The Scottish Government
Riaghaltas na h-Alba

Allotments Compensation Consultation: Analysis of responses

PEOPLE, COMMUNITIES AND PLACES

social research

Contents

1. Executive Summary

The Scottish Government considers that growing your own food, on an allotment or through other means, has the potential to contribute to improving our environment, our health and well-being, as well as offering a means to gain access to affordable, healthy and sustainable food.

The legislative framework for allotments is complex and dated. Part 9 of the Community Empowerment (Scotland) Act 2015 relates to allotments but requires secondary legislation to be made before relevant provisions can be brought into force.

The Scottish Government published a consultation paper on 20 August 2015 to seek views on the secondary legislation required with responses invited by 16 October 2015. The document requested views on three areas: compensation for disturbance; compensation for deterioration of allotment; and compensation for loss of crops.

In total, 23 responses to the consultation were received from a variety of respondents including local government, local allotment groups, representative bodies and individuals. A summary of the written responses follows. It should be noted, that the opinions presented are those of the 23 respondents to this consultation and do not necessarily represent the views of the wider population.

Compensation for disturbance

All but one of the respondents who addressed the issue considered that factors other than rent might be included in determining the amount of compensation payable to tenants for disturbance.

The most common factors identified over and above rent was loss of enhancements made by the tenant to the plot and recompense for amenities left behind, or the cost of relocating these where this is possible.

Other common views were that the level of compensation payable should reflect the worth of crops and plants of particular value; and that the length of tenure should be taken into account in determining the amount of compensation to be paid.

The most common recommendation for determining the value of compensation was the cost of replacing old for new, at least where structures were concerned.

There were mixed views on the timeframe for payment of compensation, with recommendations ranging from payment before lease ends to payment within one year of the termination of lease.

A recurring view was that where a tenant has neglected a plot to the extent that it is an extreme state of disrepair and/or where the tenancy has been breached, then local authorities should not be liable to pay compensation for disturbance.

Compensation for deterioration of allotment

A common view was that compensation by tenants to local authorities for deterioration of plot should be considered only where the fault for deterioration lies clearly with the plot-holder and is within their control. Deterioration of plots for reasons such as ill-health of tenant or an adverse conditions were perceived as outwith the plot-holders' control.

Requests were made for the definition of "deterioration" to be clarified.

The main factors which respondents recommended be taken into account when determining the cost of taking remedial action were: the costs of remediating the land to cultivatable condition; and/or the cost of returning the land to the condition it was in at the start of the lease.

Respondents' views on the timeframe for compensation to be paid by a tenant ranged largely from 30 days to three months.

Compensation for loss of crops

An overarching theme was that establishing a monetary value of compensation payable to tenants if the tenancy is terminated by the lessor appears incongruous given that finance is only one aspect of the investment put into their plot by allotment holders.

It was felt that compensation should encompass what was perceived to be the broader investment of time and effort made by tenants, and also the loss of the positive impacts which tending the plot has had on their wellbeing.

A recurring view was that rather than focusing entirely on monetary compensation, other forms of recompense should be considered, such as support in moving crops and structures to a new site.

Respondents' views on the timeframe for compensation to be paid to a tenant for loss of crops ranged largely from six weeks to one year.

Whereas some respondents considered there to be no circumstances in which a local authority should not be liable to pay compensation for loss of crops, others identified circumstances under which they felt this may not be appropriate, for example, if the tenant has grown illegal substances or neglected their plot.

2. Introduction

In 2009 the Scottish Government published its first "National Food and Drink Policy – Recipe for Success"[1]. This policy made a clear commitment to support allotments and community growing spaces. The Grow Your Own Working Group was set up in 2009 and reported in 2011, one of its recommendations being to amend the legislation governing allotments, and in particular to review the duties placed on local authorities.

The legislative framework on allotments is complex and dates from the Allotments (Scotland) Act 1892, as amended by the Land Settlement (Scotland) Act 1919 and the Allotments (Scotland) Acts of 1922 and 1950.

In its Manifesto of 2011 the SNP made a commitment to update the legislation relating to allotments. The Scottish Government undertook a number of consultations on the legislation governing allotments[2]. The outcome of these consultations informed the development of the Community Empowerment (Scotland) Act 2015 (the 2015 Act).

Simultaneous to these developments, the next phase of Scotland's "National Food and Drink Policy: Becoming a Good Food Nation" was launched[3]. The policy set out a vision that by 2025 everyone in Scotland is able to buy, eat and serve food that is affordable, healthy and sustainable.

The Scottish Government considers that growing your own food, on an allotment or through other means, has the potential to contribute to improving our environment, our health and well-being, as well as offering a means to gain access to affordable, healthy and sustainable food.

The 2015 Act brought forward a number of provisions that require secondary legislation to be made before Part 9 of the Act relating to allotments can be brought into force. The secondary legislation concerns provisions for or in connection with:

- Compensation payable to tenants of allotments for disturbance on termination of the lease.
- Compensation payable by tenants to landlords for the deterioration of allotments.
- Compensation payable to tenants of allotments for loss of crops where the allotment is resumed by the local authority.

The Scottish Government published a consultation paper to seek views on these issues on 20 August 2015[4] with written responses invited by 16 October 2015.

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[1] http://www.gov.scot/Publications/2009/06/25133322/0

[2] Community Empowerment and Renewable Bill (2012); the Legislative Framework Governing Allotments (2013); Consultation on the Community Empowerment (Scotland) Bill (2013).

[3] http://www.gov.scot/Publications/2014/06/1195

[4] http://www.gov.scot/Publications/2015/08/3902

Three stakeholder engagement events were also organised in Edinburgh, Glasgow and Inverness. The views from these along with those submitted in response to the written consultation will inform the future regulations relating to allotments compensation.

Consultation responses

The Scottish Government received 23 written responses to the consultation. Table 2.1 shows the distribution of responses by category of respondent. A full list of respondents is in the Annex. The respondent category applied to each response was agreed with the Scottish Government policy team.

Table 2.1: Distribution of responses by category of respondent

Category	No. of respondents	% of all respondents*
Local Government	7	30
Local Allotment Groups	4	17
Representative Bodies	2	9
Total organisations	**13**	**57***
Individuals	10	43
Grand total	**23**	**100**

*Percentages may not add to totals exactly due to rounding.

Overall, 57% of responses were submitted by organisations and 43% were from individual respondents. The largest category of respondent was Local Government bodies comprising 30% of all respondents. Although the number of responses was relatively low, some represented the views of wider groups and organisations. For example, one of the representative bodies submitted their response on behalf of 157 people, including 52 young people.

The written responses were submitted either via Citizen Space or by email. Content from the responses was entered onto an electronic database to enable comparison of views and analysis.

Analysis of responses

The analysis of the written responses is presented in the following three chapters and follows the order of the topics raised in the consultation paper. The consultation contained 14 questions all in an open format. The analysis is based on the views of those who responded to the consultation which are not necessarily representative of the wider population.

Throughout the report quotes taken directly from responses have been used to illustrate specific points, where respondents have given permission for their

response to be made public. The quotes were selected on the basis that they enhance the analysis by emphasising specific points succinctly. Where respondents did not provide an indication of whether or not their response could be made public, the default position has been not to publish these.

Respondent categories have been abbreviated in the report as follows:

Local Government Bodies	LG
Local Allotment Groups	Allot
Representative Bodies	Rep
Individuals	Ind

3. Compensation for disturbance

Background

Section 3 of the Allotments (Scotland) Act 1950 provides that where a tenancy for the whole or part of an allotment garden is terminated, in certain circumstances the tenant is entitled to compensation from the lessor for the disturbance caused.

The amount of compensation recoverable is dependent on whether the tenancy for the whole or part of the allotment garden is terminated. Should the tenancy for the whole land be terminated, the level of compensation is equal to one year's rent at the rate at which the rent was payable. Where the tenancy for a proportion of the land is terminated, the compensation payable is the application of that proportion to the year's rent (at the rate at which the rent was payable).

The first set of questions in the consultation sought views on the amount and type of compensation payable for disturbance.

Question 1a) Other than rent, are there any other factors that might be included in determining the amount of compensation payable to tenants for disturbance when the lease of the whole or part of an allotment is terminated?

Question 1b) Why?

Responses to Question 1a) and 1b) have been analysed together as the responses to both are inter-linked.

Overall, 22 respondents addressed these questions, with a wide range of ideas given as to what other factors might be included in determining the amount of compensation payable to tenants for disturbance.

The vast majority considered that factors other than rent might be included in determining the amount of compensation payable to tenants for disturbance when the lease of the whole or part of an allotment is terminated.

The most common factor identified for determining compensation over and above rent was **loss of enhancements** made by the tenant to the plot and recompense for amenities left behind, or the cost of relocating these where this is possible. 14 respondents across all categories identified this factor, mentioning structures such as fencing; huts; compost bins; water butts; toilet; and raised beds. A shared view was that compensation should be paid for material goods bought by tenants to enhance their allotments, which they would lose due to disturbance.

Another common view was that the level of compensation should reflect the **worth of crops and plants of value** on the allotment such as roses, fruit trees and herbs. 12 respondents shared this view emphasising that tenants should not be out of pocket for the costs of these plants.

Some respondents (eight across all categories) argued that the **length of tenure** should be included in determining the amount of compensation payable. This, they felt, would recognise the investment made by individual plot-holders and in particular the increased quality of soil over time with nourishment from manure, compost and lime.

Six respondents representing all sectors other than local government, considered that compensation should take into account the **potential negative impact on the wellbeing** of the plot-holder should the lease be terminated. Comments included:

> "To remove a site causes distress because of the work and nurture the plot-holders have spent on their plots. It is not just the monetary value but the engagement with the land that is lost".

> "My allotment is the only place I can rely on going outside my garden-less flat. It keeps me busy and active in a safe environment. I am lover of the outdoors, and need a therapeutic space where I can be left alone at peace. Other spaces and programs typically stress me out as I don't cope with groups or less controlled environments".

Another view was that compensation to the **wider allotment community** may also be required to recompense for communal investment such as fencing, access roads, meeting sheds, notice boards and toilets. Two respondents (Allot, Ind) cautioned that care should be taken to ascertain who is the actual tenant of an allotment, as on occasions allotment associations hold the lease from the council rather than individuals. One respondent (Ind) identified groups such as schools or people with special needs as holders of tenancies and commented:

> "....the ending of an allotment lease could have significant ramifications for users of those groups" (Ind).

Other factors which respondents considered should be taken into account when determining the amount of compensation payable were identified by only a few respondents each, including:

- Regard for any external funding acquired.
- Costs of appeals won by tenants.
- Reduction in accessibility to a new plot.
- Relocation of livestock if permitted.
- Whether tenant is up-to-date with rental payments.

- The status of the allotment, and in particular whether it is short-term (part of the “Stalled Space” programme, or a longer-term opportunity).

The notion of payment “in kind” rather than in monetary terms emerged as a theme amongst responses. To some extent this reflected the acknowledgement that some aspects of allotmenteering cannot be quantified financially, but are particularly valuable to tenants nonetheless. Examples were provided of special resting places within the plot; everlasting supplies of compost built up over years; plants such as grapevines and figs which have grown in greenhouses during the passage of time.

It was suggested by two respondents that compensation may need to take account of individual counselling for tenants who have lost their allotment, or supporting group initiatives where tenants can vent their views and find a way forward.

Question 1c) How should the value of compensation for these different factors be determined?

19 respondents addressed this question.

The most common recommendation (made by seven respondents across all sectors) for determining the value of compensation was the **cost of replacing old for new**, at least in relation to structures. Other recommendations made by only a few respondents each were:

- Full replacement cost minus wear and tear/depreciation.
- Market value of crops (which will vary by type of crop and time of year).
- Use existing legislation to determine.
- Consult farming communities and/or previous compensation and insurance claims to inform the value of compensation for duration of years of soil management..
- Based on representations from the plot-holder, allotment association and other relevant representatives.

Two respondents (Allot, LG)suggested that receipts be required for proof of original purchase by the plot holder. Another suggested photographic proof for the value of the compensation to be determined.

Question 1d) Within what timeframe should compensation for disturbance be paid?

18 respondents answered this question with a proposed timeframe for compensation to be paid.

There were mixed views on the timeframe for payment of compensation, with recommendations ranging from payment before lease ends to payment within one year of the termination of lease.

Question 1e) In your opinion, under what circumstances would a local authority not be liable to pay compensation for disturbance?

20 respondents addressed this question.

The two most commonly cited circumstances in which respondents considered that local authorities should not be liable to pay compensation for disturbance were if the tenant had neglected the plot to the extent that it is in an extreme state of disrepair (7 mentions); and where the tenancy has been breached, for example, used for a purpose not permitted, or there is evidence of mistreatment of livestock (6 mentions).

Two respondents suggested that a local authority should not be liable for compensation if an allotment association has ceased to function through no fault of the local authority. A further two respondents considered that if an alternative plot is offered within a reasonable proximity to the original plot, then perhaps no compensation should be required.

Several other circumstances in which a local authority should not be liable to pay compensation for disturbance were identified by one or two local government respondents:

- When the site is required for the development of a cemetery.
- If the site was allocated on a temporary basis in the first place.
- Following extreme weather which has caused damage such as flooding.
- Where the site has been identified as at risk of contamination or has been deemed unsafe for food production (e.g. land instability).
- Where the site has not been vacated by the tenant in accordance with the timescale given in the notice.

Two local government respondents suggested that whilst some compensation may be liable, this should not cover labour put into working the land, as allotments are not for commercial benefit. They also recommended that compensation should not cover anything other than rent if the disturbance is only temporary and the local authority intends to reinstate the site.

Three respondents considered that there are no circumstances under which a local authority would not be liable to pay compensation for disturbance. One remarked:

> "Even in the case of a neglected plot there should still be compensation due to the allotment association for the wider impact of the disturbance and the negative impact on the growing community" (Ind).

Summary of key points

Most respondents considered that factors other than rent might be included in determining the amount of compensation payable to tenants for disturbance. In particular respondents felt that recompense should be made for enhancements to the plot and amenities left behind by the tenant or the cost of relocating these.

It was common to recommend that compensation should be based upon replacing old for new at least in relation to structures.

Recommendations on the timeframe for paying compensation ranged from before the lease ends to within one year of termination.

A shared view was that where a tenant has neglected a plot to an extreme state of disrepair and/or where the tenancy has been breached, then local authorities should not be liable to pay compensation for disturbance.

4. Compensation for deterioration of allotment

Background

Section 4 of the Allotments (Scotland) Act 1950 entitles a lessor, on termination of a tenancy, to recover from a tenant compensation in respect of any deterioration of the land caused by failure of a tenant to maintain it. This includes that the land is clean and in a good state of cultivation and fertility. The amount payable is the cost, at the date of the tenant's removing, of making good the deterioration.

The second set of questions in the consultation sought views on the amount and type of compensation payable to local authorities by tenants for deterioration of an allotment site.

Question 2a) Where there is deemed to be deterioration of an allotment site, what factors do you think should be used to determine the cost of remedying this?

Question 2b) Why?

Responses to Question 2a) and 2b) have been analysed together as the responses to both are inter-linked.

21 respondents addressed these questions.

The most common response (8 respondents, largely individuals) was to emphasise the **importance of ascertaining reasons for deterioration**. Respondents identified reasons out with a tenant's control which could lead to deterioration of plot, such as ill-health, caring responsibilities and adverse conditions such as influx of seeds from neighbouring land. A common view was that compensation should be considered only where the fault lies clearly with the plot-holder and is within their control.

Difficulties in deciding what constitutes "deterioration" were raised by four respondents (all from different sectors). They called for a clear definition rather than what one termed a subjective assessment. They requested clear guidance on this, particularly as they felt that all parties may not agree on what deterioration comprises. One respondent remarked:

> "....some plot-holders have put in patios and barbeque areas. These could be seen as having caused deterioration because a new tenant would have to put in a whole lot of serious heavy work to turn the plot back to 100% cultivation. They on the other hand would be outraged at the mere idea that their delightful improvements would be seen as deterioration. So what is the definition of deterioration in the context? It is going to have to be thought about very hard".

Some respondents (largely Local Government) identified factors to be taken into account when determining the cost of taking remedial action, including:

- Cost of remediating the land to cultivatable condition (5 mentions).
- Cost of returning the land to the condition it was in at the start of the lease (4 mentions).

Two individual respondents questioned the practicalities of requiring tenants who have neglected their plots to pay compensation. They queried whether such tenants would be able to pay and suggested that the administration costs involved in attempting this could outweigh the size of compensation itself.

Question 2c Under what circumstances do you think a tenant should not be held responsible for the deterioration of an allotment site?

21 respondents addressed this question.

12 respondents identified **ill health** (physical or mental) as a circumstance in which a tenant should not be held responsible for the deterioration of their plot; eight respondents considered responsibility should not fall to tenants if their plot has been subjected to **adverse impacts beyond their control.** Flooding, vandalism, arson, soil contamination by previous tenants, and invasion of non-native species such as Japanese knotweed were given as examples of these adverse impacts.

Other recommendations made for circumstances in which a tenant should not be held responsible for the deterioration of an allotment site were:

- Disability of tenant.
- Change in circumstances, such as sudden unemployment.
- Work commitments.
- Death.
- Where the deterioration is clearly only short-term.
- If the deterioration relates to a boundary area with the boundary disputed and not yet resolved.
- If expectations were not made clear at the start and warnings have not been given.
- Where the plot is merely overgrown.
- If the plot was like that when the tenant took over the lease.

Question 2d) In your opinion, within what timeframe should compensation for deterioration be paid by a tenant?

15 respondents provided a proposed timeframe or relevant comments relating to this question, with varying opinions on the length of time. On the whole, responses ranged from immediately on the contract ending up until two years. The most common response (cited by four respondents) was three months.

Three Local Government respondents recommended that the timeframe should be in line with existing relevant legislation and regulations on compensation, fines and debts due.

Summary of key points

A common view was that compensation by tenants to local authorities for deterioration of plot should be considered only where the fault for deterioration lies clearly with the plot-holder and is within their control. Clarity was requested on the definition of “deterioration” in this context.

The main factors recommended for taking into account to determine the cost of taking remedial action were the costs of remediating the land to cultivatable condition; and the cost of returning the land to the condition it was in at the start of the lease.

Respondents’ views on the timeframe for compensation to be paid by a tenant ranged largely from 30 days to 3 months.

5. Compensation for loss of crops

Background

Section 2 of the Allotments (Scotland) Act 1922 states that compensation for loss of crops is payable if the tenancy is terminated by the lessor either between 1st May and 1st November or if the lessor resumes possession following the issuing of a three month notice to the tenancy. Compensation is payable for crops growing upon the land and manure applied in the ordinary course of the cultivation of an allotment garden. The amount of compensation is based on the value of the growing crops and manure to an incoming tenant.

Section 135 of the 2015 Act provides that where the whole or part of the allotment lease is terminated by way of resumption of the land by the local authority and the tenant loses crops due to the resumption, the local authority is liable to compensate the tenant for the loss of crops.

The last set of questions in the consultation sought views on the amount and type of compensation that will be payable to tenants for loss of crops.

Question 3a) What factors do you think should be included in determining the amount of compensation payable to tenants for loss of crops when the lease of the whole or part of an allotment site is resumed?

Question 3b) Why?

Responses to Question 3a) and 3b) have been analysed together as the responses to both are inter-linked.

21 respondents addressed these questions.

An overarching theme was that establishing a monetary value of compensation payable to tenants appears incongruous given that finance is only one aspect of the investment put into their plot by allotment holders. Several respondents emphasised the significant investment of time and effort made by tenants and their reasonable expectation that their reward will be forthcoming in produce, in addition to positive impacts on their wellbeing. The need to compensate for such broader investment and expectation was highlighted. One respondent commented:

> "It is important to understand the gravity of closing an allotment site and be aware of the very real detrimental effects to plotholders and their families, both in terms of access to fresh and in many case, organic food as well as health and well-being".

A related theme was that rather than focus solely on monetary compensation, other forms of recompense should be considered, such as support in moving crops and

structures to a new site; and purchase of new greenhouses and sheds for tenants affected.

Some respondents recommended approaches to determining monetary compensation value with six respondents advocating compensatory levels at the market value of the crop lost. Others recommended that compensation should relate to an entire season of crops, as crops such as brassicas, herbs and root crops grow out with the summer period.

One Local Government respondent argued that no compensation should be paid as it is too difficult and an administrative burden to try to value crops. Another (LG) considered that compensation should be paid only in cases of particularly high value crops and where there are cultivated bee hives (if these are to be considered a form of crop), as tenants will already have received compensation for disturbance of their plot.

Question 3c) How do you think the value of these different factors should be determined?

15 respondents addressed this question. Six respondents focused on establishing professional and/or systematic approaches to determining value these different factors in order to ensure consistency and standardisation. Three respondents recommended using the guide in "Peter's produce" accessed via the website www.sags.org.uk; one advocated using a qualified valuer; others supported the use of an existing or new formula to determine value.

Six respondents comprising allotment associations and individuals, considered that value should be based on the cost of plants, seeds and time and effort invested, with some recommending benchmarking against supermarket prices for equivalent produce.

Other responses included to determine the value based on the maturity of crops or based on the type and quality of crops.

Question 3d) In your opinion, within what timeframe should compensation for loss of crops be paid to a tenant?

17 respondents addressed this question. Respondents' views on the timeframe for compensation to be paid to a tenant for loss of crops ranged largely from six weeks to one year.

Question 3e) Can you think of any circumstances when a local authority should not be liable to pay compensation for loss of crops?

19 respondents addressed this question. Seven respondents (five of them individuals) considered that there are no circumstances in which a local authority should not be liable to pay compensation if the tenant is not at fault. Two Local Government respondents held a contrasting view that compensation should not be

due unless, according to one, there are valued crops involved and beehives are disturbed.

Other respondents provided their view on circumstances under which liability to pay compensation for loss of crops should be waived, including:

- Cases where the tenant is at fault, for example, they have grown illegal substances and/or neglected their plot (6 mentions).
- Where the tenant was fully aware that the tenancy was on a short-term basis when they took over the plot (2 mentions).
- Where there has been deliberate contamination of site and/or arson (2 mentions).

Summary of key points

A common view was that compensation should reflect the broader investment of time and effort made by tenants in addition to monetary value of crops and structures.

Respondents' views on the timeframe for compensation to be paid to a tenant for loss of crops ranged largely from six weeks to one year.

Whereas some respondents considered there to be no circumstances in which a local authority should not be liable to pay compensation for loss of crops, others identified circumstances under which they felt this may not be appropriate, for example, if the tenant has grown illegal substances or neglected their plot.

Annex: List of Respondents

Local Government

Aberdeen City Council's Legal Team
City of Edinburgh Council
East Dunbartonshire Council (Officer only response)
Fife Council
North Lanarkshire Council
Renfrewshire Council
West Lothian Council

Local Allotment Groups

Beechwood Allotment Association
Erskine Community Allotments
Victoria Park Allotments
Wellington Allotment Gardens' Association

Representative Bodies

Keep Scotland Beautiful – on behalf of groups and schools responses
Scottish Allotments and Gardens Society

Individuals

10 individuals

How to access background or source data

The data collected for this social research publication:

☐ are available in more detail through Scottish Neighbourhood Statistics

☒ are available via an alternative route

☐ may be made available on request, subject to consideration of legal and ethical factors. Please contact <email address> for further information.

☐ cannot be made available by Scottish Government for further analysis as Scottish Government is not the data controller.

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The views expressed in this report are those of the researcher and do not necessarily represent those of the Scottish Government or Scottish Ministers.

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