

To: The Council

On: 3 May 2018

Report by: Director of Finance and Resources

Heading: Community Empowerment (Scotland) Act 2015: Allotment Provisions

1. Summary

- 1.1 The provisions of Part 9 of the Community Empowerment (Scotland) Act 2015, relating to allotments, came into force on 1 April 2018. This report provides a summary of the main provisions of this part of the Act, and the implications for the Council. Scottish Government Guidance on the provisions is still awaited.
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2. Recommendations

- 2.1 That the Council note that the provisions of Part 9 of the Community Empowerment (Scotland) Act 2015, relating to allotments and allotment sites, came into force on 1 April 2018.
- 2.2 That a new paragraph 45 is added to the Terms of Reference of the Infrastructure, Land and Environment Policy Board to read: To consider any matters arising from Part 9 of the Community Empowerment (Scotland) Act 2015 relating to allotments, including consideration of the Council's food-growing strategy and allotment site regulations.

2.3 That the following paragraphs are added to Section F of the Scheme of Delegated Functions -Powers Delegated to Officers, delegations to the Head of Property.

- “123. To establish, publish and maintain the list under section 111 of the Community Empowerment (Scotland) Act 2015 of persons who make a request to lease or sublease an allotment.
- 124. To prepare and publish the annual allotments report in terms of section 121 of the Community Empowerment (Scotland) Act 2015.
- 125. In consultation with the Head of Planning and Housing, to make arrangements to promote allotments in Renfrewshire and where appropriate arrange for the provision of training to tenants, or potential tenants, of allotments about the use of allotments.
- 126. In consultation with the Head of Corporate Governance to determine request for the granting of leases or sub-leases for allotments and to determine the terms and conditions applicable to those leases or sub-leases.
- 127. To determine applications for compensation for disturbance or for deterioration of an allotment or for loss of crops in terms of sections 133, 134 and 135, respectively, of the Community Empowerment (Scotland) Act 2015, up to a maximum of £50,000 in respect of each application.
- 128. In consultation with the Head of Corporate Governance to arrange for the removal of any building or other structure on an allotment within the circumstances prescribed by Section 122 of the Community Empowerment (Scotland) Act 2015 and for the disposal of the material that formed the building or other structure and where appropriate to seek to recover the cost of removal and disposal from the liable tenant.
- 129. To deal with requests for use of premises in terms of Section 125 of the Community Empowerment (Scotland) Act 2015.”

Renumber all of the existing paragraphs accordingly.

2.4 That the Council note the duties imposed on the Council as a result of the allotments provisions in the 2015 Act, as set out in paragraphs 3.5 to 3.9, below, and the powers the Council has as set out in paragraphs 3.10 and 3.11.

- 2.5 That the Council note the provisions re terminating leases of allotments, in terms of paragraphs 3.12 and 3.13, and the various types of compensation which may become payable, as set out in paragraph 3.14.
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3. **Background**

- 3.1 Interest in growing food locally has increased in recent years, as has an understanding of the health and social benefits of gardening. The Scottish Government's National Food and Drink Policy – Recipe for Success committed to strategically support allotments and community growing spaces. The Grow Your Own Working Group was established, and it recommended amendments to the existing allotments legislation, including a review of the duties on Local Authorities.

The existing legislation is complex and dated, with the main Act being the Allotments (Scotland) Act 1892, as amended in 1919, 1922 and 1950. New legislation was envisaged to replace this with simpler provisions, particularly to address concerns about the level of demand for allotments and the length of time for which people may be on a waiting list to receive one.

- 3.2 At present, the Council maintains a waiting list, and there are currently 24 people who have submitted a direct request to Renfrewshire Council and are awaiting allocation of an allotment. The waiting list is managed by Development and Housing Services. The Council owns or leases six areas which the new legislation would define as allotment sites, all of which are managed by allotment associations. The Act requires the Council to establish and maintain a list of all persons who request an allotment. In total, the Council is presently responsible for 167 individual allotments or allotment plots, and is aware of an aggregate total of 97 people awaiting allocation of an allotment or allotment plot.
- 3.3 Part 9 of the Community Empowerment (Scotland) Act 2015, dealing with allotments, came into force on 1 April 2018. The Act imposes several obligations on local authorities, which will necessitate the introduction of new procedures to ensure compliance with the legislation.
- 3.4 In terms of the Act, an allotment is land owned or leased by the local authority, and used, at least mainly, for growing vegetables, fruit, herbs or flowers, but without a view to making a profit. An allotment site is land consisting wholly or partly of allotments, and includes other land

which is owned or leased by the local authority, which may be used in connection with the use of the allotments.

- 3.5 Any resident of the local authority area may request the lease of an allotment from the Council, even if the Council does not own or lease any allotments. Any such request must be acknowledged by the Council within 14 days. The Council must maintain a list of people who request an allotment, and must take reasonable steps to ensure that (1) the number of people on this list is not more than one half of the total number of allotments owned and leased by the Council, and (2) that nobody remains on the list for more than five years.

The Council must provide reasonable access to allotments and allotment sites, and must have regard to the desirability of allotments being reasonably close to people's homes.

- 3.6 The Council must make regulations about allotment sites in its area, and the Act lists matters which must be included, e.g. rent, services, costs, maintenance, keeping of livestock, permitted buildings, inspections, acceptable use, and sale of surplus produce etc. The first set of regulations must be made by 31 March 2020, and the intention to make the regulations, their general purpose and a place where they may be inspected, must be advertised in the press. The public will have an opportunity to make representations, and this fact must also be advertised.

- 3.7 The Council may not dispose of any part of an allotment site, or change its use, without the consent of the Scottish Ministers. The Ministers can impose conditions if they decide to grant consent, and they will only consent if the tenant of each allotment on the site is to be offered a lease of another allotment of similar size, either on the same site, or within a reasonable distance of it, unless providing another allotment is unnecessary or not reasonably practicable. There are broadly similar provisions for where the site is leased by the Council, rather than owned by it.

- 3.8 The Council must prepare a food-growing strategy by 31 March 2020. This must include identification of land which can be used as allotment sites, as well as other areas of land which can be used by a community for growing vegetables, fruit, herbs or flowers. Where appropriate, it should also include information as to how the authority intends to increase the provision of allotments, or other areas for community growing as above, particularly in communities experiencing socio-economic disadvantage. The strategy will require to be published electronically, e.g. on the Council's website.

The food growing strategy must be reviewed every five years, and any revised version must be published as before.

- 3.9 The Council must prepare and publish an annual allotments report for its area. The matters which this should cover include the location and size of each allotment site, and the number of allotments on each, as well as the number of people on the waiting list, and the number who have been on the list for more than five years, etc. The report must also include the steps taken by the Council to comply with its duties in terms of the waiting list. The report must be published by electronic means.

The first reporting year must commence before 1 April 2019.

- 3.10 The Council may delegate certain functions of management of the allotment sites to a person representing the interests of all or a majority of the tenants on an allotment site, if that person so requests. The functions which can be delegated are listed in the legislation, and include maintaining the list etc.

- 3.11 The Council has power to incur expenditure for promoting allotments and providing training to tenants or potential tenants, and must have due regard to the desirability of carrying out these functions in connection with communities at a socio-economic disadvantage. There is also provision for allowing or refusing requests for use of Council owned premises free of charge to tenants of allotments, or persons to whom management functions have been delegated, as above.

- 3.12 The 2015 Act contains provisions re the ways in which a lease of an allotment or allotment site may be terminated. It should be noted that, notwithstanding the terms of the lease itself, it can only be terminated by the Council giving at least one year's prior written notice, where the Scottish Ministers have consented to disposal or change of use as indicated in paragraph 3.5 above, or on one month's notice if the tenant has failed in a significant way to comply with the regulations. The latter case can't apply within the first three months of the tenant's lease.

- 3.13 The Council may take back an allotment or allotment site (i.e. for building, mining, roads construction etc.), provided that the Scottish Ministers have consented and at least three months' notice has been given to the tenant etc.

- 3.14 The Act contains provisions re compensation, as follows:-

- (1) Compensation for disturbance where the lease of all or part of an allotment is terminated etc. Where the whole of the allotment

is affected, the tenant must be paid at least an amount equal to one year's rent. If part only is affected, a proportion of a year's rent is payable. The Scottish Ministers are to provide regulations in this regard.

- (2) The tenant must pay compensation to the Council where his or her lease ends, and the allotment has deteriorated due to the tenant's fault or negligence. The amount of compensation is the cost of remedying the deterioration. The Scottish Ministers are to provide regulations in this regard.
- (3) Where the whole or part of an allotment is taken back by the Council, as mentioned in paragraph 3.11 above, and the tenant loses any crop as a result, the Council must compensate the tenant for that loss.

3.15 Guidance on the Act is awaited.

Implications of the Report

1. **Financial** – The Council may be required to acquire or lease land for use as allotments, in order to comply with the obligation to provide allotments. There may be costs involved in provision of reasonable access etc. as well as advertising costs for the regulations. Compensation may be payable to or by the Council, where appropriate. Other costs might include those arising from having to deal with contamination on sites, or other problematic ground conditions.
2. **HR & Organisational Development** - None.
3. **Community/Council Planning** –
 - *Reshaping our place, our economy and our future* – Application of the allotments legislation will assist in empowering communities and ensuring a greener Renfrewshire.
 - *Creating a sustainable Renfrewshire for all to enjoy* – the provision of allotments will aid sustainability in terms of food provision
4. **Legal** – legal advice will be required in connection with preparation of the regulations, as well as on aspects of the legislation as issues arise. If it is necessary to acquire additional land for the provision of allotments, this will require legal input.

5. **Property/Assets** – in order to comply with the obligations mentioned in paragraph 3.3 above, the Council will require to consider setting aside land for use as allotments, and/or possibly to acquire land for this purpose.
6. **Information Technology** – details of the regulations and the annual reports will require to be published electronically.
7. **Equality & Human Rights** -

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. 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** – Care will have to be taken in areas where there may be contamination in the ground, raised beds being a possible solution in this respect.
9. **Risk** – N/A

List of Background Papers - none

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