

# LAND REFORM (SCOTLAND) ACT 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – the Scottish Land Commission**

#### *Chapter 3 – the Tenant Farming Commissioner*

#### **Functions of the Tenant Farming Commissioner**

#### *Section 24 – Functions of the Tenant Farming Commissioner*

54. This section makes provision about the functions of the Tenant Farming Commissioner.
55. Subsection (1) sets out the functions of the Tenant Farming Commissioner
56. Subsection (2) places a duty on the Tenant Farming Commissioner to exercise their functions with a view to encouraging good relations between landlords and tenants of agricultural holdings.
57. Subsection (3) places a duty on the Scottish Ministers to review the functions of the Tenant Farming Commissioner within three years of this section coming into force and to publish the findings of the review.
58. Subsection (4) requires Scottish Ministers, when carrying out a review of the Tenant Farming Commissioner's functions, to seek and have regard to, the views of the Commissioner on the operation of the Commissioner's functions and, in particular, on the question of whether the Commissioner has sufficient powers to carry out his or her duties. Scottish Ministers must also seek views from any other persons appearing to Ministers to have an interest in the Commissioner's functions (i.e. stakeholders within the tenant agricultural sector such as tenants, landlords and groups that represent them.)
59. Subsection (5) gives the Scottish Ministers the power to make regulations to amend, remove or add to the functions of the Tenant Farming Commissioner.

#### *Section 25 – Tenant Farming Commissioner: delegation of functions*

60. **Section 25** makes provision for when the Tenant Farming Commissioner can delegate functions and to whom those functions can be delegated.
61. Subsection (1) gives the Tenant Farming Commissioner the power to authorise another person to exercise some, part of or all of the Tenant Farming Commissioner's functions. This includes the Land Commissioners, a committee of the Commission, and an employee of the Commission.
62. Subsection (2) sets out an exception to subsection (1) and makes clear that the Tenant Farming Commissioner cannot delegate the power under section 24(1)(f) and section 38 to refer for the opinion of the Land Court any question of law relating to agricultural holdings. That is a discretion which only the Commissioner can exercise.

63. Subsection (3) makes clear that the Tenant Farming Commissioner remains responsible for the exercise of the Commissioner's functions, even if some, or part of those functions are delegated to another person.

### ***Section 26 – Acting Tenant Farming Commissioner***

64. [Section 26](#) makes provision for the Scottish Ministers to appoint an acting Tenant Farming Commissioner to carry out all of the functions of the Tenant Farming Commissioner when no Commissioner is in office.
65. Subsection (2) makes clear that if a person is disqualified from being appointed as the Tenant Farming Commissioner then that person is also disqualified from being appointed as an acting Tenant Farming Commissioner. The circumstances under which a person can become disqualified are set out in section 12.
66. Subsection (3) sets out specific provision for when the acting Tenant Farming Commissioner can resign or be removed and allows the Scottish Ministers to otherwise determine the terms and conditions of the acting Tenant Farming Commissioner's appointment.
67. Subsection (4) makes clear that an acting Tenant Farming Commissioner is to be treated the same as the Tenant Farming Commissioner, except for the terms under which the Commissioner can resign, be removed or remunerated. For an appointed Tenant Farming Commissioner, provision is made for resignation and removal in section 13 and provision for remuneration, allowances and pensions in section 14. Subsection (3) of this section provides the equivalent of these sections for an acting Tenant Farming Commissioner.

### **Tenant Farming Commissioner: codes of practice**

#### ***Section 27 – Tenant Farming Commissioner: codes of practice***

68. [Section 27](#) places a duty on the Commissioner to prepare and publish codes of practice for the purpose of providing guidance to landlords and tenants of agricultural holdings and their agents.
69. Subsection (2) provides an indicative list of the issues relating to agricultural holdings that the codes of practice may cover.
70. Subsection (3) requires the Commissioner to review the codes of practice and revise the codes if appropriate. There is no set period within which a review must be carried out.
71. Subsection (4) provides that the Commissioner must consult with persons appearing to the Commissioner to have an interest in the draft code before publishing any code of practice.
72. Subsection (5) requires the Commissioner to lay a copy of the code before the Scottish Parliament when the code is published. There is no prescribed form for a code and a code can be published in any form the Commissioner considers appropriate.
73. Subsection (7) provides that any published code of practice can be admitted as evidence in any proceedings before the Scottish Land Court.
74. Subsection (8) requires the Scottish Land Court to take into account any part of a code of practice that it considers may be relevant to any proceedings before it.
75. Subsection (9) provides that a published code of practice can also be admitted, and should also (where relevant) be taken into account, as part of any arbitration proceedings under the 1991 and 2003 Agricultural Holdings Acts.

***Section 28 – Tenant Farming Commissioner: promotion of codes of practice***

76. **Section 28** places a duty on the Tenant Farming Commissioner to promote the observance of codes of practice published under section 27, in accordance with the Tenant Farming Commissioner’s function under section 24(1)(b), and sets out a non-exclusive list of ways in which this is to be done.

**Tenant Farming Commissioner: inquiry function**

***Section 29 – Application to inquire into breach of code of practice***

77. **Sections 29 to 35** make provision about the exercise of the Tenant Farming Commissioner’s function to inquire into alleged breaches of the codes of practice under section 24(1)(c). Section 29 sets out the process for a person with an interest in the tenancy, or who would have an interest but for an alleged breach, to apply to the Tenant Farming Commissioner to inquire into an alleged breach of any code of practice published under section 27.
78. Subsection (2) sets out what any application under subsection (1) must contain.
79. Subsection (3) provides that an application must be accompanied by the appropriate fee, unless the Commissioner waives the need to pay the fee under subsection (5).
80. Subsection (4) requires the Commissioner, when setting the fee for the application, to consider the likely impact that the amount of the fee might have on the number of applications.
81. Subsection (5) sets out the circumstances in which the Commissioner can waive the fee for an application under subsection (1).
82. Subsection (6) makes clear that any application under subsection (1) does not affect any time limits for proceedings before the Scottish Land Court.

***Section 30 – Procedure for inquiry***

83. **Section 30** provides for the process of an inquiry into an alleged breach of a code of practice, following receipt of an application under section 29, by setting out the conditions that must be satisfied in order for the Tenant Farming Commissioner to inquire into an alleged breach; what the Commissioner may do in cases where those conditions are met; and in cases where those conditions are not met.
84. Subsection (1) sets out the conditions that must be satisfied in order for the Tenant Farming Commissioner to inquire into an alleged breach of a code of practice. For example, the effect of subsection (1)(c) is that repeat applications concerning the same alleged breach are not permitted.
85. Subsection (2) provides that, where the Commissioner is not satisfied that the application contains sufficient information to proceed with an inquiry, the Commissioner can require the applicant to provide any additional information that is considered appropriate within a specified period.
86. Subsection (3) sets out the circumstances under which the Commissioner may dismiss an application.
87. Subsection (4) sets out what the Commissioner must do when satisfied that an application meets the conditions in subsection (1).

***Section 31 – Enforcement powers***

88. **Section 31** makes provision for requests by the Tenant Farming Commissioner for information for the purposes of applications and inquiries relating to alleged breaches of published codes of practice, and for the imposition of non-compliance penalties.

*These notes relate to the Land Reform (Scotland) Act 2016  
(asp 18) which received Royal Assent on 22 April 2016*

89. Subsection (1) gives the Commissioner a general power to make a request during an inquiry for any person to provide information appropriate for the purposes of that inquiry.
90. Subsection (2) provides that the Commissioner may impose a non-compliance penalty where a person has failed to provide a response to an application which meets the relevant conditions within the period specified by a request under section 30(4)(c); and where a person has failed to provide information requested under subsection (1) for the purposes of an inquiry.
91. Subsection (3) sets out that the Commissioner must set the amount of the non-compliance penalty, but this must not be set above £1000.
92. Subsection (4) provides that any non-compliance penalty imposed must be paid to the Commission.
93. Subsection (5) gives the Commission the power to recover any non-compliance penalty that is not paid as a civil debt.

***Section 32 – Notice of non-compliance penalty***

94. **Section 32** makes provision about the content of a notice of a non-compliance penalty given by the Tenant Farming Commissioner under section 31(2) and provides a right of appeal for any person in receipt of such a notice.
95. Subsection (1) sets out the information that must be included in a notice of a non-compliance penalty.
96. Subsection (2) provides that a person served with a notice has the right to appeal to the Scottish Land Court against the notice and sets out the permitted grounds for any appeal. The grounds for appeal are broad and allow, for example, the Court to consider whether a request for confidential information should be upheld.
97. Subsection (3) requires any appeal under subsection (2) to be made within 28 days of the day the notice of non-compliance was received.
98. Subsection (4) provides that, where a non-compliance notice is appealed, the penalty is suspended from the day the appeal is made until the appeal is determined or withdrawn.
99. Subsection (5) allows the Scottish Land Court to overturn, confirm or vary any notice of non-compliance that is appealed.

***Section 33 – Report on inquiry***

100. **Section 33** makes provision for the production and publication by the Tenant Farming Commissioner of a report following an inquiry into an alleged breach of a code of practice.
101. Subsection (1) provides that the Commissioner must publish a report as soon as practicable after the completion of an inquiry and sets out the information the report must contain where (a) there is sufficient information to reach a decision and (b) where there is not sufficient information to reach a decision.
102. Subsection (2) provides that any report published can be admitted as evidence in any proceedings before the Scottish Land Court.
103. Subsection (3) requires the Scottish Land Court to take into account any part of a report that it considers may be relevant to any proceedings before it.
104. Subsection (4) provides that any report published can also be admitted as evidence, and should also (where relevant) be taken into account, as part of any arbitration proceedings under the 1991 and 2003 Agricultural Holdings Acts.

***Section 34 – Tenant Farming Commissioner: confidentiality of information***

105. **Section 34** makes provision about the confidentiality of information obtained by or on behalf of the Tenant Farming Commissioner for the purposes of an inquiry into the breach of a code of practice.
106. Subsection (1) prohibits any person mentioned in subsection (6) from disclosing any information obtained for the purposes of an inquiry into the breach of a code of practice unless authorised to do so under subsection (2).
107. Subsection (2) sets out the limited circumstances under which a relevant person can disclose any information obtained for the purposes of an inquiry into the breach of a code of practice.
108. Subsection (3) provides that any person who knowingly discloses any information obtained for the purposes of an inquiry into an alleged breach of a code of practice, where they are not authorised to do so under subsection (2), commits an offence.
109. Subsection (4) sets out the potential penalty where a person is found to be guilty of an offence under subsection (3).
110. Subsection (5) sets out the defences available to a person charged with an offence under subsection (3).

***Section 35 – Protection from actions for defamation***

111. **Section 35** provides that, for the purposes of the law of defamation, any statement made by the Tenant Farming Commissioner as part of the exercise of the Commissioner's function under section 24(1)(c) to inquire into alleged breaches of the codes of practice attracts qualified privilege. This means that any such statement would not be defamatory unless it could be shown that the statement was motivated by express or actual malice.

***Section 36 – Report on operation of agent of landlords and tenants***

112. **Section 36** places an obligation on the Tenant Framing Commissioner to prepare a report on the operation of agents of landlords and tenants and to submit this report to Scottish Ministers within 12 months of this section coming into force. In preparing the report the Commissioner must consult any persons appearing to the Commissioner to have an interest in the operation of agents of landlords and tenants.

***Section 37 – Recommendations by Tenant Farming Commissioner for modern list of improvements***

113. **Section 37** places an obligation on the Tenant Farming Commissioner to prepare a report for submission to the Scottish Ministers with recommendations for a modernised list of improvements to agricultural holdings. The Commissioner must consult persons appearing to the Commissioner to have an interest in the draft recommendations before submitting the report to the Scottish Ministers.

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

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

114. Under section 24(1)(f), the Tenant Farming Commissioner has the function of referring for the opinion of the Scottish Land Court any question of law relating to agricultural holdings, and this section provides the Commissioner with the power to make such a reference where the question of law is one which may be competently determined by the Scottish Land Court.