CODE OF PRACTICE –
The Management of Relationships
Between Agricultural Tenants and
the Holder of Sporting Rights

This code of practice has been issued by Scotland’s Tenant Farming Commissioner (TFC) after consultation with, and support from, Scottish Land and Estates (SLE), The Scottish Tenant Farmers Association (STFA), the National Farmers Union Scotland (NFUS) 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 by an agricultural tenant or landlord, or agent of either, would constitute a breach of agricultural holdings legislation.

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 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 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 TFC 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.
1. Key principles

1.1 The tenant farmer and the party exercising the sporting rights should each respect the right of the other party to enjoy their rights without undue interference. Both parties should behave responsibly and with regard for the effect of their actions on the other party.

1.2 Good communication is the key to a harmonious relationship and both parties should be willing to make the effort to establish and maintain a good and effective working relationship. Where sporting rights are let to a third party the agricultural tenant and the sporting tenant should communicate directly in most circumstances but if a dispute develops, the involvement of the landlord should be sought.

1.3 Key discussions should be followed by an agreed written record so that scope for misunderstandings is minimised.

1.4 Both parties should be prepared to make reasonable compromises, including adjustments to the timing and siting of planned operations, in order to accommodate the needs of the other party.

1.5 Landlords should ensure that their employees and sporting tenants are made aware of the Code of Good Shooting Practice and, where appropriate, the BASC Code of Practice on Deerstalking in the UK and sporting leases should require tenants to follow these codes. Compliance with these codes will ensure that shooting and stalking activities are carried out responsibly.

2. Providing Contact Details

2.1 Tenant farmers should be advised of who is exercising the sporting rights and should be given details of a key contact(s) that they can approach with any issues they have. This may be the shoot manager, the gamekeeper, stalker, syndicate captain or whoever is best placed to engage with the tenant. If this level of contact does not resolve the issue the tenant should raise the matter with the landlord.

2.2 Where sporting rights are let, the landlord should ensure that the sporting tenant is provided with the names and contact details of relevant agricultural tenants and is required to make and maintain regular contact with them.

3. Agreeing Access Arrangements

3.1 The party exercising the sporting rights will frequently require access to the holding to site release pens, feeding points, high seats and other infrastructure associated with the exercise of their sporting rights. While some of these will be within woodland not part of the farm tenancy, others will be and in both cases the holder of the sporting rights should discuss their proposals in advance with the agricultural tenant to minimise conflict with farming operations. Farm tenants should not unreasonably object to the sporting tenant’s plans.

3.2 Some form of vehicular access is normally required by the party exercising the sporting rights and can be frequent where release pens are involved. It may also be significant on shoot days when transport for guns and beaters
7. Agreeing a Memorandum of Understanding (MOU)

7.1 This code covers the main areas of potential conflict between the interests of the agricultural tenant and the holder of the sporting rights but discussions between the parties are likely to involve more detailed consideration of issues specific to the local circumstances. The parties may find it useful to agree on a Memorandum of Understanding which sets out in writing all the points which have been agreed between the parties with respect to the responsibilities of each party towards maintaining a good relationship and an appropriate balance of the rights of both parties.

7.2 Where the landowner leases the sporting rights to a third party it will generally be desirable for him/her to be involved in the discussions between the agricultural tenant and the sporting tenant and to be a signatory to the MOU.

8. Dealing with Damage by Game and Other Animals

8.1 If the extent of the game burden that the agricultural tenant should bear is not set out in the lease or in a collateral agreement, the agricultural tenant will normally be held to have accepted as reasonable the existing stock at the date of entry. If the party holding the sporting rights increases the game stock during the tenancy the agricultural tenant may have a remedy for any damage attributable to the additional stock.

8.2 Where a farm tenant believes that significant damage is being caused, or may be caused, by birds or animals to crops or livestock they should discuss the matter with the holder of the sporting rights in order to agree the best way of dealing with the situation.

8.3 A farm tenant has the right to take action against rabbits and hares under the terms of the Ground Game Act 1880, and may authorise others to do so. The holder of the shooting rights should be prepared to give such assistance as can reasonably be provided if requested to do so by the farm tenant.

8.4 A farm tenant has a statutory right to take or kill, and to sell or otherwise dispose of, any deer found on arable land, improved permanent pasture other than moorland, land which has been regenerated so as to be able to make a significant contribution to the productivity of the holding or enclosed woodland. However, the farm tenant only has that right where they have reasonable grounds for believing that serious damage will be caused to crops, pasture or human or animal feedstuffs if the deer are not taken or killed.

8.5 The power to take or kill deer may be exercised by the farm tenant in person or by another person within a statutory list duly authorised by the tenant in writing. This list includes the landlord and his employees.

8.6 Compared to rabbit and hare control, deer control requires a higher degree of firearms authorisation and competence and a knowledge of the laws concerning open seasons and authorisations for night, and out of season, shooting. Tenant farmers experiencing damage to crops from deer should immediately contact the landlord and/or holder.
of the deer shooting rights to agree an approach to the issue. The tenant and the rights holder should agree on a course of action to alleviate the problem and the rights holder should be prepared to play his/her part if requested to do so by the tenant. The involvement of Scottish Natural Heritage may be advisable if control might involve out of season or night shooting.

8.7 Where marauding deer are coming from a neighbour’s land, it will often be advisable to discuss the issue with the neighbouring landowner in order to agree a joint approach to the problem.

8.8 If, despite the above actions, damage occurs which the tenant considers to be unacceptable and which is caused by game species that the tenant has no right to control, the tenant may be eligible for compensation under Section 52 of the Agricultural Holdings (Scotland) Act 1991. In such cases the tenant must serve a notice in writing on the landlord as soon as the damage is identified and must give him/her a reasonable opportunity to inspect the damage. A claim for damages can be made if the damage exceeds 12p per hectare and has been caused by deer, pheasants, partridges, grouse and black game.

8.9 A claim for damages must be made within 6 months of the first written notification by the tenant to the landlord of the occurrence of damage. The notice of claim should specify the approximate date(s) of occurrence of the damage, the crop damaged, the field(s) in which it occurred, the approximate area affected and the sum claimed. The claim must be against the landlord, not the sporting tenant where there is one, but the landlord is entitled to be indemnified by the sporting tenant against claims for damage by game.

8.10 In default of an agreement over the amount of compensation or over the sporting tenant’s obligations to indemnify the landlord, the involvement of the Scottish Land Court may be necessary but it is recommended that the first step, where agreement cannot be reached, is recourse to expert determination using a person with specialist knowledge and experience who is agreed to, and jointly appointed by, the parties involved in the dispute. This route is likely to be cheaper and simpler than the involvement of the Land Court and the parties can agree that the expert’s determination is binding on both parties.

9. Dealing with Disagreements

9.1 Where one party feels that another is breaching the Code of Practice they should draw this to the attention of the other party and follow this up in writing. Given a fair and reasonable approach by both parties, a conversation which focuses on where the code is alleged to have been breached should resolve the issue.

9.2 Where the sporting rights are exercised by the landlord, the landlord or agricultural tenant can make an application to the Tenant Farming Commissioner where there is a belief that this Code of Practice has been breached and the issue cannot be resolved through discussion and/or mediation. An application reporting an alleged breach from a sporting tenant should be made by the landlord on the sporting tenant’s behalf, having satisfied himself/herself that the breach is reasonable and unresolvable through discussion and/or mediation. 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 or by calling 0300 244 4452.

9.3 Where the dispute is between a farm tenant and a sporting tenant who have no legal relationship between them but both have legal relationships with the landlord, the involvement of the landlord in resolving the issue should be sought if the two parties cannot reach agreement. The ability of the landlord to influence the activities of the sporting tenant will depend on the nature of the legal arrangements. Where the sporting tenant has a short term lease the landlord will have a significant degree of influence, especially if the lease is constructed in accordance with section 6.1 of this code. Where the sporting lease is of a long-term nature with minimal detail, and may pre-date the current landlord, it is recognised that the landlord may have more limited ability to resolve any issues arising with the holder of the sporting rights but he/she should be prepared to act reasonably and try to assist the agricultural tenant and the sporting tenant to resolve the situation.

9.4 Where issues cannot be resolved through reasonable discussion, the parties involved should always consider the use of professional mediation at shared cost before resorting to litigation or to the Tenant Farming Commissioner’s complaints process.