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SCOTTISH LAND COMMISSION  
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# CODE OF PRACTICE – Agreeing and Managing Agricultural Leases

This code of practice has been issued by Scotland's Tenant Farming Commissioner after consultation with, and the support of, Scottish Land and Estates (SLE), the Scottish Tenant Farmers Association (STFA), the National Farmers Union Scotland (NFUS), the Royal Institution of Chartered Surveyors (RICS) and the Scottish Agricultural Arbiters and Valuers Association (SAAVA). It is issued under the authority of the Land Reform Scotland Act 2016 and is one of a suite of codes which are intended to guide and shape the behaviours and processes which accompany the interactions and negotiations between landlords and tenants and 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 agriculture holdings legislation.

Where the word **should** is used, this indicates that failure to behave in this way may constitute a breach of the code of practice and an application reporting the alleged breach can be made to the TFC who will investigate.

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 legislation or of 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 does, or for participants to forego any legal rights that they may have.



# Introduction

Reaching a clear understanding at the beginning, and then maintaining an effective dialogue between landlord and tenant throughout the duration of any agricultural tenancy plays an important part in building a constructive and mutually beneficial partnership with a shared understanding of the nature of the relationship and the aspirations of both parties.

Reaching that understanding is particularly important both at the beginning, and at the end, of any tenancies of fixed duration and when changes to the terms of any lease are proposed during its tenure. An eagerness on the part of a tenant to acquire a lease may lead to failure to understand or negotiate the terms of the lease. Misunderstandings, disagreements and disappointments often occur during the term of the lease because not enough time was taken to agree and understand the contents at the start and because subsequent agreements affecting responsibilities and obligations are not properly recorded. Similarly, there is often inadequate consideration at the start of fixed duration leases of the likely outcome when the lease term has expired and, at the end of the lease, discussions about the future intentions of both parties often begin very late in the day and with different expectations of each party.

This code of practice sets out some simple principles and practices that, if followed, will help to minimise the scope for disagreements and misunderstandings associated with agreeing and managing agricultural leases. The code supports some of the principles set out in the Scottish Government's Land Rights and Responsibilities Statement, particularly in relation to Principle 4:-

“Good stewardship also means being aware that decisions about land can have an impact on many people's lives, including, but not exclusive to those of the owner of the land or the tenant. It takes account of how decisions about land can affect a variety of factors including housing and employment, the viability of businesses and the quality of the environment that people experience.”

## 1. Key Principles

- 1.1 Both parties, but particularly tenants, ought to take time to question and understand the terms of any lease that is being entered into and, if unsure, seek professional advice so that the full implications of the rights, responsibilities and obligations being accepted are clear.
- 1.2 Both parties **should** ensure that any subsequent agreements that impact on the rights and obligations of either party are properly recorded in writing with both parties retaining a copy of the record.
- 1.3 It is **recommended** that the parties periodically review progress in order to confirm and, if necessary, update, their initial understanding on the duration of the tenancy and the impact of any subsequent changes that have been agreed. If a party changes their aspirations, they are **recommended** to tell the other party without undue delay.
- 1.4 In the case of tenancies of fixed duration, it is desirable that discussions about the aspirations and intentions of both parties at the end of the lease begin well in advance of the termination date in order to minimise uncertainty for both landlord and tenant. (see paras 4.2.1 and 4.2.2).

## 2. Entering into a New Lease

- 2.1 When a tenancy is offered it will normally be the case that the landlord produces a draft lease for discussion. The legislation relating to some fixed duration tenancies allows flexibility in areas such as the duration, the rent review mechanism and the arrangements for the maintenance and renewal of fixed equipment so not every lease will contain the same rights and obligations. It is important therefore that the tenant takes time to understand exactly what is being offered and that the lease will come to an end at the expiry of the agreed term unless agreement is reached to the contrary during the tenancy.
- 2.2 The duration of a fixed duration tenancy is a key issue for both landlord and tenant. The duration of a Short Limited Duration Tenancy (SLDT) is, by definition, expected to be short (up to 5 years) but the term of a Modern Limited Duration Tenancy (MLDT) is open to agreement between landlord and tenant provided that it is of at least 10 years duration. A desire to retain maximum flexibility may lead to a landlord offering a relatively short duration (10 to 15 years) MLDT but, where there is a reasonable expectation of a desire to continue letting the land, landlords are encouraged to consider offering longer periods.
- 2.3 Landlords **should** provide a prospective tenant with a full draft lease prior to the commencement date and allow the tenant sufficient time to understand and negotiate the contents. A period of at least one month **should** be allowed for this process. It is essential that tenants take time to understand the full implications of the rights and obligations they are accepting, taking professional advice where appropriate. Saying that a party “didn't realise what it meant” later on is frequently a sign that that party didn't take appropriate advice at the beginning of the lease.

- 2.4 Landlords ought to carefully consider the duration of MLDTs that are offered and are encouraged to aim to offer the longest period that is consistent with their long term aims for the holding.
- 2.5 When entering into a fixed duration tenancy the parties **should** discuss, and record in writing, their expectations and aspirations as to the outcome at the end of the lease. It is recognised that one or both parties may not be in a position to comment on their plans or intentions for their business into the future and if that is the case, that **should** be recorded. The aim is to avoid reaching the end of the tenancy with quite different expectations about whether or not the lease will be renewed.

### 3. Managing the Lease

- 3.1 In any tenancy, but particularly in secure tenancies or fixed duration tenancies of appreciable length, there are likely to be occasions when agreements are reached which alter the rights and responsibilities of both parties. It could be a relatively simple matter such as the tenant notifying the landlord of an intention to construct a new shed or it may involve more fundamental changes to the terms of the lease. Whatever the issue, it is important that neither party relies solely on unwritten agreements and both parties **must** follow any applicable statutory requirements. Memories are short and personalities change, so to avoid future disagreements and misunderstandings about what was agreed, all such agreements **should** be recorded in writing with both parties retaining a copy of the agreement. In some cases a letter or email exchange (which ought to be retained in hard copy) will be sufficient but if more significant changes to the terms and/or duration of the lease are involved it may be necessary to have a formal legal agreement drawn up.

## 4. Ending the Lease

- 4.1 When a tenancy is coming to an end it is important that both parties have sufficient time to prepare for a change in circumstances. This is particularly important in the case of fixed duration tenancies where continuation of the agreement may not be desired by one or both parties and where failure to follow the correct procedures may result in the tenancy being prolonged beyond its expiry date.
- 4.2 It will sometimes be the case that a tenant has been in occupation of the holding under a fixed duration tenancy for a considerable period and will have invested emotionally, physically and financially in the holding in the hope of continued occupation. Where the tenancy is not to be renewed, landlords are encouraged to deal with such situations sensitively. Ultimately, a fixed term tenancy must be able to be treated as such and landlords ought not to be criticised if circumstances dictate that they ultimately consider that it is in their best interests not to renew. However, such a decision will be more readily supportable if it is preceded by constructive dialogue with the tenant that attempts to find a mutually acceptable way forward. Such a discussion might include consideration of the tenant's age and retirement plans, the landlord's future plans for the holding, any opportunities for relocating to another holding owned by the landlord, continued occupation of the house if the land is not being re-let and any other special circumstances affecting the landlord or tenant that might lead to consideration of an extension to the existing lease, granting of a new lease or formation of a joint venture or partnership as an alternative way forward. It may not be possible to arrive at a conclusion that suits both parties but that can only be determined if the discussion takes place.



## 4.2.1 The Short Limited Duration Tenancy (SLDT)

An SLDT is for a period of not more than 5 years and cannot be prolonged. If the tenant remains in occupation after the expiry of a lease which is for less than 5 years, with the consent of the landlord, then, subject to any other agreement between the parties for a lesser period, the tenancy continues as if it were for 5 years. In the case of a 5 year SLDT which continues after the expiry date, with the landlord's consent, it becomes a MLDT and will automatically continue for a further 5 years. Since an SLDT expires automatically at the end of its term, and no formal notice requires to be given, it is important that both parties understand the need for the tenant to quit the holding at the end of the contractual term unless other arrangements have been entered into. However, where a SLDT is for a period of more than 3 years, Landlords **should** ensure that a discussion takes place with the tenant at least 6 months prior to the end of the tenancy to ensure that, either the termination is confirmed, or there is scope to discuss future arrangements. Tenants cannot assume, however, anything other than that an SLDT will terminate at the end of the agreed period.

## 4.2.2 The Limited Duration Tenancy (LDT) and the Modern Limited Duration Tenancy (MLDT).

- a) LDTs can normally no longer be created but several hundred are in existence and will remain in force. The MLDT will be the normal vehicle for new lettings. Both LDTs and MLDTs **must** be for a period of not less than 10 years and the term can be extended at any time by agreement. Termination by the landlord at the end of the contractual term **must** be by a two stage process. The landlord **must** first give, in writing, a first notice of intention to terminate the tenancy which **must** be served on the tenant not less than two years and not more than three years before the end of the contractual term. This **must** be followed up by a notice, in writing, that the tenancy is to be terminated and that the tenant must quit the land on the expiry of the term of the tenancy. The second notice **must** be served on the tenant not less than one year and not more than two years before the expiry date of the tenancy. The second notice will be invalid if the first notice has not been properly served. In effect therefore, the tenant will always have between two and three years notice of a landlord's intention to terminate the tenancy.

- b) The onus on the tenant to give notice of an intention to terminate the tenancy is rather less onerous. The tenant **must** provide to the landlord, in writing, a notice of intention to quit the land at the end of the tenancy and this notice **must** be served not less than one year and not more than two years before the expiry date.
- c) It is important that these notice periods are adhered to as failure to validly terminate the tenancy will result in it being statutorily prolonged. In the case of a LDT this is by means of a three year cycle of continuation for three fixed periods during which the tenancy remains in force unless and until it is validly terminated by either party. In the case of a MLDT, failure to validly terminate the lease at the expiry of the term will result in it being continued in force for a further 7 years. These statutory prolongations of the tenancy are binding on both parties unless both agree to another termination arrangement.
- d) The statutory termination procedures for LDTs and MLDTs will ensure that tenants are provided with adequate notice of an intention not to renew but it is **recommended** that a mid-term review of the lease is carried out. This might be combined with a meeting to discuss rent or any other issues and provides an opportunity to re-confirm the arrangements and to provide an update on the future intentions and desires of both landlord and tenant. However, as with SLDTs, tenants cannot assume other than that the tenancy will terminate at the end of the agreed period unless an agreement has been reached to the contrary.
- e) Termination of a LDT or MLDT **should** always be preceded by the sort of discussion described in para. 4.2

## 5. Reporting an Alleged Breach of this Code

- 5.1 If you believe that another party involved in discussions covered by this code has been in breach of the principles and procedures set out in this code you can report the alleged breach to the TFC who will investigate the allegation.

Information about reporting an alleged breach and how this will be investigated can be found on the Scottish Land Commission website [www.landcommission.gov.scot](http://www.landcommission.gov.scot) or by calling 01463 423 300.

## Contact us

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