

*Disclaimer:*

*The contents of this paper is the best understanding of the current state of Scottish law relating to allotments by a lay person who is a member of the SAGS committee. It is not intended to be a final and absolute interpretation of allotment law. There is no guarantee that every relevant statute has been tracked down and identified. SAGS takes no responsibility for any problems arising from the use of this contents. The main reference for this paper is the online UK Statute Law Database maintained at <http://www.statutelaw.gov.uk> by the Office of Public Sector Information.*

## **Briefing Paper: Allotment Law in Scotland**

### **Introduction**

An allotment was originally defined in Scottish law as a piece of land not exceeding 1 acre in size which can be provided (by a local authority or other body) for rental by an individual for agricultural or horticultural purposes. It is clear, from the buildings permitted, that an allotment was intended as much for grazing livestock as for growing vegetables or fruit. Subsequently the concept of an allotment garden was introduced. This was a smaller piece of land, not greater than 40 poles (1/4 acre) and intended primarily for growing fruit and vegetables for the personal and family use of the tenant. It is clear, again from the buildings permitted, however that there was an expectation that the tenant of an allotment garden might be allowed to keep poultry or pigs.

The original statute relating to allotments is the *Allotments (Scotland) Act of 1892*. Much of it still stands but various provisions of this act have been amended and repealed by a series of later acts; most importantly the *Land Settlement (Scotland) act of 1919*, and the *Allotments (Scotland) Acts of 1922 and 1950*. Allotments are also affected by other, general statutes and by Common Law. For example there is a *common law duty of care* owed by the occupier of land to visitors and the *Occupiers Liability (Scotland) Act of 1960* adds to this. These lay responsibility for injuries suffered because of negligence onto the landlord and tenant of land. Allotment Associations holding events such as Open Days should be aware of this, and may wish consider insuring themselves against the resulting risks, The *Control of Pesticides (Amended) Act of 2008* places a duty of care on anybody using pesticides to store, use and dispose of them in a safe manner. This obviously will apply to allotment gardeners as much as to professional horticulturists.

The allotment acts all definitively give the duty to provide allotments and the powers to develop allotments to the local authorities. The primary power retained by Central Government was a requirement for the local authority to consult the Secretary of State (and presumably gain his/her approval) before carrying out certain acts. As a result of devolution the requirement to consult the Secretary of State has been replaced by a requirement to consult an appropriate Scottish Minister but consultation is still required.

Since devolution the Scottish Government has maintained this arms-length approach to allotment provision. However it has signalled its approval of allotments by specifically mentioning allotments in *Scottish Planning Policy 11* and *Planning Advice Note 65*.

Allotments are also contained in a strand of the *Food and Drink Policy 2009*. In addition there are a number of acts which impose duties on local authorities with respect to measures to create and maintain greenspace, to reduce carbon emissions and have regard to the health and well being of residents in the area. It can be argued that these duties can, at least in part, be simply and economically carried out by the provision and promotion of allotments and gardens.

### **Duties imposed on Local Authorities by the acts**

1. If six or more residents of the local authority area (more precisely people who are council tax payers or on the electoral register) make representations to the council that there is a requirement for allotments in the area the local authority must consider these representations. If on due consideration the local authority determines that there is such a requirement then it *must* either purchase or lease sufficient land to provide allotments and let these to residents in its area.

The obligation to provide allotments is restricted to the provision of allotment gardens, not large allotments. If the population of the area is greater than 10, 000 then the size of allotment garden need not be greater than 20 rods i.e an 1/8 of an acre or about 500 sq meters.

*ref: Allotments (Scotland) Acts 1892, 1922 and 1950*

2. The local authority should create a register of allotments showing the size and location of each allotment in its area, the particulars of tenancy, the rental of let allotments and details of unlet allotments. This register must be made freely available to any ratepayer in the area, who must be allowed to take copies of it. The authority should also publish annual accounts of expenditure on allotments and these should be freely available.

*ref: Allotment (Scotland) Act 1892*

3. The local authority should make provision for access to the allotments it provides by means of suitable roads and paths.

*ref: Allotment (Scotland) Act 1922*

4. The local authority letting land for use as allotments must charge a fair rent for the use.. However the authority may charge a reduced rent to individuals whose circumstances justify such a reduction

*ref: Allotment (Scotland) Act 1950*

5. The local authority should allow the use, free of charge, of school rooms (outside school hours) or rooms in other buildings maintained by the rate payers for the purpose of holding meetings related to allotment management.

*ref: Allotments (Scotland) Act 1892*

### **Powers conferred on Local Authorities by the acts**

1. Where the local authority is not able to lease or purchase land for allotments by agreement then it can apply for a compulsory purchase order for suitable land.

*ref: Land Settlement (Scotland) Act 1919*

2. The local authority (after giving notice) may enter upon unoccupied land for the purpose of creating allotment gardens, may adapt such land for the purpose and may either let it to individual tenants or to an association for the purpose of subletting to individual tenants.

*ref: Allotments (Scotland) Act 1922*

3. If the local authority has land that has been acquired for some other use, but is temporarily unused, then that land can be improved and divided into allotments and let on a temporary basis with a suitable lease. This requires the approval of the Secretary of State (this would now be the relevant Scottish minister)

*ref: Land Settlement (Scotland) Act 1919*

4. The local authority can improve land acquired for allotments by e.g. draining, fencing, building access roads, or anything else considered appropriate. The authority also can maintain the drains, fencing etc

*ref: Allotments (Scotland) Act 1892*

5. The local authority can make regulations regarding the letting and management of allotments, e.g. the people eligible to be tenants, the size of an allotment, the rent, the conditions of cultivation, buildings to be erected. .... These regulations must be approved by the Secretary of State before they can be enforced.

*ref: Allotments (Scotland) Act 1892*

6. The local authority can appoint (and remove) allotment managers. The managers can be empowered by the authority to do anything the authority is empowered to do. These managers can be either a combination of local authority officers and people resident in the area or solely people resident in the area.

*ref: Allotments (Scotland) Act 1892*

7. The local authority can terminate a lease if the tenant is in arrears of rent or in breach of the allotment regulations. Termination in this case requires one month's notice.

*ref: Allotments (Scotland) Act 1892*

8. The local authority can terminate a lease for reasons other than non payment of rent e.g. if the land is required for another purpose. In this case the termination requires at least 12 months notice. This notice must terminate on or before the first day of May or on or after the last day of November in the year.

*ref: Allotments (Scotland) Act 1922 and 1950*

9. A local authority can purchase tools and seeds and sell them on to the tenants of its allotments. It can also use lectures, slide shows and other means to disseminate information on questions relating to allotments. It can award prizes in connection with the cultivation and maintenance of allotments.

*ref: Allotments (Scotland) Act 1922 and 1950*

### **Restrictions on allotment use mentioned in the statutes**

*(NB local authorities may create other restrictions through their regulations)*

1. The buildings that may be erected on an allotment garden are restricted to toolhouse, shed, greenhouse, fowl house or pig sty

*ref: Allotments (Scotland) Act 1892*

2. Although a single tenant may rent more than one allotment garden, no one may rent in aggregate land in excess of 40 poles

*ref: Allotments (Scotland) Act 1922*

3. The tenant of an allotment or allotment garden is not allowed to sublet.

*ref: Allotments (Scotland) Act 1922*

4. Allotments should be rated as though occupied by the local authority. This has the implication that an allotment plot cannot be used as part of a commercial venture.

*ref: Allotments (Scotland) Act 1922*

### **Rights of the tenant**

1. When a lease is terminated the tenant is entitled to compensation for the value of any growing crops on the land and any manure applied to the land

*ref: Allotments (Scotland) Act 1922*

2. If a lease is to be terminated the tenant may remove any fruit trees, bushes and erected buildings for which compensation is not payable.

*ref: Allotments (Scotland) Act 1892*

### **Obligations on the tenant**

The primary legal obligations of the tenant of an allotment are to pay the rent in good time, to cultivate the allotment in accordance with the regulations and to live in the local authority area, or not more than 1 mile outside the boundary. The local authority may retake possession of the allotment on 1 months notice if rent is in arrears by 40 days or greater, or if the tenant after at least 3 months possession of the allotment is not cultivating it in accordance with the regulations or if the tenant moves more than 1 mile outside the boundary of the local authority area.

*ref: Allotment (Scotland) Act 1892*

### **Using the law to help improve and protect Allotment Provision**

The allotment acts place a duty on a local authority to provide plots, but do not specify a budget or a time scale. The Land Settlement Act of 1919 part 3 section 18 specified that funds from the Public General Health Assessment should be used for the provision of allotments. These funds have certainly not been used for allotments in recent years and the provision was repealed in schedule 3 of the Public Health (Scotland) Act of 2008. No specific fund is identified as a replacement so allotments must compete for funds from the general budget with other interest sectors. Groups wishing to improve and protect the provision of allotments in their area can increase their chance of success if they can show the local authority that other statutory duties, laid down in other legislation and for which there is an identified budget, can be carried out simply and economically by the provision of allotments. Some examples are given below.

#### *Climate Change Act 2009*

This act requires that a public body must, in exercising its functions, act:

- in the way best calculated to contribute to delivery of the Bill's emissions reduction targets;
- in the way best calculated to deliver any statutory adaptation programme; and
- in a way that it considers most sustainable.

The Scottish Government is writing guidance notes for local authorities on this but allotments have been shown to contribute to the mitigation and adaptation to climate change and to sustainable actions.

#### *Local Government in Scotland Act 2003 and the associated Guidance note on Power to Advance Well-being*

Part 3 of the Local Government in Scotland Act 2003, creates a new discretionary power which enables local authorities to do anything they consider is likely to promote or improve the well-being of their area and/or persons in it. Key factors which contribute to promotion or improvement of well-being may include health related factors such as the promotion of good physical, social and mental health and developing and promoting policies which have a positive impact on health outcomes, especially on health inequalities. The therapeutic gardening movement (contact the charity Trellis at [www.trellisscotland.org.uk](http://www.trellisscotland.org.uk)) has data which can be used to show that gardening (and so allotments) can contribute to all of these. This statute is probably the most useful as a means of releasing funds for allotment development.

#### *Planning Legislation and Allotment Protection*

The situation regarding protection of allotments is different in Scotland from that in England. In England any allotment provided by a local authority which has not been specifically designated as 'Temporary' is designated a 'Statutory Allotment' and cannot be disposed of for other use unless the relevant minister has been consulted and is satisfied that arrangements have been made to provide the plot holders with an alternative site. In Scotland there is no such statutory protection and the ability to dispose of

allotment land depends entirely on the designation of an allotment site in the Local Authority's planning procedures. It is therefore vital that allotment supporters are aware of their authority's planning strategy and are vigilant about potential change of use threats.