

Sporting Rights: A new Code of Practice



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Sporting leases have been a feature of Scottish land tenure for many years. It is common for landowners of agricultural land either to retain the sporting rights over their property, or to lease them to a third party. An agricultural tenant, who is not also the sporting tenant, has no right to shoot game but may under certain circumstances control deer and vermin such as rabbits and hares.

To help to promote and facilitate good practice between landowners and farm tenants, Bob McIntosh, Scotland's Tenant Farming Commissioner (TFC), is producing a series of Codes of Practice under the Land Reform (Scotland) Act 2016. The latest of these, issued on 31 October 2017, is the *Code of Practice - Management of Relationships between Agricultural Tenants and the Holder of Sporting Rights*.

In some instances a Code of Practice will reiterate legal obligations with which the parties must comply. For the most part, the provisions of any Code are binding, meaning failure to comply may be a breach of the Code and could lead to a formal complaint being made to the TFC. Some aspects of a Code may merely represent good practice, but other approaches may be equally effective and failure to follow the recommendation would not necessarily breach legislation or the Code.

Contact and communication

Under the Sporting rights Code of Practice, a landowner is responsible for ensuring that his/her employees and tenants are aware of the Code of Good Shooting Practice and the BASC Code of Practice for Deerstalking in the UK. These codes as well as the Sporting rights Code of Practice should be incorporated into all new sporting leases.

The Landowner should provide the agricultural tenant with details of and key contacts for the sporting rights holder. This and the terms of the Code apply whether the sporting rights are held and exercised by the landowner, or by a sporting tenant under a lease.

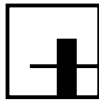
Sporting rights holders

The Code encourages sporting rights holders to communicate with the agricultural tenants, in particular regarding access across agricultural land and when planning a shoot.

When the sporting rights holder requires access across agricultural land, they should discuss their requirements in advance with the agricultural tenant and be prepared to agree to the agricultural tenant's request that they avoid certain areas.

When vehicular access is required, where possible, sporting rights holders should use low impact vehicles such as quad bikes. When using 4x4s, they should use recognised tracks where possible and agree in advance the best off-track routes and parking places to use.

When planning a shoot, sporting rights holders should inform the agricultural tenant of the proposed dates and any changes, as well as details of any vehicles they are likely to use. They are also required to make the agricultural tenant aware of the likely frequency and timing of their visits if they are involved in deer control, particularly late



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night and early morning, and any other night time activities, such as fox control.

Agricultural tenants

Under the Code the agricultural tenant is expected to be reasonably acquiescent to the sporting rights holder's exercise of their rights. However if a planned shoot conflicts with any planned farming operations, the agricultural tenant should let the sporting tenant know as soon as possible. The Code expects the parties to be prepared to adapt their activities in the interests of sustaining a cordial relationship. If the agricultural tenants sub-lease any residential properties, they should tell their sub-tenants, at the time they enter into the lease, if they are likely to be affected by the sporting rights exercised across the property.

Extent of the game burden

If the level of game stock held is increased during the tenancy, and there are no provisions in the lease or other agreement allowing this, then the tenant may be able to claim compensation for any damage caused due to the increased level of stock.

Damage

Where the agricultural tenant believes that significant damage is being done by birds or animals, this should be discussed with the sporting rights holder. Where damage is being inflicted by deer the agricultural tenant should contact the landowner and/or the holder of the deer shooting rights to agree a course of action.

Damage caused by Rabbits

Agricultural tenants can shoot or otherwise take action against rabbits and hares and may authorise others to do so on their behalf. The sporting rights holder is obliged to assist if requested to do so by the agricultural tenant.

Damage caused by Deer

Agricultural tenants can only take or kill deer if certain criteria are met. The deer must be found on arable land, permanent pasture or regenerated land, and the tenant must believe that serious damage could be caused to crops, pasture or feedstuff if the deer is not taken or killed.

Comparatively, deer control requires a higher level of firearms authorisation and competence, and a higher knowledge of the relevant laws than rabbit control. Agricultural tenants should contact the landowner and the sporting rights holder to agree a course of action.

If the deer control may involve out of season or night shooting it is advisable to contact Scottish Natural Heritage. If damage occurs that the agricultural tenant believes is unacceptable, they may have a claim for compensation. This claim can only be made if the damage exceeds 12p per hectare and is caused by deer, pheasants, partridges, grouse or black game. The claim must be made against the landowner and not the sporting rights holder.

Dispute resolution

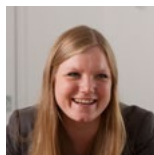
In the event that one party believes another has breached the Code and the landowner is also the sporting rights holder either the landowner or the agricultural tenant can make a formal complaint to the Tenant Farming Commissioner.

If a dispute arises between the agricultural tenant and the sporting rights holder the landlord should be involved in attempting to resolve the issue if agreement cannot be reached. The landlord may make a complaint on the sporting rights holder's behalf if they believe that the complaint is reasonable and unresolvable through mediation.

Parties are obliged to consider professional mediation before litigation or complaining to the Tenant Farming Commissioner.



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