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SCOTTISH LAND COMMISSION
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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.

Background

It is common practice for landowners who let agricultural land to retain the game sporting rights and to either exercise those rights themselves or lease them to a third party. Game shooting and deer stalking/deer control may both be involved and may be exercised by the same or different parties. Tenant farmers have no right to shoot game, unless this right has been specifically transferred to the tenant, but may control vermin (such as rabbits and hares) and deer under certain circumstances. Where the sporting rights are let, the holder of the rights will normally have a formal lease or agreement with the landlord but not with any agricultural tenants who occupy the land over which sporting rights are exercised. The landlord is responsible for ensuring that sporting tenants comply with the terms of their lease/licence.

There are many such tripartite arrangements and most work well but, unless there is good cooperation and communication amongst the landlord, the tenant and the holder of the sporting rights, there is potential for conflict to develop. This code of practice prescribes a series of actions and behaviours that, if followed, should minimise that potential. It deals with the situation where the landlord, or a third party, exercises sporting rights on tenanted land and also with the situation where a tenant farmer is suffering damage from game species.

Landlords who exercise or lease out sporting rights are advised to acquaint themselves with the law of vicarious liability (Wildlife and Natural Environment (Scotland) Act 2011) and tenants are advised to note that illegal actions by a person authorised by the tenant to control vermin could render the tenant liable to a breach of cross compliance rules.

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



is required. This brings the potential for damage to fields, particularly during wet periods, and disturbance of stock. The party exercising the sporting rights **should** therefore be particularly sensitive to this issue. Where possible, low pressure vehicles such as quad bikes should be used but it is recognised that 4X4 vehicles will also often need access. Vehicles **should** stick to recognised tracks wherever possible and the party exercising sporting rights **should** aim to agree in advance, with the farming tenant, the optimum off-track routes and parking places to be used when this is necessary. Tenant farmers **should** not unreasonably object to access proposals and the party exercising the sporting rights **should** be prepared to agree to reasonable requests to avoid certain areas at all times or at particular times of year.

4. Notification of Shooting Dates

- 4.1 Farm tenants **should** be informed of planned shoot dates and locations as soon as these are available and **should** be kept abreast of any changes. They **should** make the sporting rights holder aware, as soon as possible, of any planned farming operations which might cause a clash with a planned shoot. Both parties **should** be willing to make reasonable adjustments to planned activities in the interests of maintaining a good relationship.
- 4.2 Persons involved in deer control often don't have formal shoot days and may be out regularly throughout the year, often at dawn and dusk. They **should** ensure that farm tenants are aware of the likely frequency of their visits and the likelihood of them being out in the early morning and late evening. Details of any vehicles used **should** be provided to the farm tenants.
- 4.3 Farm tenants **should** be informed in advance of any night time activities involving lamping from vehicles or the use of night vision equipment. Fox control during the hours of darkness may be of benefit to both sporting and farm tenants but agreement over which fields can be accessed without risk of ground damage or disturbance to stock should be obtained in advance. Both parties **should** act reasonably in seeking to reach agreement.

5. Informing Other Potentially Affected Parties

- 5.1 Landlords and farm tenants of land where shooting takes place may lease properties and rights to third parties who have no involvement in the farm or sporting activities but may be affected by them. Problems can arise, for example, when tenants of houses find to their surprise that shooting is taking place around their rented property. Farm tenants **should** ensure that sub-tenants of residential properties who may be affected by shooting activities are advised of this possibility when the sub-lease is entered in to and those exercising sporting rights are advised to provide all such tenants with the dates of planned shoots.

6. Agreeing New Sporting Leases

- 6.1 When a landlord is issuing a new sporting lease, or renewing an existing one, the lease/licence/agreement **should** include a clause which requires the sporting tenant to comply with this code of practice.

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 sporting 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 focusses 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.

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