

**SCOTTISH GOVERNMENT 3<sup>rd</sup> TRIPARTITE GROUP MEETING, ALLOTMENTS  
- MINUTES -**

**MONDAY 21<sup>st</sup> November 2016 at 12:00**

**ROOM B-3, SAUGHTON HOUSE, BROOMHOUSE DRIVE, EDINBURGH,  
EH11 3XD**

**Attending**

Alexander Paterson (LA - Glasgow)  
Ian Woolard (LA - Edinburgh)

Mark Thirgood (SAGS)  
Ian Welsh (SAGS)  
Judy Wilkinson (SAGS)

Joanne Boyle (Chair, Scottish Government)  
Robin MacLean (Note, Scottish Government)

**Apologies**

Apologies were taken on behalf of Alison Swanson (SAGS), Peter Duncan (LA - Fife) and Neil McAteer (LA - North Ayrshire)

**1. Introduction**

1.1. Joanne Boyle welcomed the group and introductions were made.

**2. Previous minutes and actions**

2.1. Minutes from the previous meeting were accepted by the group. Joanne Boyle went through the previous actions from the 2<sup>nd</sup> meeting and brought the group up-to-date on how these have been actioned.

**3. Scottish Government update**

3.1. Joanne Boyle confirmed that Catriona Maclean has been appointed Deputy Director of the Food & Drink Division.

3.2. Robin MacLean updated the group on EU funding streams post Brexit: For European Structural Funds, the Scottish Rural Development Programme (CAP Pillar 2), European Maritime Fisheries Fund and for directly accessed EU funding schemes such as Horizon 2020 – all contracts entered into before the point that UK leaves the EU (which is still an undefined date) will be guaranteed, even when those payments continue beyond the EU exit point.

3.3. Robin MacLean discussed implementation of Part 9 and went into detail on a potential issue with section 115; section 115 of Part 9 provides that local authorities have two years from the date of commencement of s115 to make their allotment site regulations, which cover a number of matters.

3.4. Robin MacLean went on to say that there are a number of stand-alone provisions within Part 9 that can be commenced as soon as possible after implementing statutory instruments are laid, before regulations have been made by each LA under s115. However, by contrast there are some provisions which are dependent on s115 regulations and so cannot come into force until s115 regulations are in force.

3.5. As each LA can bring into force its section 115 regulations on any date within the two year period following that section's commencement, Robin MacLean said this could result in a piecemeal implementation across Scotland with each LA having a different commencement date for a number of the Part 9 provisions. This could be potentially confusing to the public and to stakeholders, as for a transitional period of two years different laws regarding allotments and allotment sites would apply in different LA areas, depending on whether the LA had yet made regulations and therefore whether the new law was yet in force in that area.

3.6. Robin MacLean told the group that SG is working with LAs in order to get their agreement to bring into force their allotment site regulations on a common date the full two years from commencement of s115. This, if agreed with the LAs, will allow for a more straight-forward transition across Scotland (going from the old law to the new).

3.7. Mark Thirgood questioned whether these regulations related to directly or self-managed sites. The group discussed the difference between direct vs independent and it was clarified that section 115 only relates to local authority site regulations. A brief discussion was had on the status of independent site regulations and how these would likely be handled as we move forward with bringing into force Part 9.

3.8. There was a brief discussion around the issue of local authorities providing new allotment sites once Part 9 is in force. One major issue was that of capital funding of new sites. It was heard that some local authority approaches to providing allotments will be to deliver these through management of existing waiting lists.

3.9. As Peter Duncan could not attend the meeting, Joanne Boyle agreed that we would request a written update from him on his work around food growing strategies (Action 1).

#### **4. Guidance Consultation**

4.1. Robin MacLean spoke about his discussions with colleagues in Scottish Government Legal Division (SGLD) surrounding the status of the guidance document. SGLD clarified that guidance should only be developed in relation to those sections of Part 9 that deal with the functions of local authorities, rather than producing guidance on Part 9 as a whole.

4.2. Robin MacLean shared with the group his understanding of which sections relate to functions and which sections should be excluded from guidance. He agreed to seek clarification from SGLD on which specific sections relate to functions of local authorities within Part 9 (Action 2).

4.3. Joanne Boyle set-out for the group a proposed revised timeline for delivery:

- End of January 2017 – Subgroups have ready completed wording
- March - May 2017 – Public Consultation
- May – Analysis of Consultation Results
- July 2017 – 1<sup>st</sup> Draft of Guidance ready to share with the Group

4.4. The group went on to discuss Planning Policy and accepted that the competition for land within local authorities must be balanced between priorities. In urban authorities it was accepted that competition for land will be more evident. Mark Thirgood felt that there should be an acknowledgment within certain non-urban authorities that land for allotments and GYO is in fact seen as a priority.

4.5. Robin MacLean told the group that Kristen Anderson (SG Planning) attended a recent Grow Your Own Working Group meeting and this demonstrates that SG are making the relevant connections in regards to planning and GYO. The Group agreed that Robin MacLean should invite Kristen Anderson to a Tripartite-Group meeting in order to hear from her how GYO is included in SG planning policy (Action 3).

4.6. As part of the discussion around planning, Alexander Paterson raised the issue that LAs must take into consideration organisations such as Sport Scotland when evaluating whether land is eligible for GYO. Robin MacLean agreed to establish the status of Sport Scotland (Action 4).

## **5. Communication**

5.1. Joanne Boyle informed the group that the Good Food Nation (GFN) team are developing a GFN website which could be utilised for communication around Part 9 and wider GYO work. Some of the group discussed that a series of good practice papers should be developed on a range of issues e.g. on how to deal with conflict and how to develop a new site. The group talked about funding being a barrier to developing this material but Joanne Boyle advised that SG would be happy to consider proposals for funding, which would be assessed carefully to ensure value for money and meeting policy aims. There may be some small amounts of funding available in this financial year for work which would need to be completed by the end of March 2017. Alternatively a new budget should be available from April 2017. Ian Welsh agreed to put a funding proposal together for a “stage one” project to develop this work (Action 5). It was stressed that any project that was funded through GFN would need to be completed by the end of March 2017.

## **6. AOB**

6.1. Joanne Boyle announced that in January 2017 Amanda Fox will return to her previous role. This will include looking after Part 9 and the wider work around GFN. The group thanked Joanne Boyle for her involvement with the Tripartite-Group to date and wished her well in her future work.

## **7. Date of Next Meeting**

7.1. Robin MacLean to send Doodle Poll for next meeting.

The meeting closed at 15:00

## Summary of action points:

**Action 1:** Request a written update from Peter Duncan on his work around food growing strategies – Robin MacLean

- Peter Duncan to provide update on his Food Growing Strategy work either before or at the next meeting.

**Action 2:** Seek clarification from SGLD on which specific sections relate to functions of local authorities within Part 9 – Robin MacLean

- The guidance can only relate to the carrying out of functions of local authorities under Part 9. Not all of Part 9 concerns local authority functions and not all of those provisions that do will require guidance; some are clear on their face.
- The guidance is not the same as the Explanatory Notes to the Act, which already explain what each provision of Part 9 does.
- The guidance is only for where the Scottish Ministers consider further information should be set out about how LAs are to carry out a function conferred on them by Part 9.
- On allotment size, it is a function of LAs to make offers to lease allotments to people on the waiting list. Section 110 provides that such an offer is only treated as having been agreed to if the offer is of an allotment of approximately 250 sqm, unless either the person has requested an allotment of another size, or has not so requested but chooses to accept an allotment of another size. The size of allotments is therefore relevant to how LAs carry out their function of making offers of allotments, so guidance could be used to explain the standard size of an allotment is considered to be approximately 250 sqm plus or minus a given percentage/ size (whatever the group comes up with).
- On the wider point about which sections relate to functions of LAs, the word “functions” (as defined in the Interpretation and Legislative Reform (Scotland) Act 2010) includes powers and duties. So wherever Part 9 places a power or a duty on LAs, **the Scottish Ministers may (but do not have to)** issue guidance about how that power or duty is to be exercised.
- Sections which contain no LA functions are—
  - S 107
  - S 108
  - S 129
  - S 130
  - S 131
  - S 132
  - S 137
  - S 138

- Additional sections to those identified at the 3<sup>rd</sup> Tripartite-Group meeting (s111 – s125), we can consider adding sections 109, 110 and 126-128. These sections all include some aspect of LA functions. However, not every provision within each of these sections is about LA functions. Equally, not every provision which is about LA functions will require guidance. For example, in section 109 (Request to lease allotment), only subsection (7) relates to an LA function (giving written notice of receipt of request), and it seems unlikely that any guidance would be required on that particular function. On the other hand, s 112 (Duty to provide allotments) sets out a LA's duty to take reasonable steps to ensure waiting lists are kept below certain levels. During the passage of the Bill it was discussed that examples of what could be considered reasonable steps might be appropriate to set out in guidance.
- So we can take from the above that we can produce guidance on allotment size. We can also add sections 109, 110 and 126 - 128 [back] into our guidance development exercise but we'll **need to decide which provisions we want to produce guidance on.**

**Action 3:** Invite Kristen Anderson to a Tripartite-Group meeting in order to hear from her how Grow Your Own is included in SG planning policy – Robin MacLean

- Awaiting a response from Kristen.

**Action 4:** Establish status of Sports Scotland – Robin MacLean

- Sport Scotland is the national agency for the development of sport and is a non-departmental public body (NDPB), responsible through Scottish Ministers to the Scottish Parliament. It was established by Royal Charter in 1971 as the Scottish Sports Council; sportscotland is a trading name and the name used in day to day use.

### **Planning applications**

- Sport Scotland is a statutory consultee where an outdoor sports facility may be lost, or its future use may be prejudiced. Outdoor sports facilities include outdoor playing fields larger than 0.2ha, outdoor athletics tracks, and outdoor tennis courts (except those in a private dwelling, hotel or other tourist accommodation). In assessing overall proposals where any such facilities might be lost sportscotland is guided by the provisions of Scottish Planning Policy (SPP) paragraph 226 and will compare the existing provision with that proposed, both in terms of quantity and quality. SPP requires that any outdoor sports facility which may be lost would be replaced either by a new facility of comparable or greater benefit for sport in a location that is convenient for users, or by the upgrading of an existing outdoor sports facility to provide a facility of better quality on the same site or at another location that is convenient for users and maintains or improves the overall playing capacity in the area.
- They are consulted by planning authorities where there are proposals which may result in the loss of; prejudice or prevent the use of land which was last used as

an outdoor sports facility, from being used again for that purpose. This is in relation to the following outdoor sports facilities:

- Outdoor pitches and playing fields over 0.2ha in size
  - Outdoor Athletics tracks
  - Golf Courses
  - Outdoor bowling Greens
  - Outdoor tennis courts (other than those within a private dwelling, hotel or other tourist accommodation)
- However, they do welcome and encourage early discussion from applicants and councils where there are proposals that may affect these facilities.

**Action 5: SAGS Funding Proposal**

- SG Food & Drink received a funding proposal from SAGS.

**Other Information:**

- It was suggested that a member of the Scottish Government Legal Division (SGLD) might attend the next meeting and go over some potential queries the Group may have on the Guidance exercise. However, SGLD do not generally disclose or give legal advice to bodies or individuals outside of Scottish Government and it would therefore be inappropriate for them to attend.
- The group can decide on where it may benefit from including guidance but if there are further specific queries, further clarification can be sought from SGLD.