Allotments: Legislation and Definitions

The majority of the law relating to allotments is contained in the following Acts of Parliament: Small Holdings and Allotments Act 1908; Allotments Act 1922; Allotments Act 1925; Allotments Act 1950; Local Government Act 1972, Schedule 29, paragraph 9.

There is a distinction to be made between an allotment and an allotment garden. An allotment is a parcel of land not more than five acres in extent, cultivated as a garden or farm (s.1, AA 1925). It includes a field garden, a fuel allotment, an allotment garden, and other land not more than five acres in extent.

An allotment garden is a type of allotment, being a plot of land not exceeding 1,011.71 square metres, cultivated by the occupier for the provision of vegetables and fruit crops for themselves and their family (s.22, AA 1922). In practice, most local authority allotments fall within the category of an allotment garden.

Allotments for the labouring poor are generally charities and the rules relating to charities apply to such Allotments. See under **Charities**.

Allotment authorities are the councils of London boroughs, districts, parishes and communities. Whilst these authorities all have power to provide allotments and allotment gardens, there is a statutory duty on them to provide allotment gardens sufficient to meet the demand of the local community (s.23, SH&AA 1908; s.9, AA 1950).

In practice, this duty is difficult to enforce against a hesitant local council. Nevertheless, if there is a proven and unmet demand for several successive years, the local council will have to be seen to be trying quite hard to meet that demand and have good reasons for not complying with the duty. 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 taxpayers 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 above definition).

Guidance on allotments is available: see the Local Government Association publication, Growing in the Community, and the LGA/CLG publication, A Place to Grow, both of which can be found on the LGA website: www.lga.gov.uk.

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 security of tenure and notices to quit. An allotment which is used with the council's knowledge for commercial cultivation may also become an Agricultural Holdings Act plot.

Allotments, including allotment gardens, are treated as agricultural land for the purposes of exemption from non-domestic rating. (s.51 LGFA 1988 and Schedule 5, paras1-9(2).

Allotments: Land and Property

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

- Acquisition of an existing freehold or leasehold interest in the land (s.25, 1908 Act)
- Entering into a lease or tenancy of the land (ditto)
- Acquisition of land in advance of requirements, provided there is a reasonable expectation that the land will eventually be used for allotment purposes (s.5, 1925 Act)
- Acquisition of land by virtue of a compulsory purchase order to be made by the district council or the Secretary of State (s.125, LGA 1972); (s.39(7), 1908 Act) amended by LGA 1972, s.251, Schedule 29, Part II, para 9
- Appropriation for allotment purposes of any land held for other purposes (s.126, LGA 1972) (but see the special provisions which apply in respect of public land and playing fields)
- 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, as the case may be, to the parish meeting) (SI 1999 No 545, reg.10 and SI 2008 No 625, reg.9)

In respect of compulsory purchase, the procedure is that the local council requests the principal authority to make an order. If they refuse to do so, the local council has the right to ask the Secretary of State to make such an order. This will generally involve a public enquiry and the costs of the procedure are to be borne by the local council. The purchase of land for allotments is the only circumstance in which this procedure applies.

A local council may improve any land acquired by it for allotment purposes, and may adapt the land for lettings by draining, fencing and dividing-up the land as it may think fit. The local council may also maintain drains, fences and any access roads in a proper condition; and may provide a water supply and erect new buildings or adapt ones (e.g. for tool sheds, garden stores etc).

The power to acquire land for allotments includes the now little-used power of acquiring land for the purpose of letting rights of grazing. The letting of such rights may be subject to such regulations as the authority may consider expedient (s.42, 1908 Act).

Allotments: Management

Most local councils find that communication with allotment holders is enhanced by the convening of a consultative committee or a regular meeting with the Local Allotment Holders' Association.

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 be 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 two) plot(s) to the same person or family.

It may also be decided to give preference to persons having special needs, such as pensioners, disabled persons or the unemployed. It ought not to be necessary to draw up a points scheme similar to those adopted for the letting of social housing, but the system in use should be made known throughout the parish, strictly adhered to and properly administered.

A local council may appoint managers, who may be wholly or partly council taxpayers of, and residents in, the authority's area (s. 29, 1908 Act). The managers may do anything which the local council itself can do in regard to allotments, including the power to spend money up to the limits authorised by it. In practice, the power to appoint 'lay' managers is apparently seldom exercised and routine management of allotments is normally left in the hands of the clerk or other officer.

It does not, however, seem that an officer, whatever may be their actual designation, can be an allotments manager within the section referred to, nor can they be given the discretionary powers of the council with respect to the management of allotments. Where the power in section 29 is used, it is most

often the case that the management of a particular allotments field is left to a committee elected by the plot holders themselves. There is a little-used power in section 35 of the 1908 Act for the managers of a 1908 Act allotment to requisition the use of a schoolroom (when not in use for education) as a managerial meeting room.

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 the prior consent of the local council is required for a building or structure and also requiring the tenant to submit full particulars of the design, height and materials of the proposed structure. The local 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 requirement (if any) for planning permission.

Allotments are to be let at such rent as a tenant may reasonably be expected to pay, but a less rent may be charged to a person with special circumstances or suffering hardship. If a local council wishes to increase rents it may do so at any time by agreement with each tenant. However, if an increase is not agreed and the local council wishes to impose an increase, the local council must serve a formal notice to quit on the tenant together with an offer of new tenancy at the revised rent, to take effect immediately after the existing tenancy expires. When granting a new tenancy a carefully drafted rent review clause should be incorporated in the agreement.

Where the rent exceeds £1.25 per year, not more than a quarter's rent is payable in advance (s.10, 1950 Act).

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 in to a proper state of cultivation.

Where a water supply is available, it is also common practice for the local 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 as between the tenants on the allotment site.

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, 1908 Act).

Allotments may not be sub-let by a tenant without the local council's prior consent (s.27, 1908 Act).

The local council should decide in advance its policy on the keeping of livestock on allotments and may include a restriction in the tenancy agreement of (for example) no bees to be kept on the allotment without the prior written consent of the council. Note, however, that it is lawful for any tenant to keep hens (but not cockerels) and rabbits, provided they are not kept by way of trade or business, and provided they are not kept in such a place or in such a manner as to be prejudicial to health or a nuisance or affect the operation of any enactment (s.12 1950 Act).

Allotments: Tenancy and Termination

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 agreement, signed by the tenant and by an officer of the authority (e.g. the clerk).

The agreement should be concise, as brief as possible and easy to understand. A copy of the signed agreement should be retained by the local council and a copy handed to the tenant.

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 the legislation. Any agreement to the contrary is invalid (s.1(1), 1922 Act). The only ways in which the tenancy may be so determined are:

- By 12 months' or longer notice to quit expiring on or before 6 April or on or after 29 September in any year (s.1(1)(a), 1922 Act as amended by s.1, 1950 Act)
- 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 (ss.1(1)(b)–(d), 22(1), 1922 Act as amended) (such cases may arise where the local council has leased the allotment land from another local authority or statutory undertaker)
- In the case of an association, liquidation
- By re-entry for non-payment of rent, breach of a term or condition of the tenancy, bankruptcy of the tenant, etc

Where the rent for any allotment let by a local council is in arrears for 40 days, or it appears to the council that the tenant, not less than three months after the commencement of the tenancy has not observed the rules affecting the allotment, or is resident more than one mile out of the parish, the local council may give the tenant a month's written notice determining (i.e. putting an end to) the tenancy (s.30(2), 1908 Act) as amended by s.23, 1922 Act).

The notice should be signed by a duly authorised officer on behalf of the local council and, whilst it can be served by ordinary post, it is preferable to use a system whereby the letter is served personally on the tenant or at least signed for on delivery. Once a notice has been served, further payments of new 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 of rent, outstanding on the expiry of the notice.

Should a tenant fail to vacate the allotment garden after the expiry of a notice to quit, the local council is entitled to take possession of the plot and exclude the tenant. There is no security of tenure, and it is not necessary to institute Court proceedings to secure possession. Proceedings may be brought to recover any rent arrears.

Allotments: Tenancy Compensation

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, 1950 Act). If the tenancy is terminated between 29 September and 11 October inclusive, the tenant has three weeks in which to remove their crops (s. 2, 1922 Act).

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

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

Before the termination of their tenancy, a tenant may remove any fruit trees or bushes, or any building, fencing or other improvements provided by them but in respect of which they have no compensation entitlement. The tenant must, however, make good any injury to the land caused by such removal (s.47, 1908).

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

Allotments: Land and Property: Disposal

Statutory allotment land, that is land purchased or appropriated specifically for allotment purposes, must not be sold without the consent of the English Secretary of State or the Welsh ministers (s.8, 1925 Act and s.32, 1908 Act). The local council 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 or Welsh ministers' 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 it 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 – *R v. Secretary of State, ex p. Gosforth Allotments and Gardens Association Ltd* (1996) 74 P&CR 93.

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

Using s.126, LGA 1972, a local council can 'appropriate' (i.e. begin or resolve to use the land for a different purpose) any land forming part of a common or fuel or field garden allotment, as long as it does not exceed 250 square yards. If the land to be 'appropriated' does exceed 250 square yards, the local council should get the Secretary of State or Welsh ministers' consent and use s.229 of the Town and Country Planning Act 1990, instead.

Allotments: Planning Permission

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 construction of a shed or other building on an allotment may amount to development and, unless they are erected by the local council itself, express planning permission may be needed. Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (SI 2015 No 596), or, in Wales, the Town and Country Planning (General Permitted Development) Order 1995 (SI 1995 No 418), certain minor operations are allowed without the need for a planning application.

Should a tenant erect a shed or other building on an allotment without having obtained any necessary 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, subject to a right of appeal against the notice to the Secretary of State or Welsh Ministers. The local council as the landowner 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. In practice, most planning authorities simply ignore small sheds on council allotments, but that laxity cannot be relied on.