



Issued by:
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SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

CODE OF PRACTICE – Planning the Future of Limited Partnerships

This code of practice has been issued by Scotland's Tenant Farming Commissioner (TFC) in association with the Scottish Tenant Farmers Association (STFA), the National Farmers Union Scotland (NFUS), Scottish Land and Estates (SLE) and the Royal Institution of Chartered Surveyors (RICS). It is issued under the authority of the Land Reform (Scotland) Act 2016 and it is one of a suite of codes intended to guide and shape the behaviours and processes which accompany the interactions and negotiations between landlords and tenants, including agents and intermediaries acting for either party. Their aim is to ensure that, wherever possible, landlord and tenant relationships and interactions are conducted in a spirit of mutual respect and understanding and with a view to reaching agreed positions which are reasonable and fair to both parties.

Where the code uses the word **must**, this means that the action is a legal requirement and failure to comply would constitute a breach of agricultural holdings legislation. Nothing within this code overwrites the legal requirements provided by wider partnership legislation, including any associated administrative requirements. Further advice on these elements should be obtained from Companies House or your solicitor.

Where the word used is **should**, this indicates that failure to behave in this way may constitute a breach of the code of practice and may result in a formal complaint being made to the TFC.

Where the code **recommends** a course of action it means that this is good practice but, recognising that other approaches may be equally

effective, failure to follow this recommendation will not in itself be a breach of the legislation or the code.

While every effort has been made to provide an accurate presentation and interpretation of relevant legislation, it is not possible to cover every situation and users of the code should obtain professional advice appropriate to their own situation.

All users of this code should bear in mind that the function of the Tenant Farming Commissioner is to be impartial and concerned with the procedure and manner which parties adopt when dealing with each other.

It is not the function of the TFC to mediate, arbitrate, or to persuade either party to see things the way the other party does, or to forego any legal rights they may have.

Background

Prior to the Agricultural Holdings (Scotland) Act 2003 the Limited Partnership tenancy was a popular way of letting agricultural holdings for a fixed period without creating a long term secure tenancy. They normally involve the landlord, or an associate of the landlord, as the limited partner and the active farmer as the general partner. A Limited Partnership was created so that it would dissolve automatically on a specified date or following service of a dissolution notice, though some are continuing on the basis of tacit relocation. Following dissolution of the partnership, the general partner may give notice, within 28 days of the dissolution date, that he intends to become a tenant in his own right. If the general

partner does not do so, the lease will terminate at the same time as the limited partnership is dissolved. The landlord may, if the general partner gives notice of his intention to become a tenant in his own right, thereafter give notice of termination of the lease but must do this by way of the double notice procedure which effectively gives the tenant around 3 years further occupation of the holding.

In many respects, Limited Partnerships have served the industry well but following the passage of the 2003 Agricultural Holdings Act they have limited application now. Some five hundred are still in existence and many are reaching their planned dissolution date or are

continuing on the basis of short term arrangements. The Agricultural Holdings Review Group highlighted the need for discussions to take place to ensure that there is a long-term approach to land management and that there is ample time to discuss the aspirations of both parties before final decisions are made with respect to the future of the Limited Partnership.

This code of practice prescribes the steps that should be taken when a Limited Partnership is approaching its dissolution date, or when either party feels it is appropriate to discuss the future of the arrangement, with the aim of minimising uncertainty for both parties.



1. Key principles

- 1.1 Discussions over the future of the tenancy of a Limited Partnership **should**, whenever possible, take place well in advance of the scheduled dissolution date or, in the case of those continuing on tacit relocation, as soon as either the General or Limited partner identifies a need to discuss the future of the arrangement.
- 1.2 The wishes of both parties in respect of the future of the partnership **should** be discussed before any arrangements are finalised.
- 1.3 All options **should** be considered in an attempt to meet the wishes of the landowner and both the Limited and the General Partners and to support the future sustainable management of the holding.

2. Initiating a Review

- 2.1 Either the General or the Limited Partner may initiate a review of the Limited Partnership and they **should** do so in writing, setting out the reasons why a review would be beneficial to both parties.
- 2.2 The request **should** be made well enough in advance of any scheduled or anticipated end date to allow time for discussion of the options and to reach agreement on the next step.
- 2.3 Where the Limited Partnership has a specified date on which the Partnership will dissolve without service of a notice the parties **should** agree to meet at least 12 months before the dissolution date.
- 2.4 Where the Limited partnership is to be dissolved by a notice, the parties **should** agree to meet in advance of any notice being served.



3. Meeting to discuss options

- 3.1 Within one month of the review being initiated the parties **should** meet, ideally on the farm, to discuss the way forward.

That discussion **should** include consideration of: -

- Any change in circumstances that has taken place since the Limited Partnership was established. For example, the availability of Short and Limited Duration Tenancies (LDT) now provides an alternative route for letting land on a fixed term basis and the Modern Limited Duration Tenancy will be available shortly.
 - The wishes of the Limited partner with respect to the future of the holding. Is there a desire to continue letting the land on some basis or does the landlord wish to resume control for any reason?
 - The wishes of the General partner with respect to termination or continuation of his occupancy on a short or long term basis. Is there a possibility of an extension of the Partnership or of switching to another form of tenancy, such as an LDT, to maintain the General partner's occupation or to take him through to retirement or some other event or date?
- 3.2 Both parties **should** agree on a written record (and on who should produce the record) of the discussion which summarises the views and desires of both parties and records any agreements which have been reached.
 - 3.3 If that meeting does not result in an agreed way forward the parties **should** agree to meet again once the party proposing a change to the current situation has set out in writing the proposed new arrangements in as much detail as possible. The parties **should** continue the discussions until agreement is reached or until it becomes clear that such agreement is not possible.
 - 3.4 The parties may wish to consider, at shared cost, the involvement of a trained mediator with no allegiance to either side who may be able to act as an effective intermediary leading to an agreed position.
 - 3.5 In order to minimise uncertainty for both parties, the aim **should** be to complete the discussions within 6 months.

4. Notices of Dissolution

- 4.1 There may be circumstances in which the end result of the discussions is the issue of a notice of dissolution of the Limited Partnership. The issue of such a notice **should** always follow the discussions set out in section 3.1 and **should** never precede them.
- 4.2 When the Limited partnership is brought to an end it is necessary for individuals to follow the guidance provided by Companies House: www.gov.uk/government/publications/guidance-to-the-people-with-significant-control-requirements-for-companies-and-limited-liability-partnerships

5. Making a complaint about a breach of this code

- 5.1 A landlord or tenant who feels that the other party, or an agent of that party, has acted in a way that breaches this code of practice may make a complaint to the Tenant Farming Commissioner.

Details of the complaints system can be found on the Scottish Land Commission website www.landcommission.gov.scot or by calling **0300 244 4452**



Contact us

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☎ 0300 244 4452

🌐 www.landcommission.gov.scot

Find us on:

