



SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

**Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held on Friday 13th October
2023 at 2pm.**

Present:		Actions:
Bob McIntosh	Tenant Farming Commissioner	TFC
Fiona Leslie	Scottish Government (SG)	FL
Calum Jones	Scottish Government (SG)	CJ
Helen Mooney	Scottish Government (SG)	HM
David Johnstone	Scottish Land and Estates (SLE)	DJ
Jackie McCreery	Scottish Land and Estates (SLE)	JMc
Jane Mitchell	Scottish Agric Arbiters and Valuers Assn (SAAVA)	JM
Christopher Nicolson	Scottish Tenant Farmers Association (STFA)	CN
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Gemma Cooper	National Farmers Union Scotland	GC
Bruce Morrison	Scottish Land Commission	BM

1. Welcome and Apologies

TFC welcomed everyone to the meeting. Apologies were received from Sarah Jane Laing, Andrew Wood, Martin Kennedy, and Mark Fogden.

2. Minutes of Last Meetings - 11th and 16th May

The minutes of both previous meetings were approved.

3. Future Support for the TFC

TFC informed members that Peter MacDougall would begin in post as Tenant Farming Manager at the Scottish Land Commission in late October, providing support to the TFC. TFC also noted that Peter would attend the next TFAF meeting.

4. Update on proposed legislation

FL provided an update on the Scottish Government's agricultural tenancy proposals. This included that the proposals will now be included within the forthcoming Land Reform Bill, rather than the Agriculture Bill as was previously planned.

Members were also informed that a [Strategic Environment Assessment \(SEA\) report](#) on the proposals has been published, and there will be a [consultation](#) on the assessment open until 7th December. Members were invited to provide their views on the report and consultation to SG.

FL also noted that an SEA and consultation process is also taking place for other Land Reform Bill proposals on [Small Landholdings and the creation of a Land Use Tenancy](#). FL said it would be useful to have separate conversations with TFAF members in the coming weeks to discuss these proposals.

FL also suggested that during the parliamentary bill process, it is likely that codes of practice and TFC guidance will be requested to help inform the NZET committee, who are likely to scrutinise the bill.

CN asked for more information on other aspects of the bill. FL suggested that there may be changes made to section 99 of the Land Reform Act 2016 that would involve removing the requirement for tenant farmers to register their interest in order to have a pre-emptive right to purchase their holding.

Members discussed the issue of mapping in relation to pre-emptive rights and other issues. TFC said that mapping and boundaries are often the first issues to arise during the Relinquishment process. CN identified delays in the completion of the land registry as another issue. JM also noted that boundaries often change after farm inspections.

The group also discussed housing and insulation policy issues outwith the scope of the Land Reform Bill. TFC said that as rent for houses on agricultural holdings is part of the rent for fixtures and fittings, rather than rent for housing alone, it does not fall within current rent controls. However, housing on holdings is expected to be included in new energy and insulation standards. FL suggested a future discussion should focus on grants eligibility, as issues like missing tiles can lead to a house being considered not wind and watertight and therefore ineligible for some grants related to energy efficiency.

TFC said that insulation is considered an improvement and therefore determining who is responsible will be a practical consideration in implementing new standards. In most cases, it is clear who is responsible, however tied housing and housing for tenants' non-working/retired family members presents ambiguity, as it is unclear whether the landowner for the holding, or the agricultural tenant, should be considered the landlord of the tied housing.

JMc asked whether the forthcoming housing bill would be an opportunity to address this issue and FL indicated this could be a possibility. CN said that the STFA has received several enquiries from tenants related to energy improvements such as heat pumps, and the challenges over who is responsible for improvements and grant applications for tied housing.

GC expressed concern that SG housing colleagues do not seem fully aware of the challenges facing the tenant farming sector and other rural housing in relation to energy efficiency targets. GC suggested that TFAF could further engage housing colleagues on the matter through a meeting, or potentially a site visit to see challenges firsthand.

JM agreed with GC and felt that in terms of energy efficiency, there is a need to prioritise basic improvements first, such as insulation and double glazing.

FL said that post-lease agreements can create challenges related to energy efficiency, but TFC suggested that this was less relevant as post-lease agreements mainly relate to improvements. FL and JM suggested there was ambiguity over whether certain changes constituted improvements or repairs, such as replacing old windows with double-glazing.

TFC concluded the discussion on housing by noting that a good starting point to address housing issues is to identify who is responsible for making changes, and that it would be beneficial to have further discussions with SG housing colleagues at a future meeting.

Action 1	Members were invited by FL and CJ to submit written comments on the SEA.
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5. Guidance on the use of 'productive capacity'

TFC thanks members for their written comments on the paper. TFC summarised the paper by explaining two main ways in which productive capacity could be defined in the new rent review process, both of which have previously been set out in the Fair Rent Final Report. The first is a gross output model, and the second is a full farm budget approach. Due to the variability between different holdings, the paper suggests that a full farm budget approach is the most appropriate way forward. Members were asked for their views.

FL suggested that a standard template is needed for full farm budgets.

DB suggested that only a small number of farmers currently prepare farm budgets.

JM made a similar point, suggesting that few farmers would prepare a budget based on the previous year to plan for the next 3 years.

JMc said that SLE members were concerned that both options could be used. TFC said that landlords and tenants may not use either process at all, if they are able to agree rent themselves. In instances where the tenant and landlord do not agree, then a template to determine productive capacity could be followed.

Members discussed different available data sources and possible methodologies related to productive capacity and rent. CN suggested the John Nix Pocketbook and SAC Farm Management Handbook have similar methodologies to one another.

TFC identified how housing relates to productive capacity as another unresolved issue from the Fair Rent Final Report. CN felt that housing was a major consideration in determining rents, whereas DJ said that the current approach to productive capacity ignores housing, and gave examples of farms rented without housing receiving high bids from prospective tenants.

JM said that housing costs are considered overheads.

TFC summarised a rent review methodology used in CAAV guidance on conducting rent reviews under the Agricultural Holdings Act 1986. JM suggested this methodology is too restrictive as it does not sufficiently account for diversification. DB said that any methodology should discourage double-counting.

CN did not object to the methodology described, but also recommended relevant sections from Fraser Barraclough's book on Scottish farm rent reviews. CN committed to sharing this with members.

FL noted that this issue requires further discussion and suggested potentially organising a day session with break-out groups.

TFC also said that this issue remains unresolved and requires further discussion.

Action 2	CN to share sections of Fraser Barraclough's book on rent reviews with members via email.
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6. Resolving rent disputes and the role of alternative dispute resolution (ADR)

TFC summarised the paper and said that the move from arbitration to the Land Court as the mode of dispute resolution hasn't provide the lower costs and simplification that was intended.

Members discussed legislative context. DJ explained that the Agricultural Holdings (Scotland) Act 2003 made the Land Court a backstop in resolving disputes, whilst FL said that prior to 2003 the government were the backstop. TFC also noted that pre-2003 arbitration often ended up in the land court.

TFC asked members whether it was necessary to allow for more than expert determination or short arbitration to resolve disputes.

JMc noted that any guidance from the TFC on ADR needs to have teeth in order to have an impact.

JM felt that mediation is a good option. FL said that some in the sector feel there are challenges with mediation, such as that mediators do not always have relevant knowledge, and that mediation does not meet the legal standard for ADR as a mediator does not ultimately determine the rent.

FL also said that relevant TFC codes must be taken into account by the Land Court as part of their decision-making process, however the court can ultimately disregard the code in their final decision.

FL left the meeting.

7. Date of next meeting and AOB

TFC raised issues related to the Relinquishment and Assignment process, and explained that though most tenants are going through the process privately, some are choosing to go through the legislative process and this has highlighted some aspects of the legislation that aren't clear. TFC said that this becomes an issue if the R&A process is challenged in court. One such issue is that the legislation sets an 8-week deadline for a valuer to complete their valuation, but there is nothing that sets out what happens if this deadline is not met.

JMc suggested that these issues could be remedied through legislation. TFC agreed but highlighted a practical challenge: an ongoing Lands Tribunal case may clarify what needs to be fixed in the R&A process, but the end of the tribunal is likely to be after when the Land Reform Bill is laid before Parliament.

CN said that the 12-month limit in the legislation to assign a tenancy in instances where the landlord does not accept the notice of intention to relinquish can be difficult for tenants on a practical level.

DB raised the issue of grazing lets related to TFC raised the issue of creating unintended tenancies through grazing lets and said that following the recent TFC blog, there has been a high volume of casework on this issue.

CJ explained that there would be a Business and Regulatory Impact Assessment (BRIA) process on Land Reform Bill proposals, including a series of in-person and online meetings looking at impacts on the ground. CJ said that this was open to members. DB noted interest and asked CJ for background information. CJ agreed to send CJ information via email.

It was suggested that January 2024 would be a suitable date for the next meeting. BM agreed to set a specific date and venue.

Action 3	CJ to send background information on Business and Regulatory Impact Assessment sessions to DB.
Action 4	BM to circulate doodle poll to confirm a date and time for the next meeting in January.