



# Land Reform (Scotland) Act 2016

## 2016 asp 18

### PART 2

#### THE SCOTTISH LAND COMMISSION

### CHAPTER 1

#### THE COMMISSION

##### *Establishment*

#### **4 The Scottish Land Commission**

- (1) The Scottish Land Commission (in Gaelic, Coimisean Fearainn na h-Alba) is established by this section.
- (2) In this Act, it is referred to as “the Commission”.
- (3) The Commission is a body corporate.
- (4) The Commission is to consist of the following members—
  - (a) five Land Commissioners, and
  - (b) the Tenant Farming Commissioner.
- (5) The Scottish Ministers may by regulations amend subsection (4)(a) so as to alter the number of Land Commissioners.
- (6) The Commission has the functions conferred by section 6.
- (7) The Land Commissioners have the functions conferred by section 22.
- (8) The Tenant Farming Commissioner has the functions conferred by section 24.

#### **Commencement Information**

- II** S. 4(1)(5) in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

*Status: Point in time view as at 22/11/2017.*

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**I2** S. 4(6)-(8) in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

## 5 Status

- (1) The Commission is not a servant or agent of the Crown.
- (2) It does not enjoy any status, immunity or privilege of the Crown.
- (3) Its property is not property of, or property held on behalf of, the Crown.
- (4) Its members and staff—
  - (a) are not servants or agents of the Crown,
  - (b) have no status, immunity or privilege of the Crown,
  - (c) are not to be regarded as civil servants.

### Commencement Information

**I3** S. 5 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

## *Functions of the Commission*

## 6 Functions of the Commission

The functions of the Commission are—

- (a) to provide the Land Commissioners and Tenant Farming Commissioner with the property, staff and services needed to perform their respective functions, and
- (b) to make such arrangements as are appropriate and practicable for the co-ordination of the performance of those respective functions.

### Commencement Information

**I4** S. 6 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

## 7 General powers

- (1) The Commission may do anything which it considers—
  - (a) to be necessary or expedient for the purposes of, or in connection with, the exercise of—
    - (i) its functions,
    - (ii) the functions of the Land Commissioners,
    - (iii) the functions of the Tenant Farming Commissioner,
  - (b) to be conducive to the exercise of those respective functions.
- (2) In particular, the Commission may—
  - (a) enter into contracts,
  - (b) acquire and dispose of land,
  - (c) co-operate with any person,
  - (d) obtain advice or assistance from any person who is, in the Commission's opinion, qualified to give it,

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- (e) pay any such person such fees, remuneration and allowances as the Commission may determine.

#### Commencement Information

**I5** S. 7 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

### *Strategic plan and programme of work*

## **8 Strategic plan**

- (1) The Commission must prepare a strategic plan setting out how the Commission, the Land Commissioners and the Tenant Farming Commissioner propose to exercise their respective functions for the period to which the plan relates.
- (2) A strategic plan must, in particular, set out—
  - (a) the objectives and priorities of—
    - (i) the Commission,
    - (ii) the Land Commissioners,
    - (iii) the Tenant Farming Commissioner,
  - (b) estimates of the costs of the exercise of their respective functions of—
    - (i) the Commission,
    - (ii) the Land Commissioners,
    - (iii) the Tenant Farming Commissioner.
- (3) The Commission must submit the strategic plan to the Scottish Ministers—
  - (a) in the case of the first plan, before the end of the period of 6 months beginning with the day on which this section comes into force,
  - (b) in the case of each subsequent plan, before the end of the period of 3 years beginning with the day on which the Commission last submitted its strategic plan.
- (4) The Scottish Ministers may—
  - (a) approve the strategic plan,
  - (b) approve the strategic plan with such modifications as they consider appropriate in consultation with the Commission,
  - (c) reject the strategic plan and direct the Commission to submit a revised plan before the end of such period as the Scottish Ministers may determine.
- (5) Where the Scottish Ministers approve the strategic plan under subsection (4)(a) or (4)(b), the Commission must as soon as practicable—
  - (a) publish the plan in such form as it considers appropriate, and
  - (b) lay a copy of the plan before the Scottish Parliament.
- (6) The Commission—
  - (a) must comply with any direction to submit a revised strategic plan under subsection (4)(c),
  - (b) may from time to time submit a revised strategic plan.

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- (7) Subsections (4) and (5) apply to a revised strategic plan as they apply to a strategic plan.

**Commencement Information**

**I6** S. 8 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

**9 Programme of work**

- (1) The Land Commissioners must prepare a programme of work setting out—
- (a) information on any proposed reviews under section 22(1)(a),
  - (b) information on any other activities,
  - (c) timetables for the programme.
- (2) The Commission must submit the Land Commissioners' programme of work to the Scottish Ministers when it submits the strategic plan under section 8.
- (3) The Commission must—
- (a) publish the programme of work in such form as it considers appropriate, and
  - (b) lay a copy of the programme before the Scottish Parliament.
- (4) The Commission may from time to time submit a revised programme of work.
- (5) Subsection (3) applies to a revised programme of work as it applies to a programme of work.

**Commencement Information**

**I7** S. 9 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

*Membership*

**10 Membership**

- (1) The Scottish Ministers are to appoint the members of the Commission.
- (2) The Scottish Ministers may appoint a person as a member only if the Scottish Parliament has approved the appointment.
- (3) Each member is to be appointed for such period, not exceeding 5 years, as the Scottish Ministers may determine.
- (4) Subject to sections 11, 12 and 13, an appointed member holds and vacates office on such terms and conditions as the Commission may, with the approval of the Scottish Ministers, determine.
- (5) The Scottish Ministers may reappoint as a member a person who is or has been a member.
- (6) Subsections (2) and (3) apply to a reappointment under subsection (5) as they apply to an appointment under subsection (1).

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- (7) The Scottish Ministers must select one of the Land Commissioners to chair the Commission.

#### Commencement Information

**18** S. 10 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

## 11 Eligibility for appointment

- (1) In appointing members to the Commission, the Scottish Ministers must—
- (a) have regard among other things to the desirability of the Commission (taken as a whole) having expertise or experience in—
    - (i) land reform,
    - (ii) law,
    - (iii) finance,
    - (iv) economic issues,
    - (v) planning and development,
    - (vi) land management,
    - (vii) community empowerment,
    - (viii) environmental issues,
    - (ix) human rights,
    - (x) equal opportunities,
    - (xi) the reduction of inequalities of outcome which result from socio-economic disadvantage, and
  - (b) encourage equal opportunities and in particular the observance of the equal opportunity requirements.
- (2) In appointing the Land Commissioners, the Scottish Ministers must take every reasonable step to ensure that at least one of the Commissioners is a speaker of the Gaelic language.
- (3) In appointing the Tenant Farming Commissioner, the Scottish Ministers must ensure that the person appointed has expertise or experience in agriculture.
- (4) When the Scottish Ministers refer an appointment to the Scottish Parliament for approval under section 10(2), they must lay before the Scottish Parliament a statement as to how they have complied with the duties in subsections (1) to (3).
- (5) In subsection (1) “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part 2 of schedule 5 of the Scotland Act 1998.

#### Commencement Information

**19** S. 11 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

## 12 Disqualification from membership

- (1) A person may not be appointed as a member of the Commission if that person is or has been at any time during the previous 12 months—

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- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a member of the European Parliament,
  - (d) an officer-holder of the Scottish Administration,
  - (e) a councillor of any local authority.
- (2) A person may not be appointed as the Tenant Farming Commissioner if that person is the owner or tenant of land subject to a relevant tenancy.
- (3) In this Part “relevant tenancy” means—
- (a) a tenancy to which the 1991 Act applies, or
  - (b) a tenancy under sections 4, 5, 5A or 5C of the 2003 Act (new types of tenancy).
- (4) A person's appointment as a member ceases if, during the person's period of appointment, any of subsection (1)(a) to (e) applies to that person.
- (5) A person's appointment as the Tenant Farming Commissioner ceases if, during the person's period of appointment, subsection (2) applies to that person.

#### Commencement Information

- I10** S. 12(1)(2)(3)(a)(4)(5) in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)
- I11** S. 12(3)(b) in force at 1.11.2016 for specified purposes by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

### 13 Resignation and removal

- (1) A member of the Commission may resign at any time by giving notice in writing to the Scottish Ministers.
- (2) The Scottish Ministers may by giving notice in writing revoke the appointment of a person as a member if satisfied that the person—
- (a) is insolvent,
  - (b) has been convicted of a criminal offence in relation to which the member has been sentenced to imprisonment for a period of 3 months or more,
  - (c) is incapacitated by physical illness or mental disorder,
  - (d) has been absent from meetings of the Commission for a period exceeding 6 months without the permission of the Commission, or
  - (e) is otherwise unable or unfit to exercise any of the functions of a member or is unsuitable to continue as a member.
- (3) For the purposes of subsection (2)(a) a person becomes insolvent when—
- (a) the person's estate is sequestrated,
  - (b) the person grants a trust deed for creditors or makes a composition or arrangement with creditors,
  - (c) a voluntary arrangement proposed by the person is approved,
  - (d) the person's application for a debt payment programme is approved under section 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, or
  - (e) the person becomes subject to any other kind of order or arrangement analogous to those described in paragraphs (a) to (d) anywhere in the world.

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#### Commencement Information

**I12** S. 13 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

### *Remuneration and staff*

## **14 Remuneration, allowances and pensions**

- (1) The Commission may pay its members and employees—
  - (a) such remuneration as the Commission may, with the approval of the Scottish Ministers, determine, and
  - (b) such allowances in respect of expenses properly incurred in the exercise of the Commission's functions as may be so determined.
- (2) The Commission may, with the approval of the Scottish Ministers—
  - (a) pay (or make arrangements for the payment of),
  - (b) make payments towards the provision of,
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,such pensions, allowances or gratuities to any member or employee or former member or employee of the Commission as the Commission may determine.
- (3) Those pensions, allowances or gratuities may include pensions, allowances or gratuities by way of compensation for loss of office.

#### Commencement Information

**I13** S. 14 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

## **15 Staff**

- (1) The Commission is to employ a person as chief executive.
- (2) The first chief executive is to be appointed by the Scottish Ministers on such terms as they may determine.
- (3) Each subsequent chief executive is to be appointed—
  - (a) by the Commission with the approval of the Scottish Ministers,
  - (b) on such terms and conditions as the Commission may, with the approval of the Scottish Ministers, determine.
- (4) The Commission may employ any other staff necessary for the exercise of its functions.
- (5) The Commission's staff are to be employed on such terms and conditions as the Commission may, with the approval of the Scottish Ministers, determine.

#### Commencement Information

**I14** S. 15 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

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### Operational matters

#### 16 Validity of things done

The validity of anything done by the Commission is not affected by—

- (a) a vacancy in membership,
- (b) a defect in the appointment of a member,
- (c) a person's membership having ended under section 13.

#### Commencement Information

**I15** S. 16 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

#### 17 Committees

- (1) The Commission may establish committees for any purpose relating to—
  - (a) its functions,
  - (b) the functions of the Land Commissioners,
  - (c) the functions of the Tenant Farming Commissioner.
- (2) The Commission may authorise any committee to exercise such of its functions, and to such extent, as it may determine.
- (3) Nothing in subsection (2) affects the responsibility of the Commission for the exercise of its functions.
- (4) The Commission may appoint a person who is not a member of the Commission to be a member of a committee.
- (5) The Commission may pay to a person who is not a member of the Commission and who is appointed to a committee—
  - (a) such remuneration as the Commission may, with the approval of the Scottish Ministers, determine, and
  - (b) such allowances in respect of expenses properly incurred in the exercise of the functions of the Commission, of the Land Commissioners or of the Tenant Farming Commissioner as may be so determined.
- (6) A committee must comply with any directions given to it by the Commission.

#### Commencement Information

**I16** S. 17 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

#### 18 Regulation of procedure

- (1) The Commission must establish and maintain a register of interests.
- (2) Otherwise, the Commission may regulate its own procedure and those of its committees, including the quorum at any meeting.



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#### Commencement Information

**I17** S. 18 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

### *Accounts and annual report*

## 19 Accounts

- (1) The Commission must—
  - (a) keep proper accounts and accounting records,
  - (b) prepare in respect of each financial year a statement of accounts.
- (2) The Commission must send [<sup>F1</sup>a copy of the statement] of accounts to the Scottish Ministers by such date as the Scottish Ministers may direct.
- (3) The Commission must comply with any other directions which the Scottish Ministers may give them in relation to the matters mentioned in subsection (1).
- [<sup>F2</sup>(3A) The Scottish Ministers must, as soon as reasonably practicable after receiving a copy statement of accounts from the Commission, send it to the Auditor General for Scotland for auditing.]
- (4) The Commission must make its audited statement of accounts and accounting records available so that they may be inspected by any person.

#### Textual Amendments

- F1** Words in s. 19(2) substituted (22.11.2017) by The Land Reform (Scotland) Act 2016 (Supplemental Provision) Regulations 2017 (S.S.I. 2017/400), regs. 1, 2(2)(a)
- F2** S. 19(3A) inserted (22.11.2017) by The Land Reform (Scotland) Act 2016 (Supplemental Provision) Regulations 2017 (S.S.I. 2017/400), regs. 1, 2(2)(b)

#### Commencement Information

**I18** S. 19 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with regs. 3, 4)

## 20 Annual report

- (1) As soon as practicable after the end of each financial year, the Commission must prepare a report setting out—
  - (a) an assessment of its performance in carrying out its functions, including—
    - (i) the functions of the Commission,
    - (ii) the functions of the Land Commissioners,
    - (iii) the functions of the Tenant Farming Commissioner,
  - (b) an assessment of the performance by the Commission and its members in achieving the main objectives set out in any strategic plan having effect during that year,
  - (c) an assessment of the performance by the Land Commissioners in relation to any programme of work having effect during that year,
  - (d) such other information as the Commission considers appropriate.

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- (2) The Commission must—
- (a) publish each annual report in such form as the Commission considers appropriate,
  - (b) provide a copy of each annual report to the Scottish Ministers, and
  - (c) lay a copy of each annual report before the Scottish Parliament.
- (3) The Commission—
- (a) may publish such other reports and information on matters relevant to its functions as it considers appropriate,
  - (b) where it does so, must lay a copy of each report before the Scottish Parliament.

#### **Commencement Information**

**I19** S. 20 in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with regs. 3, 4)

### *Application of public bodies legislation*

## **21 Application of legislation relating to public bodies**

- (1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), at the appropriate place in alphabetical order insert— “ The Scottish Land Commission ”.
- (2) In the Freedom of Information (Scotland) Act 2002, in Part 7 of schedule 1 (Scottish public authorities: others), after paragraph 90 insert—
 

“90A The Scottish Land Commission.”.
- (3) In the Public Services Reform (Scotland) Act 2010—
  - (a) in schedule 5 (improvement of public functions: listed public bodies), at the appropriate place in alphabetical order insert— “ Scottish Land Commission ”,
  - (b) in schedule 8 (information on exercise of public functions: listed public bodies), at the appropriate place in alphabetical order insert— “ Scottish Land Commission ”.

#### **Commencement Information**

**I20** S. 21(1)(2) in force at 1.11.2016 by S.S.I. 2016/250, reg. 2(1)(2), sch. 1 (with reg. 3)

**I21** S. 21(3) in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

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## CHAPTER 2

### THE LAND COMMISSIONERS

#### *Functions of the Land Commissioners*

#### **22 Functions of the Land Commissioners**

- (1) The functions of the Land Commissioners are, on any matter relating to land in Scotland—
  - (a) to review the impact and effectiveness of any law or policy,
  - (b) to recommend changes to any law or policy,
  - (c) to gather evidence,
  - (d) to carry out research,
  - (e) to prepare reports,
  - (f) to provide information and guidance.
- (2) The Land Commissioners must consider and advise on any such matter as the Scottish Ministers may refer to them.
- (3) In exercising their functions the Land Commissioners must—
  - (a) have regard to—
    - (i) the land rights and responsibilities statement prepared under section 1 or revised under section 2,
    - (ii) the strategic plan prepared under section 8,
    - (iii) the programme of work prepared under section 9,
  - (b) collaborate with the Tenant Farming Commissioner.
- (4) In so far as the exercise of their functions relates to agriculture and agricultural holdings, the Land Commissioners must have regard to the exercise of the Tenant Farming Commissioner's functions conferred by section 24.
- (5) In this section a “matter relating to land in Scotland” includes—
  - (a) ownership and other rights in land,
  - (b) management of land,
  - (c) use of land,
  - (d) the land use strategy prepared under section 57 of the Climate Change (Scotland) Act 2009.

#### **Commencement Information**

**122** S. 22(1)(2)(3)(a)(ii)(iii)(b)(4)(5) in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

**123** S. 22(3)(a)(i) in force at 1.10.2017 by S.S.I. 2016/250, reg. 2(4)

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### *Land Commissioners: delegation of functions*

## **23 Land Commissioners: delegation of functions**

- (1) The Land Commissioners may authorise the following to exercise such of their functions, and to such extent, as they may determine—
  - (a) any committee,
  - (b) any employee of the Commission,
  - (c) any other person.
- (2) Nothing in subsection (1) affects the responsibility of the Land Commissioners for the exercise of their functions.

#### **Commencement Information**

**I24** S. 23 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

## **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.

#### **Commencement Information**

**I25** S. 24 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

## **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.

#### **Commencement Information**

**I26** S. 25 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

## **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”).

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- (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.

#### **Commencement Information**

**I27** S. 26 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

### *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.

*Status: Point in time view as at 22/11/2017.*

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- (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.

#### Commencement Information

**I28** S. 27(1)(2)(a)-(f)(h)(i)(3)-(9) in force at 1.4.2017 by [S.S.I. 2016/250](#), [reg. 2\(3\)](#), [sch. 2](#)

## 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,
- (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.

#### Commencement Information

**I29** S. 28 in force at 1.4.2017 by [S.S.I. 2016/250](#), [reg. 2\(3\)](#), [sch. 2](#)

### *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.

*Status: Point in time view as at 22/11/2017.*

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- (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.

#### **Commencement Information**

**I30** S. 29 in force at 1.4.2017 by S.I. 2016/250, reg. 2(3), sch. 2

### **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.



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#### Commencement Information

**I31** S. 30 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

### 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.

#### Commencement Information

**I32** S. 31 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

### 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.

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- (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.

**Commencement Information**

**I33** S. 32 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

**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.

**Commencement Information**

**I34** S. 33 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

**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,

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- (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.

#### **Commencement Information**

**I35** S. 34 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

### **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.

#### **Commencement Information**

**I36** S. 35 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

*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.

*Status: Point in time view as at 22/11/2017.*

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- (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.

**Commencement Information**

**I37** S. 36 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

*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.

**Commencement Information**

**I38** S. 37 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

*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.

**Commencement Information**

**I39** S. 38 in force at 1.4.2017 by S.S.I. 2016/250, reg. 2(3), sch. 2

**Status:**

Point in time view as at 22/11/2017.

**Changes to legislation:**

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