

POLICY NOTE

THE COMMUNITY EMPOWERMENT (SCOTLAND) ACT 2015 (COMMENCEMENT NO. 10, SAVING, TRANSITIONAL AND TRANSITORY PROVISIONS) ORDER 2017

SSI 2017/458 (C. 35)

The above instrument was made in exercise of the powers conferred by section 145(2) and (3) of the Community Empowerment (Scotland) Act 2015 (“the 2015 Act”) and all other powers enabling them to do so. The instrument is not subject to any parliamentary procedure.

Background

The 2015 Act received Royal Assent on 24th July 2015. This Order forms part of the implementation package for Part 9 of the 2015 Act, which concerns allotments. This Order brings into force the provisions of Part 9, so far as not already in force. Some provisions were commenced previously, for the purposes of allowing Scottish Ministers to make regulations and guidance. This Order also makes saving, transitional and transitory provisions.

Policy Objectives

The over-arching policy objective of Part 9 of the 2015 Act is to update and simplify the legislation relating to allotments, repealing the existing legislation which is complex and out of date. The policy objective of this Order is to provide a smooth transition between the old and the new legislation. Some of the provisions of Part 9 are dependent on, or related to, allotment site regulations made by each local authority under section 115(1) of the 2015 Act. Accordingly, to achieve a smooth transition, this Order takes the approach of delaying the effect of those provisions in respect of each authority until such time as that authority has brought into force the relevant regulations.

PART 2: Appointed day

Article 2 appoints 1st April 2018 as the day that the provisions of Part 9 come into force, so far as not already in force. Those provisions are set out in the schedule to the order.

PART 3: Saving provisions

Article 3 makes saving provision in relation to the repealed 1892 Act. Where a local authority has allotment managers in office on the date that its first section 115(1) regulations come into force, the provisions of the 1892 Act about allotment managers continue to have effect for that authority as regards those allotment managers’ appointment, removal and existing powers for so long as they remain in office. Going forward, delegation of management of functions relating to allotment sites will be by way of section 123 of the 2015 Act.

Article 4 makes saving provision in relation to a number of amendments to primary legislation consequential on the new provisions under Part 9. Article 4 provides that these amendments do not have effect in relation to each local authority until it brings into force its first section 115(1) regulations.

Articles 5 to 11 make saving provision in relation to a number of provisions of existing legislation which are repealed under the 2015 Act. Article 5 provides that these provisions continue to have effect in relation to each local authority until it brings into force its first section 115(1) regulations.

Where bespoke saving provision is not made, the general saving provisions under the Interpretation Act 1978¹ will apply and govern the effect the Order has on the old law and on cases that are being dealt with under the previous processes, rights and duties.

PART 4: Transitional provision

Article 12 makes transitional provision as regards requests for allotments that have been made to a local authority, or to a tenant of a local authority, and which remain outstanding on the date on which that local authority brings into force its first section 115(1) regulations (“the relevant date” in Article 12). Article 12 provides that such requests are to be treated as having been made on that date under section 109(1) of the 2015 Act, and are to be entered in the authority’s waiting list under section 111(1) in the order of priority in which they were held before that date.

The policy objective is to ensure that persons who have applied for an allotment before the relevant date are not disadvantaged and are included in the local authority’s new section 111(1) waiting list in the appropriate order, and ahead of any requests made after the relevant date. Requests for an allotment that have been made to tenants of local authority allotment sites are included within this provision as well as those made direct to authorities, because there is no specific procedure for applying for an allotment under the existing legislation and so requests may currently be made to tenants rather than direct to the authority.

PART 5: Transitory provisions

Articles 13 to 21 make transitory provision in relation to certain provisions of Part 9 of the 2015 Act. The policy objective is to delay the effect of provisions dependent on, or related to, section 115(1) regulations in respect of each authority until that authority has brought into force those regulations. To achieve this, Part 5 provides that, notwithstanding commencement, certain provisions do not have effect in relation to an authority until it has brought into force the relevant regulations.

Article 14 prevents requests being made to an authority under section 109(1) until the relevant regulations are in force for that authority. Sections 110 to 113 similarly have no effect until that date without specific provision being made, because these sections cannot operate until requests are made under section 109(1).

Article 15 does however provide that section 112(1)(b) of the Act has no effect until 8 years after an authority’s first section 115(1) regulations have come into force. This is to fulfil a commitment given during the passage of the Bill that the effect of this provision should be delayed by 3 years. Section 112(1)(b) requires local authorities, when certain trigger points are reached, to take reasonable steps to ensure that a person does not remain on the section 111(1) list for a continuous period of more than 5 years. This provision could therefore have no effect until 5 years after section 111(1) takes effect. Accordingly, to delay the effect of

¹ 1978 (c.30). Section 23A of that Act provides that the general saving provisions of section 16 of that Act apply to repeals of enactments which are not ASPs or Scottish instruments.

section 112(1)(b) by 3 years requires that the provision has no effect until 8 years after the relevant regulations are in force. This approach was discussed and agreed with stakeholders during the passage of the Bill.

Articles 16 and 17 delay the effects of sections 117(2) and (6) and 118(2) and (7) respectively, to the extent set out in those articles, as regards each local authority until that authority's first section 115(1) regulations come into force.

Article 18 similarly delays the effect of certain requirements of the authority's annual allotments report under section 121(2), which are dependent on other provisions whose effect is delayed.

Article 19 delays the effect of the conditions under which an authority may resume an allotment under section 127(2).

Article 20 delays the effect of the duty in section 128(2) on an authority to notify its tenant of a termination of the authority's lease of a site.

Article 21 delays the effect of a tenant's liability to pay compensation for deterioration of an allotment at the end of a lease.

The effect of provisions for compensation for disturbance under section 133, and for loss of crops under section 135, are similarly delayed without provision for this being required, as these only apply where a lease is terminated by notice under provisions which have no effect until section 115(1) regulations are in force. The same applies to sections 122, 126 and 129, whose effects are delayed without the need for provision, because these cannot operate until section 115(1) regulations are in force.

Consultation

The 2015 Act places no duty on Scottish Ministers to consult on the content of this instrument. Therefore no formal public consultation has taken place on this Order. However, Scottish Government engaged with the Convention of Scottish Local Authorities and the Scottish Local Government Group on the proposed general approach to implementation of Part 9 and in June 2017, all local authorities were asked for their views on the proposed approach. The proposals were also discussed by the Tripartite Group responsible for overseeing the implementation of Part 9. This Group consists of Scottish Government, Local Government and the Scottish Allotments and Gardens Society.

Impact Assessment

No impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen. However, an Equality Impact Assessment (EQIA) was carried out at for the Bill which covered Part 9 and can be found here:

<http://www.gov.scot/Topics/People/engage/eiapt4>

Financial Effects

The Cabinet Secretary for Environment, Climate Change and Land Reform confirms that no Business and Regulatory Impact Assessment is necessary as this Order has no financial

effects on the Scottish Government, Local Government or on business. However, please see Financial Memorandum that was carried out for the Bill and which covers Part 9:
<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/83231.aspx>

Scottish Government
Directorate for Economic Development
Food, Drink and Trade Division
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