



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 at NFUS Offices, Ingliston Tuesday 11th October 2022 at 2pm**

| Present: | | Actions: |
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| Dr Bob McIntosh | Tenant Farming Commissioner | TFC |
| David Johnstone | Scottish Land & Estates (SLE) | DJ |
| Sarah Lane Laing | Scottish Land & Estates (SLE) | SJL |
| Christopher Nicholson | Scottish Tenant Farming Association (STFA) | CN |
| Douglas Bell | Scottish Tenant Farming Association (STFA) | DB |
| Gemma Cooper | National Farmers Union Scotland (NFUS) | GC |
| Martin Kennedy | National Farmers Union Scotland (NFUS) | MK |
| Jane Michell | Scottish Agric Arbiters & Valuers Assn (SAAVA) | JMi |
| Jon Robertson | Agricultural Law Association (ALA) | JR |
| James Muldoon | Scottish Government (SG) | JM |
| Calum Jones | Scottish Government (SG) | CJ |
| Anna Leslie | Scottish Government (SG) | AL |
| Alan Barclay | Scottish Government (SG) | AB |
| Sarah Allen | Scottish Land Commission (SLC) | SA |

1. Welcome and Apologies

TFC welcomed everyone to the meeting and apologies were noted from Mark Fogden, Andrew Wood and Fiona Leslie.

2. Minutes of the last meeting – 6 July 2022

The minutes were agreed.

3. Agriculture Bill consultation

James Muldoon gave a presentation on the consultation on the Agriculture Bill and then took questions from members.

JM clarified that Tier 1 payments would be a “base” /do no harm payment with Tier 2 “enhanced” payments reflecting the National Test Programme. Tier 3 would be “elective”, but not necessarily competitive and Tier 4 “complimentary”. All support needs to show credible intent towards SG’s legal obligations on climate and biodiversity.

Consideration was on-going that support might only be provided to businesses that embrace SG’s “Fair Work” criteria in relation to the real Living Wage, hence the consultation includes a section on Agricultural Wages.

The whole farm plan is still under co-development but will include a basic business/resilience plan to access public support, and must be useful as a tool for the producer planning ahead. SG colleagues are liaising with regard to reducing duplication and burden in relation to the requirements for a Land Management Plan (for holdings >3000ha) under the Land Reform Bill proposals.

JM confirmed that there was no specific role in the agri bill for RLUPs (no empowerment proposal at this stage), but they could have a role in the future.

Members felt it important to consider support for cooperative actions that deliver at a landscape scale. JM indicated that the framework would allow flexibility to allow that to happen in the future.

MK said that NFUS view is that food production has to be front and centre of the framework. Competing aims may not be compatible and SG policies may even be contradictory. DB suggested that enhanced payments for high quality food should sit alongside support for biodiversity and climate. JM explained that the focus is on *sustainable businesses to deliver outcomes* and admitted whilst this was a given within SG it may need to be articulated better.

In relation to funding of support, MK confirmed that NFUS was pushing for collective UK discussion, and there may be an argument for larger support in Scotland to meet the greater potential for enhancing biodiversity and carbon sequestration.

It was recognised that uncertainty is not good for the industry and members asked when more details on measures would be available. JM informed members that ARIOB next meets on 3 Nov and more information should be available before Christmas. He confirmed that measures would need to work for all farm/croft tenures.

JM confirmed that, in discussion at ARIOB and elsewhere to date, thought had been offered that those who are currently undertaking good practice should be acknowledged and rewarded; enhanced payments would support activities that are consistent with what the land is capable of delivering. Good sustainable and regenerative practice is likely to be an enhanced measure at the moment, but this might change over time as more people reach higher standards. In response to a question on phasing in payments, as proposed in Wales, JM indicated that a phased reform was not ruled out. He recognised that it would be crucially important to take industry with them rather than presenting cliff edges.

CN asked about some aspects of ag holdings policy that had been discussed previously at TFAF but not included in the consultation, e.g. storm damage to fixed equipment and, game damage. CJ advised that the ag holdings team was still looking at what might be included in future.

4. Land Reform Bill consultation

Anna Leslie gave a presentation on the consultation on the Land Reform Bill and then took questions from members.

In relation to a question on whether agricultural holdings would get caught up in the definition of data zones, it was confirmed that a data zone is about 500 households so a small farm near a city could be included in a data zone.

DJ felt the lack of definition of public interest in the public interest test was untransparent and deliberately vague; he felt that if it was clear what was meant by public interest then respondents would be able to answer the consultation better. SA clarified that public interest was deliberately undefined, as referenced in other legislation, as it would vary over time and by location. SJL raised the issue of what would trigger the PIT in terms of assignation, inheritance, sales and transfers and

how this would cross reference with other legislation that covers for example, in the case of tenancies, assignments.

AL clarified that it was not the intention of smaller land transfers within a large scale holding to trigger the PIT.

There was discussion on why the PIT is applied to the seller and not the buyer. AL explained that the land could be lotted for sale if applied to the seller. The purpose of the PIT is to address scale and concentration of ownership, not to see if a buyer can comply with land rights and responsibilities through a land management plan.

JR raised that issue that if registration with the Land Register is required for everyone to access funding (not just large scale holdings) there is a capacity issue with registration, and asked whether it would also apply to tenants. AL said that this had not yet been decided and costs might require compensation if they are inequitable.

AL confirmed that SG would need to compensate for any losses brought about by the legislation in line with ECHR.

5. Small Landholdings consultation

Calum Jones gave a presentation on the forthcoming consultation on Small Landholdings.

As the consultation had not received internal clearance CJ was able to provide limited detail but informed members that the consultation would be published in the coming weeks. The outcome of the consultation would feed into the Land Reform Bill.

[the [consultation](#) was launched on 22 October with a closing date for responses of 14 January 2023.]

6. Housing

The TFC referenced a paper that he had circulated to members which considered the key differences between the rental arrangements in the agriculture sector and the private/social sectors, and the implications of further alignment. This paper had been sent to SG's Agriculture Holdings Team for circulation to SG housing colleagues.

The TFC also referenced an email that had been circulated to TFAF members on how improvements to housing might be dealt with.

The main points of the ensuing discussion were:

- Agricultural tenancies already have some of the rights proposed for the private rented sector (PRS) in *A New Deal for Tenants*.
- A key difference is that rent is specified for the whole of an agricultural holding, including houses, other fixed equipment and land. DJ suggested that a separate rent could and sometimes is identified for the house(s) within an agricultural holding. CN and MK suggested that the vast majority of rents are not currently split as this leads to splitting land from housing.
- TFC asked what dis/advantages might arise if houses were rented separately. If houses were to be let separately from land and other fixed equipment on an agricultural holding, they would likely be treated as the private rented sector and subject to the proposals in the *A New Deal for Tenants*. Would that be good for the sector?
- Consensus from members was that new housing standards and energy efficiency requirements should apply to the agricultural holdings sector, but *A New Deal for Tenants* should not. If SG is worried about rent levels of housing on agricultural holdings these are well below the PRS.

- Members agreed that improvements could be implemented as currently done so - starting with the premise that whoever owns the fixed equipment involved has the responsibility for carrying out improvements that are required to comply with legislation. So, for example, a tenant who has created a slurry storage system which requires upgrading, will bear the cost of that and claim it as a tenant's improvement eligible for compensation at waygo and a similar situation would apply to any extensions that the tenant has added to the farmhouse that require upgrading to meet the new housing and energy standards.
- Where a regulatory requirement is not a repair or a renewal/replacement - for example insulation or double glazing - it is not clear who is responsible, and it is thought that the requirement to meet housing standards would not take precedence over agri holdings legislation. In this case the improvement could be carried out by either tenant or landlord. If carried out by the tenant, they would benefit directly from the improvement which would also be eligible for compensation at waygo. If carried out by the landlord, they would be entitled to make a rent increase under section 15 of the Agricultural Holdings Act 1991.
- In a sublet cottage, the agricultural tenant is likely to be responsible for improvements and could charge rent accordingly.
- Many old farmhouses and cottages are starting from a very low standard and any cost cap (e.g. EPC may have a £10k ceiling) may prohibit work from going ahead.
- What is the purpose of the policy? SG would like to achieve fair rents and good standards of energy efficient housing – there is a risk that implementing the policy may have the opposite effect in the ag holdings sector and sour relationships between landlord and tenant. It might result in an increase in bare lets and an increase in farm rents. Some landlords may (be forced to/agree to) sell the farmhouse to tenants.
- If the exemption for agricultural holdings in the 2006 Housing Act is removed, the ability for a landlord to contract out of obligations might still apply, so a tenant could have responsibility for housing standards (with the right to compensation).
- There may be issues arising with the proposed Repairing Tenancy, where during the (minimum 5 years) "repairing period", the tenant is responsible for the provision, maintenance, renewal and replacement of fixed equipment unless the lease provides otherwise.
- Home improvement grants must be accessible to both tenant and landlord – depending on who is carrying out the work.

Members agreed that housing standards and energy efficiencies should apply to the agricultural holdings sector and housing should be kept within agricultural holdings legislation. It was agreed that TFAF should work with SG Housing colleagues to find sensible ways to implement the new requirements.

Members felt that a discussion with SG housing colleagues on the practicalities, limitations and implications of bringing in new housing standards and energy efficiency requirements in the agricultural holdings sector would be helpful.

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| Action | AB/CJ to invite SG housing colleagues to next TFAF meeting in January |
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7. Member updates/AOB

JMi informed members that SAAVA had produced a new template for bare land lets.

AB informed members that there would be further information on the proposed Land Use Tenancy before the Land Reform consultation deadline of 30 October, and there would also be the opportunity to influence thinking and development beyond the consultation deadline. Further papers on the other agricultural holdings proposals in the agriculture bill would also be provided.

8. Date of Next Meeting

Members agreed to next meet in January with SG housing colleagues invited to attend.