



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

The Role and Functions of the Tenant Farming Commissioner

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Tenant Farming Commissioner



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Background

2015 Agricultural Holdings Review

- Concerns over the state of landlord/tenant relationships
- ‘Them and Us’ Culture.
- Recommendation that Government should help to facilitate the efforts of industry leaders to improve relationships
- Creation of TFC role to act in an ombudsman type role
- Interim Adviser post created



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Land Reform (Scotland) Act 2016

- Tenant Farming Commissioner role created
- Scottish Land Commission created
(6 Commissioners, including the TFC)
- Executive NDPB
- CEO and staff located in Inverness
- Operational from 1/4/17



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Functions of the TFC

- Prepare and promote codes of practice.
- Inquire into alleged breaches.
- Prepare a report on the operation of agents of landlords and tenants.
- Make recommendations for improvements to Ag. Holdings legislation.
- Refer questions of law to the Land Court
- Work with the Land Commissioners on matters relating to agriculture and agricultural holdings.
- Exercise any other functions conferred on the TFC

Must exercise the functions with a view to encouraging good relations between landlords and tenants



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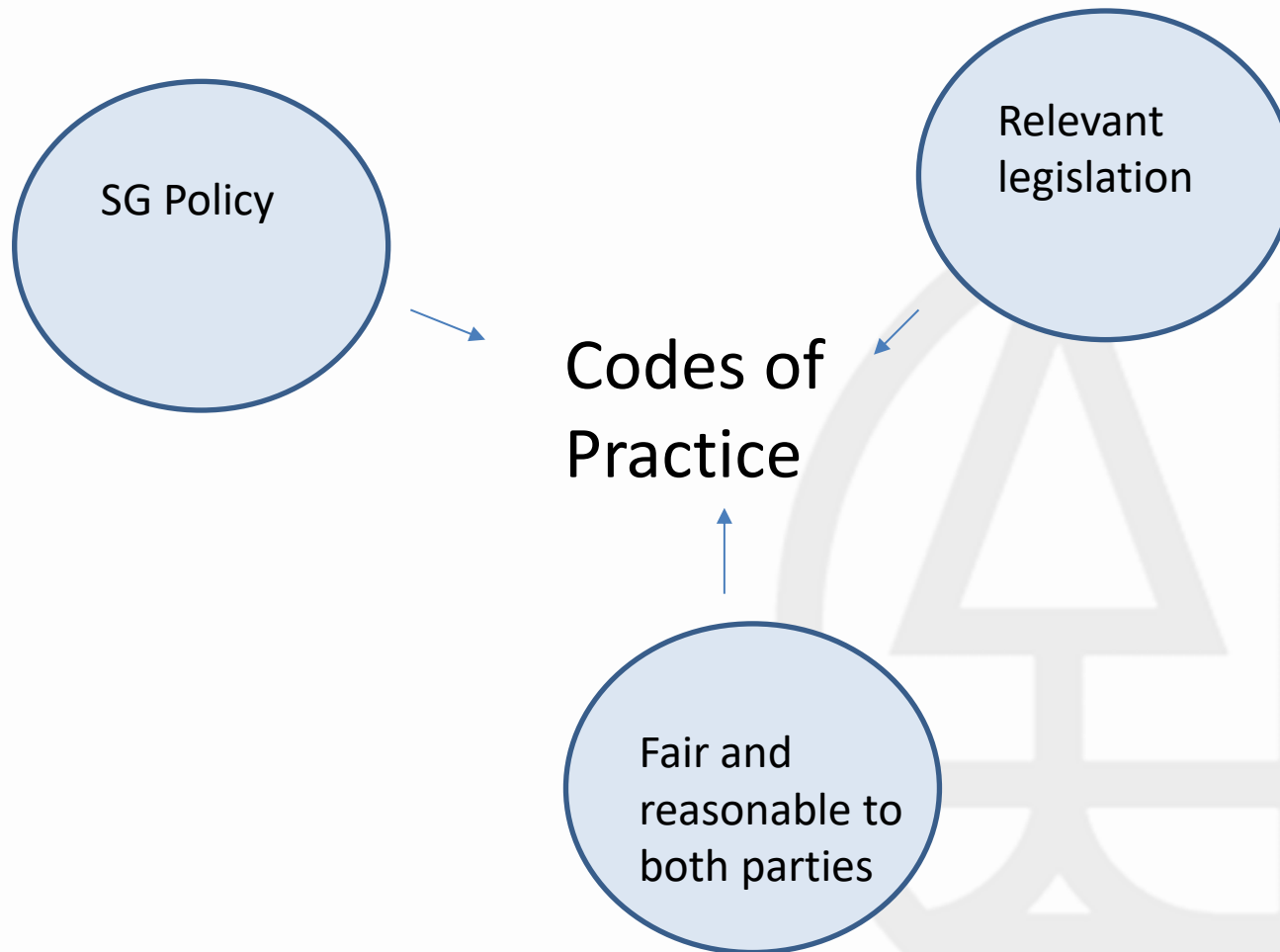
Codes of Practice

- Prescribe procedures and behaviours that will govern the conduct of landlords, tenants and their agents in key areas of interaction and negotiation.
- Set within the context of the legal framework
- Produced in association with the main industry bodies (SLE; STFA; NFUS; SG; RICS)



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Codes of Practice





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Codes of Practice

- Negotiating and conducting rent reviews
- Agreeing and recording improvements by tenants
- Negotiating the fulfilment of the obligations of landlords and tenants
- The conduct of agents of landlords and tenants
- The process of succession and assignation
- Determining compensation at waygo
- Negotiating the terms of a modern limited duration tenancy and a repairing tenancy
- The management of sporting leases
- Game management



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Complaints System

- Informal approach to TFC
- Formal complaint
- Investigation by TFC
- Power to require parties to provide information
- TFC publishes decision and recommendations
- No sanction but ‘name and shame’.
- Decision admissible as evidence in the Land Court.



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Current priorities

- Establish advisory forum
- Modern list of tenants improvements
- Codes of practice and Complaints system
 - Amnesty on tenants improvements
 - Planning the future of limited partnerships
 - Relinquishment of 91 Act tenancies
 - Relationship between farming and sporting tenants
- Report on conduct of agents of landlords and tenants
- Relevant research and data gathering
- Visibility and relationship building



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What can I do for you

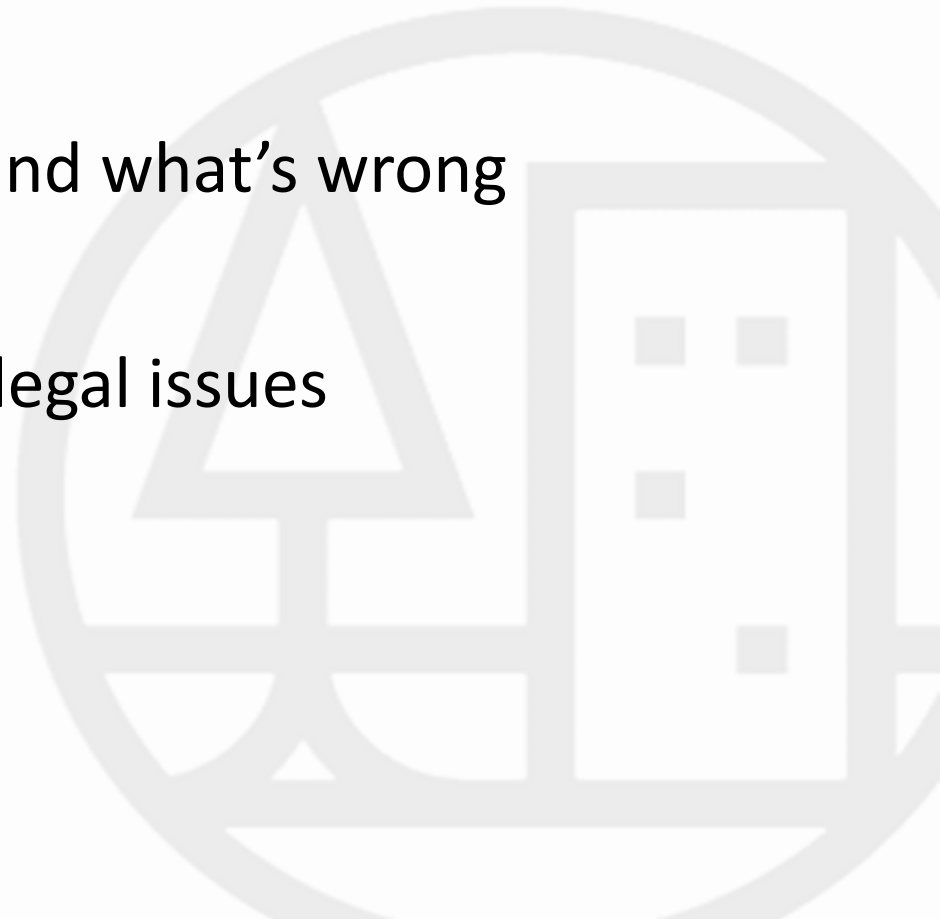
- Prepare codes for all major areas of interaction between landlords and tenants.
- Ensure that the codes are followed.
- Help landlords and tenants resolve issues without resorting to the Land Court or making a complaint about a breach of a code.
- Commission research and data gathering and generate discussion about the future of the tenant farming sector.
- Advise the Scottish Government on legislation.



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What am I not!

- A free mediation service
- The arbiter of what's right and what's wrong
- The fount of all wisdom on legal issues





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The Amnesty on Tenants' Improvements



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Key Features

- 3 years from June 2017. Any notices must be served before the end of the 3 year period.
- Opportunity to agree a definitive list of tenants improvements which may be eligible for compensation.
- No change to the current position regarding when compensation payment takes place.
- Allows some claims to be made where the proper notification procedure were not followed.
- Onus is on the tenant to initiate the process but expect landlords to help establish evidence.



Restrictions on Claiming

Part 1 improvements requiring landlord's consent

- Cannot claim for an improvement which was carried out without the landlord's consent or where consent was given but the improvement was significantly different from that agreed.

Part 2 (requiring notification only) and Part 3 improvements (no notice required).

- Cannot claim if the improvement was done despite a landlord's objection or where the improvement was significantly different from that notified.

Updated list of modern improvements will not be in scope.
Cannot claim if landlord has already allowed some form of benefit.



The Process

- Tenant initiates.
- Tenant and landlord assemble and share all relevant information.
- Tenant produces list of improvements claimed.
- On farm meeting to discuss.
- Written record of agreements reached.
- Use ADR mechanisms if necessary to resolve disagreements
- If tenant still unsatisfied can issue amnesty notice. Landlord can object and tenant can refer to the Land Court

Remember to keep the record updated in the future!



Additional Agreement Possible

- If landlord agrees, all the restrictions on claiming can be set aside and improvements can be accepted even if they are not within the scope of the amnesty.
- In such circumstances an amnesty notice cannot be issued where landlord has agreed to discuss an improvement but is unwilling to accept.



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Some Grey areas

- Write down agreements
- Post lease agreements
- Definition of a building
- Improvements to the farmhouse
- Shared cost improvements

