

WALC Guidance on Allotments

1. Legislation

The majority of the law relating to allotments is contained in the following Acts of Parliament:

- a) Small Holdings and Allotments Act 1908
- b) Allotments Act 1922
- c) Allotments Act 1925
- d) Allotments Act 1950
- e) Local Government Act 1972, Schedule 29, paragraphs 9 – 11
- f) Local Government Planning and Land Act 1980, Section 1(5) and Schedules 5 and 34.

2. Meaning of “Allotment”

2.1 There is an important distinction to be made between an allotment and an allotment garden. An allotment is a parcel of land not more than 5 acres in extent, cultivated as a garden or farm (s.1 Allotment Act 1950). It includes a field garden, a fuel allotment, an allotment garden and other land not more than 5 acres in extent.

2.2 An allotment garden is a parcel of land not exceeding forty poles (one quarter of an acre or 1,210 square yards or 1,011.72 square metres) cultivated by the occupier for the provision of vegetables and fruit crops for himself and his family (s.22 Allotments Act 1922). In practice, most local authority allotments fall within the category of an allotment garden.

2.3 Allotment authorities are the councils of London boroughs, districts, parishes and communities. Whilst these authorities have power to provide allotments and allotment gardens, there is a statutory duty to provide allotment gardens sufficient to meet the demand (s.23 Small Holdings and Allotments Act 1908; s.9 Allotments Act 1950).

2.4 In drafting tenancy conditions, care should be taken to ensure that each plot is being let as an allotment garden, because any other type of allotment may constitute an agricultural holding within the meaning of the Agricultural Holdings Act 1986 and thus be subject to special rules as to notice to quit. An allotment, which is used for commercial cultivation, may also become an agricultural holding.

2.5 Allotments, including allotment gardens, are treated as agricultural land for the purposes of exemption from non-domestic rating (s.51 and Schedule 5 paragraphs 1 – 9(2) of the Local Government Finance Act 1988).

WALC can provide model tenancy agreements at £2.50 each for allotment gardens

3. Provision and Acquisition of Allotments

3.1 Under s.23 of the Small Holdings and Allotments Act 1908 a local council is required to provide allotment gardens for personal cultivation where it is of the opinion that a

demand exists in the parish. Moreover, under that section, a local council must take into consideration any written representations for the provision of allotments made to it by any six parliamentary electors or council tax payers resident in the parish. It should be noted, however, that by virtue of s.9 of the Allotments Act 1950 a local council is not bound to provide allotments other than allotment gardens (see the definitions above).

3.2 A local council may acquire land for the provision of allotments by any one or more of the following means:

- a) acquisition of an existing freehold or leasehold interest in the land (s.25 of the Smallholdings and Allotments Act 1908);
- b) entering into a lease or tenancy of the land (s.25 of the Smallholdings and Allotments Act 1908);
- c) acquisition of land in advance of requirements, provided that there is a reasonable expectation that the land will eventually be used for allotment purposes (s.5 of the Allotments Act 1925);
- d) acquisition of land by virtue of a Compulsory Purchase Order (CPO) to be made by the district council or the Secretary of State (s.125 of the Local Government Act 1972). See also s.39(7) of the Smallholdings and Allotments Act 1908, amended by Schedule 29, Part II, s.251, paragraph 9(4) of the Local Government Act 1972;
- e) appropriation for allotment purposes of any land held for other purposes (s.126 of the Local Government Act 1972);
- f) where a new parish is constituted by order of the Secretary of State and land within the new parish has previously been held by the district council for allotments, the land automatically passes to the parish council or to the parish meeting, as applicable (S.I. No.1995/545, regulation 10).

4. Grazing Rights

The power to acquire land for allotments includes the little-used power of acquiring land for the purpose of letting rights of grazing to allotment tenants. The letting of such rights may be subject to such regulations as the authority may consider expedient (s.40 of the Smallholdings and Allotments Act 1908).

WALC can provide a NALC Legal Topic Note on Grazing Rights.

5. Management of Allotments

Allotment Committees

5.1 A local council may delegate its powers and duties under the Allotments Acts (other than a power to raise a rate or borrow money) to an allotments committee. Such a committee may comprise persons other than elected members of the Council, who are experienced in the management and cultivation of allotments and

representatives of the interests of the allotment tenants (known as co-opted members). At least two-thirds of the members of the committee must be local councillors.

Allocation of Tenancies

- 5.2 A local council has the right to determine its system of allocation of tenancies to persons resident in its area, but it is important where the supply of allotments is insufficient to satisfy demand, that a method of allocation is applied which is generally acknowledged to be fair. An obvious method is to adhere strictly to allocations in accordance with the date of first application and it is not uncommon for authorities to prohibit the letting of more than one (or possibly 2) plot(s) to the same person.
- 5.3 It may also be decided to give preference to persons having special needs, such as old-age pensioners, disabled people or the unemployed. It ought not to be necessary to draw up a "points scheme" similar to those adopted for the letting of council houses, but the system in use should be made known throughout the parish, strictly adhered to and properly administered.

Improvements

- 5.4 A local council may improve any land acquired by it for allotment purposes and may adapt the same for lettings by draining, fencing and dividing up the land as it may think fit. The council may also maintain drains, fences and any access roads in a proper condition. In addition it may provide a water supply and erect new buildings or adapt existing ones (e.g. for tool sheds, garden stores etc).
- 5.5 As to the provision of huts, sheds etc by the allotment tenants themselves, care should be taken to avoid the erection of unsightly and ramshackle buildings. This might be prevented by imposing a condition of tenancy that requires the prior consent of the council for a building and also requires the tenant to submit full particulars of the design, height and materials of the proposed erection in advance of construction. The council might also wish to reserve the right to determine the actual location of the building in relation to the plot, to ensure that buildings appear in a neat line rather than at random on different plots. The local planning authority should be consulted on the requirements for planning permission.

Rents

- 5.6 Allotments are to be let at such rent as a tenant may reasonably be expected to pay, but a lesser rent may be charged to a person with special circumstances or suffering hardship. Where the reduced rent exceeds £1.25 per year, not more than a quarter's rent shall be payable in advance by a person with special circumstances or suffering hardship (s.10 of the Allotments Act 1950).
- 5.7 It is common practice for a local council to waive payment of rent for a given period where, for instance, the plot requires extensive working to bring it into a proper state of cultivation.

- 5.8 Where a water supply is available, it is also common practice for the council to pay the periodical water accounts and either (i) reflect the annual sum payable in the rent calculation for each plot, or (ii) adapt a system of apportionment of the total annual expenditure between the tenants of the allotment site.
- 5.9 If a council wishes to increase rents, it may do so at any time by agreement with the tenants. However, if it is imposing an increase, the council must serve a formal notice to quit on the tenant, together with an offer of a new tenancy at the revised rent, to take effect immediately after the existing tenancy expires.

Rules and Regulations

- 5.10 A local council may make rules and regulations covering the letting of allotments. These may define the persons eligible for tenancies (who must be resident in the council's area), the notices to be given for lettings, the size of plots, the conditions under which the plots are to be cultivated and the rents (s.28 of the Smallholdings and Allotments Act 1908). Under the Local Government Planning and Land Act 1980 such rules and regulations no longer require the approval of the Secretary of State.
- 5.11 Allotments may not be sub-let by a tenant without the authority's consent (s.27 of the Smallholdings and Allotments Act 1908).

6. Allotment Garden Tenancies And Their Determination

- 6.1 An allotment garden tenancy is normally granted for a period of one year certain and thereafter from year to year. It is preferable, from the point of view of enforcement, for an allotment tenancy to be contained in a written form of agreement, signed by the tenant and by an officer of the authority (e.g. the clerk).
- 6.2 The agreement should be concise, as brief as possible and readily intelligible to the tenant. A copy of the signed agreement should be retained by the council and a copy handed to the tenant.
- 6.3 Where land is let for use by the tenant as an allotment garden, or is let to any local authority or association for the purpose of being sub-let for such use, the power of the landlord to determine the tenancy by notice to quit or re-entry is restricted by legislation. Any agreement to the contrary is invalid under s.1(1) of the Allotments Act 1922.
- 6.4 The only ways in which the tenancy may be so determined are:
- a) by twelve months' or longer notice to quit expiring on or before 6th April or on or after 29th September in any year (s.1(1)(a) of the Allotments Act 1922, as amended by s.1 of the Allotments Act 1950);
 - b) by re-entry, normally after three months' notice, under a power in that behalf contained in or affecting the contract of tenancy, on account of the land being required for certain purposes (s1(1)(b) – (d) and s.22(1) of the Allotments Act 1922 as amended). Such cases may arise where the local council has leased the allotment land from another local authority or statutory undertaker;
 - c) in the case of an association, liquidation; or

d) by re-entry for non-payment of rent, breach of a term or condition of the tenancy, bankruptcy of the tenant, or compounding with creditors.

6.5 Where the rent for any allotment let by a local council is in arrears for forty days, or it appears to the council that the tenant has not observed the rules affecting the allotment or is resident more than one mile out of the parish not less than three months after the commencement of the tenancy, the council may give him a month's written notice determining the tenancy (s.30(2) of the Smallholdings and Allotments Act 1908 as amended by s.23 of the Allotments Act 1922).

6.6 The notice should be signed by a duly authorised officer and, whilst it can be served by ordinary post, it is preferable to use the registered post or recorded delivery service, which will offer proof of service for the purpose of any subsequent legal proceedings. Once a notice has been served and the period thereby limited has expired, further payments on account of rent must not be accepted, for fear of creating a new tenancy, although there is no objection to the acceptance of money solely in payment of arrears outstanding on the expiry of the notice.

6.7 Should a tenant fail to vacate his plot after the expiry of a notice to quit, the authority will be entitled to institute Court proceedings to secure possession. Similar proceedings may be brought to recover any rent arrears.

6.8 Where a landlord or other person entitled to possession proposes to resume possession of land let to a local authority or association for allotment gardens, or occupied by a council under its powers to enter on unoccupied land for the purpose of providing allotment gardens, he must in general give written notice of the purpose for which resumption is required to the council or association. The council or association may serve a counter-notice requiring the matter to be determined by arbitration.

7. Compensation Provisions

7.1 If an allotment garden tenancy is terminated by notice to quit or by re-entry, the tenant is entitled to compensation for growing crops and manure and, in some cases, for disturbance, in an amount equal to one year's rent (s.3 of the Allotments Act 1950). If the tenancy is terminated between 29th September and 11th October inclusive, the tenant has three weeks in which to remove his crops (s.2 of the Allotments Act 1922).

7.2 Where the tenant of an allotment garden quits the land on the termination of the tenancy, the council may recover compensation from him equivalent to the cost of making good any deterioration of the land due to his failure to keep it in a good state of cultivation and fertility.

7.3 With regard to allotments (not allotment gardens) the tenant has rights of compensation for growing crops, manure and disturbance, where applicable. He may also remove fruit trees and bushes and any erection, fencing or other improvement provided by him with the council's prior consent in writing (s.3 of the Allotments Act 1922). Compensation is determined in default of agreement by a valuer appointed by a county court judge (s.6 or the Allotments Act 1922; s.7 of the Allotments Act 1950).

7.4 Before termination of his tenancy, a tenant may remove any fruit trees or bushes or any building, fencing or other improvements provided by him, but in respect of which he has no compensation entitlement. The tenant must, however, make good any injury to the land caused by such removal (s.40 of the Smallholdings and Allotments Act 1908).

7.5 It may be the case that the local council is itself a tenant of the land, which it sub-lets for allotment purposes. In such circumstances, where the council is given notice to terminate its tenancy by the head lessor, the council may recover compensation from that person (s.2 of the Allotments Act 1922).

8. Disposal of Allotment Land

8.1 Statutory allotment land (land that is purchased or appropriated specifically for allotment purposes) must not be sold without the consent of the Secretary of State (s.8 of the Allotments Act 1925). The authority must also be of the opinion that the land is no longer required for allotments, or that more suitable land is available. The power of disposal includes a power to exchange land and to pay or receive money for equality of exchange, subject also to the need to obtain the Secretary of State's consent. Such consent may be given unconditionally, or subject to such conditions as the Secretary of State thinks fit and may not be given unless he is satisfied that adequate provision will be made for displaced allotment holders, or that such provision is unnecessary or not reasonably practicable. "Adequate provision" means the provision of a site on which allotment gardening could reasonably be undertaken, not necessarily a site at least as advantageous to the plot holders as the site they were required to leave (see R v Secretary of State ex parte Gosforth Allotments and Gardens Association Ltd (1996) 77 P & CR 93).

8.2 Capital money received on a disposal of superfluous or unsuitable land shall be applied towards the discharge of any debt of the council in relation to its allotments and otherwise for any purpose for which capital money may properly be applied (s.32 of the Smallholdings and Allotments Act 1908).

8.3 A local council cannot appropriate under s.126 of the Local Government Act 1972 any land forming part of a common or fuel or field garden allotment if it exceeds 250 square yards.

9. Planning Permission

9.1 the use of land for allotment purposes, being an agricultural use, does not constitute development for the purposes of the Town and Country Planning Act 1990 and, as such, does not require express planning permission. The erection of sheds on allotments does amount to development and, unless they are erected by the allotment authority itself, express planning permission is needed. Under the General Permitted Development Order 1995 (S.I. No 418) certain minor operations are allowed without the need for a planning application.

9.2 Should a tenant erect a shed on an allotment without having obtained planning permission, the district council (as the local planning authority) may exercise its powers to issue an enforcement notice requiring the building to be removed within a specified period of time, subject to a right of appeal against the notice to the

Secretary of State. The council as the land-owner is liable to be served with a copy of the notice and, if and when the notice takes effect, can be prosecuted in the Magistrates' Court for failure to ensure that the requirements of the notice are complied with.

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Note compiled with reference to information provided by the Society of Local Council Clerks, revised in 2004.