



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Local Government and Communities Committee

**Wednesday 24 January 2018**

**Session 5**



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**CONTENTS**

	<b>Col.</b>
<b>SUBORDINATE LEGISLATION</b> .....	1
Community Empowerment (Scotland) Act 2015 (Supplementary and Consequential Provisions) Order 2018 [Draft].....	1
Allotments (Compensation) (Scotland) Regulations 2017 (SSI 2017/457) .....	7
<b>PETITION</b> .....	9
Freedom of Information (Scotland) Act 2002 (Housing Associations) (PE1539) .....	9

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**LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**  
**3<sup>rd</sup> Meeting 2018, Session 5**

**CONVENER**

\*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

**DEPUTY CONVENER**

\*Monica Lennon (Central Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Kenneth Gibson (Cunninghame North) (SNP)  
\*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)  
\*Graham Simpson (Central Scotland) (Con)  
\*Alexander Stewart (Mid Scotland and Fife) (Con)  
\*Andy Wightman (Lothian) (Green)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Judith Brown (Scottish Government)  
Roseanna Cunningham (Cabinet Secretary for Environment, Climate Change and Land Reform)  
Robin MacLean (Scottish Government)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Local Government and Communities Committee

Wednesday 24 January 2018

[The Convener opened the meeting at 09:31]

### Subordinate Legislation

#### Community Empowerment (Scotland) Act 2015 (Supplementary and Consequential Provisions) Order 2018 [Draft]

**The Deputy Convener (Monica Lennon):** Good morning, everyone, and welcome to the third meeting in 2018 of the Local Government and Communities Committee. I am Monica Lennon, the deputy convener. I am not Bob Doris, our convener, who has been caught up in some travel disruption this morning. He might join us later, so we have kept a place for him. I remind everyone to turn off their mobile phones or to keep them on silent. As committee meeting papers are provided in digital format, tablets might be used by members during the meeting. We have received no apologies other than those of Bob Doris, who might still join us.

We move to agenda item 1. I welcome the Cabinet Secretary for Environment, Climate Change and Land Reform, Roseanna Cunningham, and her officials. Robin MacLean is a policy officer in the Scottish Government's food, drink and trade division and Judith Brown is a Scottish Government solicitor. The committee will take evidence on a statutory instrument that provides regulations for allotments under the Community Empowerment (Scotland) Act 2015. The instrument is laid under affirmative procedure, which means that Parliament must approve it before the provisions can come into force. Following the evidence session, the committee will be invited to consider a motion to approve the instrument.

I invite the cabinet secretary to make a short opening statement.

**The Cabinet Secretary for Environment, Climate Change and Land Reform (Roseanna Cunningham):** Thank you, convener. It makes a change to be sitting in front of a different set of committee members' faces to those that I normally sit in front of.

This is a fairly technical instrument, as I am sure members have realised. The draft order forms part of a package of secondary legislation that is laid before Parliament to implement part 9 of the

Community Empowerment (Scotland) Act 2015. Part 9 is the part of the act that updates and simplifies the legislation on allotments.

The intention of the draft order is primarily to avoid misunderstanding of section 115 of the 2015 act once it comes into force, as it will on 1 April 2018, and we are clarifying Parliament's intention in that respect. The draft order will modify section 115 to clarify that local authorities must ensure that their first allotment site regulations to be made under that section cover all allotment sites in the authority's area.

The order will also make modifications to section 116 of the 2015 act to clarify when a local authority's regulations are made and come into force.

Finally, the draft order will repeal spent provisions of the Land Settlement (Facilities) Act 1919.

I will give a little bit more detail. The clarification was needed to ensure that everyone understands unambiguously that all allotment sites require to be covered when the first regulations are made by each authority.

In respect of modifications, the intention is that, for certainty and consistency, each authority's first set of regulations is to be in force within two years of the commencement of section 115. Accordingly, article 2(3) of the order makes the modifications to section 116 that are necessary to clarify that.

Lastly, the order will repeal certain provisions of the Land Settlement (Facilities) Act 1919 relating to allotments, principally because those provisions are now out of date and are no longer required, as a consequence of the 2015 act.

That is a very brief overview. I am happy to answer any questions, as are my officials.

**Andy Wightman (Lothian) (Green):** You said that it was Parliament's intention that local authorities should make regulations about all the allotment sites. That was before I became an MSP, so can you give me some evidence for that? Are you clear that that was Parliament's intention and that the order is just clarifying it?

**Roseanna Cunningham:** Yes. The slight concern was that some people might interpret the intention as applying to allotment sites from this period on rather than to all allotment sites. I should say that that small issue was picked up by our side: the order is really to try to ensure that there is no ambiguity.

**Andy Wightman:** Given that you are using powers under section 143 of the 2015 act, which allows you to modify any enactment of primary legislation, which is what you are doing—you are,

in effect, making new law—why was no public consultation carried out?

**Roseanna Cunningham:** We have been in touch with local authorities about the matter. On 1 November 2017, we wrote to them all explaining the intention to introduce modifications to part 9 of the 2015 act as part of the implementing legislation. There were no responses at all to that correspondence, so clearly people did not see it as a huge issue.

**Andy Wightman:** So, you have done some consultation.

**Roseanna Cunningham:** Yes—it was obviously not a formal consultation, but we have been in touch with local authorities to explain what we intend to do.

**Andy Wightman:** That is very helpful.

One of the provisions that will be repealed is section 22 of the 1919 act. You said that it is spent. I am just wondering why that provision is spent. It is a power to appropriate land to provide allotments, which seems to me to be a useful power to keep on the statute book.

**Roseanna Cunningham:** Like Andy Wightman, I was not involved in the passing of the 2015 act, and I certainly was not involved in the 1919 legislation—although sometimes I feel as though I could have been. Perhaps the officials can respond to that.

**Judith Brown (Scottish Government):** Perhaps I can help. The overall approach of part 9 was to repeal all the existing body of allotments legislation and to start afresh with the part 9 provisions. It was identified late in the process that that was a provision that had simply been missed, so for consistency, we are repealing it. It is similar to other provisions, for instance in the Land Settlement (Scotland) Act 1919, and our understanding is that it is no longer relevant. Part 9 will replace all the existing allotments legislation. It is really just for consistency and a tidying-up exercise for the statute book.

**Andy Wightman:** For the record, I recall that in introducing new legislation for allotments in the 2015 act, provision was not made to retain the 1919 powers for local authorities to acquire land by compulsory purchase. That was dropped. That seems to me to be something that should not have been done, but that is water under the bridge. I am nervous about repealing a provision when I have yet to hear the evidence as to why it is being done. Section 22 of the Land Settlement (Facilities) Act 1919 is a power for

“a borough, urban district, or parish”

—the modern local authorities now, obviously—

“in a case where no power of appropriation is otherwise provided ... to ... appropriate for the purpose of allotments any land held by the council”

or to

“appropriate for other purposes of the council land acquired by the council for allotments.”

In effect, that means that land that the council owns that might suffer from some restrictions—it may have been bought under another enactment—can be appropriated for use as allotments. That seems to be appropriate.

Although they were not specific to allotments, we have had problems in relation to appropriation of land. As you will recall, Portobello high school was built on common good land, which the Local Government (Scotland) Act 1973 said could not be appropriated, so we had to pass legislation to allow that. I am very nervous about passing legislation when I am not clear why it is being done. You say that it is for consistency, but that does not seem to me to be sufficient evidence.

**Roseanna Cunningham:** I suspect that the approach that has been taken is, in effect, to systematise all the legislation that relates to allotments. In those circumstances, the argument that you are making is that something equivalent to that provision could have been included, if we were to revoke previous provisions. However, it is my understanding that that was not a discussion or argument that was had at the time. I was not involved in the progress of the community empowerment legislation, so I cannot speak from experience. Perhaps Robin MacLean can remember whether there was an active discussion at that time.

**Robin MacLean (Scottish Government):** Yes, there was. It was felt that there was a need for more evidence on local authorities having used that power to acquire land for allotments. We were not going to do anything with compulsory purchase until we had that analysis. The issue did come up, but we need evidence before we can take something forward, perhaps with new legislation or by putting it in a current bill.

**Roseanna Cunningham:** There are, of course, other provisions for communities to acquire land. That is all being brought through from community empowerment legislation.

**Judith Brown:** There is similar provision in section 73 of the Local Government (Scotland) Act 1973. I am afraid that I do not have a copy of that act with me. Sections provide a protection in that ministerial consent is required for a change of use of allotment sites, and an alternative allotment should be offered. Section 22 of the 1919 act did not have that additional protection. In the light of the existing power in the 1973 act and the additional protections under part 9 of the 2015 act,

it was felt that that provision was no longer required.

**Andy Wightman:** In which section of the 1973 act is that?

**Judith Brown:** It is in section 73 of the 1973 act. I am afraid that I do not have a copy of that section with me. It was along similar lines—to appropriate land for allotments.

**Andy Wightman:** Are you saying that section 73 of the 1973 act contains the same—or updated—provisions as section 22 of the 1919 act?

**Judith Brown:** They are not identical, but there are similar provisions on the power to appropriate lands—yes.

**The Deputy Convener:** Are there any more questions from members?

**Graham Simpson (Central Scotland) (Con):** When you wrote to councils, did you ask for a response?

**Robin MacLean:** I can share a draft of the letter to councils with the committee. We certainly did not tell them not to respond to us. I cannot remember the exact wording.

**Roseanna Cunningham:** They would certainly be advised of our intention.

**Graham Simpson:** There is a difference between writing to someone and telling them what you plan to do, and writing to someone to ask what they think about it. The latter would be a consultation, but the former is not.

**Robin MacLean:** The Scottish Government has a very good working relationship with the local authorities. They know that they have a direct line to us if they need to ask any questions or are not happy with proposals that have been made. As I said, I do not have a draft in front of me, but if local authorities had an issue with what was being proposed we would certainly have taken that on board.

**Graham Simpson:** Okay. Can I just be clear on the point that Mr Wightman raised? If we are to approve the draft regulations today, will the effect be that councils will not be able to appropriate for, or change the use of land that they own to, allotment sites?

09:45

**Judith Brown:** I will turn to the appropriate section—I beg your pardon. Is the concern that councils would not be able to change the use of land that currently has allotments?

**Graham Simpson:** No. I think that Mr Wightman's line of questioning was around the

power for councils to change use of land that they currently own to be used for allotments. My concern is that they will not have that power if we pass the order. I seek clarity about that.

**Judith Brown:** There is no prohibition in that regard. In fact, local authorities have a duty and are encouraged to find ways of creating more allotments. There is nothing in part 9 of the 2015 act that would prevent their doing that.

**Andy Wightman:** The benefit of having wi-fi here is that we can look at section 73 of the Local Government (Scotland) Act 1973. Section 73(1) states:

“Subject to ... the Town and Country Planning Appropriation (Scotland) Act 1959 and to the following provisions ... a local authority may appropriate for the purpose of any function, whether statutory or otherwise, land vested in them for the purpose of any other such function.”

Section 73(3) further states:

“The land to which subsection (2) ... applies is ... held for use as allotments.”

I am content with that.

However, maybe you should take advice on policy notes, because it would help if some of the rationale for appeals was given. I say that specifically because the order is secondary legislation that will modify an enactment. The order will modify statutory provision, so it is not a regulation but is changing an act and repealing other acts. It concerns me that, although such things are sometimes done with the best of intentions—I have no doubt about that—if there is limited consultation, Parliament does not have time to scrutinise or committees find it difficult to understand the rationale, and things can easily slip by.

**The Deputy Convener:** I thank members for that. That was all very interesting, but I think that there are still a couple of points that need clarification. We all know that there is a growing interest in and demand for allotments, so I found it surprising to hear that local authorities did not reply at all to the Government's letter. Perhaps how that letter was framed is an issue to revisit. In addition, in one of—I think—Judith Brown's answers to questions there was a point about ministerial approval for change of land use. Did I pick that up correctly?

**Judith Brown:** If local authorities wish to change allotment sites to other uses, they cannot dispose or change the use of those sites unless certain conditions are met, which includes getting Scottish ministers' consent to the disposal or change of use. It is an added protection to keep allotment sites in place.

**The Deputy Convener:** Would that happen after the normal statutory planning process in the local authority?

**Judith Brown:** Yes—it would be in addition to that process.

**The Deputy Convener:** Thank you for that clarification. If there are no further questions from members, we will move on to agenda item 2, which is for the committee to consider formally motion S5M-09989. I am sorry. Forgive me, but I should have invited the cabinet secretary to respond to the debate.

**Roseanna Cunningham:** I do not need to say a huge amount. Andy Wightman's point about clarification around the rationale was well made and I am sure that the officials have listened to that. I can ask the officials to forward to the committee a copy of the letter that was sent to the local authorities so that members can content themselves that that was done in a proper manner. I do not think that there is anything else that I need to say.

**The Deputy Convener:** Thank you, cabinet secretary, for those helpful comments. We can now move on to agenda item 2. Our convener has not arrived yet to help me out, so bear with me. At this point in the meeting, the committee will formally consider motion S5M-09989, which calls for the committee to recommend approval of the draft Community Empowerment (Scotland) Act 2015 (Supplementary and Consequential Provisions) Order 2018. I invite the cabinet secretary to speak to and move the motion.

**Roseanna Cunningham:** I am not sure that I am required to speak at this point, given the conversation that we have already had, but I am certainly happy to move the motion.

I move,

That the Local Government and Communities Committee recommends that the Community Empowerment (Scotland) Act 2015 (Supplementary and Consequential Provisions) Order 2018 [draft] be approved.

*Motion agreed to.*

**The Deputy Convener:** The committee will report on the outcome of the instrument shortly. I thank the cabinet secretary and her officials.

### **Allotments (Compensation) (Scotland) Regulations 2017 (SSI 2017/457)**

**The Deputy Convener:** We come to item 3. The committee will consider an instrument that is subject to negative procedure, the provisions of which will come into force unless Parliament agrees to a motion to annul it. No motion to annul has been lodged. I therefore invite members' comments on the instrument.

**Andy Wightman:** This is a negative instrument on which there has been a vast amount of consultation. I have a broad concern, which I think it is appropriate to raise. Instruments through which ministers use their powers to modify an enactment should be subject to super-affirmative procedure. We are seeing the power used increasingly to modify enactments; ministers could introduce an order to repeal an entire act if they like, and it would just come before a committee. Maybe we, or another committee, could consider that. My colleague Mr Simpson might want to have a wee think about it. However, I am content with the regulations.

**The Deputy Convener:** That is noted. Thank you.

Save for the points that have been made, which I am sure the officials will pick up, do members agree that we do not wish to make any recommendations on the instrument?

**Members** *indicated agreement.*



## Petition

### Freedom of Information (Scotland) Act 2002 (Housing Associations) (PE1539)

inform the committee's scrutiny, which I am sure we would welcome. We move into private session.

09:55

*Meeting continued in private until 13:02.*

09:52

**The Deputy Convener:** Petition PE1539, by Anne Booth, calls for housing associations to come under the Freedom of Information (Scotland) Act 2002. The petitions calls on the Scottish Government to make an order under section 5 of the act to make all housing associations subject to its provisions.

The committee previously considered the petition last year and determined that it would consider it again once the Scottish Government had responded to the consultation on extending FOI legislation to registered social landlords. The Scottish Government announced in December last year that it intends to proceed with proposals to extend FOI to RSLs and is now consulting on the terms of a draft order to bring that into effect. The consultation is due to run until March 2018. It will likely be this committee that will consider the order, which will be subject to affirmative procedure. I invite comments from committee members.

**Andy Wightman:** The petition was lodged on 17 October 2014, so we are more than three years into the process. I commend the petitioner for her diligence. It seems like the petition has ping-ponged around committees, the Government and the regulator. The petition calls on the Scottish Parliament to urge the Scottish Government to make an order under section 5 of the 2002 act in relation to housing associations. As the convener said, the Government has issued a consultation on such an order. There is therefore no longer any need for the committee or Parliament to urge the Government to do so. Obviously, the Government still has to make the order, but it is subject to consultation and we understand that it will come forward. I therefore see no reason to keep the petition open any longer.

**The Deputy Convener:** Thank you.

**Graham Simpson:** I agree with Andy Wightman. Despite the length of time that it has taken, the petitioner can be satisfied that she has achieved what she set out to do: the Government has responded. We will deal with the order when it comes before us. We should close the petition.

**The Deputy Convener:** We all agree. I echo the comments that have been made, particularly the tributes to Anne Booth, who has been very patient and diligent. We will close the petition. The committee can invite the petitioner to provide written evidence on the draft order once it is laid to



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