



## Tenant Farming Advisory Forum

### Draft Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held at the Turcan Connell Office, Edinburgh, 22<sup>nd</sup> November 2024

Present:		Actions
Bob McIntosh	Tenant Farming Commissioner (Chair)	TFC
Fiona Leslie	Scottish Government (SG)	FL
Helen Mooney	Scottish Government (SG)	HM
Peter MacDougall	Scottish Land Commission (SLC)	PM
Sarah-Jane Laing	Scottish Land and Estates (SLE)	SJL
Christopher Nicholson	Scottish Tenant Farmers Association (STFA)	CN
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Gemma Cooper	National Farmers Union Scotland (NFUS)	GC
Rhianna Montgomery	National Farmers' Union Scotland (NFUS)	RM
Jon Robertson	Agricultural Law Association (ALA)	JR
Jackie McCreery	Scottish Land and Estates (SLE)	JM
David Johnstone	Scottish Land and Estates (SLE)	DJ
Mark Fogden	Scottish Agric Arbiters & Valuers Association (SAAVA)	MF
Andrew Wood	Royal Institute of Chartered Surveyors (RICS)	AW
Heather Bruce	Agricultural Law Association (ALA)	HB
Jeremy Moody	SAAVA/CAAVA	JER
James Muldoon	Scot Gov	JAM

#### Apologies:

Martin Kennedy	NFUS	MK
----------------	------	----

#### 1. Welcome and apologies.

The chair welcomed everyone to the meeting at 10am. Apologies were given by Martin Kennedy.

#### 2. Minutes of last meeting. (27th September)

JM provided some additional amendments to the Minutes from the 27<sup>th</sup> September, which will be made **Action PM** any additional amendments please submit today, minutes will be circulated.

Actions from last meeting –

*FL to commission paper from RICS and SAAVA on the valuation methodology – had meeting with RICS, still to have one with SAAVA, ongoing- specifically relating to Hope Value.*

*TFC to speak to Jeremy Moody of SAAVA regarding work to date on this area and invite to next meeting - Done*

*FL to consider the policy intention as it relates to Section 17 - ongoing*

*SLE could assist with looking at scope of related Bills and suggesting consequential amendments required to give effect to these proposals. SJ/JM to progress with the housing bill team and discuss amending the bill by defining the landlord and deemed landlord in different scenarios and liaise with FL on the best way to take this forward – no capacity to do so far, roll over till next meeting*

*TFC to write on behalf of TFAF with a breakdown of the additional information that would be required, FL to confirm the most appropriate recipient.*

**Action** – *FL to speak to the information commissioner to ascertain whether data on tenancies would be protected. – discussions with team taken place, looking at options, census/SAF what is most suitable changes will be needed under the bill.*

**Action** – *FL to check whether the change from comparable holding to similar holding was intentional. – purpose just stylistic and therefore they will not change wording. Scot Gov Lawyers see it as not important. Two different opinions needed to be considered.*

**Action** – *FL to check if there are any unintended consequences of not replicating these parts of s13 (relates to the disregards thought to be required as a result of reinstating comparable evidence)*

**Action** – *PM to provide FL with additional information on the negative responses concerning the increased costs. No further information available due to the confidential nature of the survey.*

### 3. Budget reflections

A wide-ranging discussion was had around the potential for tenants to be impacted by the IHT changes in the Westminster Budget, it was felt that you would not need a big farm to get to the £1m limit and it was highlighted that the average sized lowland tenancy would potentially be impacted. It was recognised that a significant number of tenancies in Scotland would be impacted by the new rules and that up to 1,700,000 acres of farmland in Scotland could be impacted by the changes.

The issue that tenants do not have the facility to realise the value of part of the land in order to pay a tax bill was highlighted. As were the differences between different types of tenure and the different valuation of tenant's interest the principle that all tenancies have value was clear.

**Action** JER to draft letter to the Treasury and get sign up TFAF Immediately – letter is included below under Annex 1

The feeling was that the changes would be not good for the tenant and they could be at a disadvantage because they are not able to access funding in the same way as owner occupiers.

Older farmers need to act quickly and undertake succession planning to protect their business. It was also felt that it would be fair to have a transition into the new system to allow planning to be undertaken as opposed to a cliff edge.

All projections suggest that the changes will do little to change land values and bring prices down while they may change locally, UK wide they are unlikely to change according to the OBR. The 20% rate for IHT remains attractive to lifestyle buyers. Environmental charities and institutions/corporates are still in the market and not affected therefore in principle just adds to the bias to drift outside productivity potentially moving land reform towards a more concentrated pattern of land ownership.

#### 4. Land reform bill – where are we

Agreed it would still be worthwhile for the Forum to submit consensus views to the NZET committee where possible.

##### Small Landholders

There was a discussion about whether there was consensus in the Forum and HB advised that ALA were in favour of small landholders being moved into crofting legislation rather than Agricultural Holdings and was worried about confusion arising.

FL confirmed that there will be some consolidation of small landholder legislation and those landholders Scot Gov had spoken to wanted to have the benefits of Ag Holdings legislation. It will be a mix and match of the 1991 Act and Crofting. HB should provide evidence to the Committee on this point.

##### Registration of RTB

CN raised a point concerning tenants' right to buy and Lotting in Part 1 of the Bill. A lotting decision shouldn't override a tenant farmer's rights. FL confirmed Scot Gov aware of this issue.

##### New Form of Tenancy

JER noted the land use tenancy has potential to be a useful tool but as drafted it "misses the plot". It needs to be carved out of existing ag holdings law and this is simple to achieve by disapplying the Acts but this needs to be on the face of the Bill. HB noted some changes may be needed to specific sections of the 2003 Act so that you don't trip up into Ag Holdings by accident. The 2003 act is very prescriptive when it comes to terms therefore the Land Use Tenancy would need to be entirely separate where parties have freedom of contract independent of the pre-existing provisions of the 2003 Act.

Rather than a specific % not used for agriculture it may be preferable to use words such as "significant use not be agriculture".

##### Resumption compensation

A strong discussion was had on the subject.

It was agreed that the compensation in the event of an incontestable notice to quit being issued should be included under the scope of the Bill. SLE conceded that it should be included in the Bill, subject to a proper consultation on the issue.

There were differences of opinion on whether the use of the relinquishment and assignation (R&A) valuation methodology for valuing partial resumptions from 1991 Act tenancies was acceptable. CN noted that the R&A valuation method should be used as it was familiar to people but JR advised that

the R&A provisions valued a one off premium payment and does not represent the market value. It is higher than the landlord would otherwise be required to pay. JER Noted that CAAV has produced guidance. Valuers are clear that it is only what's let in the lease that should be valued so excluding sporting or mineral rights and only uses permitted under the lease. The TFC noted that 12 relinquishments have gone through, and all have used the CAAV guidance. No consensus could be found on 1991 Act tenancies, but agreement was reached that it was not appropriate to use R&A valuation in 2003 Act tenancies.

It was agreed that the policy intention behind Section 17 needs to be clarified and once clarified applied to all tenancies not just those going forward. The importance of resolving this issue quickly was stressed by SLE as it is a barrier to letting land.

It was also agreed that the statutory methodology should be the fallback leaving landlord and tenant free to reach agreement by negotiation.

There was disagreement on whether hope value was excluded through the R&A valuation but parties all agreed with the principle that it should not be included.

In order to progress it was felt appropriate to explore the option of undertaking a concurrent consultation on fair compensation for resumption and this should also include a consultation on compensation for Incontestable Notices to Quit.

**Action** – FL to check the possibility for a concurrent consultation on Compensation for Resumption provisions.

#### Compensation for improvements

There was a discussion over whether there was a need for a new part 4 and on whether the types of improvement within the proposed Part 4 could be included within Parts 1, 2 and 3. Alternatively, to provide more certainty, if Part 4 is to be retained, all the improvements within part 4 should be subject to notification or consent.

The result is a question over whether moving what is in Part 4 to part 3 is ok. If this is what the TFAF would like members need to give reasons why they are notification rather than consent or vice versa. This has previously been provided by SLE. **Action JM** – will share what SLE has provided (completed at meeting). All members must articulate their views if they wish to progress it.

#### Use of agricultural land for diversification

There remains a barrier to planting trees on tenancies as the landlord can still ask for the land to be returned to agricultural production on the termination of a tenancy. There was discussion on whether it was acceptable to keep this liability. It was agreed that this remains a disincentive to planting trees on tenanted ground. JM noted that this is what the land use tenancy could be used for.

### Game Damage

The issue of Game Damage was recognised to be Scotland wide. It was also predicted that the problems would increase as pressure from deer numbers were increasing on low ground where deer management is more difficult. It was noted that NatureScot lack resources and are reluctant to use statutory powers.

Where a landlord undertakes culling it often only solves the problem for a short period. There are issues with conflicting priorities between the agricultural tenant and the sporting tenant

It may be that alternative measures such as fencing are required to protect crops. Impacts must be considered when agreeing rents.

The main issue appeared to be that the tenants right to shoot only extended to inbye ground making effective control difficult. There is generally resistance to tenants shooting deer on hill ground.

Nature Scot have powers to bring all parties to the table for discussing a suitable course of action where problems exist. Action – TFC to speak to NatureScot and discuss the issues with a view to improve the situation and discuss what can be done to encourage intervention. It was also suggested that tenants could request the right to shoot over the entire holding to allow them to address the problem. Some landlords may not give this though or there would be overlapping shooting rights which could create risks without good communication.

### Standard claim procedure

Though presented as a standard claim procedure, the reality is that at the moment it is primarily aimed at resolving waygo issues. There is support for the intention to tighten up on waygo timescales and to ensure that, wherever possible, a waygo claim is finalised by the end date of the tenancy. As proposed, the methodology would ensure an earlier start to negotiations and, therefore, a greater chance of achieving the objective by the end date if both parties actively engage.

There was general support for this but some concern was raised that the proposed timetable does not give enough scope for dealing with changes that happen right up to the date of termination. Ultimately the valuers on the TFAF felt 6 months following expiry of the lease was sufficient.

### Rent reviews

The proposals reflect the desire to find a methodology that uses the best of the current system and the 2016 Land Reform Act proposals that weren't enacted. The rent of comparable holdings and the inherent productivity of the holding are both factors which are highly relevant to the rent that should be payable, and the ability to use each as a sense check on the other should help to provide a more balanced approach to rent negotiations.

Some points that were highlighted:

Rent is paid out of profit not turnover and Basic payment is not related to production. JER noted that if you add "and related earnings capacity" in the Bill then it draws the eye away from all the other sources of benefit from the holding. The best way to solve this may be through guidance.

For productive capacity, there is provision for the TFC to provide guidance on what this looks like.

Regarding the missing disregards from the current S13 provisions now that comparables had been added back in, FL accepted there was a drafting nuance and this would be looked at.

Rent disputes, is the current methodology of using the Land Court overkill? Can the Bill reserve a power to look at another option? Arbitration, Short Arbitration and Mediation were all suggested and all have potential but it was recognised that forcing parties into any form of arbitration through legislation would be problematic per Lord Gill's comments some years ago. It was noted that arbitration is not currently binding in Scotland and can still end up in the Land Court but JER noted that the Arbitration Act gives the arbiter a lot of power over the process and he/she can disallow witnesses etc to control costs.

5. Wild Boar/feral pigs – the rights of tenants to act

It was felt important to define whether the issues being experienced were with wild boar or feral pigs as the approach of controlling may be different.

In order to progress it is important to define what actions can be taken by an owner/occupier which cannot be taken by a tenant to control.

**Action** - FL to circulate the advice on feral pigs

6. New TFC Appointment Update

Appointment has still to be confirmed by parliament. Assuming this happens, the proposed handover date would be 19<sup>th</sup> December.

7. AOB

A formal vote of thanks for Bob was raised for his work over the past 8 years in the role of Tenant Farming Commissioner.

8. Date of Next Meeting

A date will be agreed in the new year once the new TFC is in post, most likely in February.