



Land Reform (Scotland) Act 2016

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PART 2

THE SCOTTISH LAND COMMISSION

CHAPTER 3

THE TENANT FARMING COMMISSIONER

Functions of the Tenant Farming Commissioner

24 Functions of the Tenant Farming Commissioner

- (1) The functions of the Tenant Farming Commissioner are—
 - (a) to prepare codes of practice on agricultural holdings in accordance with section 27,
 - (b) to promote the codes of practice in accordance with section 28,
 - (c) to inquire into alleged breaches of the codes of practice in accordance with sections 29 to 34,
 - (d) to prepare a report on the operation of agents of landlords and tenants in accordance with section 36,
 - (e) to prepare recommendations for a modern list of improvements to agricultural holdings in accordance with section 37,
 - (f) to refer for the opinion of the Land Court any question of law relating to agricultural holdings in accordance with section 38,
 - (g) to collaborate with the Land Commissioners in the exercise of their functions to the extent that those functions relate to agriculture and agricultural holdings,
 - (h) to exercise any other functions conferred on the Commissioner by any enactment.
- (2) The Tenant Farming Commissioner must exercise the Commissioner's functions with a view to encouraging good relations between landlords and tenants of agricultural holdings.
- (3) The Scottish Ministers must—

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- (a) review the Tenant Farming Commissioner’s functions before the end of the period of 3 years beginning with the day on which this section comes into force,
 - (b) publish the findings of the review as soon as practicable.
- (4) In carrying out a review under subsection (3), the Scottish Ministers must—
- (a) invite the Tenant Farming Commissioner to give views on the operation of the Commissioner’s functions and, in particular, on whether the Commissioner’s powers are sufficient in relation to the Commissioner’s duties,
 - (b) invite such other persons appearing to Ministers to have an interest in the Commissioner’s functions to give views on the operation of those functions, and
 - (c) have regard to any such views.
- (5) Following review under subsection (3), the Scottish Ministers may by regulations modify subsection (1) to—
- (a) amend the functions of the Tenant Farming Commissioner,
 - (b) remove functions from the Tenant Farming Commissioner,
 - (c) confer new functions on the Tenant Farming Commissioner.

25 Tenant Farming Commissioner: delegation of functions

- (1) The Tenant Farming Commissioner may authorise the following to exercise such of the Commissioner’s functions, and to such extent, as the Commissioner may determine—
- (a) any Land Commissioner,
 - (b) any committee,
 - (c) any employee of the Commission,
 - (d) any other person.
- (2) But the Tenant Farming Commissioner may not authorise the function under section 24(1)(f) to be exercised by any other person.
- (3) Nothing in subsection (1) affects the responsibility of the Tenant Farming Commissioner for the exercise of the Commissioner’s functions.

26 Acting Tenant Farming Commissioner

- (1) The Scottish Ministers may appoint a person to carry out the functions of the Tenant Farming Commissioner during a period in which the office is vacant (an “acting Tenant Farming Commissioner”).
- (2) A person who is disqualified for appointment as Tenant Farming Commissioner is also disqualified for appointment as acting Tenant Farming Commissioner.
- (3) A person appointed as acting Tenant Farming Commissioner—
- (a) may, by giving notice in writing to the Scottish Ministers, resign at any time,
 - (b) may be dismissed by the Scottish Ministers at any time,
 - (c) in other respects, holds appointment on such terms and conditions as the Scottish Ministers may determine.
- (4) While holding appointment as acting Tenant Farming Commissioner, a person is to be treated as the Commissioner for all purposes other than those of sections 13 and 14.

Tenant Farming Commissioner: codes of practice

27 Tenant Farming Commissioner: codes of practice

- (1) The Tenant Farming Commissioner must prepare codes of practice for the purpose of providing practical guidance to landlords and tenants of agricultural holdings and their agents.
- (2) The codes of practice may include, among other things, provision about—
 - (a) negotiating and conducting rent reviews,
 - (b) agreeing and recording improvements by tenants,
 - (c) negotiating the fulfilment of the obligations of landlords and tenants,
 - (d) the conduct of agents of landlords and tenants,
 - (e) the process of succession and assignation,
 - (f) determining compensation at waygo,
 - (g) negotiating the terms of a modern limited duration tenancy and a repairing tenancy,
 - (h) the management of sporting leases, and
 - (i) game management.
- (3) The Tenant Farming Commissioner must from time to time—
 - (a) review the codes of practice,
 - (b) revise the codes if the Commissioner considers it appropriate.
- (4) Before the Tenant Farming Commissioner publishes a code of practice under this section, the Commissioner must consult any persons appearing to the Commissioner to have an interest in the draft code.
- (5) After complying with subsection (4), the Tenant Farming Commissioner must—
 - (a) publish the code in such form as the Commissioner considers appropriate, and
 - (b) lay a copy of the code before the Scottish Parliament.
- (6) Subsections (4) and (5) apply to a revised code of practice as they apply to a code of practice.
- (7) A code of practice published under this section is admissible in evidence in any proceedings before the Land Court.
- (8) If any provision of a code of practice published under this section appears to the Land Court conducting any proceedings to be relevant to any question arising in the proceedings the Land Court must take that provision of the code into account in determining that question.
- (9) Subsections (7) and (8) apply to arbitration proceedings under section 61 of the 1991 Act or section 78 of the 2003 Act as they apply to Land Court proceedings.

28 Tenant Farming Commissioner: promotion of codes of practice

The Tenant Farming Commissioner is to promote the observance of the codes of practice issued under section 27, including by—

- (a) educating and advising about the codes,
- (b) supporting best practice in accordance with the codes among landlords and tenants of agricultural holdings and their agents,

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- (c) encouraging good relations among landlords and tenants of agricultural holdings and their agents,
- (d) working in collaboration with other persons (whether in partnership or in other ways),
- (e) contributing to the development and delivery of policies and strategies in relation to agricultural holdings.

Tenant Farming Commissioner: inquiry function

29 Application to inquire into breach of code of practice

- (1) A person may apply to the Tenant Farming Commissioner to inquire into an alleged breach of a code of practice (an “alleged breach”) if the person—
 - (a) has an interest in a relevant tenancy, or
 - (b) would have an interest in a relevant tenancy but for the alleged breach.
- (2) An application under subsection (1) must contain—
 - (a) the applicant’s details,
 - (b) details of each other person having an interest in the relevant tenancy, so far as the applicant is aware of them,
 - (c) details of the alleged breach,
 - (d) the provision of the code of practice that the alleged breach relates to.
- (3) Subject to subsection (5), an application must be accompanied by the appropriate fee set by the Tenant Farming Commissioner.
- (4) When setting the appropriate fee, the Tenant Farming Commissioner must have regard to the likely impact of the fee on the number of applications under subsection (1).
- (5) The Tenant Farming Commissioner may waive payment of the appropriate fee if the Commissioner considers that payment is likely to result in undue hardship to the applicant.
- (6) An application under subsection (1) is without prejudice to any time limit for proceedings in the Land Court under any enactment.

30 Procedure for inquiry

- (1) The Tenant Farming Commissioner may inquire into an alleged breach only if satisfied that—
 - (a) the applicant has an interest in a relevant tenancy, or would do so but for the alleged breach,
 - (b) the application contains sufficient information to proceed to an inquiry, and
 - (c) the application is not based on substantially the same facts as a previous application from the same applicant.
- (2) Where the Tenant Farming Commissioner is not satisfied that the application contains sufficient information to proceed to an inquiry, the Commissioner may require the applicant to provide such additional information as the Commissioner considers appropriate, by the end of such period as the Commissioner may specify.

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- (3) The Tenant Farming Commissioner may dismiss the application by giving notice in writing to the applicant where—
 - (a) the application does not meet the conditions in subsection (1),
 - (b) a request by the Commissioner under subsection (2) for additional information has been made and the period specified for providing such information has expired, or
 - (c) the Commissioner considers that a request under subsection (2) for additional information would not provide sufficient information to proceed to an inquiry.
- (4) Where the Tenant Farming Commissioner is satisfied that the application meets the conditions in subsection (1) the Commissioner must—
 - (a) give notice in writing to the applicant and each other person with an interest in the relevant tenancy,
 - (b) send a copy of the application to each of those persons, and
 - (c) require a response to the application from each of them by the end of such period as the Commissioner may specify.

31 Enforcement powers

- (1) The Tenant Farming Commissioner may at any time during an inquiry into a breach of a code of practice require any person to provide such information as the Commissioner considers appropriate for the purposes of the inquiry.
- (2) The Tenant Farming Commissioner may by serving notice in writing impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a requirement under—
 - (a) section 30(4)(c),
 - (b) subsection (1).
- (3) The amount of a non-compliance penalty is to be determined by the Tenant Farming Commissioner, but must not exceed £1000.
- (4) A non-compliance penalty must be paid to the Commission.
- (5) The Commission may recover any non-compliance penalty as a civil debt.

32 Notice of non-compliance penalty

- (1) A notice under section 31(2) must include information as to—
 - (a) the grounds for imposing the non-compliance penalty,
 - (b) the amount of the penalty,
 - (c) how payment may be made,
 - (d) the period within which payment must be made, which must be not less than 28 days beginning with the day on which the notice imposing the penalty is received,
 - (e) rights of appeal, and
 - (f) the consequences of failure to make payment within the period specified.
- (2) A person served with a notice imposing a non-compliance penalty may appeal to the Land Court against the notice on the ground that the decision to serve the notice—
 - (a) was based on an error of fact,

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- (b) was wrong in law, or
 - (c) was unfair or unreasonable for any reason (for example because the amount is unreasonable).
- (3) An appeal under subsection (2) must be made within the period of 28 days beginning with the day on which the notice under section 31(2) is received.
- (4) Where an appeal under subsection (2) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.
- (5) On an appeal under subsection (2) the Land Court may overturn, confirm or vary the non-compliance penalty.

33 Report on inquiry

- (1) As soon as practicable after an inquiry into an alleged breach is complete the Tenant Farming Commissioner must publish a report setting out—
- (a) where there is sufficient information for the Commissioner to reach a decision on breach of the code of practice —
 - (i) the Commissioner’s decision as to whether or not the code has been breached,
 - (ii) the reasons for the Commissioner’s decision,
 - (iii) the relevant facts on which the Commissioner’s decision is based,
 - (iv) such recommendations as the Commissioner considers appropriate,
 - (b) where there is not sufficient information for the Commissioner to reach a decision on breach of the code of practice, that finding.
- (2) A report published under this section is admissible as evidence in any proceedings before the Land Court.
- (3) If a report published under this section appears to the Land Court conducting any proceedings to be relevant to any question arising in the proceedings the Land Court must take that report into account in determining that question.
- (4) Subsections (2) and (3) apply to arbitration proceedings under section 61 of the 1991 Act or section 78 of the 2003 Act as they apply to Land Court proceedings.

34 Tenant Farming Commissioner: confidentiality of information

- (1) A relevant person must not disclose any information which has been obtained by or on behalf of the Tenant Farming Commissioner for the purposes of an inquiry into a breach of a code of practice unless authorised to do so by subsection (2).
- (2) Disclosure is authorised for the purposes of subsection (1) only so far as—
- (a) it is necessary for the purpose of enabling or assisting the exercise by the Tenant Farming Commissioner of the Commissioner’s functions under this Act,
 - (b) it is made with the consent of each person to whom the information relates,
 - (c) it is made for the purposes of civil proceedings,
 - (d) it is made for the purposes of a criminal investigation or criminal proceedings or for the purposes of the prevention or detection of crime,
 - (e) it is made in pursuance of an order of a court or tribunal,

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- (f) it is made in accordance with any other enactment requiring or permitting the disclosure.
- (3) A person who knowingly contravenes subsection (1) commits an offence.
- (4) A person guilty of an offence under subsection (3) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.
- (5) It is a defence for a person charged with an offence under subsection (3) to prove that the person reasonably believed—
 - (a) that the disclosure was authorised under subsection (2), or
 - (b) that the information had already lawfully been made available to the public.
- (6) In subsection (1) a “relevant person” means any individual who is or was—
 - (a) the Tenant Farming Commissioner (or acting Tenant Farming Commissioner),
 - (b) a Land Commissioner,
 - (c) a member of the Commission’s staff,
 - (d) a person exercising functions on behalf of the Commission or its members.

35 Protection from actions for defamation

- (1) For the purposes of the law of defamation, any statement made by the Tenant Farming Commissioner in pursuance of the Commissioner’s inquiry function under section 24(1)(c) has qualified privilege.
- (2) In subsection (1) “statement” has the meaning given by section 17 of the Defamation Act 1996.

Tenant Farming Commissioner: review of operation of agents

36 Report on operation of agents of landlords and tenants

- (1) The Tenant Farming Commissioner must—
 - (a) prepare a report on the operation of agents of landlords and tenants in relation to agricultural holdings,
 - (b) submit the report to the Scottish Ministers before the end of the period of 12 months beginning with the day on which this section comes into force.
- (2) The report submitted to the Scottish Ministers under this section—
 - (a) must include such recommendations as the Commissioner considers necessary to improve the operation of agents of landlords and tenants in relation to agricultural holdings,
 - (b) may include such other recommendations as the Commissioner considers appropriate.
- (3) In preparing the report to the Scottish Ministers under this section, the Commissioner must consult any persons appearing to the Commissioner to have an interest in the operation of agents of landlords and tenants.

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Tenant Farming Commissioner: modern list of improvements

37 Recommendations by Tenant Farming Commissioner for modern list of improvements

- (1) The Tenant Farming Commissioner must—
 - (a) prepare a report setting out recommendations for a modern list of improvements to agricultural holdings,
 - (b) submit the report to the Scottish Ministers.
- (2) Before submitting the report to the Scottish Ministers under this section, the Commissioner must consult any persons appearing to the Commissioner to have an interest in the draft recommendations.

Tenant Farming Commissioner: power to refer questions of law to Land Court

38 Referral of questions of law by Tenant Farming Commissioner to Land Court

The Tenant Farming Commissioner may refer to the Land Court for determination any question of law which may competently be determined by the Land Court by virtue of any enactment.