



## Tenant Farming Advisory Forum

### Draft Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held at the NFU office, Ingliston, 27<sup>th</sup> September 2024

<b>Present:</b>		<b>Actions</b>
Bob McIntosh	Tenant Farming Commissioner (Chair)	TFC
Fiona Leslie	Scottish Government (SG)	FL
Helen Mooney	Scottish Government (SG)	HM
Peter MacDougall	Scottish Land Commission (SLC)	PM
Sarah-Jane Laing	Scottish Land and Estates (SLE)	SJL
Christopher Nicholson	Scottish Tenant Farmers Association (STFA)	CN
Douglas Bell	Scottish Tenant Farmers Association (STFA)	DB
Gemma Cooper	National Farmers Union Scotland (NFUS)	GC
Rhianna Montgomery	National Farmers' Union Scotland (NFUS)	RM
Jon Robertson	Agricultural Law Association (ALA)	JR
Jackie McCreery	Scottish Land and Estates (SLE)	JM
James Bowie	RICS	JB

#### **Apologies:**

David Johnstone	Scottish Land and Estates (SLE)	DJ
Mark Fogden	Scottish Agric Arbiters & Valuers Association (SAAVA)	MF
Andrew Wood	Royal Institute of Chartered Surveyors (RICS)	AW

#### **1. Welcome and apologies.**

The chair welcomed everyone to the meeting at 10am. Apologies see above.

#### **2. Minutes of last meeting. (17<sup>th</sup> June)**

FL provided some additional amendments to the Minutes from the 17<sup>th</sup> June, which have been made **Action PM** to circulate amended version to members.

Actions from last meeting –

BM spoke to Ed Mountain re: site visit

SJ discussed housing meeting with Paul MacLennan on housing supply

Helen circulated landlines paper by Jeremy Moody

Commitment to have a future discussion on the fiscal barriers to letting land, pulling together the piece of work undertaken by Hutton Institute – SLC, the Balfour case information and the paper by Jeremy moody on letting land

Discussion on land value tax or similar proposal/ John Muir trust – carbon sequestration paper/proposals.

### **3. Update on the Land Reform Bill (Fiona Leslie)**

Fiona gave an update on the Bill, progress is slowly being made with evidence still being gathered by parliament. Members were advised that while there is no clear timeframe for progress they should continue to submit comments to the committee.

There were questions over the possible impact of budget restrictions and loss of funding raised by members and were advised there was no immediate threat.

The SG team is being reconfigured there is a 6-week timeframe to replace Calum Jones, during this time resource from other teams is being utilised. Work is going into reviewing responses to the Bill and preparing for Stage 2.

### **4. Resumption – Resumption Recommendations Paper (BM)**

This was recognised as an area where there was not full agreement within TFAF therefore the paper was used to attempt to identify a way forward.

As with previous meetings there was concern over the exclusion of the compensation available in the event of an Incontestible Notice to Quit from the LRB. It was felt this was the reason resumption was looked at initially and therefore a paper trail would exist supporting this.

There was a discussion around whether it was appropriate for the Relinquishment and assignation valuation methodology to be used for resumption both for 91 Act tenancies and fixed duration tenancies. Concerns raised over the knock-on impact this could have on the availability of land and opportunities for the next generation.

Questions were raised over the way hope value was being approached during valuations and whether aspects like mineral rights were benefitting the tenant when the tenant's interest doesn't extend to rights over these.

The statutory Relinquishment and Assignation valuation methodology has never been consulted on and was only supposed to be used for one specific purpose. It was questioned as to whether we can be certain that this is the correct methodology to use.

It is important to get clarity from RICS on how hope value is being addressed

SG need to consider the policy intention as it relates to Section 17 and provide clarity whether contractual resumptions are permitted. Majority of members felt contractual resumption should be permitted. Tenants could potentially agree but may look for more meaningful compensation. Noted this would still be a retrospective change if in the legislation but compensation could be agreed in lease. Would need fraud on lease protection too.

## **Agreement**

There was consensus that there was a case to say it was a step too far to apply the relinquishment and assignment valuation methodology to fixed duration tenancies

There was full agreement that it was desirable to use any statutory process only as a back stop, if agreement by private negotiation could be reached there should be the flexibility to do so.

## **Actions**

FL to commission paper from RICS and SAAVA on the valuation methodology

TFC to speak to Jeremy Moody of SAAVA regarding work to date on this area and invite to next meeting

FL to consider the policy intention as it relates to Section 17

## **5. Housing – Summary of Housing Recommendations Paper (BM)**

There was agreement on the principle that all properties should meet the repairing and other standards for residential properties.

Two definitions were made:

Houses that were considered fixed equipment – the farmhouse and any essential workers cottages

Everything else – often former farm cottages that are no longer required or occupied by family members for low or nil rent

It was agreed that an amendment was required to the bill to make this clear

Some grey areas were highlighted such as when a former farm worker rents a house and still undertakes some work on the holding. Or when a farm worker has their own property and does not use a farm cottage but the requirement for one will exist in the future.

A problem was highlighted that improving the standard of a house may not necessarily result in a higher rent and it is not always reflected in the price of a holding at valuation.

The wider issue of the treatment of fixed equipment at rent review was discussed, specifically why different wording was used for fixed equipment/land for non-agricultural purposes in the new paragraph 7(4)(b) and (c) of Schedule 1A in the Bill. Sub para (b) uses “fixed equipment provided by the landlord” and (c) uses “land forming part of the holding”. It’s not clear whether this was a drafting issue or deliberate.

It was suggested that an avenue was required to enable a tripartite agreement for renewables, between a landlord, tenant and third party.

As in most cases it was preferred to remove land from an agricultural lease it was felt that it was best not to legislate on this and allow commercial agreement to be reached.

Returning to the housing issue it was felt that amending sub-paragraph (4) (c) by including the points below would solve the rent issues

- a) Where the law requires upgrading to take place, neither landlord nor tenant should be able to object to the other party carrying out the work or being eligible for compensation.
- b) If a tenant is to be responsible for upgrading in some circumstances, they must be eligible for the same grants that are available to owners of rented properties and vice versa.
- c) There may be a need to review the basis of compensation to both landlord and tenant to ensure that it represents a reasonable return on the net cost of the upgrading.
- d) An owner has the choice of upgrading a property or selling it. A tenant has no option to sell so must be able to relinquish a dwelling if it is felt to be surplus or that the upgrading is not cost effective. Jon – if tenant has set up a PRT and gives up a house it will give the landlord the liability
- e) There must be clarity over what constitutes an essential farm worker.

There was recognition that the whole range of relevant legislation would need to be looked at together to define what is required to accommodate agriculture and put together a proposal of how it could work.

#### **Action**

SLE could assist with looking at scope of related Bills and suggesting consequential amendments required to give effect to these proposals. SJ raised issue of recompense for commissioning a piece of work like this.

SJ/JM to progress with the housing bill team and discuss amending the bill by defining the landlord and deemed landlord in different scenarios and liaise with FL on the best way to take this forward.

#### **6. Data on Tenancies**

The members were asked whether they thought it useful to expand the information gathered on the Agricultural Census to include tenancy type.

There was agreement that this would be helpful and that it was important to allow the impact of legislative changes on the sector to be assessed.

#### **Action**

TFC to write on behalf of TFAF with a breakdown of the additional information that would be required, FL to confirm the most appropriate recipient.

#### **7. Rent Review – Issues Arising from the new System Paper (BM)**

There was a discussion on the options of having a more or less prescriptive definition of Productive Capacity, it was highlighted that a less prescriptive definition would allow a hypothetical tenant to be considered as some holdings will not be run to their full capacity.

It was agreed that a less prescriptive definition would be preferable. It was noted that the Red Book does not provide guidance on productive capacity.

A further discussion was held on the move from “comparable holding” to “similar holding” it was felt that this was more restrictive, and it could make it harder to find comparables. There was further discussion on identifying the comparables that are used in rent reviews and the issues with using unnamed comparables.

Concerns were raised over the potential for the use of inappropriate comparables. It was highlighted that there is clear guidance, and valuers should be using good comparables, if they do not and a case escalates to the land court the selection of inappropriate comparables will reflect very poorly on the valuer.

**Agreement** – it is good practice not to have unnamed comparables

The issues around gaining consent for sharing information on comparables was discussed along with what can be done to make information on tenancies more available. Agents are nervous about consent issues if they used named comparables but STFA felt it was impossible to have a review without named comparables so should be able to happen without specific consent. Backstop in Bill could be enabling power to share data.

**Action** – FL to speak to the information commissioner to ascertain whether data on tenancies would be protected.

**Action** – FL to check whether the change from comparable holding to similar holding was intentional.

There was discussion about some parts of S13 not being carried forward into the amendments to the 2016 Act rent review and FL advised this was deliberate. Members felt that the some of regards and disregards were still required.

**Action** – FL to check if there are any unintended consequences of not replicating these parts of s13

There was a further discussion on avenues to resolve rent review disputes and a less binding arbitration was discussed. While this was agreed to be a good idea in practice once both sides get legal representation and the arbitrator then needs their own legal representation costs quickly escalate. As a backstop the Bill could reserve a power to look at different ways to resolve rent disputes.

It was decided that it would be beneficial to ask SAAVA to discuss their short form arbitration as there was agreement that a cheaper form of resolution would be advantageous.

The possibility of enhancing the enforcement powers of the TFC was discussed, it was felt that there was no evidence to support increasing powers yet and good relationships between the sector and TFC was largely based on the TFC adopting the role of facilitator.

There is still an issue with tenants being discouraged from raising issues with the TFC due to the potential for damaging relations with their landlord. Would be helpful to have some complaints about breaches of the code brought to the TFC. Members should encourage their respective members to use this route.

## **8. Review of Agents**

The SLC has revisited the research undertaken in 2017 on the conduct of agents, the original research was comprised of over 1000 interviews and the TFC made recommendations for improvements, one of which was to review in 5 years' time.

It was felt that there was limited value in re-doing the 2017 research and therefore took a much smaller representative sample conducting only 16 interviews with a view to judge whether furthermore in-depth research was necessary.

From the results which have been shared it indicates that a lot of the recommendations have been adopted by the industry and we are moving in a positive direction. It was proposed to continue to raise the profile of the TFC and revisit the issue in 5 years' time to be sure the positive trajectory continues?

Members agreed that they were content with the approach and the proposal to review in 5 years' time.

**Action** PM to provide FL with additional information on the negative responses concerning the increased costs.

#### 9. AOBs

Members discussed the issues with assigning tenancies that were held by a partnership, while it is possible to assign the tenancy to an individual there is no statutory right to do so.

Members discussed the growing issue of Deer and how to move forward with deer damage proposals in the bill, bill drafted as is tenant can't get compensation for crop damage on arable and enclosed crops. An issue with some landlords deterring tenants from undertaken deer control.

Concerns were raised over the rights to control deer being unworkable in some scenarios and not giving the tenant the right to compensation. The TFC advised that if the STFA wished to change this they should submit a proposal to TFAF for discussion.

#### 10. Date of Next Meeting

Put out poll for 25<sup>th</sup> – 17<sup>th</sup> Discuss with Jon on the possible availability of meeting room toll cross.