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**SOLICITORS & ESTATE AGENTS**

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## **MAINTENANCE OF THE CONDITION OF TENANTED AGRICULTURAL HOLDINGS**

*This is one of a series of factsheets provided by J. & H. Mitchell W.S.*

In January 2018, the Scottish Land Commission Tenant Farming Commissioner published his first Code of Practice for the Maintenance of the Condition of Tenanted Agricultural Holdings. Full details of the Code of Practice can be found at [www.landcommission.gov.scot](http://www.landcommission.gov.scot). The key principles of the Code are:

- Landlords and Tenants must comply with their legally binding obligations towards the maintenance/repair/renewal of the fixed equipment and as regards the condition of the holding;
- Landlords and Tenants should regularly meet to discuss the condition and agree on what needs to be done;
- Landlords and Tenants should maintain and retain effective records of agreements made and maintenance carried out;
- Landlords and Tenants should agree on an appropriate approach to the preparation and maintenance of a Record of Condition;
- Landlord and Tenant can agree on who should make the Record of Condition and the cost should normally be shared;
- in the case of LBTs, SLDTs and MLBTs, the parties must agree, at the outset of the Lease, on a Schedule of Fixed Equipment to be provided by the Landlord, and on its condition;
- in the case of 1991 Act Tenancies, it is recommended that Landlords and Tenants should agree to commission the preparation of a Record of Condition at shared cost;
- the use of digital photography in the making of the Record of Condition is recommended, as is the taking of soil samples;

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- where either party exercises the right to request that a Record of Condition should be made, they should attempt to agree the scope of the record with the other party;
- if the Landlord and Tenant are unable to agree who should be appointed to produce a Record of Condition, they may ask the Scottish Ministers to appoint someone to perform the task;
- parties should be prepared to meet at regular intervals to review the state of the holding and agree on a Schedule of Works;
- it is recommended that such a discussion should take place at least every five years;
- following initiation of a meeting, the parties should meet within one month, and a record of the meeting should be produced and agreed by both parties;
- within one month of the meeting, the parties should produce a proposal which sets out the Schedule of Work proposed over the next three to five years;
- obligations during the five year period may be linked to longer term work cycles;
- parties should be realistic about affordability of works (if one party lacks the financial resources to meet their obligations, the other party may wish to consider offering to pay for part of the other party's obligations in return for an adjustment to the rent, and any agreement of this nature should be clearly documented by the parties.
- where wear or tear has been exacerbated by lack of maintenance by the Tenant, the parties may wish to agree that it is appropriate for the Tenant to make a contribution towards the cost of replacement or renewal;
- discussion of the proposed Schedule should continue until both parties are content, and the outcome of all discussions should be recorded in writing;
- both parties should respond timeously to each other with a view to agreeing the Schedule within a six month period;
- the agreed Schedule should be regarded as a binding contract and Tenants and Landlords should ensure they are fully aware of their statutory obligations;
- if parties cannot agree on a Schedule of Work, it is recommended that both parties agree to involve a third party before resorting to litigation.

*Although carefully prepared, this Fact Sheet is a guide only  
and is not intended to be comprehensive.  
Specific advice should be requested on your own individual situation.  
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