

Tenant Farming Advisory Forum

Draft Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held at the Turcan Connell Office, Edinburgh 14th March 2025 10am

Present:		Actions
Rob Black	Scottish Land Commission (SLC)	TFC
Fiona Leslie	Scottish Government (SG)	FL
Helen Mooney	Scottish Government (SG)	HM
Peter MacDougall	Scottish Land Commission (SLC)	PM
Sarah-Jane Laing (online)	Scottish Land and Estates (SLE)	SJL
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Rhianna Montgomery	National Farmers' Union Scotland (NFUS)	RM
Jon Robertson	Agricultural Law Association (ALA)	JR
Jackie McCreery	Scottish Land and Estates (SLE)	JM
David Johnstone	Scottish Land and Estates (SLE)	DJ
Mark Fogden	Scottish Agric Arbiters & Valuers Association (SAAVA)	MF
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
Sandy Simpson	Scottish Tenant Farmers Association (STFA)	SS
Sam Dickinson	Scottish Government (SG)	SD
Jessie O'Shaughnessy	Scottish Government (SG)	JO

Apologies:

Christopher Nicholson	Scottish Tenant Farmers Association (STFA)	CN
Andrew Wood	Royal Institute of Chartered Surveyors (RICS)	AW
Gemma Cooper	National Farmers Union Scotland (NFUS)	GC

1. Welcome and apologies.

Rob Black opened the meeting that marked his first in the post of TFC, he welcomed all members and passed on apologies as above

2. Minutes of last meeting. (22nd November)

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

3. Update on Land Reform Bill

Fiona Leslie confirmed that the debate on the bill would be held on the 26th March and no firm deadlines were set for the other aspects.

Stage 2 amendments were discussed, Scot Gov has received numerous amendments and are looking at them now. It is anticipated that further amendments will be submitted, the short window between the end of Stage 1 and Stage 2 will mean amendments need to be reviewed in the next 2 weeks. If member organisations have amendments they want to submit, they are advised to discuss them with FL directly. Members were encouraged not to submit legal drafting but to highlight the reasoning behind the proposal considering policy intention.

The Stage 1 Committee report is expected to be published by 19th March, following which the government will respond ahead of the debate on 26th March.

JM asked if FL would let members know if amendments are being taken forward and was advised that this would be decided by the Cabinet Secretary. She has taken on board comments about rent review and part 4 improvements where there is some overlap between SLE and STFA and are talking to other directorates where necessary.

Heid Jerstad is preparing analysis on themes around Business reorganisation costs. It is important to consider through a tenant farming lens, members are invited to get involved. Also a farm household survey is being undertaken, important to engage, baselining protected characteristics. Action FL to provide guidance on how to engage

Jessie O'Shaughnessy introduced herself to the TFAF

4. Baseline Data Collection

Collecting baseline data has been identified by the TFC as a priority to measure the health of the tenanted sector. Sam Dickinson (SD), Statistician in the Agricultural Census team, was invited to join the TFAF to discuss the future collection of data in the Agricultural Census.

SD provided an update on where we are regarding the census data. Agricultural tenancy data has been collected historically but since 2021 it has not been included. The reason for it no longer being included is after an internal review data quality was highlighted as a significant problem and confidence in the reported data was low. There were many factors in this such as when comparing new data with older data, issues with consistency were identified. There were also consistency issues between the June census and the December census.

In light of the issues the Census team felt it's the correct decision to remove the questions that related to tenancies, but they do recognise there remains a need for this data. To this end he was seeking confirmation that this is an area the TFAF would be interested in being involved in

JER raised the point that the collapse of ag data was troubling. CAAV produce LOS, monitor over the year. Assessment of flows but needs the complement of what is the stock/balance sheet. Only Scot Gov is in a position to collect that.

TFC –how do we overcome the challenge of data quality to restart?

SD – research is being proposed on tenancies, while we can work with uncertainty it is likely that some form of education required to help the situation.

JER – secure tenants tend to know they are secure, the problem is mainly with other forms of tenancy.

SJL – recognised the issues with reliability of the data being provided and highlighted similar discussion in the land reform futures stakeholder advisory group, run by the SRUC, DB suggested it may be worth asking to be involved in this forum. SJL advised that Ian Merrell from SRUC did this work so he would be the relevant contact.

FL – highlighted work which was undertaken in 2015/16 and managed an 80% response rate, to gather data, it was a long process but provided robust data. IPSOS Moray did the work and used the TFAF members to encourage members to answer.

Getting a baseline before the Land Reform Bill is enacted was identified as being important. It also needs to fit with the scheme design under the ARC Act so that if measures are not picked up government can understand why.

Discussed whether there could be cross reference with landlord data. FL confirmed that the Pre-emptive Right to Buy Register was looked at and landlords engaged to work out what ground was let. **Action FL** to circulate the 2015 Data for reference.

Discussion considered the various avenues available for data collection and challenges that exist to high quality data collection. The FONE group was identified as a potential collaborator to allow the requirements from a new entrant perspective to be considered given their importance to the industry.

The importance of nuance in the results was raised for example although a number of Glebes are under secure tenancies they tend to be small and in many cases incidental to the main farming operation. The potential exists for figures to be misleading therefore area tenanted may be more important than number of holdings. However agreed that first step is to get data which helps us understand the sector and we can then move on to gathering more nuanced information.

SD confirmed that his takeaway from the discussion is that there is a data gap that needs to be addressed. There is also the appetite to address this gap. The target to address this would be the 2026 Census giving us most of 2025 to do so. If we tried to use the IACS form then it couldn't be achieved in that timescale.

TFC asked what actions are required to progress. Action SD to sketch out possible questions to be included in 2026. Caution was advised by FL as the length of the census directly relates to the response rate therefore a balance may be required to ensure high return rate.

TFC, how are we going to report this? SD – one table in census publication with numbers, more detail can be shared, conversation to be had around this. The comms strategy for all members going to be crucial to encourage participation.

It was also suggested that the highland show may be an opportunity to encourage completing the census.

Information about Rent Reviews would be useful to gather but not everyone wants to share details. CAAV don't ask for rent as people don't answer that. FL confirmed she had contacted the Information Commissioner on the GDPR issue but this needs more of a conversation. JER advised that in England and Wales for comparable evidence you provide a farm name and number so the information is not meaningless. Business data is not personal data. **Action FL:** Follow up with

Information Commissioner as the GDPR question needs answered for comparable evidence being provided in Scotland.

There may also be an opportunity to engage with Land Agents by means of a TFAF webinar on GDPR.

5. IHT

The TFC handed over to Hamish Trench (HT) who presented the SLC commissioned Saffrey briefing paper. He asked the group to highlight specific issues related to the tenanted sector that are important to be aware of, and whether any further specific analysis is helpful at this stage.

Led by Jeremy Moody (JER) there was a good discussion on the potential for using Section 177 of the Inheritance Tax Act 1984 and the barriers and uncertainties that currently exist. The manner in which tenancies have been passed down and the setting of rents at or below market value were key factors. It was considered that Section 177 would apply in certain circumstances but not in others. It is incomplete and the legislation in Scotland has changed over time. For example it does not cover lifetime successions.

Given the issues it is considered that now is a good opportunity to modernise this piece of legislation. The issue is live with the Treasury and given we have S177 as a starting point we have some leverage.

Practical issues were also discussed over how tax could be paid as it is not possible to split a tenancy and the issues with gifting as there may be issues with fulfilling the requirement to pay a market rent being considered to be subletting. It was noted that there is very little case law on reserved benefits.

JER confirmed after a question from DJ that the detail in the legislation would likely appear in November 2025.

JER and Scot Gov are working with the Treasury and HMRC to try and resolve the issues, as Section 177 exists it would appear sensible to modernise it to remove uncertainty.

It was felt that the TFAF letter made an impact. Members confirmed that letter continues to reflect a shared view.

Desired outcome – modernisation of Section 177 – can the TFAF get behind Jeremy and Scot Gov. debate in 1991 pushed S177 into the tax system?

Consensus was reached that the TFAF recommends for tenancies not to be included in valuation for IHT through modernisation of Section 177 and any tax is on real value not notional value.

6. Game Damage

It was felt that the issue of Game Damage had been considered at length at the Ingliston meeting on the 27th September and had been discussed at a number of different meetings. It appeared on the face of it that the Natural Environment Bill went some way to address some of the issues that are being faced. Ultimately if it's felt the Natural Environment Bill is not sufficiently addressing the ongoing issues, it may be better addressed through this bill and out with the Ag holdings legislation

Need to be looking at it through 2 distinct lenses, agricultural damage and control of game

7. Notice of Intention to Relinquish

An issue was raised by the TFC that was highlighted in a recent case as part of a Notice of Intention to Relinquish which was received by the Commission. There was uncertainty over the timescales when an amendment was made to a Notice of Assessment.

Once the amendment was made there were different interpretations on whether the timescale for objection of 21 days would change from the date it was first issued to the date the amended notice was sent. However, the TFC confirmed there was no basis in law to alter the timescale.

It was recognised that this was not a satisfactory outcome for all parties and clearer guidance was required to ensure there was clarity over what should happen in this scenario.

There were two questions to be addressed here:

1. What can be done to avoid this situation in the future?
2. Should the legislation be changed to be able to address force majeure?

For the first point JM Proposed that a draft valuation could be provided prior to issuing the notice, providing an opportunity for any errors of fact to be addressed. It is clear from the legislation that the 8 week time period runs from the date at which the period for objection (14 days) ends. If the valuer was to publish the valuation at 8 weeks from appointment, then serve the official notice within 10 weeks it would allow additional time for any issues to be considered without frustrating the process.

This was well received but consensus was not confirmed, as this has the potential to impact live cases and therefore requires addressing, we propose to amend the guidance to reflect this change and include it at the next TFAF meeting for consideration. Should any member not agree with this approach please make it known.

The second point on additional powers, members agreed that to implement this the legislation would need to be amended.

Some members felt that if parties were in agreement there should be the facility for extension by agreement, but caution was advised as where a deadline exists in law, certainty is required and a facility for extension may remove this certainty.

The importance of making it simple was discussed, and that it would only apply in instances where the TFC is responsible for appointing the valuer.

FL confirmed that to progress an email with the reasoning was needed from the Scottish Land Commission, an appeal process would also have to be considered

8. AOB

Housing

JM raised housing as a pressing issue that needs to be addressed, there was discussion on where responsibility lies for landlords and tenants which centred on a housing paper which was written by Bob McIntosh. To allow progress it was agreed the previous paper would be recirculated to ascertain the level of agreement that was reached and allow further discussion on it.

It was felt that the CabSec would be open to an amendment to the Housing Bill if it was supported by TFAF

FL confirmed that changes to housing legislation need to happen in Housing Bill. The Bill is at Stage 2 which is underway now. JM stressed that it was important to allow compensation for landlord and tenant.

Action – recirculate Bobs paper.

JM raised that if landlord or deemed landlord is required to make improvements it should be able to be addressed at rent review. However, members expressed different views on whether this would impact rental values and noted concerns about separating out housing from other fixed equipment. The potential for the cost implications of improvements to lead to significant landlord/tenant disputes is recognised by all.

Resumption

JM – understanding Cab Sec is not minded to change resumption value in Bill unless presented with a fair alternative. If we don't want a compensation value based on the capital value of the land rather than the value of the interest in the tenancy for 91 Act leases can something be put together? Many not happy with a multiplier option.

JER intended to put short paper to this meeting but could not due to other pressures.

Proposed the principle should be the tenant should be left no better off and no worse off, principle of equivalence.

JM compensation should relate to ability to farm that land.

MF there is a reasonable approach as tenant has lost this portion of the leased land

JM can we put together an alternative option? – JER will put together a paper on this for discussion (CPO methodology based on profit rent) DB can it show a comparison of different methods?

FL need to consider disturbance costs as they will be much higher than previously thought.

Action JER to prepare a paper for discussion.

Other SG work

FL Heather Holmes - training and support for farmers, covering discovery phase, to look at synergies between CPD system and put option to ministers in March for further discovery work. Looking for people to contribute to BRIAs (Business & Regulatory Impact Assessments) Going to contact members for people to get in touch.

Small producers pilot fund, has £1m resource, training networking, work with enterprise groups. Enable individuals 30ha or less to do activities, options for individuals or businesses who support small businesses, (private kill improvements) Small producer info hub alternative to RPNS?

Opportunities for organisations and members to get involved. Input and support ag industry. add value to industry it is Women in Agriculture related

JM is there funding for deer larders, FL small private kill.

9. Date of Next Meeting

PM to put out doodle poll once we receive confirmation from FL on bill timings, will aim for the start of May.

TFC thanked members for their contribution and brought the meeting to a close.

This meeting was the final TFAF meeting attended by Jon Robertson therefore we would like to record a note of thanks for the considerable contribution he has made over the years. His legal knowledge has been hugely important in the success of the forum which I am sure all would agree.