



Land Reform (Scotland) Act 2016

2016 asp 18

PART 2

THE SCOTTISH LAND COMMISSION

CHAPTER 3

THE TENANT FARMING COMMISSIONER

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.

Status: This is the original version (as it was originally enacted).

- (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.
- (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,
 - (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.

Status: This is the original version (as it was originally enacted).

- (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,
 - (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.