

LAND REFORM (SCOTLAND) ACT 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – the Scottish Land Commission

Chapter 1 – the Commission

Establishment

Section 4 – The Scottish Land Commission

11. This section establishes the Scottish Land Commission as a body corporate with its own legal personality (subsection (1)). The Scottish Land Commission's Gaelic name (Coimisean Fearainn na h-Alba) has equal legal status. The Commission will consist of a total of six members, comprising five Land Commissioners and the Tenant Farming Commissioner. The Commission will provide staff to support the Land Commissioners and the Tenant Farming Commissioner by virtue of section 6(a).
12. Subsection (5) contains a delegated power to allow the Scottish Ministers to make regulations changing the number of Land Commissioners in the future.

Section 5 – Status

13. This section provides that the Commission is not a servant or agent of the Crown, that it does not enjoy any status, immunity or privilege of the Crown, and that its property neither belongs to the Crown nor is held on behalf of the Crown. Subsection (4) sets out that its members and staff are not servants or agents of the Crown, that they have no status, immunity or privilege of the Crown and that the staff of the Commission are not to be regarded as civil servants.

Functions of the Commission

Section 6 – Functions of the Commission

14. **Section 6** sets out the functions of the Commission, which are to provide property, staff and services to the Land Commissioners and the Tenant Farming Commissioner and to ensure that arrangements are in place to co-ordinate the performance of their functions.

Section 7 – General powers

15. Subsection (1) states that the Commission can do anything which it considers necessary or expedient for the exercise of the functions of the Commission, the Land Commissioners and the Tenant Farming Commissioner. Subsection (2) sets out a non-exhaustive list of particular powers of the Commission, namely the power to enter into contracts, acquire and dispose of land, co-operate with any person and obtain advice or assistance from certain persons and pay that person fees, remunerations or allowances.

Strategic plan and programme of work

Section 8 – Strategic plan

16. To provide for proper corporate governance within the Commission, section 8 imposes a duty on the Commission to regularly set out in a strategic plan how it, the Land Commissioners and the Tenant Farming Commissioner plan to exercise their functions.
17. Subsection (2) requires the Commission to include in each strategic plan the objectives and priorities of the Commission, the Land Commissioners and the Tenant Farming Commissioner, and cost estimates for the exercise of their respective functions. Subsections (3) to (7) set out the required time frames and procedure for the preparation of each strategic plan. In particular, the strategic plan must be submitted to the Scottish Ministers under subsection (3) and, following the approval of the plan, it must be published and laid before the Scottish Parliament under subsection (5). The Scottish Ministers may reject the strategic plan and direct the Commission to submit a revised strategic plan (subsection (4)(c)).

Section 9 – Programme of work

18. In addition to the strategic plan required under section 8, section 9 imposes a duty on the Land Commissioners to prepare a programme of work to set out information on the proposed reviews into the impact and effectiveness of any law or policy under section 22(1)(a), information about other activities being undertaken by the Land Commissioners and the timetable for the programme of work. The programme of work must be submitted to the Scottish Ministers by the Commission on behalf of the Land Commissioners at the same time as the strategic plan, but the Scottish Ministers cannot reject the programme of work. There is no duty on Scottish Ministers to comment upon the programme of work and no duty on the Commissioners to take into account any direction or comment made by the Scottish Ministers. The Commission must then publish the programme of work and lay a copy before the Scottish Parliament. Subsection (4) enables the Commission to submit a revised programme of work to Ministers and subsection (5) places a duty on the Commission to publish and lay before the Scottish Parliament any revised programme.

Membership

Section 10 – Membership

19. Section 44(4) of the Act provides that the members of the Commission are to be five Land Commissioners and one Tenant Farming Commissioner. Section 10 sets out the procedure for the appointment of the members of the Commission.
20. Under subsection (2), the Scottish Parliament has to approve the appointment of the members. Section 11(4) sets out that when an appointment is referred to the Scottish Parliament, the Scottish Ministers must lay a statement before the Scottish Parliament as to how they have complied with the appointment duties set out in section 11. The Scottish Ministers will determine the appointment period for each member and the appointment can last up to five years (subsection (3)). Sections 11 to 13 contain particular conditions regarding the appointment of members, but otherwise the Commission, with the approval of the Scottish Ministers, is free to determine the terms and conditions of appointment under subsection (4). Subsection (5) allows the Scottish Ministers to re-appoint an existing or previous member and subsection (7) places a duty on the Scottish Ministers to select one of the Land Commissioners to chair the Commission.

Section 11 – Eligibility for appointment

21. Land matters are complex and multi-faceted. Therefore, to ensure that there is a range of expertise in the Commission, subsection (1) places a duty on the Scottish Ministers to have regard to the overall expertise of the members of the Commission in—
- Land reform
 - Law
 - Finance
 - Economic issues
 - Planning and development
 - Land management
 - Community empowerment
 - Environmental issues
 - Human rights
 - Equal opportunities
 - The reduction of inequalities of outcome which result from socio-economic disadvantage.
22. Subsection (1)(b) requires the Scottish Ministers to encourage equal opportunities and the observance of the equal opportunity requirements.
23. Subsection (2) requires Ministers, when appointing the Land Commissioners, to take every reasonable step to ensure that at least one of them speaks the Gaelic language.
24. Subsection (3) requires Ministers to ensure that the Tenant Farming Commissioner has the necessary expertise or experience in relation to agriculture.

Section 12 – Disqualification from membership

25. Subsection (1) prevents persons from being appointed as a member of the Commission if they have been in office within a relevant category listed in (a) to (e) within the previous 12 months. For instance, a person who was either a Member of Parliament or a Member of the Scottish Parliament in the last 12 months would be ineligible for appointment as a member of the Commission.
26. Subsection (2) excludes a person who is either a landlord or tenant in a “relevant tenancy” as defined in subsection (3) from being appointed as the Tenant Farming Commissioner. A “relevant tenancy” is a 1991 Act tenancy, a short limited duration tenancy, a limited duration tenancy, a modern limited duration tenancy or a repairing tenancy (in respect of the last two see, respectively, Part 10, Chapters 1 and 2 of the Act).
27. Subsection (4) provides that any member of the Commission who becomes one of the persons listed in subsection (1)(a) to (f) will cease to be a member of the Commission.
28. Similarly, subsection (5) provides that the appointment of the Tenant Farming Commissioner ceases if subsection (2) applies and the Commissioner becomes a landlord or tenant in a “relevant tenancy” under subsection (3).

Section 13 – Resignation and removal

29. Subsection (1) allows a member of the Commission to resign by serving notice in writing to the Scottish Ministers.

30. Subsection (2) sets out the circumstances in which the Scottish Ministers can revoke the appointment of a member of the Commission: for instance, insolvency of a member will allow the Scottish Ministers to use their discretion to end an appointment.
31. Subsection (3) defines insolvency for the purposes of subsection (2)(a).

Remuneration and staff

Section 14 – Remuneration, allowances and pensions

32. **Section 14** permits the Commission to pay its members and employees remuneration and expenses. Subsection (1)(a) sets out that remuneration is to be determined by the Commission with the approval of the Scottish Ministers. Subsection (2) provides that the Commission may also make payment of pensions, allowances or gratuities as the Commission determines, but with the approval of the Scottish Ministers. Subsection (3) allows for pensions, allowances and gratuities to be paid to staff and members in compensation for any loss of office.

Section 15 – Staff

33. Subsection (1) provides that the Commission must employ a person as a chief executive. The first appointment will be made by the Scottish Ministers (subsection (2)), with subsequent appointments being made by the Commission with the approval of the Scottish Ministers (subsection (3)).
34. Subsection (4) allows the Commission to employ other staff, and subsection (5) sets out that the Commission are to determine the terms and conditions for staff, with the approval of the Scottish Ministers.

Operational matters

Section 16 – Validity of things done

35. To ensure that the Commission is always able to perform its functions, section 16 provides that the validity of any of its actions is not adversely impacted by a vacancy of membership, a defect in the appointment of a member or any resignation or removal under section 13 of the Act.

Section 17 – Committees

36. Subsection (1) allows the Commission to set up committees for any purpose relating to the functions of the Commission, the Land Commissioners or the Tenant Farming Commissioner. Subsection (2) authorises the Commission to delegate the exercise of its functions to any committee but the Commission will remain responsible for the exercise of its functions notwithstanding any such delegation of the exercise of its functions (subsection (3)). Similarly, section 23(1)(a) authorises the Land Commissioners to delegate the exercise of their functions to any committee and section 25(1)(b) authorises the Tenant Farming Commissioner to delegate the exercise of the Tenant Farming Commissioner's functions to any committee.
37. Subsection (4) enables persons who are not members of the Commission to be appointed to be a member of any committee established.
38. Subsection (5) allows for the payment of remuneration or allowances to any person who is not a member of the Commission who is appointed to be a member of any committee established.
39. Subsection (6) provides that any committee established must comply with any directions given to it by the Commission.

Section 18 – Regulation of procedure

40. Subsection (1) imposes a duty on the Commission to establish and maintain a register of interests for its members. Subsection (2) clarifies that, with the exception of the duty in subsection (1), the Commission is free to regulate its own internal procedures.

Accounts and annual report

Section 19 – Accounts

41. Subsection (1) imposes a duty on the Commission to keep proper accounts and accounting records, and prepare a statement of accounts for each financial year.
42. Subsection (2) requires the Commission to send accounts to the Scottish Ministers and subsection (3) provides that the Commission must comply with any direction from the Scottish Ministers regarding the preparation of the accounts under subsection (1).
43. Subsection (4) places a further duty on the Commission to ensure that an audited statement of accounts and accounting records is made available for public inspection.

Section 20 – Annual report

44. Subsection (1) places a duty on the Commission to prepare an annual report shortly after the end of each financial year, with an assessment of its performance in carrying out its functions, of the performance of Land Commissioners and the Tenant Farming Commissioner in carrying out their functions, an assessment of the performance of the Commission and its members in achieving their main objectives as set out in any strategic plan having effect in that financial year, and an assessment of the performance of the Land Commissioners in relation to any programme of work having effect in that financial year.
45. Subsection (2) imposes procedural duties on the Commission to ensure that the annual report is published, sent to the Scottish Ministers and laid before the Scottish Parliament.
46. Subsection (3) enables the Commission to publish other reports and information in relation to its functions, and where it does do, it is under a duty to lay the report before the Scottish Parliament.

Application of public bodies legislation

Section 21 – Application of legislation relating to public bodies

47. This section makes a number of consequential amendments to other primary legislation in relation to public bodies. Subsection (1) adds the Commission to the list of public bodies required to produce a code of conduct under the Ethical Standards in Public Life etc. (Scotland) Act 2000. Subsection (2) makes the Commission a “Scottish public authority” for the purposes of the Freedom of Information (Scotland) Act 2002, conferring a general entitlement for any person to request information from the Commission, subject to the procedures and exemptions in that Act. Subsection (3)(a) makes the Commission subject to the Scottish Ministers’ power under section 14 of the Public Services Reform (Scotland) Act 2010 to make provision by order to improve the exercise of public functions, and subsection (3)(b) makes the Commission subject to the duties to provide information contained in Part 3 of the 2010 Act.