

# Report

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Report to:	<b>Community and Enterprise Resources Committee</b>
Date of Meeting:	<b>12 December 2017</b>
Report by:	<b>Executive Director (Community and Enterprise Resources)</b>

Subject:	<b>Consultation on Part 9 - Community Empowerment (Scotland) Act 2015 - Allotment and Food Growing Opportunities</b>
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## 1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ Inform the Committee of the Scottish Government's consultation on Part 9 of the Community Empowerment (Scotland) Act 2015.

## 2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the content of the report be noted; and
- (2) that the response submitted to the Scottish Government by the deadline of 17 November 2017 be approved.

## 3. Background

- 3.1. The Community Empowerment (Scotland) Bill was passed by the Scottish Parliament on 17 June 2015 and it received Royal Assent to become an Act on 24 July 2015. There are 11 parts to the Act and each will come into effect at different times.
- 3.2. Part 9 of the Act brings new rights, duties and responsibilities regarding the provision of allotments and food growing opportunities but to date it has not been enabled.
- 3.3. The Act updates legislation on allotments including:
  - It requires local authorities to maintain waiting lists and take reasonable steps to provide allotments if the waiting list exceed certain trigger points. It also strengthens the protection for allotments and clarifies the rights of local authorities and plot holders
  - Provisions allow allotments to be 250 square metres in size or a different size that is to be agreed between the person requesting an allotment and the local authority.
  - The Act also requires fair rents to be set and allows tenants to sell surplus produce grown on an allotment, other than with a view to making a profit.
  - There is a requirement for local authorities to develop a food growing strategy for their area, including identifying land that may be used as allotment sites and identifying other areas of land that could be used by a community for the cultivation of vegetables, fruit, herbs or flowers.

3.4. It was anticipated that detailed Government guidance covering Part 9 will be published later this year, however, at this point in time, no definitive date has yet been confirmed.

#### **4. Consultation on Part 9 - Community Empowerment (Scotland) Act 2015 – consultation ends 17 November 2017.**

4.1. The Council has been asked to respond to a consultation request by the Scottish Government by 17 November 2017. The consultation asks for comments covering 10 sections as noted below:

- Offer to lease allotment
- Duty to maintain list
- Duty to provide allotments
- Access to allotment and allotment site
- Allotment site regulations and further provision
- Duty to prepare a food growing strategy
- Duty to review food growing strategy
- Delegation of management of allotment sites (reduced charges)
- Promotion of use of allotments: expenditure
- Further guidance

4.2. Due to the deadline for submission being in advance of the Committee, the response was submitted by officers, however, noting that it was still to be approved by Committee and that other comments may be forthcoming, reflecting the Committee's views. The proposed submission by the Council to the Scottish Government is contained in Appendix 1.

#### **5. Employee Implications**

5.1. There are no employee implications associated with this report at this time.

#### **6. Financial Implications**

6.1. There are no financial implications associated with this report at this time.

#### **7. Other Implications**

7.1. There are no risk or sustainability implications in terms of the proposals contained within this report.

#### **8. Equality Impact Assessment and Consultation Arrangements**

8.1. This report does not introduce a new policy, function or strategy or recommend a change to an existing policy, function or strategy and, therefore, no impact assessment is required.

8.2. There was no requirement to undertake any consultation in terms of the information contained in this report.

**Michael McGlynn**  
**Executive Director (Community and Enterprise Resources)**

21 November 2017

**Link(s) to Council Objectives and Values**

- ◆ Develop a sustainable Council and communities

**Previous References**

- ◆ None

**List of Background Papers**

- ◆ None

**Contact for Further Information**

If you would like to inspect the background papers or want further information, please contact:- Lynn Carr, Amenity Services Manager

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## Part 9, Community Empowerment (Scotland) Act 2015 Consultation Response

### 110. Offer to lease allotment

This section has the effect that a person on a waiting list is entitled to wait for a standard allotment of approximately 250 square metres or a smaller size (a “specified area”) if it is requested. The standard allotment plot should be considered as 250 square metres plus or minus 5%. When a lease is offered for an allotment, the potential tenant should be made aware whether the land is leased rather than owned by the local authority, as different procedural requirements apply in relation to termination (see sections 128 and 129).

Q 1. To what extent do you agree with this statement?

Strongly Disagree

Comment:

The size of a standard plot (250m<sup>2</sup>) will clearly have major implications on the Council's ability to deal with our current and future waiting list. Based on experience, many Council ploholders have struggled to maintain a full plot of 100m<sup>2</sup> and defining this as a standard is not only unrealistic in terms of provision but also could be unmanageable for most ploholders. The Council regularly has applicants requesting a full plot (100m<sup>2</sup>) only to realise its too large and they subsequently request a reduction to a half plot. Councils will struggle to identify and fund new sites if a standard plot is defined as 250m<sup>2</sup> and there is a risk that having invested resources to create larger plots, ploholders may conclude it is too much for them to maintain and ask to revert back to a smaller plot.

The Council identified 4 additional sites which could address much of the waiting list based on current plot sizes of 50/100m<sup>2</sup> however funding to develop these has still to be secured. The proposed 250m<sup>2</sup> plot size would mean that a significant number of other sites would need to be identified. Given the limited availability of suitable land in some areas and the pressure to provide other local services e.g. cemeteries or parks, it is unlikely that the Council could identify appropriate sites to remove or reduce the waiting list to an acceptable level based on a 250m<sup>2</sup> plot.

### 111. Duty to maintain list

This section places a duty on local authorities to produce and manage a waiting list in relation to the requests it receives to lease an allotment that the authority owns or leases. Where a request is submitted jointly, this should be regarded as a single request for the purpose of the waiting list and the first named person on the request should be considered the lead person (and will count as one person for the purposes of the duty in section 112). The form of the list is to be determined by the local authority but it should include the following:-

- Name of lead person
- Address of lead person
- Special requirements
- Size of allotment requested, if specified
- Information about distance from nearby allotment sites
- Date added to the list

Q 2. To what extent do you agree with this statement?

Agree

Comment:

The Council currently maintains a waiting list although some additional information would be required and the application form would need to be reviewed to include all information outlined above. However, the Council is concerned that a strong emphasis is being placed on allotments and not opportunities to register for alternative food growing opportunities such as community gardens, raised beds and this should also be included rather than a formal allotment being the only solution. The Council proposes to ask applicants if they would consider alternative options and record this on the waiting list also as the outcomes are broadly the same.

In terms of joint applications, clarification is sought in respect of joint applicants then making separate applications (a married couple who have separated for example) and does that mean they retain two places on the list or as stated above, is it a single request?

### **112. Duty to provide allotments**

This section places a duty on local authorities to take reasonable steps to ensure (1) that the number of people on their waiting list does not exceed half the total number of allotments owned and leased by the authority; and (2) that a person on the list does not wait more than five years for an allotment. In respect of (2), as agreed during the passage of the Bill, that part of the duty will take effect later than the rest of Part 9. For local authorities which do not, when section 112 comes into force, own or lease any allotments, this duty applies when there are 15 people on the waiting list maintained under section 111. For local authorities which already own or lease allotments when the section comes into force, the duty applies when only one person is on the waiting list.

Subsection (4) provides that local authorities must have regard to the desirability of making available allotments that are reasonably close to where people on the relevant authority's waiting list reside. There is no definition of "reasonably close" but as a guide, allotments within a 5 mile radius, or within a 30 minute journey on public transport from where people on the waiting list reside is considered reasonably close.

Q 3. To what extent do you agree with this statement?  
disagree

Strongly

Comment:

South Lanarkshire has an extensive mix of urban and rural areas with widespread communities. To identify suitable land, fund and create an allotment site for 1 person within a 5 mile radius or 30 min bus journey is unrealistic in terms of funding as well as geographical spread and limited availability of land in certain locations. As a result of ongoing reductions in Council funding, Councils do not have the resources to manage a growing number of sites and if a legislative requirement, Government funding should be identified to allow Councils to meet their obligations.

For those who live in remote villages, they may have to travel more than 5 miles or a 30 min bus journey to access other key services and perhaps this should be taken into account when determining what is reasonable.

To ensure the Council can exercise flexibility in managing waiting lists the Council would suggest that three issues be considered: (1) that allotments that are provided by third parties on land leased by the Council for that purpose, (2) for provision of allotments by third parties within the Council area e.g. community and local growers groups and (3) for land that is categorised as providing wider food growing opportunities all contribute to the managing the waiting list rather than just allotments.

#### **114. Access to allotment and allotment site**

This section places a duty on local authorities to provide reasonable access to allotments and allotment sites that it leases to tenants. Reasonable adjustments should be made in order that all tenants, including those with a disability, have physical access to their allotment plot.

Q 4. To what extent do you agree with this statement?

Agree

Comment:

The Council has no issues with this however available land may be more challenging in certain locations. There is a balance between providing a site that is Equality Act compliant and providing a site which is not but may be the only available land within a reasonable distance from a large number of applicants in a particular location.

#### **115. Allotment site regulations. 116. Allotment site regulations: further provision**

Section 115 places a duty on local authorities to publish allotment site regulations within two years from the date this section comes into force, and section 116 makes further provision about the procedure local authorities are to follow in making such regulations. Local authorities should have consulted widely with relevant stakeholders within their areas prior to publication of new regulations. In preparing their regulations, local authorities should take into consideration any existing allotment site regulations already in place at independently managed sites.

Q 5. To what extent do you agree with this statement?

Agree

Comment:

The Council currently has rules and regulations for each of our two existing sites however these require to be reviewed and standardised following consultation with existing plot holders. Whilst it is accepted that there will be mandatory information required, local authorities must have the scope able to reasonably vary these to reflect local circumstances. Guidance on mandatory items needs further clarification before rules can be finalised.

#### **119. Duty to prepare food growing strategy**

When developing their food growing strategies, it would be good practice for local authorities to consult, wherever possible, with Grow-Your-Own communities within their areas to understand how best to offer Grow-Your-Own opportunities and to assist with managing waiting lists.

Q 6. To what extent do you agree with this statement?

Agree

Comment:

This proposal would appear to contradict the information required on waiting lists (as per 111 comments above). Information collated at the outset could cover alternatives as well as formal allotments so that Councils can take a view on how best to meet an individual request.

Clarification sought that if an alternative is offered and declined, this should be reportable in the event that an individual allotment cannot be provided.

#### **120. Duty to review food-growing strategy**

As part of the review of the food-growing strategy, the local authority should compare the total number of people on their allotment waiting list with the total number of allotments in their area. They should also look at the length of time a person has been on the waiting list.

If the number of people waiting for an allotment site is more than half the total number of allotments, or the person on the list has waited longer than 5 years to be offered an allotment, the local authority should make changes to their food-growing strategy and look at increasing Grow-Your-Own opportunities within their area.

Q 7. To what extent do you agree with this statement?

Strongly disagree

Comment:

The Council is in the process of identifying sites in Council ownership that would offer alternative food growing opportunities. However, the focus is on allotment provision and clarification is required on whether the offer of an alternative solution will satisfy the Government in terms of those who have waited more than 5 years or are over the prescribed 50%

The ongoing reduction in Council funding, and, a considerable increase to what is considered a standard allotment (250m<sup>2</sup>) will provide a significant challenge, indeed could be viewed as an unachievable target, in terms of managing to keep the waiting list to under 5 years.

### **123. Delegation of management of allotment sites**

This section allows a person (usually an allotment association) to request to take on some of the functions of a local authority. The functions that may be delegated are clearly described in section 123(3). If an authority agrees to delegate functions to a person, consideration should be given to whether a reduction in rent might be warranted.

Q 8. To what extent do you agree with this statement?

Neither agree or disagree

Comment:

The Council is required to implement a charging review to standardise charges for all sites which will reflect that applicants could request up to 250m<sup>2</sup> which is more than double a full plot currently. Until completed, we are unable to confirm whether a reduced rent is feasible or appropriate as the Council is not in a position to subsidise additional sites with ongoing budget reductions.

### **124. Promotion and use of allotments: expenditure**

This section provides a specific power for local authorities to incur expenditure for the purpose of promoting allotments in its area and providing training to allotment tenants and potential tenants about the use of allotments. In exercising this power, local authorities should consider how best to promote allotments in their area. This can include linking with organisations such as health boards and housing associations to encourage non-growers to visit allotment sites in their areas in recognition of the wider benefits growing food has in our communities.

Special consideration should be given to how best to engage with communities in areas of multiple socio-economic disadvantage.

Local authorities should use waiting lists to understand the demand for allotments in their areas and may choose to offer funded training to those on the list who are going to be offered a lease. This will ensure that newly awarded plot-holders have the skills to begin growing their own food.

Q 9. To what extent do you agree with this statement?

Neither agree or disagree

Comment:

The Council is in the process of creating a toolkit for those interested in food growing including creating community led solutions. For those being offered an allotment, we offer initial advice and also have an email database to keep in regular contact and provide

updates. However, in terms of promoting allotments and providing formal training, the Council has limited resources which will be stretched if the number of current sites increases.

### **Further Guidance**

Do you think we have captured all those sections, relating to functions of local authorities that require further guidance?

Q 10. To what extent do you agree with this statement?      Disagree

Comment:

Our duty to provide food growing opportunities is clear and we accept that the Council needs to take reasonable steps to ensure compliance. At the same time it must be recognised that to ensure full compliance, as currently drafted, would represent a significant challenge in terms of funding and extent of suitable and available land. Therefore, it is recommended that any test for compliance should be based on reasonable steps rather than being mandatory without any due considerations to constraints.