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A Guide to General Statutory Compliance on Agricultural Holdings

This guide provides information on how to comply with general statutory regulations for those operating in the agricultural holdings sector.

It aims to help farmers, landlords and their agents understand responsibilities with regard to statutory obligations and suggests pragmatic ways to undertake these responsibilities. It provides practical information on who is likely to be responsible for which aspects of statutory compliance and what action is required to be compliant with the regulations.

Whilst this guidance aims to help landlords and tenants navigate compliance requirements, it is only guidance and it may be possible for parties to agree to other courses of action.

Please note that regulations are regularly updated and you are advised to check relevant regulations at source. To the best of our knowledge information contained in this guide was correct at the date of publication.

Users of this guide are advised to obtain independent legal advice relevant to their particular circumstances before acting upon any of the information contained in this guide.

Introduction

Operating a farm involves many responsibilities and ensuring that everything is in order can be challenging – particularly in the tenanted sector where responsibilities are split between landlord and tenant. Requirements for statutory compliance on agricultural holdings can be confusing and lead to potential misunderstandings between landlords and tenants. It can also be difficult for landlords and tenants to keep abreast of requirements particularly as tenancy agreements can remain in place for many years, but the regulations for agricultural buildings and dwellings included in agricultural leases are often subject to change.

This guidance is not about the normal legal obligations of landlord and tenant with regard to the repair and maintenance of fixed equipment but covers additional obligations around inspections and certifications. It provides information on current statutory requirements and aims to help parties to understand where responsibilities lie and what actions they require to take.

How to Use this Guide

The compliance table (see page 4 of this guide) lists statutory compliance relevant to agricultural holdings but does not take into account specific wording in individual leases and Post Lease Agreements. This guidance has been written on the assumption that the lease terms follow the principle that the landlord replaces or renews fixed equipment if required due to natural decay, fair wear and tear and the tenant is responsible for repairing and maintaining the fixed equipment. Each individual lease and any accompanying documentation should always be consulted when considering compliance matters in agricultural tenancies.

The table outlines the general approach most landlords and tenants choose to take, but other arrangements can be agreed between the parties provided the correct certification is ultimately acquired; for example landlords may choose to take on some or all of the tenant's responsibilities if they see fit.

As with many duties on tenanted holdings a good place to start is an open discussion between tenant and landlord on who is going to do what and when. The checklist at the end of this guide may help initiate discussion and it can also be used to help both landlords and tenants keep their records up to date.



Proof of Compliance

In order for the compliances to be deemed ‘fully compliant’ in terms of having the checks and annual inspections carried out, the landlord and tenant must hold a copy of the compliance certificates.

Where certificates and surveys are required to be shared between landlord and tenant it would be reasonable to expect this to be within two months following completion of the compliance inspection. Without certified paper proof that the inspections or tests have been carried out, the landlord or tenant cannot verify these have been completed and are therefore not seen to be compliant with the requirements.

In the unfortunate event of an ‘incident’ surrounding compliance, evidence (e.g. a certificate/ photograph) will be required as proof to demonstrate that the appropriate measures have taken place.

Note on Statutory Requirements for Housing

Housing included within agricultural tenancies must at present meet the Scottish Government’s Tolerable Standard. The provision of heat and smoke detectors is to be added from 1 February 2022, which will be the responsibility of the landlord. There is also further guidance to be released regarding the use of lead pipes in private water supplies within the Tolerable Standard.

Please also note that the Scottish Government is planning to introduce a requirement for the Repairing Standard to apply to all dwelling houses included in agricultural leases under the Agricultural Holdings (Scotland) Act 2003, which will include 1991 Act tenancies, Short Limited Duration Tenancies, Limited Duration Tenancies, Modern Limited Duration Tenancies and Repairing Tenancies, by 28 March 2027. This should be taken into account when considering responsibilities and works to residential properties included in agricultural tenancies going forward.

Some amendments to the Repairing Standards are planned to come into force before 2027 which will apply to houses included within agricultural tenancies. This will include safe kitchens, fixed heating systems, residual current devices and other fuel sources.



Guidance on Compliance

Compliance	Prior to the Start of New Lease	Throughout the Duration of a Lease	Information Link
Electrical Inspections	The landlord is responsible for carrying out an electrical inspection on any dwelling and steading electrics. An Electrical Safety Certificate should be supplied by the landlord to the tenant prior to start of the lease. This should be an Electrical Installation Condition Report (EICR) for an existing electrical supply or an Electrical Installation Certificate (EIC) for a new installation.	The tenant should have an electrical safety inspection carried out at least every three years on agricultural buildings and every five years for residential dwellings. The tenant should supply the landlord with an Electrical Safety Certificate. Where a tenant has installed electrics as a tenant's improvement or fixture, and where the tenant's improvement or fixture is connected to landlord's fixed equipment, the tenant should supply a satisfactory certificate of installation to the landlord.	www.electricalsafetyfirst.org.uk Search: Scottish Private Landlords
Portable Appliance Testing (PAT)	The landlord should have a PAT test carried out on any electrical appliances included in the let.	PAT testing should be carried out by the landlord if any electrical appliances are included in the tenancy. Regulations do not dictate how often PAT testing should be done, only that it should be "regularly".	www.electricalsafetyfirst.org.uk Search: Scottish Private Landlords
Emergency Lighting	There is a requirement for emergency lighting on new agricultural buildings to meet building warrant regulations and planning consent conditions.	The tenant should arrange for regular inspections of emergency lighting by a competent person.	

Compliance	Prior to the Start of New Lease	Throughout the Duration of a Lease	Information Link
<p>Fire Risk Assessments</p>		<p>Good practice suggests that a fire risk assessment is carried out annually by the tenant. At the very least an assessment should be carried out when a significant change is proposed. A copy of the assessment should be supplied to the landlord. The landlord may request that the tenant makes alterations if high risks are identified in buildings that the landlord is responsible for insuring against fire damage.</p>	
<p>Chimney Sweeping</p>	<p>The landlord should have the chimney swept.</p>	<p>The tenant should have the chimney swept annually or agree that the landlord will have the chimney swept and the cost recharged to the tenant. The tenant should be able to give the landlord proof they have had the chimney swept by a person qualified to do so.</p>	
<p>Smoke Detectors, Heat Detectors and Carbon Monoxide Detectors</p>	<p>The landlord is responsible for installation. By February 2022 there must be a:</p> <ul style="list-style-type: none"> • Smoke detector in the main living room and in hallways on each level of property • Carbon monoxide detector in every room with a combustion appliance (e.g. boiler, open fire or stove) and any room with a chimney flue • Heat detector in the kitchen or where there is an open fire <p>Smoke and heat detectors must be interlinked.</p>	<p>The tenant should check and maintain throughout the tenancy; the landlord is responsible for end-of-life replacement.</p>	<p>www.gov.scot Search: Carbon monoxide guidance</p> <p>www.gov.scot Search: Fire and smoke alarms – then select the Factsheet</p>

Compliance	Prior to the Start of New Lease	Throughout the Duration of a Lease	Information Link
<p>Asbestos Inspections</p>	<p>The landlord should carry out an asbestos inspection of all fixed equipment and the survey should be supplied to the tenant. Any properties of a pre-2000 construction could have Asbestos Containing Materials (ACM) or Asbestos Cement materials may be present.</p>	<p>The landlord should regularly review the asbestos survey and check materials at least once a year to make sure they haven't deteriorated. A refurbishment and demolition survey should be undertaken if carrying out refurbishment or demolition of buildings.</p>	<p>www.mygov.scot</p> <p>Search: Asbestos regulations</p> <p>www.hse.gov.uk</p> <p>Search: Asbestos: The survey guide</p>
<p>Boiler Servicing</p>	<p>The boiler should be serviced by the landlord and a copy of the certificate supplied to the tenant.</p>	<p>The tenant should service the boiler annually and provide a copy of the certificate to the landlord.</p>	
<p>Gas Safety Checks and Gas Cylinders</p>	<p>The landlord is responsible for having gas safety checks carried out prior to the start of the tenancy.</p>	<p>An annual gas safety check is required. This can be actioned by either landlord or tenant, but generally, if the tenancy is more than seven years long the tenant would organise the safety check and provide a copy of the certificate to the landlord. If the tenancy is shorter than seven years, the landlord would usually organise the annual gas safety check and provide a copy of the certificate to the tenant. If the tenant installs a gas appliance as a tenant's improvement, the tenant should carry out gas safety checks.</p>	<p>www.hse.gov.uk</p> <p>Search: Gas safety - landlords and letting agents</p>

Compliance	Prior to the Start of New Lease	Throughout the Duration of a Lease	Information Link
<p>Private Water Supply Inspection</p>	<p>The landlord is responsible for arranging for the local council to test a private water supply for bugs, chemicals, metals and lead; and is responsible for carrying out a risk assessment.</p>	<p>Anyone who owns, controls or manages any part of the water supply infrastructure or the land from which the water comes, is likely to be a 'relevant person' so a shared responsibility is to be the norm.</p> <p>If the water supply was installed or upgraded as a tenant's improvement, the tenant should have an annual water supply test carried out and be responsible for future maintenance and replacement.</p> <p>If the landlord owns the water supply system, the landlord should have the water supply test carried out in first instance and the tenant and landlord should agree on who is to carry out water supply tests annually thereafter.</p>	<p>www.mygov.scot</p> <p>Search: Private water supply rights and responsibilities</p> <p>www.landcommission.gov.scot</p> <p>Search: TFC Blog Private water supply</p>
<p>Legionella Risk Assessment</p>	<p>The landlord should carry out a legionella risk assessment.</p>	<p>The tenant should undertake regular risk assessments. The landlord may request a copy of the legionella risk assessment.</p>	<p>www.hse.gov.uk</p> <p>Search: Legionella and Landlords</p>
<p>Septic Tank</p>	<p>The landlord should register any private septic tank with SEPA and supply information to the tenant.</p>	<p>The tenant should maintain any private septic tank during tenancy and have tank(s) emptied when required.</p>	<p>www.sepa.org.uk</p> <p>Search: Septic tanks</p>

Checklist

Compliance	Residential Dwellings	Agricultural Buildings	Action Required
Electrical Inspection	Every five years	Every three years	Tenant should arrange inspection and supply landlord with Electrical Safety Certificate.
PAT Testing	Annually (if applicable)	Annually (if applicable)	Landlord should carry out regular PAT testing on electrical appliances included in the tenancy.
Emergency Lighting	N/A	Annual review and regular inspection. Above entrance to new buildings or above entrance to old buildings being re-wired.	Tenant should have electrical inspection of emergency lighting carried out regularly by a competent person.
Fire Risk Assessments	Annual review	Annual review	Tenant should carry out regular assessment and provide a copy to the landlord.
Chimney Sweeping	Annually	N/A	Tenant should have chimney swept annually or alternative agreement with landlord. Tenant should provide proof they have had the chimney swept by a person qualified to do so.
Smoke Detectors, Heat Detectors and Carbon Monoxide Detectors	New regulations for installation by February 2022	N/A	Landlord is responsible for installation. Tenant should check and maintain throughout the tenancy.
Asbestos Inspections	Annual review	Annual review	Landlord should carry out inspection of all fixed equipment. The survey should be supplied to the tenant. Tenant is responsible for asbestos inspections on relevant tenant's improvements.
Boiler Servicing	Annually	Annually, if applicable	Tenant should service the boiler and provide a copy of the certificate to landlord.
Gas Safety Checks and Gas Cylinders	Annually	Annually, if present	Tenant and landlord should agree who organises the gas safety check(s) and provide a copy of the certificate(s) to the other party.

Compliance	Residential Dwellings	Agricultural Buildings	Action Required
Private Water Supply Testing	Annually	Annually if water is for potable use	Landlord should have test carried out by local council prior to tenancy start. Tenant and landlord to agree who is to have tests carried out thereafter.
Legionella Risk Assessment	Annually	May be required annually for some units, e.g. dairy, poultry	Tenant is responsible for ongoing risk assessments. Landlord may request a copy of the assessment.
Septic Tank	Registered with SEPA	N/A	Tenant should maintain private septic tank.



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