



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Tenant Farming Advisory Forum

**Minutes of Meeting of the Tenant Farming Advisory Forum (TFAF)
held on Tuesday the 17th July 2018, NFUS Offices, Ingliston**

| Present: | | Actions |
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| Dr Bob McIntosh | Tenant Farming Commissioner | TFC |
| Kate McLeish | Scottish Land & Estates | KM |
| Christopher Nicholson | Scottish Tenant Farming Association | CN |
| Sandy Simpson | Scottish Tenant Farming Association | SS |
| Andrew McCornick | NFUS | AM |
| Gemma Cooper | NFUS | GC |
| Andrew Wood | RICS | AW |
| Rob Forrest | SAAVA | RF |
| Jeremy Moody | CAAV | JM |
| Jon Robertson | Agricultural Law Association | JR |
| Alistair Henry | Scottish Government | AH |
| Mal Cooke | Scottish Government | MC |
| Sarah Allen | Scottish Land Commission | SA |
| James MacKessack-Leitch | Scottish Land Commission | JML |

1. Welcome and Apologies

TFC welcomed everyone to the meeting, and thanked NFUS for their hosting the meeting.

Apologies received from David Johnstone and Sarah Jane Laing, SLE and Jen Willoughby, SG.

2. Minutes of the last meeting – 19th September 2017

Agreed.

Matters Arising:

The survey regarding the functions and impact of the TFC is still open, members are requested to complete the survey if they haven't done so already.

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| Action | SA to circulate link to survey to members. |
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Revenue Scotland – still no update regarding the impact of LBTT on assignments.

TFC will meet with the Minister in September.

3. Presentation on data collected on tenanted agricultural holdings

MC presented an overview of how such data is collected and highlighted trends in recent years.

In response to queries from members:

- Data cannot be shared in any great detail due to confidentiality surrounding identifying individual businesses.
- Seasonal let data has not been published since 2013 due to changes in the support payments form which resulted in incomplete data being obtained.
- The statistics do show a plateauing of tenanted holdings over the past four years, and a slight increase from 2016/17 – but long term trends are not yet clear.
- More information can be found at www.gov.scot/agricstats

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| Action | SA to circulate presentation to members |
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4. Update from Tenant Farming Commissioner

Code on Late Payment of Rent, and Guide to Alternative Dispute Resolution have been published.

Guide on Productive Capacity is in draft and circulated to stakeholders.

Update on casework, as per paper.

Tenants Amnesty – Anniversary

- Anniversary media campaign planned launched by Cab Sec, date being finalised.
- Members agreed to promote the use of the CAAV template.
- Members agreed Case Studies would be very helpful.

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| Action | All to nominate appropriate amnesty case studies to SA, and to promote the Amnesty during the anniversary campaign. |
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Tenants Amnesty – general discussion

- Members agreed clear justification is required in demanding detailed evidence, especially where it may have been lost over time. Members also noted that there is a need to be proportionate and recognise the balance of probabilities – particularly where improvements may have been made years or decades previously. Only items that have a value to an incoming tenant should be recorded.
- TFC suggested that problems would be alleviated if, as set out in the Code of Practice, tenants and landlords met first to discuss what might qualify under the amnesty and agree what information was to be collated.

- Members agreed that highlighting the necessary quality of information to be provided under the amnesty should be covered in ongoing media / promotion work. The CAAV would be helpful in this regard.
- Members raised concerns that some tenants were ignoring the amnesty as they felt it didn't apply to their situation. However, with the new rent review process coming this should be seen as an opportunity to record other things of use – including consents and improvements covered in Part 1 and Part 3 of the Schedule, fixtures, and arrangements for insurance.
- Members noted that where no evidence is available, an improvement is treated as a landlords improvement.

5. Recommendations from the TFC's review of agents

Recommendations have been approved by the Cabinet Secretary.

TFC reminded members that SLC cannot “enforce” the recommendations, but is reliant on the sector taking the recommendations on board and acting appropriately. SLC will continue to monitor the situation.

Comments on specific recommendations (see Paper 5 for details) :

Recommendation 1

- Members agreed, and will encourage parties to meet regularly.
- Members were comfortable with the wording, but did recognise that not all landlords are accessible.

Recommendation 2

- Members agreed the importance of guidance.
- Members noted that if guidance wasn't working it would become clear very quickly, particularly via TFAF.

Recommendations 3 and 4

- Members noted that most agents already participate in compulsory CPD.
- Additional CPD would incur extra costs, both time and resources.
- Members highlighted that in reality there were a small number of individuals at fault, and that proportionality is required in considering new measures.
- Members noted that there have been no formal complaints made to professional bodies.
- Members suggested the best point to introduce interpersonal skills was at the initial training stage – i.e. in college or university. TFC has previously written to course providers, however, either received no response, or confirmation that interpersonal skills were not covered in the curriculum.

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| Action | TFC to write to Education providers again regarding the inclusion of interpersonal skills in agent training – JM to assist in support and dissemination. |
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| Action | TFC to write to agent firms reiterating the recommendations of the review. |
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Recommendation 5

- Members agreed.

Recommendation 6

- Members noted that the previous discussion paper and guide should be updated as necessary.
- Members agreed that complaints procedures should be clarified in the new guide; and that it should be made clear that making a complaint is acceptable.

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| Action | SLC to draft a guide for stakeholder comment. |
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Recommendations 7, 8, and 9

- Members agreed.

6. Feedback from JHI Report and JM Paper

Feedback on the items has been received from some members.

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| Action | Members to feedback on the report and paper as soon as possible if they have not done so already. |
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Members highlighted key points:

- The need for emphasis on non-familial succession.
- More targeted support for New Entrants .
 - Including revising the age definition of New Entrant – there are more relevant considerations than age – the age limit is potentially preventing older people with experience entering the industry.
- Broad support for a land matching service.
- Broad support for a Republic of Ireland style income tax relief associated with land letting
 - Members recognised the impact on productivity of *trained* farmers being able to access land
 - Members recognised that this was not a devolved competency
 - Members indicated that more investigation is required
 - Members would support action on this to be pushed at a UK level.
- The route to entry via farm employee / manager needs highlighting – and potentially holds more opportunities.
- Noted the flexibility of tenancies in England, that the sector there is in better health. Members were not keen to see more legislative changes here at this stage, but want to wait until the 2016 Act is in fully in force and has had time to bed in.
- Share farming could have a significant role to play, but is poorly understood here. NFUS is launching a share farming initiative.

- Concerns around potential changes to Agricultural Property Relief and the subsequent impacts on the tenanted sector.
- The need for building confidence in the sector was recognised.

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| Action | All to consider how to support investigation into the Income Tax relief proposal at a UK level. |
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7. Land Matching and Joint Workshops

Members supported the work outlined in the paper. SA confirmed that Local Authorities have been/are being contacted via FONE on opportunities for letting land.

8. SLC Pilot Mediation Service

SA highlighted the specific circumstances under which cases being dealt with by the TFC might qualify for the pilot mediation service now set up by SLC. These tend to be long running cases involving multiple and sometimes non-legal issues.

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| Action | SLC agreed to keep members updated on progress |
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9. Update on commencement of legislation under Land reform Act 2016

AH updated members on the progress the Scottish Government has made.

Rent review

Final stakeholder meeting was held 13 June. SG will continue to engage stakeholders via email. SG currently drafting legal instructions to lawyers with a view to being enacted in May 2019, but depends on availability of legal colleagues and parliamentary time. The amnesty on tenants improvements will be important in relation to determining the statement of facts and record of condition required for the rent review process.

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| Action | Members to feedback to TFC on the productive capacity guide that has been circulated. |
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Assignations

Resources have been re-allocated to start moving this forward in the next 2-3 weeks.

Schedule 5 – list of modern improvements

The Statutory Instrument will be laid before in Parliament after recess with a view to it coming into effect in November 2018. A change in primary legislation would be required for inclusion of intangible improvements; it may be possible to include as an ancillary to a larger piece of legislation.

Condition of Agricultural Housing Survey

Results are to be published soon. The intention is for all housing on agricultural holdings to be brought up to the same standard as the private letting sector. The Housing Minister is looking to hold a summit in late Sept/Oct.

Consultation on energy efficiency housing (<https://consult.gov.scot/better-homes-division/energy-efficient-scotland/>) closes 27 July

Members raised concerns about unintended consequences. Already (soon to be) substandard housing in rural areas is being disposed of – this is housing that has traditionally met local low cost housing needs. Some is being sold locally, some as holiday homes and it was felt that this would create local housing shortages in the future. Funding to bridge the gap in standards may be forthcoming but may be too late as houses already sold on.

Consultation on Limited Partnerships

(<https://www.gov.uk/government/consultations/limited-partnerships-reform-of-limited-partnership-law>) closes 23 July

Thought to be 500 LP tenancies in Scotland but 2000 others with (non-tenancy) limited partnerships. General partners need to be aware that they can be struck off if they don't make returns to the Registrar, whether this triggers dissolving the LP (tenancy) is outwith the scope of the consultation but could be an unintended consequence. Consultation suggests potential role for TFC.

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| Action | All stakeholders to raise awareness that all LPs should be registered and make an annual return |
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10. Any Other Business

None.

11. Date of Next Meeting

Members agreed to be flexible. Likely next meeting in October, but will confirm near the time and as needs must.

Scottish Land Commission
July 2018