

To: Infrastructure, Land & Environment Policy Board

On: 26 August 2020

Report by: Director of Finance & Resources

Heading: Proposed Renfrewshire Allotment Site Regulations in terms of the Community Empowerment (Scotland) Act 2015

1. Summary

- 1.1 The purpose of this report is to update and seek approval of the Board of the Council's proposed Renfrewshire Allotment Site Regulations in accordance with Part 9 of the Community Empowerment (Scotland) Act 2015.
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2. Recommendations

- 2.1 It is recommended that the Board: -
- 2.2 Approve the Renfrewshire Allotment Site Regulations, forming the Appendix to this report which have been prepared in accordance with Part 9 of the Community Empowerment (Scotland) Act 2015.
- 2.3 Authorise the Head of Property and the Head of Corporate Governance to bring the regulations into force.
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3. Background

- 3.1 The Community Empowerment (Scotland) Act 2015 (Part 9) relates to allotments and encourages Council's to support the development of allotments and community growing spaces. This is aimed at improving health & well-being along with the creation of a sustainable food strategy.

A summary of the main provisions of Part 9 of the Act and its' implications were outlined in a report to Council dated 3 May 2018.

3.2 The Council has a statutory duty to provide allotments and the Act imposes several obligations on the Council including an obligation to introduce its first Allotment Site Regulations. The Council's proposed Renfrewshire Allotment Site Regulations form an appendix to this Report.

3.3 The Act requires the Council to introduce Allotment Site Regulations and Section 115 of the Act outlines the mandatory and discretionary matters which should be provided for in the Regulations. These mandatory provisions include, but are not limited to:

- Allocation policies;
- Rent including a method of determining fair rent, to take into account, amongst other things, circumstances that affect, or may affect, the ability of a person to pay the rent payable under the lease of an allotment;
- maintenance of allotments;
- 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;
- the keeping of livestock (including poultry; and
- landlord inspections.

The discretionary provisions include, but are not limited to:

- access by persons (other than allotment tenants) and domestic animals;
- acceptable use of allotments and allotment sites;
- sale of surplus produce.

4. Consultation

4.1 Section 116 of the Act requires the Council to consult persons appearing to the local authority to have an interest before making regulations. At least one month prior to bring into force regulations, the Council are required to advertise the regulations with an advertisement in at least one newspaper circulating in its' area. To make copies of the proposed regulations available for inspection by the public without payment at its offices and if it considers it practicable, at the allotment site/s to which the regulations are to apply.

4.2 Any person may make a representation in writing in relation to the proposed regulations during the consultation period.

The Council are required to take account of any representations received during the consultation period prior to bringing into force the regulations.

- 4.3 In advance of the formal consultation process, the Council have kept stakeholders including the six Allotment and Growing Ground Associations up to date and made its draft Allotment Site Regulations available to stakeholders.
 - 4.4 In line with its statutory consultation obligations, it had been proposed the Regulations consultation period would commence on or around 27 March 2020 and close on or around 26 April 2020. Regrettably, due to the Covid 19 lockdown, this was not possible. However, consultation began on the 8 April 2020 with advertisement in the Paisley and Renfrewshire Gazette, online via the Council's website, and by email to the various Allotment Association and Growing grounds groups known to the Council.
 - 4.5 The consultation was for 1 month in accordance with the legislation. Following completion of the consultation, only 1 comment was received. This party asked that the Council appoint an Allotments Officer, and that it takes full control of the day to day management of the existing Allotments, setting charges and Regulations for the day to day operation of these facilities.
 - 4.6 While this has some merit, as currently the Council do not have a dedicated Allotments Officer, it is contrary to the ethos of Community Empowerment, whereby it is the Communities who run and manage the facilities on a day to day basis.
 - 4.7 The Allotment Regulations, if approved by Board, will set in place a consistent approach for each of the 6 Allotment Association's within Renfrewshire who occupy Council owned ground. At the same time the Associations will retain a degree of autonomy which accords with Community Empowerment.
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Implications of the Report

1. **Financial** - The Council has established funds that can provide financial support for community proposals to develop and improve the provision of allotments and growing rounds in Renfrewshire.
2. **HR & Organisational Development** – None.
3. **Community Planning**
 - Our Renfrewshire is thriving – will help to support a sustainable food strategy;
 - Our Renfrewshire is well – the provision of allotments will help to promote health and well-being;
 - Our Renfrewshire is fair – the annual report provides transparency about the use and provision of allotments;

Reshaping our place, our economy and our future – ensures there is community involvement in decisions taken about the provision of allotments.

4. **Legal** – Although the regulations are being brought into force after the deadline for doing so originally set by the Community Empowerment (Scotland) Act 2015, Legal Services have been consulted and have confirmed that the Council should proceed to implement the regulations in accordance with the Act, if approved by Board.
5. **Property/Assets** – None.
6. **Information Technology** – None.
7. **Equality & Human Rights**
 - (a) The Recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report because no groups or individuals have any involvement currently at the property. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website.
8. **Health & Safety** – None.
9. **Procurement** – Not applicable.
10. **Risk** – None.
11. **Privacy Impact** – Not applicable.
12. **Cosla Policy Position** – Not applicable.
13. **Climate Risk** – None.

List of Background Papers

- (a) Background Paper 1 – Proposed Renfrewshire Allotment Site Regulations.

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Appendix 1 – Draft Allotment Regulations

Preamble

The Renfrewshire Council, a Local Authority constituted in terms of the Local Government etc. (Scotland) Act 1994 (“the Council”) has a statutory duty to provide Allotments in terms of Part 9 of the Community Empowerment (Scotland) Act 2015 (the “2015 Act”). The Council discharges the duty to manage allotment sites through a system of delegation, through which independently managed allotment associations and community garden groups enter into leasing arrangements with the Council to operate allotments on Council owned land in terms of Section 107 of the 2015 Act. These Regulations are made in support of this statutory function and to support Tenants of Allotment Plots in understanding their responsibilities and relationship with their respective allotment association or community garden group. These Regulations have been adopted by resolution of the Infrastructure, Land and Environment Policy Board dated 26 August 2020.

Definitions

“**Allotment**” has the meaning given to it by Section 107 of the 2015 Act;

“**Allotment Association**” means the association or community group leasing the Allotment Site from the Council;

“**Allotment Plot**” means the Allotment plot leased by a Tenant from an Allotment Association in terms of an Allotment Tenancy;

“**Allotment Site**” has the meaning given to it by Section 108 of the 2015 Act;

“**Allotment Tenancy**” means a tenancy agreement between the Allotment Association and an Applicant for an identified Allotment Plot on an Allotment Site;

“**Applicant(s)**” means an applicant or applicants for an Allotment Tenancy in the Renfrewshire Local Authority area;

“**Application**” means an application for an Allotment Tenancy by an Applicant to an Allotment Association in the form prescribed by the Allotment Association;

“**Commencement Date**” means the day after the date of execution of these Regulations;

“**Livestock**” has the meaning given to it by Dogs (Protection of Livestock) Act 1953;

“**Management Committee**” means the management committee or the equivalent governing body constituted by the Allotment Association for the purpose of managing their Allotment Site;

“**Protected Adult**” has the meaning given to it by Section 94 of the Protection of Vulnerable Groups (Scotland) Act 2007 (as amended);

“**Regulations**” means these regulations made in terms of Section 115 of the 2015 Act;

“**Secretary**” means the secretary appointed by the Allotment Association responsible for administration of the affairs of the Allotment Association;

“**Site Rules**” means the site-specific rules published by the Allotment Association governing their Allotment Site;

“**the Tenant**” means the tenant leasing an Allotment Plot from an Allotment Association, in terms of an Allotment Tenancy;

Interpretation

- a. Words importing any gender include all other genders, and words in the singular include the plural and vice versa.
- b. The Interpretation Act 1978 applies to these Regulations as it does to an Act of Parliament.
- c. Where any conflict exists or arises between these Regulations and the 2015 Act, the 2015 Act shall have priority.
- d. Where any conflict exists or arises between these Regulations and the Site Rules, these Regulations shall have priority.

1. Allocation

- a. An application for an Allotment Plot must be made in writing by an Applicant to the Allotment Association in the form to be prescribed by the Allotment Association in their Site Rules.
- b. Allotment Associations shall determine their eligibility criteria and allocation policy for Applications for Allotment Plots on their Allotment Site. This allocation policy should be published in their Site Rules.
- c. All Tenants are required to sign an Allotment Tenancy annually in advance agreeing to lease an Allotment Plot for the coming year and that they shall adhere to these Regulations, and any Site Rules that may pertain to the particular Allotment Site.
- d. Allotment Associations shall provide annual reports to the Council on such matters as the Council shall prescribe in writing which for the avoidance of doubt shall include:
 - Number of Allotment Plots on their Allotment Site;
 - Annual subscription fee payable by a Tenant to the Allotment Association;
 - How annual subscription fee was decided by Allotment Association;
 - Number of Applicants on the waiting list for Allotment Plots on their Allotment Site;
 - Number of Applicants waiting 5+ years for an Allotment Plot;
 - Number of Allotment Plots accessible to a disabled person;
 - Number of Allotment Plots adjusted to meet needs of disabled persons, and
 - Number of Applicants applying for adapted Allotment Plots or for adjustment to existing Allotment Plots.
- e. The Council reserves the right to inspect any Allotment Sites and records without giving prior notice to ensure that the Allotment Sites and Allotment Plots thereon are being managed in accordance with these Regulations.

2. Rent Provisions/Charges

- a. The annual subscription fee is payable under an Allotment Tenancy by a Tenant to the Allotment Association on the date specified by that organisation each year. The annual subscription shall be set by the Allotment Association at its annual general meeting or by its Management Committee, notified to members, publicised through appropriate media and reported to the Council (so that the local authority can discharge its duties under Section 121 of the 2015 Act).
- b. In the event that a Tenant has not paid to the Allotment Association the annual subscription within the period prescribed by the Allotment Association in their Site Rules (which for the avoidance of doubt shall be not less than 30 days after the later of the annual subscription falling due and/or the invoice date, if applicable), the Allotment Association shall be entitled to treat this an indication that the Tenant does not wish to renew his/her Allotment Tenancy, and that the Allotment Plot can be re-allocated accordingly.
- c. Following a defined timescale prescribed by an Allotment Association in their Site Rules the Tenant shall be entitled to enter upon an Allotment Plot and remove all items, buildings and erections and make the Allotment Plot available for re-letting to another person.
- d. If all items, buildings and erections are not removed from an Allotment Plot within this defined timescale which may be prescribed by an Allotment Association in their Site Rules, the Allotment Association may carry out the necessary works itself, and may seek to recover the costs from the Tenant. No further intimation of this will be given to a Tenant. Any of the Tenant's belongings remaining on the land after the period of defined period has elapsed, will be removed by the Allotment Association, although a Tenant will be given an opportunity to retrieve them, at their own cost.
- e. Changes to circumstances that affect a Tenant's ability to pay the annual subscription under the Allotment Tenancy should be advised in writing to the Secretary as soon as possible. The Allotment Association committee will review the specific circumstances of the Tenant prior to making a decision on their Tenancy Agreement.
- f. Annual subscriptions and other charges imposed by the Allotment Association for services it provides to Tenants on Allotment Sites are subject to annual review by the Management Committee. The Allotment Association will advise Tenants in writing of any increase following the annual general meeting or meeting of the Management Committee. For the avoidance of doubt, these services to Tenants may include but are not limited to site improvements, recycling and waste service, utilities and general repairs.
- g. For Allotment Plots in secured sites, a key may be issued to the Tenant upon payment of a refundable deposit by the Tenant to the Allotment Association.

3. Allotment Plot Management

- a. All Tenants shall be responsible for keeping their Allotment Plot in a clean and tidy condition at all times of the year to at least the standard outlined in the Site Rules, of which the Allotment Association shall be the sole judge. Allotment Sites will be inspected regularly by the Allotment Association.
- b. An Allotment Plot shall be used for the sole purpose of growing vegetables, fruit and other produce and the growing of flowers and Tenants shall be entitled to sell this produce (other than with a view to making a profit). An Allotment Association may prescribe in their Site Rules a minimum proportion of each individual Allotment Plot which should be used for growing purposes.
- c. All Tenants shall be responsible for ensuring that weed growth is controlled and their Allotment Plots are cultivated prior to the growing season, all to at least a standard outlined in the Allotment Association's Site Rules.
- d. A Tenant shall be responsible for keeping the boundaries and paths adjacent to his/her Allotment Plot in a clean and tidy condition. Where a path is adjacent to two Allotment Plots, the respective Tenants shall come to an agreement as to how it is to be kept clear of weeds and any obstructions, failing which the Allotment Association shall direct the Tenants as to how this should be done.
- e. A Tenant shall not allow trees on the Allotment Plot, with the exception of fruit trees which must be maintained within their Allotment Plot and which shall not grow into or cause shade to be cast on neighbouring allotment plots. Fruit bushes are permitted to be grown. Allotment Associations shall be entitled in their Site Rules to prescribe exceptions to the general prohibition on growing trees contained in these Regulations.
- f. A Tenant shall be responsible for ensuring that appropriate pest and disease control measures are carried out on their Allotment Plot in accordance with the Site Rules.
- g. A Tenant must not allow his/her Allotment Plot to be used for storage of any material deemed unsuitable by the Allotment Association and prescribed as such in their Site Rules (which for the avoidance of doubt shall include glass, timber and refuse).
- h. A Tenant shall not do, or allow any other person to do, anything to adversely affect other Allotment Plots including, but not limited to, causing spray damage, fertiliser run off, spreading/seeding weeds or any other activity that may cause damage and/or nuisance to other Tenants.
- i. Any person using any of the facilities in any Allotment Site shall be held to have satisfied themselves as to the condition of the facilities and as to their suitability thereof for their purposes. The Council shall not be held responsible for any accident or injury to any person or any loss incurred arising from the use of the facilities however such accident, injury or loss may be caused. Any person using the facilities must indemnify the Council for any damage, loss or costs arising as a result of their use of the facilities.

- j. Tenants are encouraged to practise good housekeeping and sustainable practices, for example composting green waste on their Allotment Plot, the use of water butts for collecting water and responsible disposal of waste material.
- k. Where waste disposal facilities are provided, these are strictly for recyclable green garden waste only. Tenants are responsible for removal of all other waste lawfully from their Allotment Plot by the following methods:
 - i. Suitable vegetable/green waste shall be composted within the Allotment Plot.
 - ii. Other green waste should be disposed in green waste facility (if provided).
 - iii. If a waste facility is not provided, waste must be removed from Allotment Site by the Tenant.
 - iv. If no waste facility or service is provided, all non-compostable waste material must be removed from Allotment Site by the Tenant.
 - v. Any breach of these conditions may be deemed as fly tipping and may result in the termination of a Tenant's Allotment Tenancy. This is in addition to any other legal remedy which may be available.
- l. Small scale burning rules shall be prescribed by the Allotment Association in their Site Rules in accordance with air pollution legislation.
- m. To increase sustainability and keep charges manageable, Tenants are encouraged to harvest water within their Allotment Plots to supplement mains water provision where provided. Tenants are not permitted to install additional water taps on an Allotment Site.
- n. Where no mains water is provided, Tenants must harvest water within their Allotment Plot.

4. Structures and Property

- a. No greenhouse, polytunnel, shed or storage hut shall be erected within an Allotment Site without the prior written consent of the Allotment Association. For the avoidance of the doubt, it shall be the responsibility of the Tenant to obtain all necessary statutory consents for their greenhouse, polytunnel, shed or storage hut.
- b. Tenants are solely responsible for the safety and maintenance of any structure as well as boundary fences on their Allotment Plots. The nature, materials and dimensions of acceptable plot boundary features may be prescribed by the Allotment Association in their Site Rules.
- c. When any structure is to be removed or demolished, Tenants shall ensure that all waste materials are removed from their Allotment Plot and disposed of lawfully. Tenants are encouraged to dispose of any waste materials responsibly.
- d. The Allotment Association shall prescribe in their Site Rules the maximum proportion of the Allotment Plot that shall be used for non-growing structures such as sheds, seating and storage.

- e. The Tenant shall indemnify the Council against all claims and liabilities which may be made against the Council arising directly or indirectly from any breach or non-performance by the Tenant of his/her obligations under these Regulations, or from any act or omission or negligence of the Tenant or any person acting expressly or impliedly with the consent or authority of the Tenant in relation to the Allotment Plot or so arising from the presence of any of the Tenant's property. For the avoidance of doubt this includes the expenses of any proceedings arising therefrom.
- f. The Council and its employees will not accept responsibility for any claims, loss or damage arising from the Tenants use of the Allotment Site, except insofar as provided for by statute.
- g. Tenants are responsible for the removal of any structures as requested by the Council following the end of the lease and for making good, to the Council's satisfaction, all damage caused thereby. Failure to do so may result in charges being levied against the Tenant to cover the reasonably incurred costs by the Council in removing and disposing of the structures, and making good as aforesaid.

5. Livestock

- a. Allotment Associations shall prescribe in their Site Rules the rules regarding Tenants bringing dogs on to Allotment Sites.
- b. Tenants are responsible for safe disposal of any dog waste and for making good to the Council's satisfaction any damage caused by said dogs brought on to the Allotment Site or permitted to be on the site by a visitor accompanying the Tenant.
- c. Tenants shall not keep animals and/or poultry on any Allotment Site overnight nor permit the same on any part of the Allotment Site.
- d. No Livestock shall be permitted on the Allotment Site.
- e. The Council has determined that bees do not fall within the definition of livestock, so beekeeping arrangements for an Allotment Site will be determined by the Allotment Association. Any Tenant who does keep bees on an Allotment Site shall be responsible for ensuring that no harm is caused thereby to the other Tenants, visitors to the Allotment Site, or any other person whatsoever. The Council shall not be held responsible for any accident or injury to, or the death of any person or any loss incurred arising from the keeping of bees as aforesaid. Any person keeping bees on an Allotment Site must indemnify the Council for any damage, loss or costs arising as a result thereof. Further, appropriate and adequate warning signs must be prominently displayed to ensure that all persons are made aware of the presence of bees on the Allotment Site.

6. Security and Maintenance

- a. All Tenants share responsibility for security of an allotment site at all times and shall enter and leave the Allotment Site only through the authorised boundary gates. Children under the age of sixteen years and Protected Adults must be supervised by an appropriate adult at all times within the Allotment Site.

- b. Subject to any Allotment Site specific access arrangements, boundary gates shall be padlocked at all times and securely locked by Tenants entering and exiting an Allotment Site.
- c. A Tenant is solely responsible for the security of any greenhouse, shed or other structure erected on his/her Allotment Plot.
- d. Tenants shall not enter other Allotment Plots, whether let or un-let, and remove any item or materials from such plots.
- e. Issues relating to any defects in general site maintenance shall be reported to the Allotment Association where appropriate.

7. Monitoring, Plot Improvement and Termination

- a. The Allotment Association shall be entitled to carry out general inspections or (at their discretion) inspections of specific plots. The purpose of these inspections shall be to assess whether sufficient progress is being made to reach and maintain specific cultivation and maintenance standards as well as noting any non-performance of rules and regulations.
- b. Tenants who consistently fail to meet the required standards will receive a first warning letter requiring that issues are rectified within a specified period determined by the Allotment Association (such period being at least 14 days). If the issue is not rectified within the specific period, the Allotment Association shall issue a final warning letter requiring that the Tenant rectifies the issues within 14 days. Failure to rectify issues to the satisfaction of the Allotment Association may result in the Allotment Tenancy being terminated in accordance with these Regulations.
- c. Tenants who have failed to complete with a final warning will be notified in writing that their tenancy has been terminated and should vacate their plot and return their keys to the Secretary within 14 days.
- d. Tenants shall be entitled to appeal against a termination of their Allotment Tenancy in writing to the Allotment Association within 7 days of the termination letter providing reasons for their failure to comply with the final warning letter. A decision on the appeal will be made by the Allotment Association within 21 days of the submission of the appeal. The Allotment Association shall be entitled to extend the period for a decision by agreement with the Tenant.
- e. Issues related to gross misconduct by a Tenant such as theft or inappropriate behaviour should be referred to the Allotment Association as soon as possible. The Allotment Association will investigate all reports of gross misconduct and reserve the right to terminate the Allotment Tenancy on this basis.

- f. In the event of any dispute regarding the interpretation and application of these Regulations, the matter shall be referred to such of The Renfrewshire Council's Officers, or such other person, as may be nominated for this purpose from time to time. The Council shall have regard to the 2015 Act and any regulations and guidance made under it in arriving at its decision.

FOR AND ON BEHALF OF THE RENFREWSHIRE COUNCIL

.....
(Proper Officer of the Renfrewshire Council)

..... (Print Full Name)

..... (Witness)

..... (Print Witness' Full Name)

..... (Witness' Address)

.....

..... (at)