
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 457

**ALLOTMENTS
COMMUNITY EMPOWERMENT**

The Allotments (Compensation) (Scotland) Regulations 2017

Made - - - - - *19th December 2017*
Laid before the Scottish
Parliament - - - - - *21st December 2017*
Coming into force - - - - - *1st April 2018*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 133(4) and (5), 134(4) and (5) and 135(3) and (4) of the Community Empowerment (Scotland) Act 2015⁽¹⁾ and all other powers enabling them to do so.

In accordance with sections 133(6), 134(6) and 135(5) of that Act the Scottish Ministers have consulted with local authorities and other persons appearing to the Scottish Ministers to have an interest.

PART 1

General

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Allotments (Compensation) (Scotland) Regulations 2017 and come into force on 1st April 2018.

(2) In these Regulations—

“the Act” means the Community Empowerment (Scotland) Act 2015;

“applicant” means the tenant mentioned in section 133(1)(b) or, as the case may be, section 135(1)(b) of the Act;

“the authority” means the local authority mentioned in, as the case may be, section 133(2), 134(1)(b), or 135(2) of the Act;

“deterioration notice” means a notice given under regulation 5(b);

“the lease” means—

- (a) in Part 2, the lease mentioned in section 133(1)(a) of the Act;
 - (b) in Part 3, the lease mentioned in section 134(1)(a) of the Act; and
 - (c) in Part 4, the lease of the allotment mentioned in section 135(1)(a) of the Act;
- “regulation 2(1) notice of claim” means a notice given under regulation 2(1) claiming compensation under section 133(2) of the Act;
- “regulation 10(1) notice of claim” means a notice given under regulation 10(1) claiming compensation under section 135(2) of the Act; and

any reference to writing includes an electronic communication within the meaning of section 15(1) (general interpretation) of the Electronic Communications Act 2000(2).

PART 2

Compensation for disturbance

Regulation 2(1) notice of claim

2.—(1) An applicant who considers that the authority is liable to compensate him or her under section 133(2) of the Act must give a regulation 2(1) notice of claim to the authority.

(2) The regulation 2(1) notice of claim must be—

- (a) in writing;
- (b) signed by the applicant; and
- (c) given to the authority within 28 days beginning with the date of termination of the lease.

(3) The regulation 2(1) notice of claim must include or be accompanied by the following information and evidence:—

- (a) the applicant’s full name;
- (b) the applicant’s address;
- (c) the allotment site and the location of the allotment which was the subject of the lease within the site;
- (d) the date of termination of the lease;
- (e) a statement of—
 - (i) the damage caused by disturbance of the enjoyment of the allotment as a result of the termination of the lease; and
 - (ii) the amount of compensation claimed in respect of that damage including, in relation to any item mentioned in section 132(2) of the Act, the costs mentioned in paragraph (4); and
- (f) subject to paragraph (5), photographs taken no earlier than 28 days before the date of termination of the lease, receipts, quotations or other evidence as to the matters mentioned in sub-paragraph (e).

(4) The costs mentioned in this paragraph are—

- (a) the removal and relocation of the item; or
- (b) the replacement of the item, where—
 - (i) the removal and relocation is not reasonably practicable; and

(ii) the item is not a crop.

(5) Where the damage mentioned in paragraph (3)(e)(i) includes the destruction of livestock (including poultry), the evidence provided under paragraph (3)(f) must show that the destruction was necessary.

Consideration of regulation 2(1) notice of claim

3.—(1) Within 28 days beginning with the date on which the authority receives a regulation 2(1) notice of claim, the authority must decide whether or not it has received sufficient information and evidence under regulation 2(3) to enable it to determine the matters mentioned in paragraph (2).

(2) The matters mentioned in this paragraph are—

- (a) whether the authority is or is not liable to pay compensation to the applicant under section 133(2) of the Act; and
- (b) if it is liable—
 - (i) whether or not the lease makes provision about the procedure to be followed in assessing the amount of compensation which the authority is liable to pay under section 133(2) of the Act; and
 - (ii) the amount of compensation the authority is liable to pay under section 133(2) of the Act in cases where the lease does not make such provision.

(3) If the authority decides under paragraph (1) that it has not received sufficient information or evidence under regulation 2(3) to allow it to determine the matters mentioned in paragraph (2) it must, within the period mentioned in paragraph (1), give the applicant written notice stating any further information or evidence that it requires.

(4) The applicant must give the authority any information or evidence stated in the notice mentioned in paragraph (3) within—

- (a) 28 days beginning with the date on which the applicant receives the notice; or
- (b) such longer period as agreed between the authority and the applicant in writing.

Authority's decision

4.—(1) For the purposes of paragraph (2) the relevant date is the day after the day on which—

- (a) the period mentioned in regulation 3(1) expires; or
- (b) where regulation 3(3) applies, the period mentioned in regulation 3(4) expires.

(2) Within 28 days beginning with the relevant date the authority must—

- (a) determine the matters mentioned in regulation 3(2)(a) and, if applicable, (b); and
- (b) take the steps mentioned in paragraph (5), (6) or (7), as applicable.

(3) The determination by the authority under paragraph (2)(a) must take account of—

- (a) the information and evidence included in or accompanying the regulation 2(1) notice of claim;
- (b) any information and evidence given to the authority under regulation 3(4);
- (c) where the lease makes provision about the procedure to be followed in assessing the amount of compensation for which the authority is liable, that procedure; and
- (d) the minimum amount of compensation payable under section 133(3) of the Act.

(4) Where the authority has given notice under regulation 3(3) and it has not received the information or evidence stated in that notice within the period mentioned in regulation 3(4), the

authority must determine under paragraph (2)(a) that it is not liable to pay compensation under section 133(2) of the Act.

(5) If the authority determines that it is liable to pay compensation under section 133(2) of the Act of the amount stated in the regulation 2(1) notice of claim, it must—

- (a) give written notice to the applicant accepting the claim; and
- (b) pay the applicant the amount of compensation stated in the regulation 2(1) notice of claim within 30 days beginning with the date on which the written notice is given under subparagraph (a).

(6) If the authority determines that it is liable to pay compensation under section 133(2) of the Act of a lesser amount than that stated in the regulation 2(1) notice of claim, it must—

- (a) give written notice to the applicant stating—
 - (i) the amount of compensation which the authority is liable to pay under section 133(2) of the Act; and
 - (ii) the reasons for its determination; and
- (b) pay the applicant the amount of compensation stated in the written notice given under subparagraph (a) within 30 days beginning with the date on which the written notice is given.

(7) If the authority determines that it is not liable to pay compensation under section 133(2) of the Act, it must give written notice to the applicant—

- (a) refusing the claim; and
- (b) stating the reasons for its decision.

(8) A notice under paragraph (6) or (7) must contain particulars of the applicant's right to appeal a decision of the authority under section 133(7) of the Act.

(9) The amount of compensation stated in the notice given under paragraph (5) or (6) is recoverable as a civil debt.

PART 3

Compensation for deterioration

Assessment of deterioration

5. Where it appears to the authority that a tenant may be liable to pay compensation for the deterioration of an allotment under section 134(2) of the Act, the authority must—

- (a) carry out an inspection of the allotment to which the lease relates within 10 days beginning with the date of expiry or termination of the lease; and
- (b) where following that inspection it appears to the authority that—
 - (i) the allotment has deteriorated during the tenant's lease; and
 - (ii) the deterioration was caused by the fault or negligence of the tenant,

give a deterioration notice to the tenant within 28 days beginning with the date of expiry or termination of the lease.

Deterioration notice

6.—(1) The deterioration notice must be—

- (a) in writing; and

- (b) signed by the authority.
- (2) The deterioration notice must include or be accompanied by the following information and evidence:—
 - (a) the tenant’s full name;
 - (b) the tenant’s address;
 - (c) the allotment site and the location of the allotment which is the subject of the lease within the site;
 - (d) the date of the inspection mentioned in regulation 5(a);
 - (e) the date of expiry or termination of the lease;
 - (f) the reasons it appears to the authority that—
 - (i) the allotment has deteriorated during the tenant’s lease; and
 - (ii) the deterioration was caused by the fault or negligence of the tenant;
 - (g) a description of the deterioration of the allotment which it appears to the authority has taken place during the tenant’s lease;
 - (h) the cost of remedying the deterioration;
 - (i) photographs, receipts, quotations or other evidence as to the matters mentioned in sub-paragraphs (f), (g) and (h);
 - (j) a statement of the amount of compensation which the tenant is liable to pay under section 134(2) of the Act, based on the matters mentioned in paragraph (3); and
 - (k) particulars of the tenant’s right to make representations under regulation 7.
- (3) The matters mentioned in this paragraph are—
 - (a) the particulars mentioned in paragraph (2)(h) and (i); or
 - (b) where the lease makes provision about the procedure to be followed in assessing the amount of compensation for which the tenant is liable, that procedure.

Representations by tenant

7. On receipt of a deterioration notice the tenant may, within 28 days beginning with the date on which the notice is given, make oral or written representations to the authority in relation to any matter mentioned in regulation 6(2)(a) to (j).

Authority’s decision

- 8.—(1) The authority must, within 28 days beginning with the expiry of the period mentioned in regulation 7, determine—
- (a) whether or not—
 - (i) the allotment has deteriorated during the tenant’s lease; and
 - (ii) the deterioration was caused by the fault or negligence of the tenant; and
 - (b) where the determination under sub-paragraph (a) is in the affirmative, the amount of compensation which the tenant is liable to pay under section 134(2) of the Act, based on the matters mentioned in regulation 6(3).
- (2) The authority’s determination under paragraph (1) must take account of any representations made by the tenant under regulation 7.
- (3) The authority must, within 28 days beginning with the expiry of the period mentioned in regulation 7, give written notice to the tenant stating—

- (a) the authority's determination under paragraph (1);
- (b) the amount of compensation which the tenant is liable to pay under section 134(2) of the Act;
- (c) the reasons for the authority's determination; and
- (d) particulars of the tenant's right to appeal a decision of the authority under section 134(7) of the Act.

Payment of compensation

9.—(1) Subject to any appeal by the tenant under section 134(7) of the Act, the tenant must pay the amount of compensation mentioned in the written notice given under regulation 8(3)—

- (a) within 3 months beginning with—
 - (i) the date on which that written notice is given; or
 - (ii) where the tenant appeals under section 134(7) of the Act, the date of determination of the appeal (if the appeal is not upheld); or
- (b) within such longer period as is agreed between the authority and the tenant in writing.

(2) The amount of compensation stated in the notice given under regulation 8(3) is recoverable as a civil debt.

PART 4

Compensation for loss of crops

Regulation 10(1) notice of claim

10.—(1) An applicant who considers that the authority is liable to compensate him or her under section 135(2) of the Act must give a regulation 10(1) notice of claim to the authority.

(2) The regulation 10(1) notice of claim must be—

- (a) in writing;
- (b) signed by the applicant; and
- (c) given to the authority within 28 days beginning with the date the allotment is resumed.

(3) The regulation 10(1) notice of claim must include or be accompanied by the following information and evidence:—

- (a) the applicant's full name;
- (b) the applicant's address;
- (c) the allotment site and the location of the allotment which has been resumed within the site;
- (d) a statement of—
 - (i) the crops lost as a result of the resumption; and
 - (ii) the amount of compensation claimed in respect of the crops so lost, based on the costs directly attributable to the lawful buying and growing of the crop; and
- (e) photographs taken no earlier than 28 days before the date of resumption, receipts, or other evidence as to the matters mentioned in sub-paragraph (d).

Consideration of regulation 10(1) notice of claim

11.—(1) Within 28 days beginning with the date on which the authority receives the regulation 10(1) notice of a claim, the authority must decide whether or not it has received sufficient information and evidence under regulation 10(3) to enable it to determine the matters mentioned in paragraph (2).

(2) The matters mentioned in this paragraph are—

- (a) whether the authority is or is not liable to pay compensation to the applicant under section 135(2) of the Act; and
- (b) if it is so liable—
 - (i) whether or not the lease makes provision about the procedure to be followed in assessing the amount of compensation which the authority is liable to pay under section 135(2) of the Act; and
 - (ii) the amount of compensation the authority is liable to pay under section 135(2) of the Act in cases where the lease does not make such provision.

(3) If the authority decides under paragraph (1) that it has not received sufficient information or evidence under regulation 10(3) to allow it to determine the matters mentioned in paragraph (2) it must, within the period mentioned in paragraph (1), give the applicant written notice stating any further information or evidence that it requires.

(4) The applicant must give the authority any information or evidence stated in the notice mentioned in paragraph (3) within—

- (a) 28 days beginning with the date on which the applicant receives the notice; or
- (b) such longer period as agreed between the authority and the applicant in writing.

Authority's decision

12.—(1) For the purposes of paragraph (2) the relevant date is the day after the day on which—

- (a) the period mentioned in regulation 11(1) expires; or
- (b) where regulation 11(3) applies, the period mentioned in regulation 11(4) expires.

(2) Within 28 days beginning with the relevant date the authority must—

- (a) determine the matters mentioned in regulation 11(2)(a) and, if applicable, (b); and
- (b) take the steps mentioned in paragraph (5), (6) or (7), as applicable.

(3) The determination by the authority under paragraph (2)(a) must take account of—

- (a) the information and evidence included in or accompanying the regulation 10(1) notice of claim; and
- (b) any information and evidence given to the authority under regulation 11(4);
- (c) where the lease makes provision about the procedure to be followed in assessing the amount of compensation for which the authority is liable, that procedure.

(4) Where the authority has given notice under regulation 11(3) and it has not received the information or evidence stated in that notice within the period mentioned in regulation 11(4), the authority must determine under paragraph (2)(a) that it is not liable to pay compensation under section 135(2) of the Act.

(5) If the authority determines that it is liable to pay compensation under section 135(2) of the Act of the amount stated in the regulation 10(1) notice of claim, it must—

- (a) give written notice to the applicant accepting the claim; and

- (b) pay the applicant the amount of compensation stated in the regulation 10(1) notice of claim within 30 days beginning with the date on which the written notice is given under subparagraph (a).
- (6) If the authority determines that it is liable to pay compensation under section 135(2) of the Act of a lesser amount than that stated in the regulation 10(1) notice of claim, it must—
 - (a) give written notice to the applicant stating—
 - (i) the amount of compensation the authority is liable to pay under section 135(2) of the Act; and
 - (ii) the reasons for its determination; and
 - (b) pay the applicant the amount of compensation stated in the written notice given under subparagraph (a) within 30 days beginning with the date on which the written notice is given.
- (7) If the authority determines that it is not liable to pay compensation under section 135(2) of the Act, it must give written notice to the applicant—
 - (a) refusing the claim; and
 - (b) stating the reasons for its decision.
- (8) A notice under paragraph (6) or (7) must contain particulars of the applicant's right to appeal a decision of the authority under section 135(6) of the Act.
- (9) The amount of compensation stated in a notice given under paragraph (5) or (6) is recoverable as a civil debt.

St Andrew's House,
Edinburgh
19th December 2017

ROSEANNA CUNNINGHAM
A member of the Scottish Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under sections 133(4) and (5), 134(4) and (5) and 135(3) and (4) of the Community Empowerment (Scotland) Act 2015 (“the Act”). These provisions of the Act place duties upon Scottish Ministers to make, by regulations, further provision for or in connection with compensation relating to allotments.

Part 2: Compensation for disturbance

Regulation 2(1) and (2) provides that an applicant who considers that an authority is liable to compensate him or her under section 133(2) of the Act for damage caused by the disturbance of the enjoyment of the allotment as a result of termination of the lease must, within 28 days beginning with the date of termination, give a regulation 2(1) notice of claim to the authority. The information and evidence that must be included in or accompany the regulation 2(1) notice of claim are set out in paragraphs (3), (4) and (5).

Regulation 3(1) provides that when an authority receives a regulation 2(1) notice of claim, it must within 28 days decide if it has sufficient information and evidence to enable it determine the matters in paragraph (2). If the authority decides it does not have enough information and evidence it must request the further matters it requires from the applicant (paragraph (3)), which the applicant must provide within the timescale in paragraph (4).

Regulation 4(2) sets out the determination the authority must make in relation to the claim and paragraphs (3) and (4) set out the matters it must take into account in making that determination. Paragraphs (5) to (7) set out the steps the authority must then take in relation to the claim.

Part 3: Compensation for deterioration

Regulation 5 provides that where it appears to the authority that a tenant may be liable to pay compensation for the deterioration of an allotment under section 134(2) of the Act, the authority must:- (a) carry out an inspection of the allotment within 10 days of the lease ending; and (b) if it appears that the allotment has deteriorated during the tenant’s lease, and the deterioration was caused by the fault or negligence of the tenant, give the tenant a deterioration notice within 28 days of the lease ending.

Regulation 6(1) sets out the requirements of the deterioration notice. Regulation 7 provides that when a tenant receives a deterioration notice, that tenant may, within 28 days, make representations to the authority about any of the matters contained in the deterioration notice.

Regulation 8(1) sets out the determination the authority must make. Paragraph (2) provides that this must take account of any representations made under regulation 7. The authority must give the tenant written notice of its determination (paragraph (3)). The determination must take account of any representations made under regulation 7 (paragraph (2)).

Regulation 9(1) sets out the arrangements for payment of any compensation due under section 134(2) of the Act.

Part 4: Compensation for loss of crops

Regulation 10(1) and (2) provides that an applicant who considers that an authority is liable to compensate him or her under section 135(2) of the Act for loss of crops where the lease of the

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allotment is resumed must, within 28 days beginning with the date on which the allotment is resumed, give a regulation 10(1) notice of claim to the authority. The information and evidence that must be included in or accompany the regulation 10(1) notice of claim are set out in paragraph 3.

Regulation 11(1) provides that when an authority receives a regulation 10(1) notice of claim, it must within 28 days decide if it has sufficient information and evidence to enable it to decide the matters in paragraph (2). If the authority decides it does not have enough information and evidence it must request the further matters it requires from the applicant (paragraph (3)), which the applicant must provide within the timescale in paragraph (4).

Regulation 12(2) sets out the determination the authority must make in relation to the claim and paragraphs (3) and (4) set out the matters it must take into account in making that determination. Paragraphs (5) to (7) set out the steps the authority must then take in relation to the claim.

No business and regulatory impact assessment has been prepared for these Regulations as no impact on business, charities or voluntary bodies is foreseen.