



Department for
Communities and
Local Government



Factsheet

Allotments law and community growing

This factsheet has been produced with the Community Land Advisory Service and endorsed by the Department for Communities and Local Government.

This factsheet is designed and intended to provide general information on various legal issues concerning allotments, current at the time of publication. The contents do not constitute legal advice, are not intended as a substitute for legal advice and should not be relied on as such. You should seek legal advice in relation to your individual circumstances and any particular matters you may have.

In this factsheet, the term 'plot' means an individual allotment of the statutory size or smaller (i.e. 40 poles which equates to one quarter of an acre) (1). 'Site' means a larger area on which a number of individual allotment plots are located.





Allotments law: a brief introduction

The law on allotments appears in several Acts of Parliament, some more than a century old. Broadly speaking, the combined effects of these laws can be divided into two main themes:

1. those which govern the provision and disposal of sites, and
2. those which govern the use of individual plots.

Regulations concerning the provision and disposal of allotments only apply to statutory allotment sites. Temporary and private allotment sites are not similarly protected. In particular, there are duties placed on certain councils to provide allotments (2) and that means that they cannot be sold or used for other purposes without the consent of the Secretary of State for Communities and Local Government (3).

Broadly speaking, the law that governs the use of individual plots applies to any allotment plot. In addition, allotment sites are also subject to the planning system.

The provision and disposal of sites

Statutory allotments sites

If a site has been acquired or appropriated by a local authority (of any type, from parish to county council) for the specific purpose of being used as allotments, then this site has special protection and is known as a 'statutory allotments' (4) site.

It will remain a statutory allotment site even if the management of the site has been devolved or a lease of the site granted from the local authority to an allotments association or similar managing body. Where management has been devolved (5) or leased to an allotments association (6) it is often known as a 'self-managed' site (see below).

Statutory allotments, with some exceptions (7), cannot be sold or used for other purposes without the consent of the Secretary of State for Communities & Local Government (8). The Department for Communities and Local Government published guidance about the disposal of allotments in January 2014 (9) which sets out the factors that the Secretary of State will take into account when deciding whether to give consent. Inner London Borough Councils (10) have a discretionary power to provide allotment plots (11).

Temporary allotments sites

If land has been acquired or held by a local authority for another purpose, perhaps for future use as a school or housing development, but in the meantime is used as allotments, then these are conventionally known as 'temporary allotments' (12) - even though they may be in use as allotments for decades.

For example, if a school on a local authority-owned site decided to

fence off part of its playing field and create allotments to be let out to local people, this would be a temporary allotment site as the land was not originally acquired for allotment provision.

Frequently, land bought for future expansion of a cemetery - which in some cases can take place many years in advance of need - is used as allotments in the meantime and will be a temporary allotment site. However, there is no single point of reference for identifying whether allotment sites are designated as temporary or statutory and some historical research may be necessary to check their legal status. If you are unsure of the status of your site you should seek independent legal advice and contact your local authority or the National Allotments Society (NSALG).

Temporary allotments are outside the scope of the laws relating to statutory allotments. This means the Secretary of State's consent is not required for the disposal of temporary allotment sites but the allotment authority will usually be required to give plot holders 12 months notice to quit before the land can be used for another purpose. In addition, temporary allotment sites are also subject to the planning system (as noted above) which regulates operational development and material changes of use.

Privately owned allotment sites

If allotments are on a privately owned site, then like temporary allotments, there is no statutory protection regulating their provision and disposal. Both temporary and private allotments, whether the whole site or an individual plot, can be leased to a community group and tenancies do not need to be on allotment agreement leases (which are set out below), although these are likely to be helpful to use.

Devolved management of allotment sites

When an allotments site has its management devolved (13) the site is run by an allotments association rather than directly by the local authority. This is usually called 'self-management'.

Longer-term leases from the local authority to the allotments association are permitted by law (14). In order to enter into a lease, it is advisable for the allotments association to have a legal personality and legal powers to do so. Alternatively, constituted associations can appoint holding Trustees to enter into the lease on behalf of the association. One method of attaining this status is as a registered association under the Co-operative and Community Benefit Act 2014. Alternatively, an allotments association can incorporate as a limited company (15). The National Allotments Society acts as a sponsor for Associations to become a limited company.

Where there is devolved management, the allotments association will usually set the rents, decide codes of conduct for the site, enforce the rules of the allotment tenancy agreements in place on the site and maintain communal areas such as paths, water supplies, fences and hedges (16).

Use of individual allotment plots

When an individual rents an allotment plot under an allotments tenancy agreement (whether on a statutory or temporary site) the conditions and terms concerning the use of the plot will be set out in the tenancy agreement. There are also certain statutory provisions concerning the use of plots.

In summary, the Allotments Act 1922 includes the following restrictions:

1. The notice period that has to be given to leave the plot (17)
2. What can be grown on the plot (18)
3. The size of an individual plot (19)
4. What can be done with the produce grown on the plot (20).

If the plot holder allows a group to use his plot, then the plot holder may be in breach of his allotments tenancy agreement (which does not allow subletting, sharing or parting with possession without the consent of the Allotments Authority (21, 22) and could have notice served to end the tenancy.

Local authorities or allotment associations managing sites could grant temporary use of allotment

land to a community group. This is more likely where plots cannot easily be let as allotments, for example due to their derelict nature or where there is no allotments waiting list.

However, the granting of an allotment plot on a statutory site on anything other than an allotments tenancy agreement, or for an agreement lasting for a period of more than 7 years, could be viewed as a disposal (23) which, with some exceptions (24), would require the prior approval of the Secretary of State for Communities & Local Government.

Alternative types of agreement

Allotment tenancy agreements can be offered by any type of landowner - councils, allotment associations or private individuals. Entering into an agreement will not give any extra protection to a site.

If the plot use has some but not all of the characteristics of an allotment plot, for example produce is being grown for trade purposes (25), for the avoidance of doubt it would be useful to include the following clause in the alternative lease (such as a Farm Business Tenancy: "the parties agree that this is to be a tenancy under the <name of Act> and allotments law will not apply" (26).

However if the plot and how it is used by the plotholder have all the characteristics of an allotment, even if the agreement says to the contrary, allotments law is likely to still apply (27).

There are alternative agreements available which may be more appropriate for different situations. For example, on a licence or a Farm Business Tenancy (28). For further information please go to: www.communitylandadvice.org.uk and search for the document 'Flowchart for leases type'.



For further information

It is beyond the remit of this factsheet to go into details about the provision of allotment plots, size, governance of waiting lists and details on the use of plots.

There are plenty of publications covering this area including *The Law of Allotments* by Paul Clayden, published by Shaw & Sons (currently in its 5th edition). Advice is also available from the National Allotments Society: www.nsalg.org.uk

References

1. Allotments Act 1922 s22(1) & Allotments Act 1950 s14(1)
2. Small Holdings & Allotments Act 1908 s23
3. Allotments Act 1925 s8
4. There is no reference in the Allotments Acts to "statutory", it's a name that has come in to use to differentiate from "temporary".
5. Small Holdings & Allotments Act 1908 s29
6. Allotments Act 1922 s22(4)(b)
7. Snelling and another v Burstow Parish Council [2013] EWCA Civ 1411; [2013] WLR (d) 433
8. Allotments Act 1925 s8
9. www.gov.uk/government/publications/allotment-disposal-guidance-safeguards-and-alternatives
10. Camden, Greenwich, Hackney, Hammersmith and Fulham, Islington, Royal Borough of Kensington and Chelsea, Lambeth, Lewisham, Southwark, Tower Hamlets, Wandsworth and Westminster
11. London Government Act 1963 s55(4)
12. There is no reference to Temporary Allotments in any of the five Allotments Acts (1908 to 1950) or the Land Settlement (Facilities) Act 1919 or the Agricultural Land (Utilisation) Act 1931
13. Small Holdings & Allotments Act 1908 s29(1)
14. Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003
15. The Companies Act 2006, s7ff
16. Small Holdings & Allotments Act 1908 s28(2)
17. Allotments Act 1922 s1(1)(a) including as amended by Allotments Act 1950 s1(1)
18. Allotments Act 1922 s22(1)
19. Allotments Act 1922 s22(1)
20. Allotments Act 1922 s22(1)
21. Small Holdings & Allotments Act 1908 s27(4)
22. Contact the National Allotments Society about model tenancy agreements
23. Local Government Act 1972 s123 and s127
24. Snelling and another v Burstow Parish Council [2013] EWCA Civ 1411; [2013] WLR (d) 433
25. An allotment must, by definition, be wholly or mainly cultivated for the production of vegetable or fruit crops for consumption by the tenant or his family (s22 Allotments Act 1922)
26. For example, a Farm Business Tenancy under the Agricultural Tenancies Act 1995, s1
27. Allotments Act 1922 s22(1) and (4)
28. Agricultural Tenancies Act 1995, s1.

