



Scottish Land Commission
Coimisean Fearainn na h-Alba

Issued by the Tenant Farming Commissioner

CODE OF PRACTICE – Late Payment of Rent

This code of practice has been issued by Scotland's Tenant Farming Commissioner (TFC) after consultation with, and with 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 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 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 to forego any legal rights that they may have.



Introduction

No owner of property can be expected to operate without an effective remedy to deal with the late payment of rent. Landlords are entitled to expect reliable cash flow from rental income, and the deliberate late payment of rent should have consequences. There are, however, some situations where there may be genuine mitigating factors that justify a more supportive response. Most landlords are aware of this, and if rent payment is not made on time they will take steps to understand what has gone wrong and to ensure that the tenant is given every opportunity to rectify the matter. Some tenants may need help from a third party, and someone who is ill or confused may need specific support.

This code sets out the processes and behaviours that should be adopted in all cases of late payment of rent for agricultural tenancies. It also includes a copy of the leaflet 'Late Payment of Rent – Important Advice to Tenants'.

1. Key Principles

- 1.2 The tenant **should** always budget so that the rent can be paid on or before the date on which it is due.
- 1.3 Late rent payments **should** only be by prior written agreement between the landlord and the tenant, or their agents. If the tenant becomes aware that he is not going to be able to pay the rent on the due date he should notify the landlord immediately.
- 1.4 Where a rent payment is late without prior agreement, the landlord should take all reasonable steps to ensure that the tenant fully understands the potential consequences of non-payment and he **should** actively encourage the tenant to seek independent advice and support.

2. Avoiding Misunderstandings Over Dispatch and Receipt of Payments

- 2.1 The landlord **should** always invoice the tenant for the rent due not less than one month and not more than three months before the date on which payment is due. The tenant, however, should be aware that in law the rent is payable whether an invoice has been issued or not. If an expected rent invoice is not received, the tenant **should** immediately contact the landlord, or his agent, to clarify the situation.
- 2.2 To avoid disputes about whether or not rent has been sent and received, tenants are advised to pay by means of bank transfer. If requested to do so by the tenant, the landlord **should** provide the necessary details to allow this to happen. Where a tenant presents a cheque in person a receipt **should** always be obtained. Paying by cheque through the postal system is not recommended.





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3. Procedures for Addressing Late Payment of Rent

Step 1 – Informal Discussion

Immediately following the date on which the rent has fallen due and not been paid, the landlord **should** make informal contact with the tenant and seek an explanation. This conversation should include a clear verbal warning of the risk that the tenant is now subject to, and may also include explicit encouragement to the tenant to discuss the matter with immediate family and/or professional advisers.

Step 2 – Formal Notice of Arrears

If payment is not forthcoming within 7 days, the landlord **should** issue the tenant with a formal written notice of arrears. This notice should be unambiguous in making clear that the tenant is likely to lose the tenancy if the arrears are not paid within the relevant statutory time period. A copy of the leaflet 'Late Payment of Rent – Important Advice to Tenants', which can be found on the Scottish Land Commission website www.landcommission.gov.scot/tenant-farming, should be enclosed with the letter.

Step 3 – Final Written Warning

If no payment is received within one month of the formal notice of arrears being issued, the landlord **should** issue a final written warning by recorded delivery, referring to the formal notice of arrears, making it clear that the next step available to the landlord is terminating the tenancy. Another copy of the 'Late Payment of Rent – Important Advice to Tenants' should be enclosed with the letter.

4. Termination of the Tenancy

- 4.1 The procedure for terminating the tenancy where rent has not been paid depends on the type of tenancy. Landlords **must** comply with the relevant statutory procedure in each case if they are seeking to terminate the tenancy. In doing so the landlord **should** be able to evidence that the steps set out in section 3 have been followed.

5. Keeping Records

- 5.1 All landlords, tenants and professional intermediaries are advised to maintain a concise written record of all correspondence and conversations, with dates, relevant to the late payment situation.

6. Reporting an Alleged Breach of this Code

- 6.1 If you have been directly involved in a late rent payment issue and believe that another party to these discussions 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 circumstances.

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.



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Contact us

@ tfc@landcommission.gov.scot

01463 423 300

www.landcommission.gov.scot

Find us on:

