

Part 9 of the Community Empowerment (Scotland) Act 2015 - Allotments

Guidance for Local Authorities

June 2019



Scottish Government
Riaghaltas na h-Alba
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MINISTERIAL FOREWORD



Good food can have major impacts on our health, environment and society. It can help reduce dietary-related diseases, mitigate the environmental impact of our food consumption, and also bring communities together.

When people are involved in growing their own food it enhances these benefits even further – fruit and vegetable consumption often increases, gardening can provide a source of low-impact exercise and offer mental health benefits, and growing spaces can improve biodiversity and reduce the air miles of the food that we eat.

Allotments and other grow-your-own initiatives undoubtedly help us to deliver these benefits which is why I am delighted to produce this guidance for local authorities.

This guidance will assist local authorities in delivering on their new functions as set out in the allotments legislative framework and will help them to deliver our aim of extending availability of grow-your-own land.

I fully expect these new powers will open up the many benefits of allotments to the wider community.

A handwritten signature in black ink, appearing to read 'Mairi Gougeon'.

Mairi Gougeon

Minister for Rural Affairs and the Natural Environment

June 2019

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Introduction

The Community Empowerment (Scotland) Act 2015¹ (“the Act”) was brought forward with the aim of empowering our communities by enhancing the rights of community bodies and placing new duties and functions on public sector authorities.

The implementation of the Act will help empower communities across Scotland and should increase access to land for food growing purposes, be that on allotments or through any other Grow-Your-Own initiatives.

Policy Framework

In 2009 the Scottish Government published ‘Recipe for Success’, its first national food and drink policy. This policy made a clear commitment to support, strategically, allotments and community growing spaces. To help the Scottish Government meet this commitment, the Grow Your Own Working Group was established in 2009. One of this working group’s recommendations was to amend the legislation relating to allotments and specifically to review the duties placed on local authorities.

The SNP Manifesto in 2011 made a commitment to bring forward a Community Empowerment Bill and to update the legislation relating to allotments. This commitment acknowledged the view that the legislation was outdated and that the demand for suitable land to allow people to grow their own food continued to be high.

The next phase of the Scottish Government’s national food and drink policy, ‘Becoming a Good Food Nation’, was launched in June 2014. This document highlighted the successes of Scotland’s first food and drink policy whilst recognising the continuing challenges within Scotland’s food and drink sector. ‘Becoming a Good Food Nation’ set out the policy objective that everyone in Scotland should be able to buy, eat and serve food that is affordable, healthy and sustainable.

In 2015, prior to the passage of the Community Empowerment (Scotland) Bill, the Scottish Government made a commitment to stakeholders to establish a tripartite group. The aim of the tripartite group was to develop constructive dialogue around Part 9 of the Bill and monitor the early stages of Part 9 implementation.

A tripartite group was established, consisting of representatives from Scottish Government, local authorities and the Scottish Allotments and Gardens Society. The work of the tripartite group has helped shape this guidance document. We are grateful to the tripartite group, greenspace Scotland, local authority colleagues and others who have helped to shape this guidance through their comments and feedback.

Grow-Your-Own (GYO), be it on an allotment or community garden, can increase access to affordable, healthy, sustainable food; a key aspect of the national policy set out in ‘Becoming a Good Food Nation’.

¹ <http://www.legislation.gov.uk/asp/2015/6/contents/enacted>

Legislative Framework

Part 9 of the Act² consolidates, updates and simplifies the previous statutory regime regarding allotments by bringing it together in a single piece of legislation. It requires local authorities to take reasonable steps to provide more allotments if waiting lists exceed certain trigger points and ensures appropriate protection for local authorities and plot-holders. Part 9 replaces and repeals various statutory provisions including the Allotments (Scotland) Acts 1892, 1922 and 1950 in their entirety and some provisions of the Land Settlement (Scotland) Act 1919.

An allotment is defined in Part 9 of the Act as land that:

- is owned or leased by a local authority (or leased or intended for lease by a person from the authority);
- is used or intended for use wholly or mainly for the cultivation of vegetables, fruit, herbs or flowers; and
- is used or is intended for use otherwise than with a view to making a profit.

An “allotment site” is defined in Part 9 of the Act as land consisting wholly or partly of allotments. The definition makes clear that an allotment site includes other land owned or leased by a local authority that may be used by tenants of allotments in connection with their use of allotments.

For the purposes of this guidance, the term “site” has the same meaning as “allotment site”.

In addition to the functions conferred by Part 9 of the Act, local authorities have powers under section 70 of the Local Government (Scotland) Act 1973 (“the 1973 Act”) to acquire land (by agreement) for the purposes of the benefit, improvement or development of their areas³. Section 73 of the 1973 Act enables a local authority to appropriate, for the purpose of any functions, land already vested in them for the purpose of any other function⁴.

² <http://www.legislation.gov.uk/asp/2015/6/part/9/enacted>

³ This power may also be used for the purposes of functions conferred on a local authority by certain other legislation, but this does not include functions conferred by the Community Empowerment (Scotland) Act 2015. This is because “enactment” in section 70 of the 1973 Act does not include an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament (by virtue of the Interpretation Act 1978).

⁴ The power in section 73 of the 1973 Act is now subject to sections 117 and 118 of the Community Empowerment (Scotland) Act 2015. Section 117 provides that a local authority may not, without the consent of the Scottish Ministers, dispose of any allotment site which it owns or change the use of the whole or part of it. Section 118 applies where a local authority leases an allotment site and provides that such a local authority may not renounce its lease of the whole or part of the allotment site and may not change the use of the allotment site (where a change of use of whole or part of the allotment site proposed by the local authority is permitted by the lease) without the consent of the Scottish Ministers.

Purpose of this Guidance

Section 137 of the Act requires that a local authority have regard to any guidance issued by the Scottish Ministers about the carrying out of functions conferred on the authority by Part 9 of the Act.

The Scottish Ministers consider that it is not necessary to issue guidance in relation to all provisions found in Part 9 of the Act. Ministers have, however, identified a number of sections in the Act in relation to which they consider that guidance would assist local authorities in carrying out their duties.

This guidance is issued with the purpose of assisting local authorities in the carrying out of their functions under Part 9 of the Act. This guidance is advisory only and does not impose legal obligations on local authorities. If there are conflicts between the content of this guidance and the provisions of the Act or any secondary legislation made under the Act, such binding provisions should take priority. The interpretation of legislation is ultimately a matter for the courts.

Guidance on Section 119 - duty to prepare a food-growing strategy

This guidance should be read in tandem with the guidance on section 119 of the Community Empowerment (Scotland) Act 2015 which concerns the duty to prepare a food-growing strategy. Section 119 places a duty on every local authority to prepare a food-growing strategy which must be published by 1 April 2020 and reviewed every five years thereafter. The guidance for local authorities on section 119 was published in November 2018. [The section 119 guidance can be accessed via this link.](#)

Guidance for Local Authorities

This guidance relates to the following sections of the Act:

- Section 110 - Offer to lease allotment
- Section 111 - Duty to maintain list
- Section 112 - Duty to provide allotments
- Section 114 - Access to allotment and allotment site
- Section 115 - Allotment site regulations
- Section 116 - Allotment site regulations: further provision
- Section 117 - Disposal etc. of allotment sites owned by local authority
- Section 118 - Disposal etc of allotment sites leased by local authority
- Section 120 - Duty to review food-growing strategy
- Section 123 - Delegation of management of allotment sites
- Section 124 - Promotion and use of allotments: expenditure

1. Section 110 – Offer to lease allotment

Relevant Legislation

1.1 Section 109 makes provision relating to requests to lease allotments. Subsection (1) provides that a resident of a local authority area may make a request to lease an allotment from that local authority (or sublease an allotment from a tenant of the authority to whom the authority has leased an allotment site). Section 109, as a whole, imposes various requirements in relation to such requests. Subsection (3) requires that the person making the request specify the area of allotment sought if it is less than 250 square metres. Section 110 of the Act sets out rules that a local authority must apply in relation to a request under Section 109(1). Different rules apply under section 110 depending on whether the request specifies an area of less than 250 square metres.

1.2 Subsections (2) and (3) of section 110 apply where a person specifies an allotment of an area less than 250 square metres in a request made under section 109(1). If a person requests a particular size smaller than 250 square metres and is offered this size then the request is treated as having been agreed for the purpose of maintaining the waiting list under section 111(3)(a)(i) (subsection (2)). The person's name will be removed from the waiting list. If a person is offered an alternative size of allotment but does not accept that offer, the request is treated as not agreed to (subsection (3)).

1.3 Subsections (5) and (6) of section 110 apply where a person does not specify an area of allotment sought of less than 250 square metres in their request made under section 109(1). The request is treated as agreed for the purpose of section 111(3)(a)(i) when an allotment of approximately 250 square metres is offered (subsection (5)). The person's name will then be removed from the waiting list. If the person is offered an allotment of other than approximately 250 square metres but does not accept that offer, the request is treated as not agreed and the person's name remains on the waiting list (subsection (6)).

Section guidance

1.4 The term “approximately 250 square metres” (used in section 110) is considered by the Scottish Ministers to mean 250 square metres plus or minus 5%.

1.5 It is possible that a person who requests a lease of an allotment, particularly a larger sized allotment, may not appreciate the amount of effort involved in managing such an allotment. Local authorities may therefore find it helpful, in terms of managing the allocation of allotments, to discuss with applicants their particular needs and to ensure that potential tenants are aware of the actual dimensions of the allotment requested and how much work would be required by the tenant to look after such an allotment properly.

1.6 There is no legislative requirement within section 110 for a local authority to assist tenants in moving to larger or smaller allotments (beyond the requirement to process any request under section 109(1) in the standard way). Local authorities should, however, consider ways to meet the requirements of tenants which may

arise due to changing circumstances such as age, family circumstances, health and disability.

1.7 Local authorities should also consider how best to make growing spaces available for people with particular needs, such as those with limited mobility who may require particular growing spaces including small raised beds.

1.8 Subject to the requirements of section 111, it is for the local authority to manage its waiting list in the most suitable way for that authority. Authorities may wish to separately categorise requests for applications from an existing tenant for a transfer to a larger or smaller allotment.

1.9 Whether the offer of a lease of an allotment is to be regarded as accepted for the purposes of section 110 will depend on the particular dealings between the parties to the proposed lease of an allotment.

1.10 If an existing tenant makes a formal request under section 109(1) for a different size of allotment, that person must be added to the list maintained by the authority under section 111. Although not a legislative requirement, in its annual allotment report (section 121(2)), the authority should distinguish between people on its waiting list who have not yet been offered a lease for an allotment and those tenants who have been granted a lease on an authority allotment but have requested another allotment.

1.11 To meet existing tenants' requests to transfer to a larger or smaller allotment, local authorities may wish to facilitate a system to enable tenants to swap plots.

1.12 When facilitating a tenant to move to a larger or smaller allotment, the local authority should have regard to its obligations under the Equality Act 2010.

1.13 Although not a legislative requirement, when a lease or sub-lease is offered for an allotment the potential tenant should be made aware as to whether the land is leased or owned by the local authority, as particular procedural requirements apply in relation to termination of subleases granted by local authorities under section 128 of the Act. When the offer is of a sublease of an allotment owned by a local authority but leased to a tenant (e.g. a tenant association) then the applicant for the sublease should be made aware of the identity of the tenant. This is recommended because particular procedural requirements apply in relation to such subleases (section 129 of the Act).

1.14 It would also be good practice for a local authority to make the potential tenant aware of whether management of the site has been delegated to a body other than the local authority (e.g. to a body under section 123 of the Act) .

1.15 Local authorities are not expected to disturb or move existing tenants from smaller allotments in order to join together existing allotments to create allotments of 250 square metres. However an authority may consider it prudent to join together vacant smaller sized allotments in order to create allotments of 250 square metres.

1.16 Where an offer of a lease for an allotment is made to two or more persons which is accepted, the lease should set out whether the tenants have joint or split liability in terms of rent and other relevant obligations.

2. Section 111 – Duty to maintain list

Relevant Legislation

2.1 Section 111(1) imposes an obligation on local authorities to establish and maintain a waiting list of residents who have requested an allotment. Subsection (2) provides that there is no set format for such lists and local authorities may manage them as they see fit. Subsection (3) provides that a person's details must be removed from the list when their request to lease an allotment is agreed to or if the person withdraws their request.

2.2 Section 112(7) provides that, where a request under section 109(1) is submitted by two or more persons, the persons making the request should be regarded as one person for the purpose of calculating the number of persons on the waiting list.

2.3 Section 123 allows a local authority to delegate certain functions, including the function of maintaining the list required by section 111(1), to a person who represents the interests of all or the majority of the tenants of the allotments on a particular site. Usually, this “person” will be an allotment association. In order for functions to be delegated, a written application must be made by the person wishing to take over the functions of the local authority (subsection 4). Various procedural rules and requirements regarding such applications are set out in section 123.

Section guidance

2.4 The first named person on a request under section 109(1) should be considered the lead person. Should the lead person withdraw from a request, the entry on the list should remain on the waiting list and the name of the lead person should be changed to the name of the second person named in the request under section 109(1). An additional name cannot be added to a request under section 109(1) after a person has withdrawn from an application. Should that former lead person who has withdrawn from a request wish to re-join the waiting list at a later date they will be required to make a new request under section 109(1).

2.5 Where the persons named in a request for an allotment become estranged, the original request under section 109(1) cannot be treated as if it were submitted separately by two or more persons. If a person wishes to withdraw from an existing request by two or more people but nonetheless wishes to request an allotment, that person should submit a new request under section 109(1).

2.6 It is quite common for a body other than an individual (natural person) to submit a request for an allotment. An example would be a body set up by community groups. An unincorporated association, however, cannot generally in its own right enter into legal agreements or be a tenant under a lease. Care should therefore be taken to make sure that bodies who make a request for an allotment are appropriately constituted.

2.7 The form of the list is to be determined by the local authorities and they can manage the list as they see fit. They may, for example, wish to split the list into

applicants' preferred geographical areas. The Scottish Government recommend that the the list should, as a minimum, include the following:

- the name of the persons making the request (including identification of the lead person, if relevant);
- the address and other contact details (e.g. telephone numbers, email address etc.) of the lead person;
- any special requirements;
- the size of allotment requested, if specified;
- information about the distance of the lead person from nearby allotment sites; and
- the date on which the person was added to the list.

2.8 Even when the function of maintaining the waiting list required by section 111(1) is delegated to another body, the duty to maintain the waiting list remains with the local authority. The local authority should therefore, if agreeing to a request to delegate that function, be completely satisfied that the individual or body to whom management of the waiting list is to be delegated is fully able to fulfil the local authority's duties as set out in section 111 and fully understands the responsibilities, including compliance with data protection laws. Applicants should be advised to seek independent legal advice on the matter if necessary.

2.9 If tenants of an allotment site in relation to which functions have been delegated express their dissatisfaction to the local authority regarding how the delegated functions are being carried out, the local authority should investigate those concerns in accordance with their local complaints process.

2.10 A person's name and the details of their request for an allotment must be removed from the waiting list when their request to lease an allotment is agreed or if the person withdraws their request.

2.11 Section 111 of the Act applies only to requests for an allotment made to a local authority within the meaning of section 109. The duty to maintain a list under section 111(1), and any related guidance, does not therefore apply to requests for any allotment outwith the meaning of section 107 and requests made to organisations other than the relevant local authority (such as independent allotment associations). Accordingly, this guidance only applies to requests *made to a local authority* which request to lease an allotment owned or leased by the local authority from that authority, or which request to sub-lease an allotment from a tenant of the authority.

2.12 Local authorities may liaise with other stakeholders such as allotment associations to gather data surrounding requests for plots outwith the definition of an allotment under section 107 (i.e. plots that are not on land owned or leased by the relevant local authority) made to such stakeholders. Such activity is, however, outwith the scope of this guidance.

2.13 When determining the total number of persons on a waiting list, local authorities should be mindful of persons who may have requested an allotment across multiple sites within their area. A mechanism is required to identify such multiple applications to ensure overall waiting list data is accurately reported under section 121 (annual allotments report).

2.14 Where practicable, local authorities should give consideration to using an online application process to receive and manage applications for allotments. Local authorities should however also make provision to make available an offline/ paper-based application process.

2.15 There are no reasons or circumstances in which local authorities should consider closing their waiting lists to new applicants.

2.16 Local authorities, as data controllers in their own right, will have regard to data protection laws when managing their waiting lists.

2.17 In order to assist with the provision of information about allotments (on topics such as training/ learning opportunities, networking events, newsletters, signposting etc.) to people on the waiting list from organisations such as the Scottish Allotments and Gardens Society and local growers' forums, local authorities may wish to consider including a question on their application form as to whether the person requesting the allotment agrees to being contacted by such third parties for those purposes. Local authorities must make sure that any relevant data protection laws are complied with if sharing any information about persons on the waiting list with third parties.

2.18 The Act does not make provision for any request made to a local authority by a person who is not resident in the area of that authority. Any such request is not a request for an allotment as defined by section 109. There is therefore no need for a person making such a request to be added to the waiting list required by section 111(1).

3. Section 112 – Duty to provide allotments

Relevant Legislation

3.1 Section 112(1) imposes a duty on local authorities to take reasonable steps to do the following: (1) provide sufficient allotments to keep the waiting list referred to in section 111 at no more than half of the authority's current number of allotments; and (2) ensure that a person entered on the waiting list does not remain on it for a continuous period of more than 5 years.

3.2 Although section 112(1) has come into force, part (2) of the above duty has not come into legal effect as at the date of publication of this guidance. As agreed during the passage of the Act, that particular aspect of the duty will take legal effect later than the rest of Part 9 (see regulation 15 of The Community Empowerment (Scotland) Act 2015 (Commencement No. 10, Saving, Transitional and Transitory Provisions) Order 2017⁵). Regulation 15 provides that part (2) of the duty comes into effect 8 years after the local authority has made its first regulations under section 115(1) of the Act.

3.3 For local authorities which did not own or lease any allotments when section 112 came into force (1 April 2018), the duty under section 112(1) is triggered when there are 15 people or more on the waiting list maintained under section 111(1). For local authorities which already owned or leased allotments on 1 April 2018, the duty arises (subject to the qualification set out in paragraph 3.2 above regarding part (2) of the duty) when only one person is on the waiting list.

3.4 Subsection (4) requires that local authorities, when taking reasonable steps to meet the duty in subsection (1), have regard to the desirability of making available allotments that are reasonably close to where people on the relevant authority's waiting list reside.

Section guidance

3.5 Section 112(4) does not provide a definition of "reasonably close" but, as a guide, allotments within a 3 mile radius, or within a 20 minute journey on public transport from where people on the waiting list reside should be considered reasonably close. Local authorities may however opt to apply different travel-time or distance criteria, where appropriate, based upon local geography, particularly in remote and rural areas (where there is, for example, limited public transport provision in that area).

3.6 The reasonable steps that the local authorities should take to meet their obligations under section 112 include, but are not limited to:

⁵ <http://www.legislation.gov.uk/ssi/2017/458/made>

(1). Analysing demand:

3.7 Officers responsible for allotments should consult with a wide range of internal and external stakeholders when carrying out their analysis of demand for the local authority area. Such stakeholders should include, as appropriate, the following: planners, community development and health improvers, senior elected members, senior managers from relevant public services, members of the business community and the third sector, allotment associations, local grow-your-own groups and community gardens. Local authorities should also consider using on-line consultation and other methods to obtain the views of local residents. Further guidance relating to stakeholder engagement is included at paragraphs 9.1 to 9.4 and 11.19 of the [section 119 food-growing strategy guidance](#).

3.8 Local authorities can use information gathered from the consultation process to analyse demand for food-growing space, to identify local residents' needs in terms of the growing space that they need and want, and to identify where that demand is located.

(2). Disseminating information:

3.9 Every local authority should develop adequate procedures for wide dissemination of information about allotment provision. This should include a clear, easily accessible webpage on the local authority website listing all sites within the local authority area. It should include local authority managed and devolved sites and privately managed sites, and give contact details for these sites, where relevant.

3.10 Local authorities should, where possible, include information on the website relating to the length of waiting lists or the time since the most recent allotment allocation on the site. Such information should be updated as appropriate, at least on an annual basis.

3.11 Where an allotment site has its own website or social media page, local authorities should include links to these sites from the local authority website. The local authority should also, as good practice, include links to any allotment strategy that the authority may have, and to their food-growing strategy and annual allotments report from the local authority website.

3.12 Where practicable local authorities should give consideration to using an online application process to receive and manage applications for allotments. Authorities should also make available an offline/paper application process to those who require this.

3.13 If applicable, local authorities may wish to consider liaising with the Scottish Allotments and Gardens Society and relevant local growers' forums to determine the feasibility of sending out communications such as newsletters and information for aspiring plot-holders on their behalf (see also paragraph 2.17 above).

3.14 Local authorities should consider how to make such information available in an offline version too, for those without online access.

(3). Developing partnership working:

3.15 Local authorities should work in partnership with a wide range of stakeholders, including independent allotment associations, those on the waiting lists, community participation bodies such as community councils, housing associations, and community growers. These stakeholders should be engaged in the decision-making process around allotments policy and in the design and delivery of new allotment sites. The local authority may, if it is considered to be beneficial, work with the allotment associations to facilitate independent groups wishing to develop self-funded allotment sites.

3.16 Local authorities may wish, through their various local authority officers (such as regeneration, community development, land and environment services), to consider the provision of relevant training for members of such stakeholder groups in technical aspects (e.g. in the design and procurement of allotment sites), managerial and other relevant matters.

3.17 Community planning partnerships could be used to bring together the collective talents and resources of local public services and communities, the third sector and other organisations.

(4). Identifying all land in the area that is suitable for growing:

3.18 As part of the food-growing strategy, the Planning Department of the local authority may wish to use an appropriate dataset, such as the Greenspace map based on the OS MasterMap (OSMM)⁶, to improve planning, analysis and decision making.

3.19 Appropriate datasets could help local authorities to show all the land available for cultivation together with ownership, distinguishing between local authority owned or leased land and that in private ownership.

3.20 When identifying land which may be suitable for food-growing, officers should consult at the earliest opportunity with their contaminated land or environmental health colleagues to ensure that land identified is indeed suitable for food-growing purposes, or identify remedial action to make the land safe for such purposes. Further guidance relating to contaminated land is included in the [section 119 food-growing strategy guidance](#).

3.21 Where there is an unmet demand for allotments, local authorities may wish to approach private landowners to discuss options for making additional land available for allotments provision. The authority should consider including in the Allotment Report (section 121) additional information relating to such approaches, the result of the approach, and any arrangement offered etc.

⁶<https://www.ordnancesurvey.co.uk/business-and-government/products/os-mastermap-greenspace.html>

(5). Ensuring there is sufficient suitable land to satisfy future demand:

3.22 Local authorities should, where practicable, (e.g. based on the scale of the development) incorporate growing spaces in planning briefs for regeneration and new developments, preserving sufficient good quality land to satisfy current and future demand. Further guidance relating to planning considerations is included at paragraphs 11.1 to 11.31 of the [section 119 food-growing strategy guidance](#).

3.23 Reasonable steps should **not include** reducing waiting lists by either restricting the size of allotments available, or taking steps to remove tenants from their allotment via unreasonable landlord inspections regarding the condition of allotments.

3.24 Local authorities are, however, required in section 115(3)(c), (d) and (h) to make regulations pertaining to the cultivation, maintenance and inspection of allotments. A reasonable and balanced approach should be taken when authorities are evaluating plot condition or plot deterioration during their inspections.

(6). Understanding individual needs of those on the waiting list:

3.25 Based on individual needs, the authority should offer the most appropriate allotment relevant to the specified area requested. For example, if the specified area requested is 100 square metres, an allotment of $100\text{m}^2 \pm 5\%$ should be offered. If a $100\text{m}^2 \pm 5\%$ allotment is unavailable, the authority should offer the closest available size to the size of allotment requested which is within a 3 mile radius of the individual's residence (or within a 20 minute journey on public transport). Local authorities may opt to apply more appropriate time or distance criteria based upon local geography, particularly in remote and rural areas where there is, for example, limited public transport provision in that area.

3.26 If the closest available size of allotment to that which was requested is offered and rejected, the person should remain on the list until an allotment of, for example, 100m^2 is available or a different sized allotment is offered and accepted. To ensure those on the list have the best chance of obtaining the size of allotment requested, local authorities may wish to signpost individuals to private sites in its area, and remove the individual from the waiting list if they subsequently accept such an alternative arrangement and formally withdraw their request for an allotment from the local authority. Further guidance relating to waiting list management and signposting people to alternative options is included at paragraphs 14.1 to 14.3 of the [section 119 food-growing strategy guidance](#).

4. Section 114 – Access to allotment and allotment site

Relevant Legislation

4.1 Section 114 requires local authorities to provide reasonable access to allotments and allotment sites that it leases to tenants.

Section guidance

4.2 Where tenants have particular needs, including those arising from disabilities, reasonable adjustments should be made in order that such tenants have physical access to their allotment. When considering what reasonable adjustments to make or reasonable access to provide, the authority should have regard to its obligations under the Equality Act 2010.

4.3 It may not always be possible to provide full access to an allotment site, for example due to the terrain on or near to a particular site, the limited size of an allotment or site, or difficulties posed by lack of parking or routes to a particular site. However local authorities must make all reasonable attempts to make allotment sites and allotments as accessible as possible.

4.4 Depending on the circumstances, it may be reasonable for local authorities to :

- ensure that access tracks or paths to allotment sites are likely to be accessible during adverse weather, e.g. tracks or paths are not overly muddy during periods of heavy rain;
- ensure that access tracks and paths are of a suitable design to accommodate persons of limited mobility and wheelchair and mobility scooter users;
- ensure that paths, roads and tracks in and around the allotment site and allotment are well maintained and compliant with the authority's obligations under the Equality Act 2010;
- make any existing onsite toilet facilities accessible (e.g. installation of ramps and handrails etc.) (local authorities are not expected to install accessible toilet facilities where none currently exist onsite);
- provide accessible allotments and raised beds near hard standings at the entrance to allotment sites or at other suitable locations on the site;
- provide secure handrails on slopes, steps and other appropriate places in and around the allotment site and allotment;
- consider installing a seating bench or rest area in or close to accessible allotments;
- ensure that paths or tracks to the allotment site and paths within the allotment are sufficiently wide to enable easy access and movement around the accessible allotment, including by wheelchairs and mobility scooter users; and
- where practicable, provide car parking close to the site entrance.

4.5 Where a local authority leases a site from a private landowner, consideration should be given to the duties and rights under the lease between the local authority and the landlord in relation to adjustments to be made regarding access.

5. Section 115 – Allotment site regulations

Section 116 – Allotment site regulations: further provision

Relevant Legislation

5.1 Section 115 requires each local authority to make allotment site regulations by 1st April 2020, that is within two years of section 115 coming into force. The regulations must make provision for allotment sites in the area of the local authority. The matters set out in subsection (3) must be included in the regulations. In addition to the mandatory requirements under subsection (3), subsection (4) sets out other matters local authorities may include in the regulations. Local authorities are permitted to vary the regulations for different areas or different allotment sites in order to take account of local circumstances (subsection (5)).

5.2 Section 116 makes further provision about the procedure local authorities are to follow in making such regulations.

Section guidance

5.3 The allotment site regulations required by section 115 should provide for all allotments within the local authority's area. In preparing such regulations, local authorities should take into consideration any existing allotment site rules, regulations or constitutions, including those onsite rules drafted by individual allotment associations.

5.4 Local authorities should consult widely with a range of stakeholders in their area and take their views into consideration. Stakeholders may include, for example, allotment associations, allotment holders, persons on the waiting list and other interested persons. This list is not exhaustive and local authorities should be satisfied that they have engaged all relevant stakeholders and stakeholder groups in their local area.

5.5 Section 115(3) sets out the matters for which a local authority *must* include provision in its regulations, whereas section 115(4) sets out optional matters for which a local authority *may* wish to include provision in its regulations.

5.6 Section 115(3)(b) provides that local authorities must make regulations relating to rent, including a method of determining a fair rent. It is for each local authority to decide what services or infrastructure it will provide on each allotment site. When determining fair rent levels, authorities should take account of the size and location of the individual allotment for which rent is payable and the condition of any shed/storage available to the tenant on the allotment, the onsite facilities provided (such as toilet facilities, mains water, waste and recycling collection, access to polytunnels, meeting spaces), expenses incurred by the authority in maintaining and managing the allotment site, and any other relevant factors. Authorities should also take account of any improvements and upgrades to the allotment or site when setting future rent levels.

5.7 When making regulations relating to the future setting of rent levels, local authorities should not normally take account of improvements to allotments or the

allotment site which have been wholly funded by onsite allotment tenants or allotment associations.

5.8 Where improvements to allotments or the allotment site (paragraph 5.6) have been jointly or partially funded by the allotment tenants or allotment associations, local authorities should not normally take account of the percentage of the improvements carried out by the allotment tenants or allotment associations when making regulations relating to the future setting of rent levels. In order to determine the value of ineligible improvements when making regulations relating to the future setting of rent levels, if considered necessary, local authorities should attempt to obtain evidence of the cost of improvements and the amount or percentage of improvements funded by the allotment tenants or allotment associations as appropriate.

5.9 Local authorities should make provision for concessions on the level of rent payable. When making provision for concessions, authorities should have regard to their local concessionary procedures to maintain consistency across local services. The regulations will set out what rent concessions will apply where a lease on a joint tenancy for an allotment is to be offered but only one tenant in a joint tenancy is eligible for a concession on the level of rent payable on grounds such as age.

5.10 Section 115(5) allows local authorities to make different provisions for different areas or allotment sites. A 'one size fits all' approach to the local authority's regulations might not be appropriate for the range of allotment sites within the local area. Local consultation with a wide range of stakeholders will help to inform local site requirements.

5.11 Section 116 sets out the process that local authorities must undertake to make allotment site regulations, or to vary or revoke them. Any variation or revocation of regulations should be subject to full consultation with interested stakeholders.

5.12 Section 116(2)(b) requires the local authority to make copies of the proposed regulations available for inspection by the public at least one month before they are made at (i) its offices and (ii), if it considers it practicable, at the allotment site to which the proposed regulations will apply once made. Although local authorities are not required to publish their proposed regulations for inspection online, they may also choose to do so.

5.13 When determining whether the requirement to make the proposed regulations available for inspection at the site is practicable for the allotment site in question, the local authority may wish to have regard to matters such as:

- whether there is a shared space such as a communal shed on the allotment site in which to place the draft regulations;
- whether there is a site noticeboard on which to place the draft regulations;
- whether it is appropriate to erect an appropriate board on which to place the draft regulations; and
- other reasonable steps that could be taken in order to fulfill this requirement.

Once regulations have been made, section 116(9) requires that a copy of the regulations be displayed at the entrance to an allotment site to which they apply.

6. Section 117 – Disposal etc of allotment sites owned by local authority Section 118 – Disposal etc of allotment sites leased by local authority

Relevant legislation

6.1 Section 117 applies where a local authority owns an allotment site. If a local authority wishes to change the use of, or dispose of, the whole or part of such an allotment site, before doing so the local authority must obtain the consent of Scottish Ministers (subsection (2)).

6.2 Section 118 applies where a local authority leases an allotment site. If a local authority wishes to renounce its lease of the whole or part of an allotment site, before doing so the local authority must obtain the consent of Scottish Ministers (subsection (2)). In addition, if a change of use is permitted by the lease, the local authority may not change the use of the whole or part of an allotment site unless the Scottish Ministers consent (subsection (3)).

Section guidance

6.3 The purpose of sections 117 and 118 is to protect allotment sites situated on land owned or leased by a local authority from closure and to otherwise prevent loss or change of use of such allotment sites.

6.4 Whether the consent of the Scottish Ministers is required would depend on the circumstances. In particular in relation to allotment sites owned by a local authority, the Scottish Ministers anticipate that consent would be required under section 117 in order to proceed with the following acts:

- sale of all, or part of, the allotment site;
- change of use by the local authority of all, or part of, the allotment site; and
- grant of a lease (including grant of a lease to satisfy an asset transfer request made under Part 5 of the Act) of all, or part of, the allotment site where this will involve a change of use of the area of the allotment site that is proposed to be let.

7. Section 120 – Duty to review food-growing strategy

Relevant Legislation

7.1 Section 120 requires every local authority to review its food-growing strategy. This review must be carried out within 5 years of the date of the publication of the initial food-growing strategy and every five years thereafter. When the local authority changes its food-growing strategy following review, the local authority is required to electronically publish the revised strategy.

Section guidance

7.2 A local authority may review their food-growing strategy more frequently than every 5 years.

7.3 Reviewing their food-growing strategy will allow the authority to respond to changes in local need and demand. Authorities should take account of relevant factors such as ongoing planning activity including plans for new housing developments, refreshed local plans, or changes to interdependent strategies (e.g. to local health and wellbeing, environmental or social strategies) when revising, or identifying the need to revise, their food-growing strategy. Further guidance relating to relevant local strategies is included at paragraph 9.6 of the [section 119 food-growing strategy guidance](#).

7.4 As part of the review of the food-growing strategy, the local authority should consider whether changes to its strategy are required in order to comply with its duty under section 112, and should generally consider whether it is necessary to increase allotment provision and grow-your-own opportunities within its area.

7.5 When reviewing their food-growing strategies, local authorities should consider steps they have identified or taken to increase provision of allotments and other food-growing spaces, if this has proven necessary.

7.6 Local authorities should carry out adequate consultation when reviewing their food-growing strategies. Further guidance on consultation and engagement is included at paragraphs 9.1 to 9.7 of the [section 119 food-growing strategy guidance](#).

8. Section 123 – Delegation of management of allotment sites

Relevant Legislation

8.1 Section 123 allows a local authority to agree to a request to delegate certain functions under Part 9 of the 2015 Act to a person (usually an allotment association) who represents the interests of all or the majority of the tenants of the allotments on a particular site. The functions that the 2015 Act permits to be delegated are clearly described in section 123(3).

8.2 Procedural requirements in relation to the content and processing of such requests are set out in subsections (4) to (9). Subsection (10) provides that the local authority has the power to recall any of the functions it has delegated under section 123 in cases where the local authority considers that the person to whom they have delegated functions is not carrying out those functions satisfactorily or where there is a disagreement between this person and the local authority. It is also set out in subsection (11) that, where the local authority is leasing an allotment site from another person, any delegation of its functions must not contravene the head-lease.

Section guidance

8.3 Functions of a local authority can only be delegated under section 123 to the extent of the functions listed in section 123(3). The functions of a local authority under the Act cannot be delegated under section 123 if delegation of the function(s) has not been requested.

8.4 Delegation of functions is not a substitute for local authority duties regarding the management of allotment sites and waiting lists. Local authorities will retain overall responsibility for the allotment site and waiting list even if certain functions are delegated.

8.5 Local authorities are expected to consider each application on its merits, and consider how each person or body requesting delegation intends to fulfil their obligations under the relevant section of the Act. It is for the local authority to be satisfied that the person or body requesting delegation is able to fulfil the role in order to agree to the delegation request.

8.6 The local authority should be satisfied that the person or body requesting delegation does indeed represent the interests of all or the majority of tenants on the allotment site, and that the tenants of the site for which delegation is requested are aware of that delegation request and of the outcome. The local authority should have regard to the views of the allotment tenants in order to be satisfied that the person or body requesting delegation does indeed represent the interests of all or the majority of tenants on the allotment site.

8.7 It would be prudent for local authorities to ensure that the person or body requesting delegation fully understands its responsibilities, liabilities, risks and the legal implications that might come with delegation of the requested function(s). Local authorities should advise the applicant to seek independent legal advice, including from appropriately qualified third sector organisations, on the matter. The person or

body seeking delegation of functions may also be advised to seek legal advice about the most appropriate form of legal organisation for them (e.g. whether it should incorporate as a company or other body), a consideration that may be relevant if personal liability is incurred in the event of a dispute or incident.

8.8 The local authority should prepare formal documentation setting out the responsibilities of both sides should a request for delegation of certain functions be granted. The documentation should be understood and agreed by all parties.

8.9 If an authority agrees to delegate functions to a person, consideration should be given as to whether a reduction in rent might be warranted. This is a matter for the individual local authority.

8.10 The local authority has the right to refuse the request and should consider doing so if it is not satisfied that the person or body requesting delegation will fulfil the requirements of the delegation effectively.

8.11 Local authorities should monitor the operation of delegated functions. The local authority should ensure that the delegated person or body is aware of the authority's existing complaints procedure, should there be a material disagreement between the local authority and the delegated person or body about the carrying out of the functions.

8.12 If tenants on an allotment site in relation to which certain functions have been delegated express their dissatisfaction to the local authority regarding how the delegated management of functions is being carried out, the local authority should investigate those concerns in accordance with their local complaints process.

8.13 The local authority may wish to consider whether there is value in providing training to those who have requested delegation, or to those who are to be granted delegation, in relation to certain site management functions. Should the local authority determine that this would be of value, the local authority should consider whether training could be funded under powers set out in the Local Government (Scotland) Act 1973 or the Local Government in Scotland Act 2003.

8.14 As set out in paragraph 2.16 above, local authorities as data controllers in their own right will have regard to data protection laws when considering delegating certain functions, such as section 111 (duty to maintain list).

9. Section 124 – Promotion and use of allotments: expenditure

Relevant Legislation

9.1 Section 124 permits local authorities to incur expenditure for the purpose of promoting allotments in their areas and providing training to allotment tenants and potential tenants about the use of allotments. Subsection (2) requires that local authorities take into account the desirability of exercising this power in relation to communities which experience socio-economic disadvantage.

Section guidance

9.2 In the 2017 Greenspace Use and Attitudes Survey by greenspace scotland⁷, 32% of people said that they lacked the knowledge or skills to grow their own vegetables or fruit.

9.3 In exercising the power in section 124, local authorities should consider how best to promote allotments in their area. This could include linking with organisations such as health boards and housing associations to encourage non-growers to visit allotment sites in their areas. This may be appropriate 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.

9.4 When considering action to promote allotments, local authorities may wish to take into consideration the possible increase in demand for allotments, particularly if allotments in that area are already oversubscribed. There is a balance to be struck between raising and meeting expectations about availability of allotments.

9.5 Local authorities should use waiting lists to understand the demand for allotments in their areas and may choose to offer funded training to those persons on the list who are going to be offered a lease. This will ensure that new allotment-holders have the confidence and skills to begin growing their own food successfully. Such training would be optional for new allotment holders.

9.6 There may be merit in local authorities considering the value in offering training to existing tenants should there be issues identified surrounding allotment cultivation or allotment maintenance when landlord inspections are performed in accordance with section 115.

9.7 When considering what training to provide to tenants or prospective tenants, local authorities may wish to consider a range of options. These may include electronically signposting to a website or range of sites containing online guidance, and partnership working with other individuals and organisations to upskill both potential and existing tenants. Local authorities may also consider facilitating a “buddy” scheme to match new tenants with existing tenants who are willing to volunteer to provide support and advice to support a new tenant. Local authorities may wish to consult with local stakeholders prior to developing and offering training.

⁷ https://drive.google.com/file/d/1x_GfzPxFf059X-3lmz20Mj51EHCoN8F6/view

Further guidance relating to signposting to alternative options or learning opportunities is included at paragraphs 14.1 to 14.3 of the [section 119 food-growing strategy guidance](#).

9.8 To make best use of resources, local authorities should ensure that any training they choose to provide does not duplicate existing training. A wide range of formal and informal food-growing and horticultural training opportunities is currently available. A list of such training is available on the Grow Your Own Working Group's website, and accessible via the following link :

<http://www.growyourownsotland.info/education-and-training/>

9.9 It is for the local authority to determine the content of any training that it wishes to offer. The authority may wish to include in its training schedule, in addition to the fundamentals of food-growing and biodiversity, other relevant matters including the safe use, storage and disposal of fertilisers, herbicides, fungicides and pesticides (and their use versus other options such as organic approaches). Training or skills awareness sessions may also address pollution awareness, biodiversity, climate change and health and safety considerations.

9.10 Local authorities may wish to concentrate on offering training to new tenants on new allotment sites where there are few, if any, experienced allotment tenants to offer support or guidance to new tenants.

9.11 When including measures to identify land that may be used as new allotment sites in their food-growing strategies, local authorities may also consider whether it is appropriate to include possible training needs and training costs relating to that land, i.e. for potential new allotment tenants on the site.

9.12 When local authorities are determining whether to exercise the power to incur expenditure for the purpose of promoting allotments or providing training, as set out in section 124(2), they should have regard to the costs as well as the benefits of providing such services. Local authorities should evaluate which activities would present best value for money, and note that such activities are not mandatory.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78781-931-3 (web only)

Published by The Scottish Government, June 2019

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS597170 (06/19)

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