



SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

**Tenant Farming Advisory Forum**

**DRAFT Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF)  
held online on Friday 27<sup>th</sup> August 2021**

Present:		Actions:
Dr Bob McIntosh	Tenant Farming Commissioner	TFC
Sarah-Jane Laing	Scottish Land & Estates (SLE)	SJL
David Johnstone	Scottish Land & Estates	DJ
Christopher Nicholson	Scottish Tenant Farming Association (STFA)	CN
Angus McCall	Scottish Tenant Farming Association	AM
Douglas Bell	Scottish Tenant Farming Association	DB
Martin Kennedy	NFUS	MK
Tom French	NFUS	TF
Jane Mitchell	SAAVA	JM
Andrew Wood	RICS	AW
Jon Robertson	Agricultural Law Association (ALA)	JR
Fiona Leslie	Scottish Government (SG)	FL
Alan Barclay	Scottish Government (SG)	AB
James Muldoon	Scottish Government	JMu (left at 14:45)
Sarah Allen	Scottish Land Commission (SLC)	SA

**1. Welcome and Apologies**

TFC welcomed everyone to the meeting, particularly Martin Kennedy, Tom French and Douglas Bell as this was their first TFAF meeting.

Apologies were received from Gemma Cooper.

**3. SG Priorities for Agricultural Holdings**

Item 3 was brought forward as JMu had limited time available.

JMu highlighted the announcement of the ARIOB (Agriculture Reform Implementation Oversight Board) - a new government-appointed board to support and inform the development of proposals for a future Agriculture Bill. ARIOB's immediate task is to develop pilot schemes to test the suggestions of the farmer-led groups (FLGs), which would signal the direction of future support. JMu asked for views on what the discussion should focus on in the tenanted sector.

MK acknowledged the tremendous amount of work put in by the FLGs and their wide remit of environment, biodiversity and emissions reduction. In relation to woodland creation, he highlighted a need to increase capability in the tenanted sector to enable tenant farmers to undertake tree planting. MK said it was vital to get to grips with assessing carbon credits quickly and highlighted the risk of farmers trading carbon before they even knew what it was worth - especially as it would be

required to offset their own farm emissions. Carbon trading could also potentially undermine potential renewal or reletting of LDTs if landowners saw it as a way to realise capital.

SJL asked that policy development consider the impact on the tenanted sector – not just for tenants but on the need for the policy/support environment to be attractive for landowners to bring land into the tenanted sector. SJL also requested that consideration be given to other joint venture vehicles that may be fit for purpose.

TF also expressed a need to ensure policy and support is tenant-proofed and in order to instil confidence in the sector appealed for a sense of urgency in terms providing information on the direction of support.

JM asked about the requirement to reduce an extra 60% in emissions not identified by the FLGs. She also emphasised the need to not deter landlords from letting tenancies.

DJ asked for clarity in Government policy, so that members could respond appropriately. He also expressed concerns about the tenanted sector losing confidence – and referred to problems in changing contracts retrospectively. He also asked how policy would line up with policy south of the border.

AW reiterated concerns about making retrospective changes to agricultural holdings legislation - in relation to Limited Partnerships this had proven to be a disincentive to let land. He also expressed concerns about the timelines and the current uncertainty being unacceptable to the industry as businesses need time to change and adapt.

During the discussion JMu highlighted the requirement for new schemes to be compliant with the 2020 Agriculture Act, to meet SG's legal obligations for biodiversity and climate change, and to remain aligned to EU support where practical - whilst continuing to produce high quality food. He reassured members that there was a requirement to ensure that policy did not purposefully disadvantage any sector - such as the tenanted sector, and that there would need to be a long term-short term balance in measures. Policy might diverge from that in the rest of the UK but there would be commonality under the umbrella of the Single Market Act - but no details were available yet. He confirmed that ARIOB's terms of reference had not yet been published but TFAF members were welcome to share ideas with members of ARIOB, himself or FL.

Regarding timelines, a statutory consultation would be launched in late summer 2022, including specific detail on how support would function, but prior to this there would be debates in Parliament (the first being w/b 31 Aug) so the direction of travel would be socialised. Details would be codeveloped with ARIOB and the functionality of ARIOB would evolve as required. The aim is for the Bill to get Royal Assent in 2024 ready to be implemented in the 2025/26 payment year.

JMu noted concerns about the impact of retrospective changes and said he would feed back to colleagues.

TFC thanked JMu for attending the meeting. JMu left the meeting at 1445 and TFC invited FL to continue the discussion with priorities for agricultural holdings.

FL outlined two issues outstanding from the 2016 Act

- enforced sale - would require 3 SSIs which would take a year to bring through Parliament, and require engagement with stakeholders

- removal of the prtbt register has some technical issues over how to handle records with Registers of Scotland (RoS) and disputes that are live with RoS.

More staff are to be recruited to the Ag Holdings team but currently there are only 3 including FL. SNP manifesto commitments would go into the Agriculture Bill including compensation for resumption and rent reviews; the Bill would also include equality of succession rights for women and reform of Trust law. The AH team would be focussing initially on compensation for resumption and how tenant farmers could access opportunities in terms of climate mitigation and adaptation. She highlighted a need to investigate whether existing leases preclude such activities and how future leases might work.

Individual discussions will be held with stakeholders but assistance from TFAF would also be welcomed including feedback on how measures might work practically and how they might be received the sector. TFC suggested that TFAF could be a forum to help take forward some of the work but would need to meet more often. He suggested that a sub-group might make faster progress; SJL and AM agreed that a focussed working group could move more quickly.

FL highlighted work to understand how the woodland, soil and peatland carbon codes were positioned in relation to tenants and landlords; and also to reflect on best practice in relation to UK wide codes. SLC might be approached to assist in developing rules of engagement.

TFC reiterated earlier comments on the urgency for guidance and regulation in the trading of carbon, particularly as many farms will need carbon credits to offset their own emissions to reach net zero. MK repeated concerns about selling carbon off farm as these credentials should be attributed to the farm production and farm products. There was general agreement that landlords and tenants and owner occupiers should hold onto carbon.

AW offered to ask a colleague from Bidwell's Natural Capital team to join a future meeting of TFAF to explain how carbon trading operates. He expressed concern that there is not the technical capability to meet Nature Scot targets.

TFC advised that no-one should jump into carbon trading and welcomed AW's offer of a presentation to TFAF.

FL advised that training was available to Women in Agriculture on climate change mitigation and adaptation, and LANTRA are developing some training courses and would welcome some early adopters.

SJL asked about equality of succession rights for women as this had not been a recommendation from the Women in Agriculture Task Force - although they had recommended cultural change. FL explained that further instruction was required.

## **2. Minutes of the last meeting – 26<sup>th</sup> January 2021**

The minutes were agreed.

### **Matters Arising**

FL advised that a report on the rent review surveys would be going to the Cab Sec next week and publication would follow that.

#### **4. Planting Trees on Tenanted Land**

TFC introduced his paper on addressing concerns that tenants will not be able or willing to contribute to woodland creation targets nor benefit from opportunities to generate revenue.

MK said he was happy with the recommendations but highlighted DJ's earlier point about retrofitting legislation and the impact that had on undermining confidence in letting land. He suggested that if changes were made to legislation to allow tree planting or other climate change mitigation measures, they should be limited to a certain percentage of land, for example 5% for agro-forestry or wildlife corridors. To date funding rates haven't driven small scale activities such as shelterbelts, but if the incentive was there, he felt it would be better to do focus on small scale planting eligible under lease terms rather than large scale planting.

CN thought the recommendations were a good way to progress but thought SLDTs might come under threat, and there may be an increase in resumptions in secure tenancies if landlords were incentivised to pursue forestry or rewilding initiatives. He suggested that other public goods such as footpaths and carparks should be given the same consideration where presently the only option is resumption.

AW thought that commercial forestry production offered significant practical challenges to the majority of tenants. He suggested that both large and small scale woodland creation is required to meet timber needs and climate objectives, but agreed that there is limited demand for large scale planting from tenants.

DJ agreed that if land is moved into forestry by mutual agreement it should come out of the agricultural lease, otherwise it undermines the confidence in the terms on which the land is let.

AM agreed with others that commercial planting should be done on a joint venture outwith the agricultural lease. Small scale planting could be done within the terms of the lease and could end up being a useful percentage contributing to woodland targets. He also agreed that there is little appetite for tenants to be involved in large scale forestry, suggesting that attention should focus on encouraging different forms of agriculture to sequester carbon.

JM agreed that both landlord and tenants would want to plant trees on a small scale but it was not financially attractive at present.

FL suggested new leases could be a hybrid allowing scope for more (than 50%) forestry and carbon capture. DJ suggested that parties should be left to make their own agreements and prescriptive leases could stifle creativity. JR picked up on FL's reference to a 50% limit for tree planting – suggesting that it have arisen from the Ffyfe vs Esselmont case. He clarified that diversification (e.g. tree planting) had no limit provided the diversification process had been adhered to and that the cost of returning to agricultural use is covered by the tenant.

TFC noted TFAF's preference for those wishing to pursue large-scale planting to seek agreements outwith the agricultural lease, and highlighted the work done by CES on formulating such agreements.

#### **5. Amnesty**

The Land Court had provided the TFC with an update on amnesty submissions to w/b 23<sup>rd</sup> August.

A total of 72 amnesty applications had been received.

13 had reached agreement and await final orders; 7 were dismissed at the joint request of both parties. 41 remain sisted to allow parties to negotiate. 7 are in process - answers have been lodged and parties are following usual Court procedures. These are likely to progress to an oral hearing. The remaining 4 have been intimated to landlords from whom the Court has received no response.

SJL enquired whether there were common themes to the cases presented to the Land Court. TFC responded that the Court had not provided that level of detail, but he had come across cases where landlords were concerned that not enough details had been provided.

## **6. Update from TFC**

SA referred to the paper circulated. Casework had been steady over the summer and no mediations had come forward under the scheme to date. She highlighted problems when 1 party would agree to take part but the other refused – this is not uncommon in mediation and the mediation sector continues to try and address barriers. Only 1 application had come forward under the statutory relinquishment and assignation procedures but given the number of enquiries it is likely that relinquishments are going ahead by mutual agreement.

DJ wondered if it would be possible to quantify the number of relinquishment transactions taking place, suggesting that statutory legislation is acting as an enabler. TFC agreed and thought that it would be worthwhile conducting a survey of agents later in the year to gauge the level of transactions taking place.

## **7. TFAF Survey Results – Measuring the Impact of TFC and TFAF**

SA introduced the paper and thanked everyone for taking part in the survey and highlighted the intention to carry out a survey of all TFC contacts to gather further feedback on the work of the TFC.

SJL noted that the survey results are dependent on the person who is in the TFC role and it was important to continue to ask for feedback. In considering a wider survey she urged caution in linking feedback on TFC input to outcomes, as outcomes could colour feedback. SA agreed as the same issue had arisen in the survey of opinions on agents and would consider appropriate wording of the survey questions.

## **8. Member Updates & AOB**

STFA CN was hearing from more tenants about resumption, green issues and public goods. AM highlighted rent reviews that had been in limbo for 6 or 7 years so TFC guidance was well timed, but the biggest stumbling block was the need for transparency on comparable rents. TFC responded that the TFC Code of Practice emphasises the need for transparency and also said that some people had started to use the 2016 Act for rent reviews as it isn't clear on the web version of the Act that it is not in force.

SLE SJL highlighted the requirement for housing improvements and smoke detectors, and visitor management and access issues. DJ asked for further information on future support and/or when will we know more.

NFUS MK reiterated the need for information on future support – to provide confidence to attract new entrants with new ideas into the industry and to provide confidence in letting land. He highlighted the pressure on good agricultural land for forestry. He would prefer that 1000 farms plant 1ha of tress rather than 1000ha being planted on 1 farm. Appropriate support could help

direct that. TF reiterated need to provide confidence for the sector. The NFUS Tenant Working Group would meet to discuss the rent survey work once it was published.

RICS AW spoke from a personal perspective rather than RICS. He had a number of rent reviews ongoing as some had not taken place for a while, noting that where a landlord had invested in the holding tenant was reluctant to see a rent increase. A few succession cases and few amnesties were lingering on but these were likely to settle.

ALA JR spoke from the perspective of his own practice. He warned of canvassing to sign over carbon rights and exclusivity agreements and suggested a message should be put out warning people to handle with care. He asked that both parties are considered in terms of carbon rights, for example an agricultural lease may prevent a landlord from restoring peatland, or a landlord committed to a restoration scheme may find that a successor in an agricultural lease is not bound to a restoration agreement.

SAAVA JM thought the STFA submission to Farming for 1.5 Degrees was useful. She cautioned against more regulations and that tax should be considered when diversifying into woodlands.

#### **AOB**

FL said that she would be circulating an email seeking sector specific ideas to help control the spread of Covid – responses were requested by Monday.

CN highlighted issues in redirecting core paths that ran through steadings. Some local authorities rerouted paths around the steading other local authorities were not willing. SJL suggested alerting the National Access Forum and calling for consistency in approaches.

Action	SA to write to NAF highlighting the issue around lack of consistent approaches.
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AM raised the issue of the responsibility for installing smoke alarms in all houses by Feb 2022 and highlighted the interface with insurance. FL advised people to consult their leases. SG had circulated guidance earlier in the week, but this was not specific to agricultural holdings. AW advised that interpretations vary depending on whether it was considered an improvement and also on the relationship between landlord and tenant. Some tenants would prefer to arrange installation themselves. Responsibility for sublet cottages would also need considering – some share responsibility where rental income is split.

JR advised that in secure tenancies the tenant is likely to be responsible for the house occupied by the tenant and the landlord for other farm cottages – however leases should be consulted. JR advised that the same issues would arise in addressing the introduction of repairing standards.

It was agreed that the installation of smoke alarms needs to be taken seriously and landlords and tenants should consult their leases and have a sensible conversation to agree installation.

#### **Date of next meeting**

Dates to be canvassed for a meeting at the end of October/beginning of November. Agenda to include a presentation on SG's rent review survey and perhaps a presentation from Bidwell's on carbon trading.