



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 Saughton House, February 22<sup>nd</sup> 2024 at 2pm

Present:		Actions
Bob McIntosh	Tenant Farming Commissioner (Chair)	TFC
Calum Jones	Scottish Government (SG)	CJ
Fiona Leslie	Scottish Government (SG)	FL
Bruce Morrison	Scottish Land Commission (SLC)	BM
Peter MacDougall	Scottish Land Commission (SLC)	PM
David Johnstone	Scottish Land and Estates (SLE)	DJ
Sarah-Jane Laing	Scottish Land and Estates (SLE)	SJL
Jackie McCreery	Scottish Land and Estates (SLE)	JM
Christopher Nicholson	Scottish Tenant Farmers Association (STFA)	CN
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Mark Fogden	Scottish Agric Arbiters & Valuers Association (SAAVA)	MF
Jon Robertson	Agricultural Law Association (ALA)	JR
Rhianna Montgomery	National Farmers' Union Scotland (NFUS)	RM

#### 1. Welcome and apologies.

The chair welcomed everyone to the meeting. Apologies were received from Andrew Wood, Gemma Cooper, and Martin Kennedy.

#### 2. Minutes of last meeting

The minutes from the previous meeting (13<sup>th</sup> of October 2023) were approved.

#### 3. Update on Bill – Calum Jones

CJ delivered an update on the bill and gave confirmation that it would be finalised soon. It was explained that SG will set up meetings to take comments on the bill and a business and regulatory update will be given to SLE and STFA. CJ summarised the areas of agricultural holdings legislation that would be changed, including rent reviews, rules of good husbandry, sustainable agriculture, waygo, succession and resumption as well as the introduction of a Land Use Tenancy, which will have the flexibility to take into account the widening scope of land use. CJ noted that a number of points are still to be addressed through secondary legislation.

DJ raised a question of scale relating to forestry and tree-planting on holdings. CJ said that it was unlikely that a specific limit between ancillary to agriculture tree-planting and tree planting as diversification would be set, but the list of activities considered to support agriculture within Schedule 5 would be expanded. Tree planting beyond what is set out in Schedule 5 would therefore be considered forestry or other diversification.

Members asked about other aspects of the bill, including whether communities would hold first right of refusal over tenants in circumstances where community right to buy legislation is applied to an agricultural holding. It was confirmed that a community would be prioritised over a tenant if both parties are registered, and following a sale, the tenant would have to re-register with the new landlord. CN commented that instances of this would likely be rare, as community groups generally have issues taking on the responsibilities of a '91 Act tenancy. SJL said that it was necessary to see the statute before a view could be taken.

JM asked for clarification as to whether the proposals reflected the flowcharts shared with members previously, and whether the most up-to-date versions of the flowcharts had been shared. FL and CJ said that most up to date information about the proposals was in the Bill's Strategic Environment Assessment (SEA) which contains detailed information.

A follow-up meeting will be held once the Bill is published, with a wider invitation to TFAF member organisations' staff to broaden the conversation.

#### **4. Responsibility for Upgrading Houses within Agricultural Tenancies – A Discussion Paper by the TFC**

TFC gave a presentation on the upcoming changes to several areas of housing legislation and how they may affect the agricultural holdings sector, including a higher repairing standard, higher energy efficiency standards, introduction of non-fossil fuel heating systems, and greater rights for tenants and rent controls.

Historic exemptions on higher standards are coming to an end, and there was agreement that improving the standard of accommodation on agricultural tenancies was an important step for the industry and it was not reasonable to seek further exemption.

TFC raised the question of where responsibility lies on holdings in making the necessary changes and improvements. Members discussed where responsibility lay in different scenarios.

JM said that that the rent review provision in the Land Reform Bill would need to accommodate these changes so that any non-agricultural improvements required to be carried out under another statutory regime were covered, not just housing. Some members felt that the Land Reform Bill should be futureproofed by doing so. FL said that it would be impossible to legislate specifics in the Agriculture Bill as it is being published before the Land Reform Bill.

JM also said that it was important that other pieces of legislation should take into account agricultural holdings legislation when they are being drafted such as the forthcoming Housing Bill.

Different types of accommodation on farms were discussed and the various interpretations of landlord and deemed landlord in different scenarios, including tied housing, houses occupied by family members or others rent free and sublet houses. Further issues were raised regarding houses that had been extended and developed by the tenant.

TFC set out options for addressing ambiguities in forthcoming areas of responsibility. Option 1 is that the owner is always the deemed landlord. This was the SG view in 2009 but may no longer be. Option 2 – responsibility is split between landlord and tenant. The farmhouse and houses required for staff to operate the farm would be the responsibility of the head landlord. Other houses occupied at low rent or no rent by the tenant's family or retired workers for example, as well as any sublet houses would be the responsibility of the tenant. In this case tenants should have option to relinquish properties that they do not wish to upgrade. JR said

(and there was general agreement among members) that this can be done by agreement, but a tenant should not be able to do this where he/she was in breach of the maintenance obligations under the lease. It should not be used as an anti-avoidance measure and dilapidations may still be due. TFC suggested that there could be an unfair situation where if the landlord cannot afford to carry out the required works, the landlord can sell but tenant may not be able to relinquish, in circumstances where there is no agreement and the landlord objects to the relinquishment. This point was disputed, but those who argued that it was an issue suggested that an amendment on relinquishment may be required to accommodate this.

It was concluded overall that responsibility should be shared as set out above, and that it was important that tenants should be eligible for grants, just as owners are, although it was noted that grant funding is not widely available at the moment.

It was highlighted that the cost for statutory improvements could be enormous, and there were concerns that this investment would not necessarily improve the productive capacity of the holding and therefore not be eligible under the new rent review methodology for consideration. TFC noted however that the compensation provisions (meaning in the wider sense of compensation and return vis rent review) would need to reflect this.

Concern was also raised over the ability to recover compensation at waygo, some aspects have been hard to recover previously. CJ said that the proposals for rent reviews and waygo would make improvements with regard to compensation, as the proposals have been developed in consultation with TFAF, however this does not mean that all issues will be addressed.

The new deal for tenants and rent control proposals were also raised by TFC. SJL said that the Minister responsible has said that agricultural housing and tied housing should be included within proposals, irrespective of complexity. However, members generally felt that the rent process for agricultural holdings should remain separate. SJL said a clear rationale for this position should be articulated. One specific concern raised was that as housing and land rent would be separated under the proposals, this could exacerbate the increasing trend of separating land on holdings from housing, which could be disadvantageous for tenants. MF raised another concern by explaining that the methodology for calculating rent differed between the agricultural holdings and private rental sectors, making it difficult to apply the same legislation across both sectors. MF also said that the market conditions of the private rental sector, such as scarcity, do not apply to the agricultural sector.

TFC welcomed the progress made on housing and suggested the forum is moving close to a sectoral view, and that the discussion provides a foundation for discussion with the SG Housing Team on the 7<sup>th</sup> of March. There was general agreement that approaching the housing team and setting out a sectoral view, rather than inviting housing colleagues to TFAF meetings, was a good approach.

## **5. AOB**

CN highlighted a current case brought to STFA where evidence for a rent review was not being presented in a transparent format, therefore making it difficult for the other party to consider it and adjust it. Options to make information more available were discussed. It was noted that problems exist on both landlord and tenant sides, but TFC codes should be followed. SJL said that it was a behavioural issue and we should consider how this can be influenced, and that there is SAAVA guidance on the matter.

Discussion also raised the possibility of solutions through the changes to the Land Court, such as the requirement for full information to be submitted before raising a case, but it was unclear whether this level of information would be required at that point.

SJL confirmed SLE had been contacted to discuss the possibility of the appointment of a TFC for England and Wales. Both SJL and JM advised that the focus should not only be on the post itself, but on the individual who takes up the post, pointing to the successes of the TFC in Scotland. This led to a conversation about succession planning for the TFC, who confirmed that the advert for the replacement TFC post would go out in the summer.

### **Provisional Conclusions for Discussion**

*Following the meeting, TFC circulated an email to TFAF members proposing some conclusions from the Item 4 discussion. While these have not yet been agreed, they have been included to facilitate discussion and work towards consensus.*

- Dwellings within agricultural holdings should not be exempt from the need to meet the repairing standard and any associated regulations that affect the standard of the property with respect to condition, energy efficiency, and method of heating.
- Responsibility for meeting those standards should be shared between landlord and tenant. The head landlord to have responsibility for the main farmhouse occupied by the tenant and for any other dwellings which are demonstrably required for a farm worker(s). The agricultural tenant to have responsibility for any dwelling that he/she chooses to retain for occupancy by a person who is not a necessary farm worker.
- Where a tenant has added an extension to the main farmhouse or to a dwelling occupied by a necessary worker, the tenant has responsibility for ensuring that the extension meets the standards.
- Where a tenant does not wish to retain any dwellings not required for a worker, landlord and tenant must agree on a way forward and the tenant cannot be required to retain such a property within the lease.
- Where improvements to attain those standards are required by regulations, neither landlord nor tenant should have the ability to object to the other party carrying out such works.
- Where the responsibility rests with the tenant, the tenant should have access to the same improvement grants available to the head landlord.
- Such works should qualify as a landlord's or tenant's improvement, qualifying each party for compensation.
- The methodology for assessing compensation should be reviewed to ensure that it provides both parties with a fair return that reflects the net expenditure involved and the gain to both parties.

The sector should resist any requirement to have a separate occupancy arrangement, and an identifiable rent, for the main farmhouse and workers cottages, should the results of the New Deal for Tenants consultation suggest a need to move in this direction.