



# Community Empowerment (Scotland) Act 2015

2015 asp 6

## PART 9

### ALLOTMENTS

#### *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)
  - (c) 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.