Dear Mr Cullum

Local Government and Regeneration Committee - Queries raised during consideration of the Community Empowerment (Scotland) Bill at Stage 2 – Allotments (Part 7)

On the 18th March the Local Government and Regeneration Committee scrutinised the above Bill (Stage 2). During the debate the Committee raised a number of queries on part 7 (allotments) of the Bill. The Committee asked whether:

1. The provisions in the Bill relating to disability included temporary or intermittent disability;
2. Buildings transferred to Arms length External Organisations (ALEOs), or otherwise transferred outwith local authority (LA) control, were included in the scope of the provisions relating to the, “Use of local authority premises for meetings;”
3. The definition of, “land,” included water and so, for example, would a river which changed course over time become part of an allotment or allotment site;
4. The provisions prevented the acquisition of allotment land for; the purposes of access rights, use by the Ministry of Defence; or other United Kingdom bodies that have rights to acquire land?

Responses to each of these queries are provided below. My sincere apologies for the delay in forwarding this response to the Committee.

Disability – temporary or intermittent

Section 70 of the Bill (as amended at Stage 2) allows a disabled person making a request for an allotment to include information about the person’s needs on the grounds of disability. Section 79 (as amended at Stage 2) requires annual allotment reports produced by a local authority to include the; number of allotments accessible by a disabled person, number of allotments adjusted to meet the needs of a disabled person, and number of persons on the waiting list who have provided information about their needs on grounds of disability.

Section 93 of the Bill provides that a, “disabled person,” means a person who is disabled for the purposes of the Equality Act 2010. A, “disabled person,” under the 2010 Act is defined as a person who has a disability, which is further defined as where (a) a person has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on the person’s ability to carry out normal day-to-day activities (Section 6). The effect of an impairment is long-term if (a) it has lasted for at least 12 months, (b) it is
likely to last for at least 12 months, or (c) it is likely to last for the rest of the life of the person affected. Furthermore, if an impairment ceases to have a substantial adverse effect on a person’s ability to carry out normal day-to-day activities, it is to be treated as continuing to have that effect if that effect is likely to recur (Schedule 1, paragraph 2).

Accordingly, as the Bill stands references to disability mean impairments with a substantial effect that have lasted at least 12 months and those that are likely to last that long, so people would not necessarily have to wait until they had been disabled for 12 months before the relevant provisions in the Bill would apply. There is scope for impairments with an intermittently substantial effect to be treated as continuing to have a substantial adverse effect if they stop doing so but are likely to recur.

To better align the definition of a disabled person within the Bill, with that of the 2010 Act, the Scottish Government intends to bring forward a minor drafting amendment to clarify that a, “disabled person,” means a person who is a disabled person for the purposes of the Equality Act 2010.

Arms length External Organisations (ALEOs)
Section 82A of the Bill (as introduced at Stage 2) allows requests to be made for the use of premises for allotment site meetings. The premises are schools (public or grant-aided) and other premises within the area of the authority which are maintained by the authority.

The Committee highlighted cases where responsibility for maintaining and letting community facilities or school premises for community activities has been passed to an ALEO. ALEOs are usually set up as companies, trusts or non-profit making organisations which are independent from local authorities, but are contracted to deliver services on behalf of the authority. The Scottish Government intends to expand the scope of Section 82(A) to include premises used to deliver local authority services but which are maintained under this type of arrangement to address the concerns raised by the Committee.

Definition of land - water
During the debate at Stage 2 the Minister indicated that the legal definition of land includes water. For clarification, the Interpretation and Legislative Reform (Scotland) Act 2010, Schedule 1, paragraph 1 (as introduced by Section 25(1)), provides that, “land,” includes buildings and other structures, land covered with water, and any right or interest in or over land. Accordingly, water is included within the meaning of land in the definitions of, “allotment,” and, “allotment site,” at Sections 68 and 69 of the Bill.

Should, for instance, a river change course over time and thereby encroach upon an allotment site, that would not take the allotment or site concerned outwith the definitions at Sections 68 and 69. The provisions of Part 7 of the Bill would therefore continue to apply to that area of land.

Acquisition of allotment land – access, Ministry of Defence use etc
Sections 75 and 76 of the Bill prevent disposal of allotments and allotment sites by local authorities without consent of the Scottish Ministers. That does not however exclude allotment land from the scope of powers for compulsory acquisition or use (including the relevant authorisation and compensation provisions) where these exist elsewhere in legislation eg the Opencast Coal Act 1958, which is amended at Schedule 4 of the Bill in light of Part 7, makes provision for compulsory rights orders for temporary occupation and use of land for working coal.
Furthermore, the provisions of the Bill would not prevent the Ministry of Defence or any other UK body from resuming, in accordance with the terms of the lease, land it had let to a local authority which the local authority used as an allotment site. In this case, Section 85 of the Bill would apply. The local authority, on receiving notice of termination of its lease of the land, would be required to notify the allotment tenants (or any allotment association representing them) that their leases ended when the local authority’s lease ended.

I hope the information provided above will be useful for the Committee.

Yours sincerely

Dr Amanda Fox