Tenant Farming Advisory Forum

Draft Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held online, 23rd July 10:00

Present:

Rob Black	TFC	RB
Mark Fogden	Scottish Agric Arbiters & Valuers Association (SAAVA)	MF
Andrew Wood	Royal Institute of Chartered Surveyors (RICS)	AW
David Johnstone	Scottish Land and Estates (SLE)	DJ
Helen Mooney	Scottish Government (SG)	HM
Peter MacDougall	Scottish Land Commission (SLC)	PM
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Rhianna Montgomery	National Farmers' Union Scotland (NFUS)	RM
Jackie McCreery	Scottish Land and Estates (SLE)	JM
Heather Bruce	Agricultural Law Association (ALA)	HB
James Bowie	Royal Institute of Chartered Surveyors (RICS)	JB
Jeremy Moody	SAAVA/CAAVA	JER
James Muldoon	Scottish Government (SG)	JAM
Hamish Trench	Scottish Land Commission (SLC)	HT
Christopher Nicholson	Scottish Tenant Farmers Association (STFA)	CN
Sarah-Jane Laing	Scottish Land and Estates (SLE)	SJL

Apologies:

Fiona Leslie	Scottish Government (SG)	FL
Emma Robertson	ALA	ER
Duncan Macallister	NFUS	DM

1. **Welcome and apologies.**

Members we welcomed to this online meeting by the TFC

Apologies were put forward as above.

2. **Minutes of last meeting. (30th May)**

The minutes of the previous meeting have been circulated prior to the meeting, no additional amendments were requested. **Agreement**

If there are any final amendments make them known to PM otherwise, they will be published on the SLC website.

3. Update on Land Reform Bill

JMul confirmed that Parliament has concluded stage 2, Cab Sec committed to discussions with TFAF and with opposition members, meetings are currently being held to discuss the key issues

SG has committed to a consultation on powers of TFC to be published mid March and is developing the detail of the consultation as this is a quick turnaround.

Stage 3 is likely to take place in the autumn and SG is keen to hear further representations to inform Stage 3. If there is unanimity on some of these positions the Cab Sec is eager to listen to it.

4. Resumption

The TFC took the resumption conversation first as JMul had connection issues. He noted he had spoken with the Cabinet Secretary in the previous week and there remains an appetite to consider changes that have clear sector support through TFAF.

1991 Act tenancies

The final part of the table circulated (JER drafting) was taken as the starting point. JM referred to the amendment that had been submitted at Stage 2 and there were 2 issues raised by STFA which were not in that amendment so still needed agreement. The first was that that restoration of land to Ag use after mineral extraction was not covered. Secondly the Notice period of 12 months, and thirdly whether it should be specified that the tenant can serve notice to terminate the lease following a resumption notice. At the last TFAF meeting HB had pointed out this was not appropriate.

AW pointed out that retaining the provision about restoration of minerals was not a big issue as long as there is not an absolute requirement to restore because in some cases that can be a big issues. (It was confirmed in the notes that it is not an absolute requirement in the Bill). HB also advised that government lawyers should check how the Open Cast Act correlates with the 1991 Act.

CN didn't think notice period needed discussion but was relaxed about removal of tenant's right to terminate. ,

JM this was a backstop if parties could not agree, do we need it on the face of the bill that parties can agree their own timescale? If 6 months is more appropriate and suit the needs of parties it should be able to be agreed.

CN agreed that parties can agree whatever they wish if both in agreement.

There was agreement in the group around the statutory notice period of 12 months staying the same as the backstop but with the ability to reduce this through written agreement. Agreement all members. HB indicated that it would be preferable for this to be made clear on the face of the Bill because lawyers do not like uncertainty as resulted from 2003 Act.

There was further agreement in principle on the valuation methodology for 91 Act tenancies following JERs original paper.

A discussion ensued on the practical steps that would be needed to progress, CN suggested that it would be preferable to focus on the minimum changes that could be undertaken to the Bill which was supported in principle by JM. JER put forward an alternative view acknowledging the pragmatism of the approach but highlighting the preference of straightforward legislation.

CN highlighted the importance for tenants that the disturbance is uncapped as small losses from a tenancy can have major implications. Some examples of damaged drainage and holiday accommodation impacting the hours of operation of the farm given.

JM highlighted that Schedule 2A should be removed and this was agreed. The Bill also needs amended to change " Tenant's interest in the value of the land" to "value of tenant's interest in the lease". There was agreement on this as well. Finally, it was agreed this would replace the 4 x rent calculation.

Members confirmed unanimous support for the proposed basis for valuation in relation to 1991 Act tenancies as set out in JER drafting, to replace the current drafting in the Bill.

Incontestable Notice to Quit

Members unanimously reiterated a desire to see this addressed in the Bill and concern that it had not been addressed despite previous discussions. There was support from all members for the valuation approach to follow the same principles as those supported for partial resumption above.

The valuation principles have been agreed previously as with those for partial resumption; no change proposed from this position.

JMul confirmed the Cab Sec has committed to bring something in at Stage 3 – there remains a legal issue as to take back of whole tenancy is different legally than taking back part of the tenancy so there may just be a regulation making power in the Bill.

HB – if the valuation approach for partial resumption is used different parts of 91 Act apply. Government lawyers need to look at S10A and some hybrid may be required as tweaks are required for partial resumption, similar approach for INtQ. Duplication an issue.

JER and HB – to discuss and propose a suitable wording. HB indicated she would prefer to know whether the Cabinet Secretary would take the detail forward in the B Ill if they can work it out at this stage before spending time on this.

SJ – would have been helpful to communicate this to TFAF and make use of expertise of TFAF. Sought clarity – CabSec wants to put regulation making powers in rather than address it directly and suggest an amendment.

HB what is required is for JER paper to be amended updated, circulated to group and submit with full agreement. **Action HB and JER**

2003 Act tenancies

JM asked whether is it the plan to remove what is in the bill already and replace with regulation making power or is it to stay in (2003 Act)

JMul – that is what the Cab Sec has alluded to.

AW – there should be no changes to 2003

The TFC noted there has been a lot of discussion and acknowledged a strong majority position that has been expressed by TFAF members with an equally clear different view held by STFA. He outlined the current agreement was to to find a non statutory way to address issues with codes of practice and invited views.

SJ recognised some tenants need additional advice and the previous suggestion of providing an additional code of practice and guidance was one SLE supported and therefore support TFC position.

HB confirmed this approach was seen as a useful compromise

TFC – important to ensure one group is not impacted disproportionately, but evidence required to support any action.

CN - not sure codes of practice is sufficient to address this. If Rent Reviews are used as an example many are not currently following the code of practice. STFA are looking for some form of statutory back stop for those groups of tenants. Current fiscal arrangements are already a deterrent to letting land on tenancies and it's a disimproving picture so amending the 2003 Act won't make any difference.

AW completely disagree –to include 2003 Act tenancies would be a breach of contract between gov and landlords. Agree on the taxation point but this will undermine confidence.

JM important fully understand what the issue is and how many tenants are affected. Is it a resumption problem or waygo?

HB important point goes to Cab Sec that all of TFAF except STFA are in agreement.

A wider discussion was had on the need for evidence and the challenge this presented due to the tight timescales. HB suggested using real world examples. If there is a power to change 2003 Act in the Bill Advisers to landlord clients will have to advise about potential retrospective legislation which present problems down the line. Prof advisors are advising clients to be cautious. Tenants at end of tenancy looking for continuation will be advised that landlord may not be minded to grant one.

The TFC reiterated his view that the issue to be addressed needs to be clearly understood and evidenced. He outlined the value of addressing through a Code of Practice with potential to use emerging evidence to take further action if the need is demonstrated.

DJ – evidence – understanding impact of legislation on those who might look to let land. Not captured, that includes all aspects. Outcome may not be what sector needs.

TFC looking to use evidence as the basis to grow sector

SJ highlighted the need to survey people who may be future landlords too namely owner occupiers

CN point out tinkering to 2003 Act tenancies so far has been to the favour of the landlord but has made little difference to their uptake. Landowner bodies that are letting land are tax exempt = fully let. Not appropriate to wait and see, tenants are losing their tenancies at an alarming rate.

JM – perhaps need to come up with an alternative. We understand the point about reluctance to use them but need to do everything possible to boost them, rather than kill them off.

CN have been trying to do this for many years but not been successful.

SJ asked if there is anything that could be done or discussed that would enable STFA to support the proposed compromise?

CN although tenants went into agreements with eyes open, the landscape has changed dramatically due to green lairds, etc that could not have been foreseen. Expectation that these agreements would continue to run but now many more barriers. Estates that have changed ownership different ideas as those at start of the lease.

2003 act tenancies, resumption can be whole holding. Some resumptions can be done to make holding unworkable, not protected by fraud on the lease. Imbalance of power still a big problem.

CN not certain Code of Practice is suitable or useful to address the issues RR as an option. Stronger input needed for how leases are managed on big estates, needs to be stronger steer from SLC ScotGov on how they are being treated at end of lease. Answer, happy to support removal of 03 act from bill, like to see something concrete in place that can be applied to management of leases on big estates where concentrated

HB noted unanimous agreement to take 2003 act tenancies out of bill, with the exception of this small group.

SJ suggested if all TFAF members will formally support change in TFC powers to ensure TFC is applicable, it may help address some underlying issues.

AW – is landlord not entitled to ask for market rent. CN market rent fair but taking advantage of tenant being in occupation.

JB need to protect the 2003 Act tenancies that are

CN can't support full removal at present – need protection against partial or full resumption for longer term LDTs. Some with 20+ years to run. Position now, 2003 acts to be dealt with on secondary legislation, should support that as a vehicle to address the issues.

In summary the TFC noted that several issues raised by STFA go beyond the drafting of the resumption valuation and that wider poor practice should be addressed through TFC functions. There is agreement among TFAF that not all 2003 Act agreements should be included in the Bill but there remain different views on a potential group of 2003 Act tenancies that may require action.

In conclusion

<u>1991 Act tenancies</u>

The notice period of 12 months should stay but parties should have the ability to reduce this through written agreement. Agreement all members

The valuation methodology for 91 Act tenancies following the principles outlined in JER original paper with some amendment to consider the timescale of the notice period remaining at 12 months and to include the removal of the cap on disturbance. Broadly agreed by all members. *STFA raised concern at the time over the practicality of making such a significant amendment at Stage 3.*

<u>Incontestable Notices to Quit</u>

TFAF members remain of the view that the Bill should address the compensation payable to a 1991 Act tenant subject to an Incontestable Notice to Quit. Through discussion issues were highlighted therefore HB and JER to amend JER paper and circulate to TFAF members for agreement, the paper is then to be submitted with the full backing of TFAF.

<u>2003 Act tenancies</u>

The discussion crystalised in basically the same place that previous conversations have. There was a clear majority view which is very strongly held in favour of 2003 Act tenancies being excluded from the resumption provisions. There is an equally strongly held view from STFA that they should be included to protect tenants with longer term LDTs and it is acknowledged that agreement could not be reached on this point.

The use of non-statutory measures were proposed and discussed as a possible solution to the identified group of 2003 Act tenancies that would be impacted. This was supported by the majority of members and not supported by the STFA.

There was agreement within the group that not all 2003 Act tenancies should be included in the provisions.

5. AOB

None raised

6. Date of Next Meeting

PM to put out doodle poll for the next meeting – ideally September time but TBC