

Selling Allotment Produce:

Is it Legal ?

Is it Right ?

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There is increasing interest in locally and naturally grown food, and this is to be welcomed, for a range of well documented social, environmental and health reasons. In urban areas especially, the most important sites for actual production of local natural food are allotment sites.

By renting an allotment garden, people can get direct access to *food without food miles* by growing it themselves. However, not everyone has the time, ability or inclination to manage an allotment; those that do rarely produce for all their fresh food needs; there are insufficient plots to meet demand in many areas; and on many allotment sites, surpluses, gluts and cultivable land 'go to waste'.

In economic terms, there seems to be a healthy but unmet demand for allotment produce, exacerbated by the fact that methods of production and distribution are insufficiently developed. One obvious means of addressing this would be to look at ways of *selling* surplus allotment produce. However, there are certain legal, and philosophical, issues which people ought to be aware of before going down this road.

The aim of this discussion paper is to explain, in as simple terms as possible, when allotment produce can be sold legally, when it can't, and why. It will also give an overview of some of the extra-legal moral/philosophical issues which need to be considered.

What the Law Says:

Allotment Gardens Cannot Be a Business

The key legal restriction is contained in the Allotments Act 1922, whereby there is a general prohibition on any "trade or business"¹ being conducted on the allotment garden or any part thereof. An allotment garden must, by definition, "be wholly or mainly cultivated for the production of vegetable or fruit crops for consumption by the occupier or his family"². So allotment gardens can't operate as market gardens, or nurseries.

Furthermore, carrying out any form of trade, however small, *on the allotment site* could also be interpreted as being in breach of this law.

Allotment Gardeners Can Sell their Surplus Crop

There is however, no restriction on the distribution, by sale or otherwise, of a certain proportion of the plotholder's crop. Geoff Stokes, secretary of the *National Society of Allotment & Leisure Gardeners (NSALG)* has stated in a recent article: "there seems to be no justification in preventing [an allotment] tenant from selling or otherwise disposing of 'surplus' produce"³. This view has been approved by Paul Clayden, author of *The Law of Allotments (Fifth Edition)*, and thus probably the leading specialist on allotment law!

Of course the definition of 'surplus' is a grey area. According to Mick Marston of the Soil Association, as far as the law, and the government, are concerned, "limited commercial activity can take place as long as it is ancillary to the main purpose"⁴.

Allotment Gardens Can Be Rented Out for Commercial Production

With the Allotments Act 1922 new restrictions came which created a new category, of *allotment gardens*. It was defined by size (not more than 40 poles) as well as use i.e. cultivated mainly for home consumption. This distinguished it from the *allotment*, which remained, as defined in the 1922 Act as “any parcel of land of not more than two acres in extent, held by a tenant under a landlord, and cultivated as a farm or garden, or partly as a garden and partly as a farm”⁵.

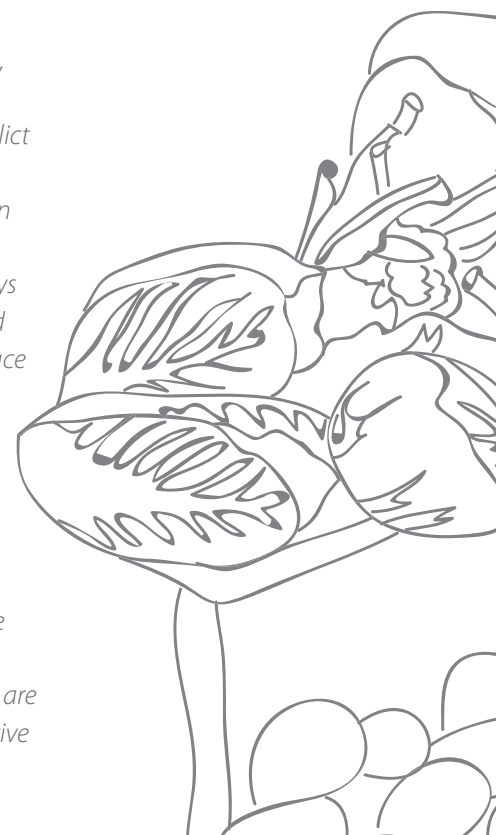
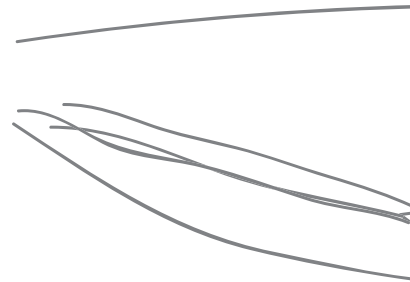
The purpose of this distinction was to limit the demands for land that could be placed on authorities, and limit security of tenure to contracts based on annual renewal. The vast majority of allotment sites are now divided into allotment gardens. However allotment gardens *can* be rented out as “allotments”: a subsection in the Small Holdings & Allotments Act 1908–1926 enables an authority, “when they are unable to find proper allotment tenants from the population to let provisionally to market gardeners, farmers or others willing to take the land”⁶. So, on an allotment site where there were vacancies, the council or association could let plot(s) for commercial food production. However, a subsequent applicant for the allotment garden would be presumed to have a greater claim when it came up for annual renewal.

What the Law Doesn't Say:

The Latest in Government Thinking

In 1998 the Environment, Transport & Regional Affairs Select Committee presented their report *The Future of Allotments*, including the recommendation that decisions over commercial use with regard to site shops and sales of surplus produce should be made on a site-by-site basis, with the proviso that “care should be taken when relaxing

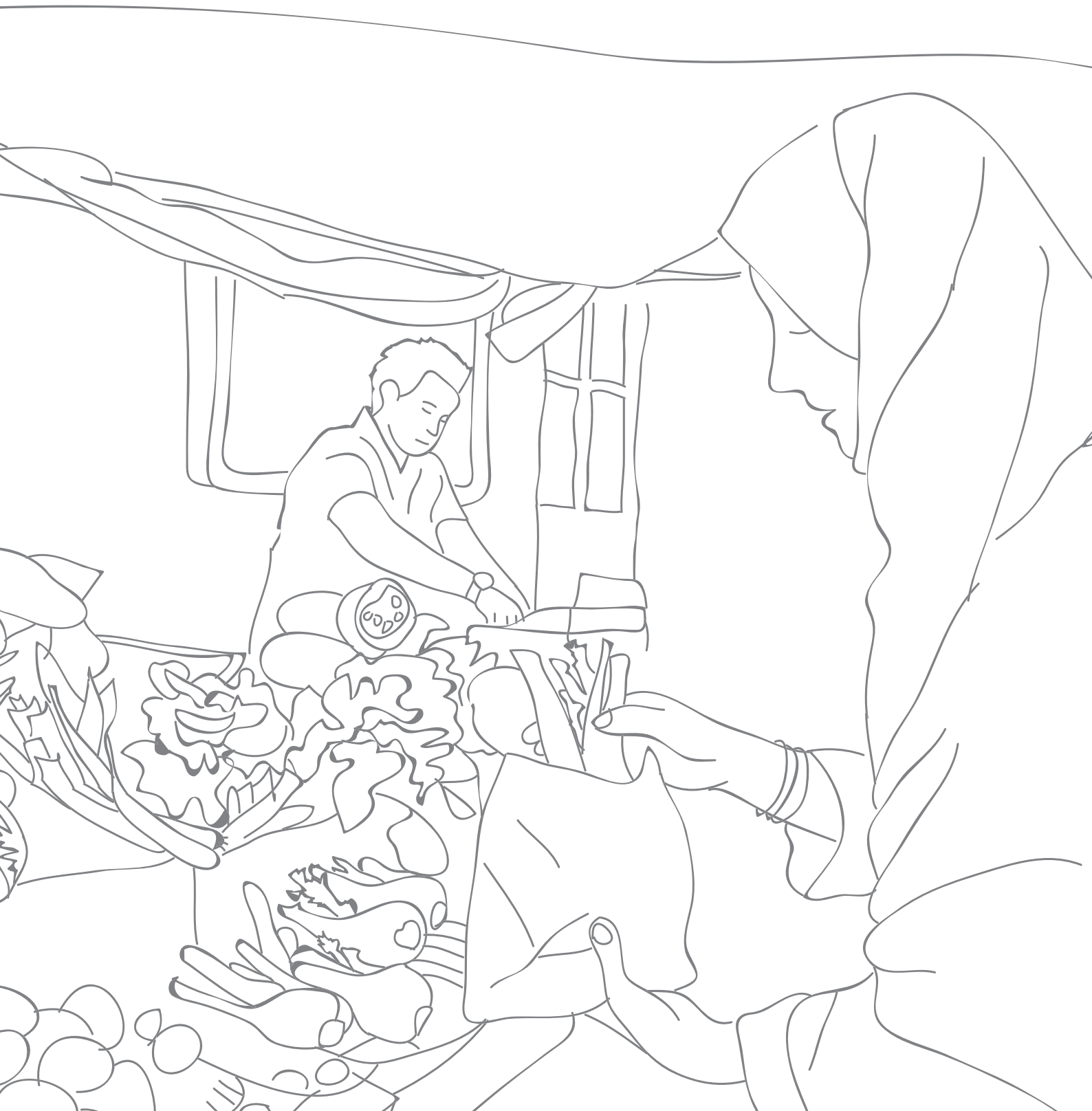
Case Study 1 OrganicLea & Crop Share *OrganicLea, a voluntary association constituted as a workers co-operative, approached a number of organisations in 2000, with a plan for a “community market garden”. They were offered six derelict allotment plots by London Borough of Waltham Forest, in the north of the borough. The majority of the produce grown on the site is consumed by the members and anyone who volunteers on the gardens. However, OrganicLea have always explicitly produced a surplus for sale. Proceeds are reinvested in the project. In 2006/07 OrganicLea were selling produce on a fruit and vegetable stall in Walthamstow, launched in partnership with Eostre Organics, a growers cooperative in East Anglia. Crop Share was launched as a way of allowing other local gardeners and food producers, on allotments or otherwise, to make their naturally grown produce available to the wider community. Gardeners who sell vegetables as part of Crop Share can be remunerated by cash, or claim the monetary value of their sale back in other produce from the stall. OrganicLea argue that by selling their surplus they are able to actively support and promote sustainable co-operative food production.*



restrictions so that the essential character of a site is maintained”⁷. None of the Select Committee recommendations have, as yet, been made law, but they are an indication of the current thinking in government, which in turn is at least influenced by the current thinking on the ground.

When Business is Business

In the Acts no distinction is made between someone selling allotment produce for private profit, and an association selling produce to raise funds, for themselves or others: it *could* all be defined as “business”. In practice, authorities may deem the distinction an important one. The allotment shop, selling gardening sundries and based on the site, is a common and widely accepted feature of the allotment landscape. Usually proceeds go to the allotment association, so they are not regarded as a form of “business”.



Beyond the Law: Allotment Rights and Wrongs

So, while there is some room for interpretation, legally allotment gardeners can trade a surplus (off site), and councils or associations can let vacant plots to market gardeners. But, as people who value allotments and what they represent, do we welcome this legal dispensation? Do we want to see more, or less of it?

Case Study 2 Beacon Hill Allotment & Leisure Gardeners Society *BHALGS are based on an allotment site in Cleethorpes, Lincolnshire. They were formed to fight rent increases and have since significantly contributed to the regeneration of their allotments. In recent years they have had a regular plant and produce stall, and are about to sell rhubarb to a local wholefood shop. Many of the customers are gardeners buying plants or filling their "hungry gaps". Jaq Brown of BHALGS says that "it all goes to boost society funds".*



Selling Surplus: The Case Against

Some of the main arguments against the selling of allotment produce are to do with maintaining the non-commercial *character* of allotments. Allotment sites are a patchwork of all manner of weird and wonderful gardening styles, partly because optimising crop yield is not necessarily the prime objective. Allotment sites are viewed by many as almost an oasis from the world of commerce, where favours and spare veg are given freely. To encourage people to grow for a market risks upsetting this "gift economy". In the worst case scenario, people who are economically motivated may not only disrespect or abuse the cooperative culture of an allotment site, but even exploit the land itself. Geoff Stokes quotes the example of a plant nursery business that operated from an allotment site in Birmingham. When they left, it was found they had literally mined three feet of topsoil! One allotmenteer in Barnet complained that when her neighbours began operating

commercially, “it became a place of work, which is what people... come to allotments to get away from”⁹.

Selling Surpluses: The Case For

However, it may be equally easy to find examples of bad behaviour, bad horticultural practice and work ethic amongst “leisure gardeners” on allotments. Proponents of trade in allotment produce would argue that the encouragement of trading activity need not run counter to the peaceful, community feel of allotments. Produce could be sold to help raise needed funds for an allotment association or project, and a produce stall can help raise the profile of allotments in the neighbourhood. Gardeners can grow and sell their produce in cooperatives rather than as “sole traders”. Trading activity needn’t be on the basis of money: produce can be swapped, bartered, exchanged through schemes such as *Good Food Swaps*¹⁰, and *LETS (Local Exchange Trading Systems)*¹¹ or other innovative methods. All these things build community and cooperation rather than weaken it.

Crucially, it may be argued, what they also do is encourage people to grow more! Environmentally, the more food is grown on urban allotments by sustainable methods, and eaten, the less damage done, to the climate and ecosystems, by industrial agriculture and long distance road haulage. Healthwise, fresher and less chemicals is better. Socially, it means people, as growers and consumers, reconnecting with their food, who grows it, where it comes from, the very earth they live on. Money spent on allotment produce goes to someone in the community, not to distant shareholders. The knowledge that any extra vegetables grown won’t go to waste, and are in fact valuable and appreciated, may in turn encourage gardeners to grow more food. And, it might be asked, if financial returns encourage or enable them to spend more time on their plots engaged in honest work producing sustainable nourishment for the community, can this really be a bad thing?

Case Study 3

AUTHORITIES THWARTING ALLOTMENT SALES

In 2003/04 John Trim, of Hampshire, reported in the National Vegetable Society Bulletin of how their allotment stall was effectively halted by the local council. The stall was based at the allotment site and sold produce donated by tenants. All proceeds went to local organisations and charities, and it was apparently very popular with the public, raising £300 in one month, but not with everyone. One plotholder complained to the council of fears over security of the site. A council meeting discussed the issue, and despite a petition in support of the stall, and the sympathy of some councillors, it ended in a stalemate. Eventually the council ordered the allotment tenants to [John’s words] “curtail our activities due to health and safety regulations”.

Thinking Outside of the Plot

Some of the misgivings about commercial use of urban allotments may be, on examination, more to do with the lack of access to land. If gardeners rent one or more plots in order to grow for the market, whilst keen leisure gardeners are left on the waiting list, it is understandable that this is seen as unfair. Another way of looking at the problem, though, is that the statutory duty to provide citizens with an allotment garden is not being met, and more allotments should be created. It must also be said that there are many examples of people cultivating, for sale and subsistence, on non-allotment open land even in inner city areas. Any discussion on growing more food in towns should reflect on the possibilities of open land (parks, domestic gardens, “waste ground” etc.) beyond that currently designated for allotment use, and on why peri-urban and rural land shouldn’t be made available to those that have a desire to garden it.

A “middle way” between the ayes and the nays might be to insist that allotment surpluses are sold on a not-for-profit basis through co-operative/collective structures; that production for market meets high standards of sustainability such as the Wholesome Food Association (WFA) principles¹² and the *Guidelines for Organic Gardening*¹³ so as to minimise any adverse impacts on allotment sites and beyond; and that more allotments be made available, and distinct from allotment gardens, for people wishing to engage primarily in commercial production.

REFERENCES **1** The Allotments Act 1922 subsection 22 (1) quoted in Paul Clayden, *The Law of Allotments (Fifth Edition)*, Shaw & Sons 2002 **2** Geoff Stokes, “To sell or not to sell” or “when is an allotment not an allotment”, Councils & Clerks Direct **3** Ibid. **4** Mick Marston, Local Food Links Officer at Soil Association, in conversation, January 2007 **5** Allotments Act 1922 quoted in Clayden, op.cit. **6** Quoted in Stokes, op.cit. **7** Quoted in Clayden, op.cit. **8** Geoff Stokes, in conversation, January 2007 **9** e-mail communication with allotment gardener **10** www.growingcommunities.org **11** www.letslinkuk.net **12** Wholesome Food Association: www.wholesome-food.org.uk. 01237 441118 **13** Garden Organic: www.gardenorganic.org.uk. 02476 303517