



Issued by:
Bob McIntosh,
Tenant Farming
Commissioner



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

A GUIDE TO – Tree Planting on Tenanted Agricultural Holdings

This guide provides information for landlords and tenants who might be considering planting trees on tenanted agricultural holdings.

It outlines tenants and landlords rights to planting trees and provides information on applying for permission to plant.

INTRODUCTION

Increasing pressure on farm business margins, particularly in the uplands, is creating an incentive for farmers to diversify into non-agricultural activities and this has been recognised through changes to the law governing a tenant's right to diversify. Coupled with strong Government encouragement and support for an increase in the area of woodland in Scotland, this is leading more farmers to consider the pros and cons of woodland creation on the holding and more landlords to consider taking land back in hand in order to plant it.

Tenants and landlords are likely to see tree planting on tenanted holdings (predominantly secure tenancies) in the context of 4 basic scenarios:-

1. Some tenants will see value in the creation of shelterbelts and small stands, supported by grant, which provide shelter and improve the amenity of the holding. Landlords are unlikely to object to this activity since it is likely to enhance the sporting potential, improve the amenity (and, probably, value) of the holding without having any significant effect on its agricultural productivity.
2. The creation of one or more larger (10ha plus) blocks of woodland which will provide the opportunity to consider future timber production as an income source and which, if carefully sited can also enhance the sporting, amenity and shelter aspects with limited impact on agricultural productivity. In the case of livestock farms a well-designed scheme can reduce fencing costs, create shelter and improve access, leading to a positive impact on productivity. Landlords may well consider such a scheme to be beneficial, depending on scale, and tenants will be strongly influenced by the level of financial incentives available to encourage their participation.
3. Turning over a significant area of the farm to woodland is something which would have implications for both tenant and landlord. It may suit a tenant who wants to remain on the holding and to retire from an active working life, but will depend on the extent to which the investment in woodland can provide an income source in the period between planting and harvesting. Landlords may have significant concerns about such a move on the basis that it may, at least in the short term, reduce the capital value of the land, diminish its sporting value and significantly limit future use options. It also raises the question of how rent for the holding is to be determined, especially given the new rent determination proposals which put significant emphasis on the productive capacity of the land.
4. A landlord may have the right to resume tenanted land to plant trees, provided the right to resumption is written into the lease. This could be attractive for landowners, but would only likely be of interest to a tenant where a solution is found that offers alternative land and/or a reasonable distribution of financial benefits to both parties, possibly aligned with tenant retirement or as part of succession planning.

Landlord's Right to Plant

The Landlord could use any power of resumption in the lease to take the ground in hand before planting. Not every lease has power to resume, but there is no reason in principle why the parties could not do a deal to plant trees on land that remained inside the lease.

Tenant's Right to Plant

Before 2003 the tenant had no right to plant trees on the holding or, if they did, had no right to harvest them. The 2003 Agricultural Holdings (Scotland) Act changed that with Sections 39-42 allowing for diversification.

A tenant of a secure tenancy or a limited duration tenancy wishing to use the land for a non-agricultural purpose such as tree planting can now do so provided they give the landlord written notification and obtain active consent for the diversification.

A landlord who does not wish to have the land planted has ample grounds for withholding consent where:

- a) The diversification would:-
 - significantly reduce the amenity of the land or the surrounding area, or
 - substantially prejudice future use of the land for agricultural purposes, or
 - be detrimental to the sound management of the estate of which the land forms part of.
- b) The change of use is in furtherance of a business, the landlord reasonably considers that viability of the proposed change or use has not been demonstrated.
- c) The landlord reasonably considers that the intended use would cause him undue hardship.
- d) The tenant has failed to respond within 30 days to a request to provide any relevant information reasonably requested by the landlord.

The failure by a landlord to object to a notice of diversification is deemed to be consent for a diversification except in the case of planting trees. However, the tenant can still go to the Land Court for their consent. The landlord can impose conditions and if those conditions are contested, the matter can go to the Land Court.

It is for the parties to work out a deal whereby trees would be planted on let land. Once consent has been given by a landlord, a tenant must apply to Forestry Commission Scotland for a licence.

Applying for Permission to Plant

New woodlands must comply with the Forestry (Environmental Impact Assessment) (Scotland) Regulations 2017 for afforestation. A request for an Environmental Impact Assessment (EIA) screening opinion must be sought from Forestry Commission Scotland, regardless of whether grant support is being sought or not.

If a forestry grant is being sought by a tenant, it is their responsibility to discuss the proposed application with their landlord to make sure it does not break the conditions of the tenancy.

A tenant must be able to demonstrate a legal right to carry out the works to be funded on the land included in their application for the full length of the contract's agreement period of undertakings under the grant scheme.

In order to show that a tenant has the legal permissions to carry out work on the land, where the tenancy is of a limited duration, they must submit a signed Landlord Declaration Form in which their landlord confirms that the lease extends beyond the required duration.

Tenant's Right to Timber

The tenant, under a secure tenancy and a limited duration tenancy, has the general right during the tenancy to cut timber from any trees planted by them on the land after November 2003 and any such timber will belong to the tenant. However, this right does not apply if the landlord and the tenant have agreed in writing to the contrary in the lease or in any other agreement, provided that such an agreement includes provision for reduction of rent or payment of compensation for any loss incurred by the tenant as a result of removal of their right to cut timber.

Waygoing Compensation

On termination of the lease, either the tenant or the landlord could be entitled to compensation from the other, depending on whether the planting has increased or decreased the value of the land.

The tenant is entitled to compensation when the value of the trees is more than the loss of rent to the landlord in retaining the trees until likely date of cropping plus the cost to the landlord of returning the land to agricultural use. If the assessed value of the trees is less than this, the landlord will be entitled to compensation from the tenant to the value of the difference. The trees should be valued on the basis of their worth to a willing purchaser for future cropping.

This is an important and potentially decisive issue affecting a tenant's willingness to plant trees. If a tenant were to quit the holding when the trees are still pre-harvesting age, and given that the cost of returning the land to agriculture could be significant, the tenant may find that they have to pay compensation to the landlord.

Limited Duration Tenancies

LDTs are generally not long enough to allow a cycle of tree cropping. It is hard to imagine any tenant on an LDT or MLDT planting trees, otherwise than by agreement with the landlord.

Further Sources of Information

EIA Screening Requirements

scotland.forestry.gov.uk/supporting/grants-and-regulations/environmental-impact-assessment

Occupancy of Land

www.ruralpayments.org/publicsite/futures/topics/all-schemes/forestry-grant-scheme/forestry-grant-scheme-full-guidance-menu/forestry-grant-scheme---occupancy-of-land/



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Contact us

@ ffc@landcommission.gov.scot

☎ 0300 244 4452

🌐 www.landcommission.gov.scot



Forestry Commission Scotland
Coimisean na Coilltearachd Alba

This Guide has been produced by the Scottish Land Commission in conjunction with Forestry Commission Scotland.