenant subleases allotments on the whole or part of the allotment site to one or more subtenants, and
  - (c) the tenant represents the interests of the subtenants.
- (2) The tenant must—
- (a) send a copy of the notice to each subtenant, and
  - (b) notify each subtenant—
    - (i) of the date on which the lease of the whole or part of the allotment site is terminated, and
    - (ii) that the subtenant's sublease is terminated on that date.

*Prohibition against assignation or subletting*

**130 Prohibition against assignation or subletting**

- (1) The tenant of an allotment must not assign the lease of the whole or part of the allotment without the consent of the local authority which granted the lease of the allotment or, as the case may be, of the allotment site on which the allotment is situated.
- (2) The tenant of an allotment must not sublet the whole or part of an allotment to any person.
- (3) A purported assignation of the lease of the whole or part of an allotment contrary to subsection (1) is of no effect.
- (4) A purported sublease of the whole or part of an allotment contrary to subsection (2) is of no effect.

*Tenants' rights*

**131 Sale of surplus produce**

Subject to any regulations under section 115(1), a tenant of an allotment may sell (other than with a view to making a profit) produce grown by the tenant on the allotment.

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

- (1) A tenant of an allotment may remove from the allotment any of the items mentioned in subsection (2) before the expiry or termination of the tenant's lease.
- (2) The items are—
  - (a) any buildings (or other structures) erected by or on behalf of the tenant,
  - (b) any buildings (or other structures) acquired by the tenant,
  - (c) any produce, trees or bushes—
    - (i) planted by or on behalf of the tenant, or
    - (ii) acquired by the tenant.

*Compensation***133 Compensation for disturbance**

- (1) Subsection (2) applies where—
  - (a) the lease of the whole or part of an allotment is terminated—
    - (i) by notice under section 126(2)(b)(ii),
    - (ii) as a result of a 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 a notice of resumption of the allotment, or the allotment site on which the allotment is situated, under section 127(2), or
    - (iv) as a result of a notice mentioned in section 128(1)(c), and
  - (b) the tenant of the allotment suffers damage caused by disturbance of the enjoyment of the tenant's allotment as a result of the termination of the lease.
- (2) The local authority giving or, as the case may be, receiving a notice mentioned in paragraph (a) of subsection (1) is liable to compensate a person referred to in paragraph (b) of that subsection.
- (3) The minimum amount of compensation payable under subsection (2) is—
  - (a) where the termination of the lease relates to the whole of an allotment, an amount equal to one year's rent of the allotment payable immediately before the termination of the lease,
  - (b) where the termination of the lease relates to part of an allotment, a proportion of the amount mentioned in paragraph (a) that is in the same proportion that the part of the allotment bears to the whole of the allotment.
- (4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).
- (5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed in—
  - (a) determining whether the local authority is liable to pay compensation under subsection (2), and
  - (b) subject to subsection (3), assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.
- (6) Before making regulations under subsection (4), the Scottish Ministers must consult—
  - (a) local authorities, and
  - (b) any other person appearing to the Scottish Ministers to have an interest.



- (7) A person referred to in subsection (1)(b) who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority's decision.

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

- (1) This section applies where—
- (a) the lease of a person (“the tenant”) of an allotment has expired or been terminated, and
  - (b) it appears to the local authority which granted the lease of the allotment or, as the case may be, of the allotment site on which the allotment is situated that—
    - (i) the allotment deteriorated during the tenant's lease of the allotment, and
    - (ii) the deterioration was caused by the fault or negligence of the tenant.
- (2) The tenant is liable to pay compensation for the deterioration to the tenant's landlord.
- (3) The amount of compensation payable is the cost of remedying the deterioration.
- (4) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).
- (5) Regulations under subsection (4) must include, in particular, provision about the procedure to be followed—
- (a) in determining whether the tenant is liable to pay compensation under subsection (2), and
  - (b) in accordance with subsection (3), in assessing the amount of compensation for which the tenant is liable in cases where the lease does not make such provision.
- (6) Before making regulations under subsection (4), the Scottish Ministers must consult—
- (a) local authorities, and
  - (b) any other person appearing to the Scottish Ministers to have an interest.
- (7) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority's decision.

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

- (1) This section applies where—
- (a) the whole or part of an allotment is resumed under section 127(2), and
  - (b) the tenant of the allotment suffers loss of any crop as a result of the resumption.
- (2) The local authority that resumed the allotment under section 127(2) is liable to compensate the tenant.
- (3) The Scottish Ministers must by regulations make further provision for or in connection with compensation payable under subsection (2).
- (4) Regulations under subsection (3) must include, in particular, provision about the procedure to be followed in—

- (a) determining whether the local authority is liable to pay compensation under subsection (2), and
  - (b) assessing the amount of compensation for which the local authority is liable in cases where the lease does not make such provision.
- (5) Before making regulations under subsection (3), the Scottish Ministers must consult—
- (a) local authorities, and
  - (b) any other person appearing to the Scottish Ministers to have an interest.
- (6) A tenant who is aggrieved about any decision by the local authority in connection with the duty imposed by subsection (2) may appeal to the sheriff within 21 days of receiving notice of the authority's decision.

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

- (1) Where a local authority is liable to pay compensation to a former tenant under section 133(2) or 135(2), the local authority may deduct from the compensation any sum that the former tenant is liable to pay to the local authority in connection with the lease that was terminated.
- (2) Where a tenant is liable to pay any sum to a local authority in connection with a lease of an allotment, the tenant may deduct from the sum any compensation that the local authority is liable to pay to the tenant under section 133(2) or 135(2).

### *Guidance*

### **137 Guidance**

- (1) A local authority must have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the authority by this Part.
- (2) Before issuing such guidance, the Scottish Ministers must consult—
  - (a) local authorities, and
  - (b) any other person appearing to the Scottish Ministers to have an interest.

### *Interpretation of Part 9*

### **138 Interpretation of Part 9**

In this Part—

- “allotment” has the meaning given by section 107,
- “allotment site” has the meaning given by section 108,
- “disabled person” means a person who is a disabled person for the purposes of the Equality Act 2010,
- “food-growing strategy” has the meaning given by section 119(3),
- “lease” and “leased” include “sublease” and “subleased”,
- “prescribed” means prescribed by the Scottish Ministers by regulations,
- “tenant” includes “subtenant”.