



SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

**Tenant Farming Advisory Forum**

**Minutes of the Meeting of the Tenant Farming Advisory Forum (TFAF) held  
online on Tuesday 26<sup>th</sup> January 2021**

Present:		Actions:
Dr Bob McIntosh	Tenant Farming Commissioner	TFC
Sarah-Jane Laing	Scottish Land & Estates (SLE)	SJL
David Johnstone	Scottish Land & Estates	DJ
Christopher Nicholson	Scottish Tenant Farming Association (STFA)	CN
Angus McCall	Scottish Tenant Farming Association	AgM
Andrew McCornick	NFUS	AnM
Jane Mitchell	SAAVA	JaM
Rob Forrest	SAAVA	RF
Niall Milner	RICS	NM
Jon Robertson	Agricultural Law Association (ALA)	JR
Alistair Henry	Scottish Government (SG)	AH
John Martin	Scottish Government	JoM
Sarah Allen	Scottish Land Commission (SLC)	SA
James MacKessack-Leitch	Scottish Land Commission	JML

### **1. Welcome and Apologies**

TFC welcomed everyone to the meeting.

Apologies were received from Andrew Wood (RICS), and Fiona Leslie (SG).

### **2. Minutes of the last meeting – 9<sup>th</sup> July 2020**

Agreed.

Matters Arising

JML gave a brief update on SLC tax work, highlighting the formation of the expert working group, and noting that SLC intends to publish more details before the dissolution of parliament and purdah.

CN raised the issue of LDTs coming to an end where waygo discussions were taking too long and inhibiting the outgoing tenant from being able to plan next steps for their business.

TFC indicated that a Code on waygo is on the to-do list.

Members agreed this would be useful – particularly to encourage and speed up discussions.

### **3. Update from TFC**

SA introduced the paper, in particular highlighting TFC work on mediation, and the overwhelming success of the mock mediation event. The event drew extensive praise for the hard work of the participants.

Members briefly discussed follow up to determine if/how cases had been resolved after TFC advice was provided. TFC/SA noted that while advice is given, contacts often don't come back, particularly as advice tends to be on process, rather than resolution of specific issues.

<b>Action</b>	<b>TFC/SA to consider how to measure impact/success of TFC advice.</b>
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#### 4. Amnesty Update

TFC introduced the paper.

TFC/JR clarified that where a landlord has objected to an initial amnesty notice issued by a tenant and the parties have been able, in the two month period in which the tenant has to decide whether to ask the Court to overturn the objection, to reach agreement, the tenant still has to ask the Court for an Order.

AH provided a link to the Land Court for making an application <http://www.scottish-land-court.org.uk/using/making-an-application> and confirmed the fee to lodge an application is £110.

Members discussed agreements made outwith the amnesty period (both before and after), noting that:

- any new post- or existing pre-amnesty agreements are not enforceable, and cannot be made so through the Land Court.
- some tenants might have assumed pre-amnesty agreements would be enforceable.
- other tenants/landlords are going down the non-amnesty agreement route, and that seems to work for them.
- TFC guidance on agreements, and the role of the Land Court in settling disputes would be welcome. TFC noted this requires input from Land Court, and that he has already asked whether the process could be simplified (to keep costs down), with no reply from LC yet.

<b>Action</b>	<b>TFC to provide further information on LC process for amnesties if/when available.</b>
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AH provided information on amnesty cases being lodged with the Land Court – a total of 5 had been lodged by the end of November and a total of 6 by the end of December. AH agreed to circulate updated figures to TFAF.

<b>Action</b>	<b>AH to circulate monthly number of cases lodged with the LC.</b>
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Members discussed the apparent low participation on the amnesty, noting that:

- it would be harder to record amnesties made by tenants and landlords who did not make use of agents.
- only c. 300 STFA members (around a third) had participated.

#### 5. Relinquishment and Assignment

TFC introduced the item, noting that while this is significant for the sector as a whole, it may not provide the opportunities or returns some tenants hope for. TFC noted that the timings in the legislation are tight, and that tenants would need to be well prepared before commencing.

JoM confirmed that, all going well with parliamentary procedures, R&A legislation would come into force on the 28<sup>th</sup> February.

Members discussed relevant issues, in particular noting that:

- awareness of the legislation was poor – notably amongst MSPs where it was causing confusion – and suggested improving comms.
- R&A could result in significant tax implications for outgoing tenants, and that awareness of this, and the need to do the homework, is critical.
- SAAVA/CAAV is in the process of producing guidance on the valuation process and a TFC Guide was also nearing completion.
- valuations would rely on the professionalism of valuers, guidance is just that.
- TFC has received a handful of enquiries about R&A already.

Members agreed that tenants and landlords should take an informal approach to R&A discussions where possible. Statute should be the fallback, rather than first option.

AgM noted discussions with TFC about the definition of progressing farmers.

## 6. Rent Reviews

TFC introduced the paper, emphasising this is not an exact science, but requires a balance between comparable rents, earning capacity, and the business outlook over the coming 3 years. TFC confirmed there is no “pecking order” of evidence in his proposals, all elements are to be treated equally.

Members agreed this was a good approach, provided a workable compromise, and welcomed the inclusion of “earning potential” moving to include diversified activities.

Members discussed what type of rents were acceptable to use for comparables; the consensus of the meeting was, as suggested in the TFC paper, that comparable rents should be able to be obtained from ‘91 Act and 2003 Act tenancies and that both open market and negotiated rents should be available to use in any new rent system that contained comparable rents as part of the evidence base.

AH confirmed SG would need to conduct a formal consultation with members, which would be based on TFC’s paper, before submitting the findings to the Cab Sec. AH noted that the Cab. Sec. requires a significant evidence base to propose repealing legislation.

<b>Action</b>	<b>AH to issue consultation to members on TFC’s proposals for rent determination</b>
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AH also confirmed that SG are contracting research on tenant attitudes on rent reviews which is due to be completed by the end of June, and that other stakeholders would be consulted separately.

<b>Action</b>	<b>AH to circulate information on research once available. NFUS and STFA to encourage participation amongst members.</b>
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## 7. Compensation for Resumption

TFC introduced the paper, noting that the existing formula (under the 1991 Act) for compensation is advisory rather than statutory, but that in practice many resumptions are settled with a higher rate of compensation. TFC proposes adopting a formula similar to the R&A provisions in 2016 Act.

Members highlighted example cases where compensation had been perceived to be fair, and where it had not, to highlight issues with the current approach. There was discussion about the scale of the problem - with the number of whole farm resumptions arising from an incontestable notice to quit likely to be very low.

Members briefly discussed the need to balance historic contractual obligations with current market circumstances.

Members highlighted concerns with partial resumptions in particular noting:

- a lack of clarity in determining where the line below which a unit becomes unviable is.
- the impact of creeping resumption, i.e. small areas being regularly resumed over a number of years.
- uncertainty at what point could a partial resumption be considered a fraud on the lease.

Members broadly agreed a better definition of what constitutes a “Fraud on the Lease” would be welcome, whilst acknowledging that definitions can be tricky and may lead to rigidity and unintended consequences.

AH will report discussion to Cab. Sec. but no action is expected until after the elections in May.

## **8. Members Update/AOB**

STFA – AgM highlighted discussion circulating around the impact of Brexit, commodity prices, and continuing uncertainty facing the wider sector.

SLE – SJL indicated concerns with tourism and visitor management/behaviour, as well as an increase in rural crime.

NFUS – AnM also emphasised issues with increasing rural crime.

SAAVA – JaM hoped that Jeremy Moody’s guidance on R&A for valuers would be published mid February. She thought a TFC checklist on what to do post-amnesty (where notices had been served) would be helpful.

ALA – JR emphasised the positive reception of mediation amongst colleagues, and a willingness see mediation become a common tool.

## **9. Date of next meeting**

Members agreed six months’ time.