



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Tenant Farming Advisory Forum

Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held online, Tuesday 16th May 2023 at 5pm.

Present:		Actions:
Dr Bob McIntosh	Tenant Farming Commissioner	TFC
Sarah Jane Laing	Scottish Land & Estates (SLE)	SJL
Jackie McCreery	SLE	JM
Mark Fogden	Scottish Agric Arbiters & Valuers Assn (SAAVA)	MF
Jon Robertson	Agricultural Law Association (ALA)	JR
Christopher Nicholson	Scottish Tenant Farmers Association (STFA)	CN
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Andrew Wood	Royal Institute of Chartered Surveyors (RICS)	AW
Fiona Leslie	Scottish Government (SG)	FL
Calum Jones	Scottish Government (SG)	CJ
Helen Mooney	Scottish Government (SG)	HM
Bruce Morrison	Scottish Land Commission (SLC)	BM

1. Welcome and Apologies

TFC welcomed everyone to the meeting. Apologies were noted from Gemma Cooper, Martin Kennedy, and David Johnstone.

2. Agriculture Bill proposal: Resumption

CJ thanked members for their feedback on proposals from the previous meeting and set out the revised Scottish Government draft proposal on resumption. CJ explained that the proposal considers how valuation for resumption should be assessed and is intended to enable tenant farmers to plan with business certainty.

It was clarified that the proposal relates only to 1991 Act secure tenancies. JR suggested that this be included in the proposal document. JR also said that as, in practice, no new 1991 Act tenancies are being created, changes to resumption would have to apply retrospectively to existing tenancies.

It was noted by members that resumption is purely contractual and has to have been agreed to at the time of the lease.

It was also noted that a 2-month notice period for resumption is not currently a statutory requirement, but rather just common practice. The flowchart suggests a statutory notice period of at least two months before the resumption takes place, for non-agricultural resumptions.

It was also generally agreed that a resumption should have a financially neutral effect on the tenant.

CN described current issues felt in the tenant farming sector related to resumption. He suggested that the current system of compensation is outdated and unfair to tenants. He also suggested that there are increasing examples where larger areas of land are resumed by the landlord, such as several fields for nature restoration.

CN suggested a two-stage process for resumption as part of a fairer system of resumption for tenants. MF said that a two-stage process would be disproportionate and said that resumption is only used for small pieces of land, as larger resumptions can risk constituting a fraud on the lease. Other members noted concerns over using the two-stage process used for assignation for resumption, as assignation and resumption are not comparable. Members suggested that as a part of a tenancy cannot be assigned, a part of the capital value cannot be apportioned to a resumed part. CN however felt there could be a capital value apportioned to a part being resumed.

FL asked members whether guidance was needed for identifying instances of fraud on the lease related to resumption. JR suggested that creating guidance would be difficult and it isn't needed, as instances of fraud on the lease are typically 'know it when you see it' situations. JR suggested the focus should be on making sure the compensation process is adequate.

Some members agreed that part B of the proposal would help to address the issues CN described. CN agreed, noting however that he felt the proposal lacked detail. Other members noted that as compensation is contractual, any retrospective changes could be damaging.

Members discussed different approaches to compensation in relation to parts B and C of the proposal. This included discussion on whether compensation for tenants' loss should be calculated through capital value, revenue, or both, as well as the risk of double-counting, and the risks of using the term 'agricultural loss' as it could, for instance, negatively impact a tenant who has undertaken diversification.

From the discussion, TFC concluded that capital value of the lease could be explored further as an option for determining the value that the tenant is entitled to under part B of the proposal.

It was suggested that valuation to determine capital value could follow the statutory process set out in the Agriculture (Scotland) Act 2003 and updated in the Land Reform (Scotland) Act 2016.

TFC concluded the discussion by noting that members mostly supported the proposal, but had some concerns, clarifications, and suggested changes. These included:

- Remove 'agriculture' and 'market value' from part B of the proposal for clarity.
- One of the current grounds for compensation (point C: 'The tenant is entitled to an additional reorganisation payment under s.54 and s.55 of the 1991 Act equal to four times the proportion of rent') could remain as an option for calculating compensation. This could be chosen at the discretion of the tenant, if, for example, it is unfeasible or too complicated to calculate the value of their loss.
- AW suggested that the language of the proposal should be updated to include reorganisation related to the Integrated Administration and Control System (IACS).
- JR suggested that it should be made explicit that the proposal relates only 1991 Act tenancies.
- JR suggested that the bottom box of the proposal document, which sets out current grounds of compensation, should include the fact that tenants are entitled to compensation on improvements on resumed land.

FL said that SG would create a revised version of the flowchart based on points of consensus and that the issue of capital value would be addressed separately. FL also noted that the Schedule 5 proposal was currently being tested by solicitors and may be tested again later this week with TFAF members.

TFC closed the meeting.

Action 1	FL and CJ to create and circulate a revised version of resumption flowchart.
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