



Tenant Farming Advisory Forum

Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held at Saughton House, 2 May 2024 at 2pm

Present:		Actions
Bob McIntosh	Tenant Farming Commissioner (Chair)	TFC
Calum Jones	Scottish Government (SG)	CJ
Fiona Leslie	Scottish Government (SG)	FL
Helen Mooney	Scottish Government (SG)	HM
Uwe Stoneman	Scottish Land Commission (SLC)	US
Peter MacDougall	Scottish Land Commission (SLC)	PM
David Johnstone	Scottish Land and Estates (SLE)	DJ
Jackie McCreery	Scottish Land and Estates (SLE)	JM
Christopher Nicholson	Scottish Tenant Farmers Association (STFA)	CN
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Jon Robertson	Agricultural Law Association (ALA)	JR
Martin Kennedy	National Farmers' Union Scotland (NFUS)	MK
Gemma Cooper	National Farmers Union Scotland (NFUS)	GC

Apologies:

Mark Fogden	Scottish Agric Arbiters & Valuers Association (SAAVA)	MF
Sarah-Jane Laing	Scottish Land and Estates (SLE)	SJL
Andrew Wood	RICS	AW
Rhianna Montgomery	National Farmers' Union Scotland (NFUS)	RM

1. Welcome and apologies.

The chair welcomed everyone to the meeting at 2pm. Apologies see above.

2. Minutes of last meeting.

The minutes from the previous meeting held at Saughton House on 2 Feb 2024, were approved.

3. Discussion on the Land Reform Bill – a discussion paper on the key issues arising by the TFC – leads: Fiona Leslie/Calum Jones/Bob McIntosh

1. Model Lease for Environmental purposes

FL confirmed that this is aimed at holding of over 50% non-agricultural and is therefore outside the scope of the 1991 and 2003 Act. Some members were asking for this to be clarified in the current bill. There was concern about the 50% threshold, and how the Model Lease relates to existing agricultural holdings legislation. FL asked members to set out their positions and reasons when giving evidence at Stage 1. FL mentioned that clerks were asked to contact TFAF members and for members to follow up if they had not yet been contacted. **Action all**

There was agreement that it would be good to clarify that the new lease is not subject to Ag Holdings Legislation

2. Small Land Holdings

There was some discussion on how these relate to crofts. The TFC raised the point of the paper that the proposed role of the TFC at waygo re Small Holdings should be in line with the TFC's role re other forms of tenancy. There was agreement that the TFC should not be involved unless agreement could not be reached by the Landlord and Tenant. CN asked for a code of practice for the conversion of small landholdings to crofts.

3. Agricultural Holdings

Tenant's Right to Buy

The TFC suggested to defer a detailed discussion. There was some discussion about the challenge to define what 'taking action' means and what the trigger points would be. CJ confirmed that the intention is to make the process as least burdensome as possible. In terms of mapping, it was noted that the Keeper has indicated she should not be used as a decision maker.

Resumption

There was general agreement that the TFC should step in to appoint a valuer only if there is no agreement between landlord and tenant, "unless otherwise agreed" to be inserted. There is a freedom for landlord and tenant to agree if they can but an option to fallback on statute if needed.

CJ mentioned that the policy intention re Resumptions was to align them with Relinquishments.

The main discussion centred around whether to base the valuation on current use or include development value / hope-value. CJ advised the provisions were taken from the relinquishment and assignation provisions and in 2016 parliament had accepted the principle. Discussion on valuation highlighted differences between members but reached a level of agreement on:

- (a) the need for fairness in relation to all parties
- (b) that landowners should be able to recoup uplift if they create development value. Tenant will not have contributed to the costs of promoting development.
- (c) impacts on development and availability of land for agricultural use need to be considered and

(d) the current 5x annual rent figure is out of line with the widening gap between rents and land values, and that an upward adjustment could provide a proportionate compensation value on which TFAF members could agree, that would remove the need to include hope-value and give certainty to the sector.

CJ reiterated the policy intention to provide a thriving tenant farming sector and that it can be adapted in Stage 2 what valuers can and cannot take into account. It was also confirmed that 2 enabling powers were referenced, one for the 2003 Act and one for the 91 Act for amendment through secondary legislation.

It was agreed that there was merit in reviewing the multiplier for 03 Act Tenancies based on use permitted by lease and excluding hope-value, as long as tenants are no worse off but retaining the 91 Act arrangements based on relinquishment and assignation and excluding hope value.

DB highlighted the need for good communication by all parties involved in Resumptions. The TFC stated that Section 17 of the 2003 Act and its policy intent needs clarifying to make it clear that parties can agree other resumption provisions contractually. CJ recommended that TFAF and its individual members should make all the points raised about Resumptions when giving evidence.

An issue was raised over the scenario where planning consent is achieved over an entire holding – landlord can submit an incontestable notice to quit, this is not a resumption therefore is not covered by the resumption changes and therefore compensation. Previous discussions had indicated an intent to address this issue but at present the Bill does not do so. If members believe it should apply to incontestable notice to quit they must put it forward to the committee in parliament. CJ explained that the Programme for Government 2021/22 only referred to resumption.

It was also raised that in the instance where a certificate of bad husbandry is used to remove a tenant whether full compensation should be available for the tenant as would be available to a landlord if they were removed.

Compensation for improvements

Various concerns were discussed in line with the paper, particularly whether Part 4 of the schedule was required or should be in guidance. Members encouraged to provide feedback in their evidence.

There was a call by CN to remove Clause 3b, and JM and JR felt that the examples given out of date (e.g. 'irrigation example'). CJ explained the intention that a principles-based approach allows flexibility and provides futureproofing re potential future policy changes. The aim was to provide maximum flexibility while achieving the principal policy goal.

There remains concern for some members about whether a landlord could claim from the tenant to return the land to agriculture and the likely impact this may have on tenants taking up tree planting on any scale.

Carbon Credits remain a big issue as all liability falls onto the title, those who purchase put a charge on the title of the land as a minimum requirement which puts a burden on the land.

Game damage

Discussion on ability of tenants to manage deer when they are off the in-by, and what the landlord's responsibility should be. No consensus was reached. The TFC, supported by JM and DJ suggested that this would be covered by the new deer legislation, which is expected to enhance Sections 7 and 8. MF? Agreed with the comments in the paper.

A concern was raised about the possibility of a landlord having responsibility to compensate a tenant even if the tenant has no other ground or ability to control the deer.

Standard claim procedure

Concerns were raised about the timetable for valuing as soe items cannot be valued until the lease expiry date. A two-stage approach was suggested, i.e. agree first what need to be valued (stage 1) and then when it will be valued (stage 2). CJ suggested that timing could potentially be altered at Stage 2, and FL cautioned that there would only be only one chance for an alteration.

General agreement that TFC should only need to get involved if parties cannot agree.

Rent review

Discussion about *rent on similar holdings v comparable rent* for rent reviews and advice from JR to stick with the current *comparable*, as this is well understood and has been tested in court so there is an established set of precedents. The TFC, CN, JR and JM agreed that there should be enabling power to go to third-party arbitration where necessary.

CN noted that as section 13 is disappearing we so need to make sure we are not missing anything in terms of regards and disregards. Other member agreed this should be checked.

4. AOBs

- b) CN asked for the risk of transfer of diseases from game to domestic stock to be considered.
- c) FL stated that she felt TFAF had given useful feedback during the meeting without undermining the Bill. **Action FL/CJ to consider feedback given**
- d) She asked whether TFAF would give consensual written evidence. The **TFC will coordinate**
- e) FL encouraged individual members to give individual evidence. **Action all**
- f) FL thought it highly likely that all members would be called as witnesses.
- e) FL agreed with the TFC that individual members' evidence cannot undermine TFAF's consensual evidence. **Action all**
- f) FL informed TFAF that two amendments to the bill had so far been tabled: one in relation to a CoP on tenant farmers and landlords; and one in relation to government support for peatland restoration and agroforestry. Members confirmed none of them had had prior knowledge of these.

5. Date of next meeting

Agreed to meet before Parliamentary Recess, starting 28 June and before the Royal Highland Show, 20-23 June. **PM – to circulate online poll** location TBC