

THE HIGHLAND COUNCIL

PLANNING, ENVIRONMENT AND DEVELOPMENT COMMITTEE

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| Agenda Item | 16 |
| Report No | PED 41/13 |

15th May 2013

CONSULTATION ON THE LEGISLATIVE FRAMEWORK GOVERNING ALLOTMENTS

Report by Head of Policy and Performance

Summary

This paper summarises the Scottish Government's consultation on the legislative framework governing allotments and asks Members to consider the Council's draft response which is set out at Appendix 1.

1. Background

- 1.1 In its consultation on a proposed Community Empowerment and Renewal Bill (CERB), conducted in 2012, the Scottish Government included questions regarding possible changes to allotments legislation. This followed a commitment to strategically support allotments and community growing space in the National Food and Drink Policy – Recipe for Success, published in 2009. Following the CERB consultation, this is a further consultation seeking more detailed responses.
- 1.2 The Council's Programme includes a commitment (4.18) to "*ensure the provision of allotments and the maintenance of green spaces and public parks across the Highlands and encourage various schemes such as community growing*".
- 1.3 The Council's powers and obligations regarding the provision of allotments are defined in the Allotments (Scotland) Acts of 1892, 1922 and 1950 and the Land Settlement (Scotland) Act 1919. Included in these acts is a requirement on the Council to:
 - Consider any representations made by local residents regarding the provision of allotments;
 - Acquire any suitable land that may be available to be let as allotments where the Council concludes there is a demand for allotments.
- 1.4 The Council's Allotment Policy, established in 2009 and revised in 2012 can be accessed here: <http://www.highland.gov.uk/NR/rdonlyres/C71A8822-7DAC-4588-A749-2483EFBFEB70/0/AllotmentPolicyv2.pdf>.

2. Scope of the Consultation

2.1 The consultation is structured to reflect the following key areas raised during the consultation on the proposed CERB:

- Reviewing the definition of an allotment
- Reviewing the powers and duties of Local Authorities in relation to allotments
- Identifying any other areas of the legislation that may need to be updated or simplified

2.2 Definition of an allotment

There is no general definition of an allotment in the various acts. Rather, allotments are defined by reference to the area of land, the way in which the land is used, and the buildings that may be placed upon the land. There was a general consensus from the responses received to the CERB consultation that there was a need to review and revise the definition relating to allotments.

2.3 Powers and duties of Local Authorities

The feedback received to the CERB consultation proposed a number of potential, additional responsibilities for Local Authorities regarding the duty of providing allotments where there is a local, identified need. There were also comments indicating that it would be beneficial for the duties placed on Local Authorities to be more clearly defined. Three specific areas are being consulted on: the timeframe for provision of allotments once demand has been established; possible provisions for a minimum number of allotments according to population size; and strategic planning for allotments as part of a Local Authority's Open Space Strategy.

2.4 Updating and simplifying allotments legislation

The consultation also seeks other ways in which the legislation can be updated or simplified.

3. The Council's Response

3.1 A response to the consultation has been drafted and can be found at Appendix 1.

3.2 Definition of an allotment

Whilst Local Authorities have various duties regarding the provision of allotments, the definition of an allotment is not clear on whether allotments must be provided directly by Local Authorities or may also be provided by community groups and private landowners. The Council is seeking a definition which would include allotments provided by community groups with support from the Local Authority and also those provided privately. We are also seeking inclusion of community growing projects in the definition, in light of the similar aims regarding local food provision and the additional benefits from community-based provision.

3.3 Powers and duties of Local Authorities

In light of our views regarding the definition of an allotment in section 3.2 above, we feel that our duty to satisfy demand for allotments by purchasing or leasing land should be extended to include a Local Authority supporting other

organisations to provide allotments with the Local Authority retaining a duty to provide if no other organisation does.

- 3.4 Duties to provide allotments are limited in current legislation, where the local population is lower than 10,000, but the area within which that population is counted is not defined. We are seeking clarification of that, with a recommendation that the definition be based on time taken to travel between home and allotment. We are not seeking additional powers regarding allotments provision as the existing powers are considered to be adequate and effective.
- 3.5 If proposals are implemented to impose a time limit for provision of allotments once demand has been identified, the Council's view is that the total number of sites which must be provided within that time limit should itself be limited to 4. With a widely distributed population such as that of Highland, it is possible that otherwise we would be required to provide a large number of sites at the same time, with associated cost and capacity problems.
- 3.6 The Council has planning guidance in place to protect allotment sites in the development planning process and provide for new allotments in new residential developments. Our allotments policy commits us to finding land where there is demand for allotments. These measures are proving to be effective in increasing the number of allotments in Highland, so we do not support the need for a strategic plan relating to land use for food growing purposes.
- 3.7 Updating and simplifying allotments legislation
Apart from those issues already identified, there are no other updates that we feel are needed.

4. Implications

- 4.1 Resource implications - some of the proposals being consulted upon would have resource implications for the Council if taken forward and our responses include mitigation of those implications.
- 4.2 Legal implications – any new legislation would need to be reviewed for legal implications.
- 4.3 Climate change implications - allotments and some community gardens enable people and communities to reduce their carbon footprint by reducing food transport requirements and so impact positively on climate change. There are no new negative climate change implications arising from this consultation.
- 4.4 Equality implications – there are no equality implications arising from this consultation.
- 4.5 Risk implications – the risks associated with any new duties and powers would need to be reviewed when they are known.

5. Recommendation

5.1 Members are asked to agree:

- The draft response to the Government's consultation on the Legislative Framework Governing Allotments found at Appendix 1 of this report.

Designation: Head of Policy and Performance

Date: 29th April 2013

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Appendix 1 – Draft consultation response

CONSULTATION: THE LEGISLATIVE FRAMEWORK GOVERNING ALLOTMENTS



RESPONDENT INFORMATION FORM

Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

Organisation Name

The Highland Council

Title Mr Ms Mrs Miss Dr Other (please specify)

Tick as appropriate

Surname

Walker

Forename

Keith

2. Postal Address

Highland Council

Glenurquhart Road

Inverness

Postcode IV3 5NX

Phone 01463 702247

Email keith.walker@highland.gov.uk

3. Please indicate which category best describes your organisation (Tick one only)

| | |
|---|-------------------------------------|
| Executive Agencies and NDPBs | <input type="checkbox"/> |
| Local authority | <input checked="" type="checkbox"/> |
| NHS | <input type="checkbox"/> |
| Other statutory organisation | <input type="checkbox"/> |
| Representative body for private sector organisations | <input type="checkbox"/> |
| Representative body for third sector/equality organisations | <input type="checkbox"/> |
| Representative body for community organisations | <input type="checkbox"/> |
| Representative body for professionals | <input type="checkbox"/> |
| Private sector organisation | <input type="checkbox"/> |
| Third sector/equality organisation | <input type="checkbox"/> |
| Community group | <input type="checkbox"/> |
| Academic | <input type="checkbox"/> |
| Individual | <input type="checkbox"/> |
| Other – please state... | <input type="checkbox"/> |

4. Permissions - I am responding as...

Individual / **Group/Organisation**

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

(c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes

No

Thank you.

CONSULTATION: THE LEGISLATIVE FRAMEWORK GOVERNING ALLOTMENTS



CONSULTATION RESPONSE FORM

We are inviting written responses to this consultation paper. The consultation closes on **Friday 24th May 2013**. Please send your response with the completed 'Respondent Information Form' (please see pages 1 and 2 of this document) to: allotmentconsultation2013@scotland.gsi.gov.uk

The Definition of Allotment

Q1a. How should the term 'allotment' be defined?

The present definition (paraphrased) allows for land which is wholly or mainly cultivated by the occupier for the production of vegetable crops for consumption by the occupier and his/her family and is not let during the occupier's continuance in any office, appointment or employment or along with any dwelling house. This is a good basis, but any new definition of 'allotment' will need to be clear on whether such sites provided privately or by allotment associations on land leased from a Local Authority or a private landowner is considered to be an allotment. By including such land in the definition, the capacity to provide sufficient allotments to satisfy demand would be greatly enhanced.

Consideration should also be given to the inclusion of community growing projects in the definition of allotments, where these projects are growing food for consumption within that community. This would enable those members of a community unable to manage an allotment to still benefit from food produced locally in a way that aids community development.

Q1b. What potential impacts, either positive or negative, will the proposed change in definition have on different organisations and/or sectors of society?

The proposed changes would allow for a broader basis for provision of allotments, leading to better provision to meet demand. They would also support additional benefits of community development by encouraging an assets-based approach.

Q1c. What potential impacts, either positive or negative, will the proposed change in definition have on the environment?

While consideration of planning applications for allotments continues to protect vulnerable habitats, there would be no adverse impact, while the positive impacts of increased habitat diversity would benefit biodiversity.

Q1d. What potential economic or regulatory impacts, either positive or negative, will the suggested change to the definition of allotments have?

Where allotments are provided privately or through allotment associations, this will impact upon a Local Authority's ability to maintain and publish a list of allotment holders and vacant plots. Any new legislation will need to be clear on the responsibilities of Local Authorities and allotment providers in this respect.

The Role of the Local Authority

Current powers and duties

Q2. What current duties and powers that Local Authorities have in relation to allotments should be changed and in what way?

Q2a. Duties:

The duty to satisfy demand by purchasing or leasing land should be extended to include a Local Authority supporting other organisations to provide allotments, with the Local Authority retaining a duty to provide if no other organisation does. In this case, other organisations would include allotment associations, other community groups, community development companies or private landowners.

Regarding the provision in section 9 of the 1950 act, for limited allotment provision where the local population is less than 10,000, the geographic extent of the local population needs to be defined. We would suggest that this be defined in terms of travel time where an individual would be able to travel between home and allotment within 30 minutes.

Q2b. Powers:

The existing powers are adequate

Q2c. What potential impacts, either positive or negative, will the proposed change have on different organisations and/or sectors of society?

The proposed changes would increase the speed of provision for new allotments, and define the extent of a 'local' population in light of the increased geographical size of Local Authority areas since the 1950 act.

Q2d. What potential impacts, either positive or negative, will the proposed have on the environment?

While consideration of planning applications for allotments continues to protect vulnerable habitats, there would be no adverse impact, while the positive impacts of increased habitat diversity would benefit biodiversity.

Q2e. What potential economic or regulatory impacts, either positive or negative, will the suggested change have?

By enabling third sector organisations to provide allotments, resources which are not available to Local Authorities would become available to support provision of allotments.

Revised powers and duties

A timeframe for gaining an allotment

Q3a. Should Local Authorities be required to provide individuals in their area with an allotment within a specified timeframe?

This would seem to be a sensible provision.

Q3b. What potential impacts, either positive or negative, would such a duty have on different organisations and/or sectors of society?

This would ensure that demand is satisfied within a reasonable timeframe. There is, however, the potential to create a bottleneck on implementation of such a requirement. For example, Highland Council currently has demand for allotments which would require 22 new sites to satisfy. This number of sites is driven by the geographical separation of the communities requiring allotments. To provide all 22 sites within a single timeframe would present challenges and we would recommend that provision is made to account for this if timeframes for provision are introduced. The time taken to establish a new allotment site varies but is typically a minimum of 2 years from the point at which sufficient demand has been identified. Our recommendation would be to require that a minimum of 4 sites should be established simultaneously per Local Authority area.

This provision would incur a cost impact on Local Authorities in cases where allotment provision is accelerated or more allotments are to be provided within a limited timeframe.

Q3c. What potential impacts, either positive or negative, would such a duty have on the environment?

While consideration of planning applications for allotments continues to protect vulnerable habitats, there would be no adverse impact, while the positive impacts of increased habitat diversity would benefit biodiversity.

Q3d. What potential economic or regulatory impacts, either positive or negative, would such a duty have?

This provision would incur a cost impact on Local Authorities in cases where allotment provision is accelerated or more allotments are to be provided within a limited timeframe.

In instances where no suitable land is available under local authority ownership and other landowners are unwilling to lease or sell land, the costs of compulsory purchase can be high, especially if there is opposition to the purchase. If these costs are passed on to the allotment holders, they may affect the viability of the project.

Population size and the number of allotments

Q4a. What are your views on placing a duty on Local Authorities to provide a specific number of allotments in their area per head of population?

Consideration should be made to provide allotments on the basis of demand rather than by a prescribed number per head of population. Demand for allotments has varied over time and between different areas, and provision needs to be able to reflect that variation and accommodate a possible future fall in demand.

There would also need to be consideration of the geographical distribution of any quota-based provision, so that sufficient provision is made to satisfy demand in

every locality (with reference to our response to question 2a above)

Q4b. What potential impacts, either positive or negative, would such a duty have on different organisations and/or sectors of society?

Any such provision would ensure adequate provision but would risk over-provision in the event of a fall in demand for allotments.

Q4c. What potential impacts, either positive or negative, would such a duty have on the environment?

While consideration of planning applications for allotments continues to protect vulnerable habitats, there would be no adverse impact, while the positive impacts of increased habitat diversity would benefit biodiversity.

Q4d. What potential economic or regulatory impacts, either positive or negative, would such a duty have?

Any provision based on population size would incur an additional responsibility to monitor population fluctuations. If our recommendation that local population be defined to a 30-minute travel time (or similar measure) is adopted (see Q1a) then this would need to be done at locality level.

Allotments and planning

Q5a. Should Local Authorities be required by statute to develop and publish a strategic plan relating to land use for food growing purposes?

The preamble to this question explains that Scottish Planning Policy requires local authorities to safeguard existing, and where relevant, potential allotment sites in the development plan. In preparing its local development plan's The Highland Council complies with requirement this by safeguarding existing established allotment sites as areas of protected space, whereby there is a presumption against development. New sites for allotments are also identified and safeguarded in local development plans through consultation with communities and relevant Council Services.

The preamble also makes reference to Open Space Strategies and that an increasing number of local authorities are using these to identify new, suitable, sites for allotments and land for food growing purposes. Whilst the Council's Open Space in New Residential Developments: Supplementary Guidance does not identify suitable sites for allotments it does require that a certain proportion of open space in new developments is provided in the form of allotments and details specifications for their development. Furthermore the Council approved a revised Allotments Policy in April 2012, an aim of which is to increase the provision of allotments across the Highland Council area.

The introductory text or question does not make clear what the potential content of a strategic plan relating to land use for food growing purposes could be. Nevertheless, given the provisions described above that the Council already has in place with regards to the safeguarding and development of new allotment sites it is not considered that local authorities should be required to develop and

publish a strategic plan relating to land use for food growing purposes. Furthermore the Council has limited resources to prepare such a strategy. There is the potential however to consider the encroachment on such land as a specific criterion in the assessment of potential development sites during the Strategic Environmental Assessment process and the general selection process used in plan preparation. It is also considered there is potential for the revised Scottish Planning Policy to place more emphasis on the protection of land used for food growing purposes.

Q5b. What potential impacts, either positive or negative, would such a duty have on different organisations and/or sectors of society?

Such a duty could potentially have a positive impact on different organisations and sectors of society as it could provide a simple way of such groups accessing a single clear and concise plan rather than searching and accessing several different publications.

Q5c. What potential impacts, either positive or negative, would such a duty have on the environment?

There is potential for such a duty to positively impact on the environment as it may result in additional protection for land used for food growing purposes and development of additional land for food growing purposes. This in turn has the potential to improve the local environment through increased biodiversity and a reduction in carbon emissions. However these benefits may be minimal as it is considered that there is currently an effective planning policy framework in place to safeguard and provide additional land for food growing purposes.

Q5d. What potential economic or regulatory impacts, either positive or negative, would such a duty have?

There is potential for positive economic impacts by the publication of a strategic plan relating to land use for food growing purposes, for example through the increased provision of land used for this purpose. In terms of regulatory impact, the plan may be difficult to enforce resulting in an increase in resources for it to be effectively delivered.

Updating and Simplifying the Legislation

Q6a. In what **other** ways, other than those already outlined in section 6. (of the consultation document), should the legislation relating to the provision of allotments be updated and, or simplified?

No further comments

Q6b. What potential impacts, either positive or negative, will the suggested legislative changes have on different organisations and/or sectors of society?

No further comments

Q6c. What potential impacts, either positive or negative, will the suggested legislative changes have on the environment?

No further comments

Q6d. What potential economic or regulatory impacts, either positive or negative, will the suggested legislative changes have?

No further comments

Thank you for completing this consultation. Please return your completed 'Respondent Information Form' (pages 1 and 2 of this document) and this 'Consultation Response Form' to allotmentconsultation2013@scotland.gsi.gov.uk by **Friday 24th May 2013**.