

ASSISTING NEW ENTRANTS INTO SCOTTISH FARMING RECOMMENDATIONS TO THE CABINET SECRETARY

Introduction

Following a paper submitted to the Cabinet Secretary, Mr Richard Lochhead, by the Tenant Farming Forum (TFF) concerning the difficulties that new entrants were experiencing in gaining a foothold in the industry he asked the TFF to undertake an investigation and consultation with the following remit:

- To investigate barriers to new entrants to farming, identify practical solutions and make recommendations, including how these might be implemented in practice.
- To consider the views of people within the industry.
- To deliver recommendations to Scottish Ministers with a view to their being published.

Following the preparation of a brief, and with funding from the Scottish Government the TFF let a contract to conduct, administer and analyse a wide-ranging consultation and survey throughout Scotland. The work included a literature review of research and experiences of new entrant and retirement schemes funded by the public sector in Europe and the USA. The work was undertaken by a research consortium, which included the Macaulay Institute, Peter Cook, The Rural Development Company and the Scottish Agricultural College. Their full Report is available on the TFF Web Site, <http://www.tenantfarmingforum.org.uk/tff/> and is included as an Annex to this paper.

More than 670 responses were received to a written consultation and some 150 people attended 6 consultation workshops in different rural locations. A questionnaire survey based on a random sample of farm households in four regions of Scotland generated 222 responses. **Statistical analysis revealed that the survey produced very similar results to the consultation and provides confidence that the consultation responses are robust and representative of stakeholder interests.**

Of the 498 respondents to the **written consultation** document who indicated their status, 17% were landlords, 19% were tenants, 33% were owner-occupiers, 24% were mixed owner/tenants, and there were 7% that included land agents, advisers and retired farmers. This represents a fair reflection of the stakeholders within the industry.

The six **workshops** were held to give a broad geographical coverage of Scotland and were held in the North West at Oban, in the North East at Olmeldrum, in the Eastern Highlands at Inverness, in the Central area at Birnam/Dunkeld, in the South East at Lauder, and in the South West in Castle Douglas. Verbal feedback was very good: there was a high level of participation and generally appreciative comments received about the opportunity the workshops provided to air views and hear what others had to say.

For **the statistical survey**, four case study areas were selected with representation from each of the four main agricultural areas i.e. North West, North East, South West, South East. In terms of tenure classification 41% of the responses came from mixed tenure arrangements, 30% from owner-occupiers, 19% from tenants and 10% from landlords with a good representation of farm type and size from the responses as a whole.

THE MAIN FINDINGS OF THE CONSULTATION AND SURVEY

Following the Cabinet Secretary's remit, the consultation aimed to identify the perceived barriers to new entrants, the potential solutions to remove them and the opportunities that may arise from them. The TFF has used the information obtained to identify and prioritise the solutions and opportunities, which in its view best meet the criteria outlined above and makes its recommendations to the Cabinet Secretary accordingly.

Barriers

Respondents were asked to rank sixteen potential barriers in relation to their importance as low, moderate or high. For those ranked high, respondents were asked to describe why in their view it was a problem and what had caused it. The ranking of the perceived top ten barriers to new entrants was as follows:

First Level

- The lack of availability of land to lease
- The high cost of agricultural land
- Competition from established farmers

Second Level

- A lack of working capital
- Low profitability
- Unavailability of the Single Farm Payment to new entrants
- Lack of confidence or security – high risk

Third Level

- Individuals not retiring from the industry
- Number of farms for sale
- Lending institutions' reluctance to lend

Solutions

The top five potential solutions were as follows:

- Financial support to young people getting started in farming (e.g. interest rate subsidies, higher grant rates)
- Taxation changes that make the letting of land more attractive
- Freedom to agree any length of tenancy
- Planning policies which allow retiring farmers to build house in country
- Payments to farmers who retire and vacate farm early

Opportunities

Respondents were presented with a list of possible opportunities for getting started in farming and were asked to rate them high, moderate or low as a means of getting into the industry. Taking the results of the written consultation the ranked responses are as follows;

- Contract Farming Agreements
- Doing Contract Work (machinery and labour)
- Obtaining short term lets and having informal annual cropping agreements
- Starting a new business on parents' farm (e.g. farm shop)
- Getting a job in a sector related to farming

In addition the survey identified two other opportunities that had strong support:

- Building up capital (mostly outside the industry)
- Share farming

The Basis of the TFF Recommendations

The TFF has formulated its recommendations

- By considering carefully and taking full account of the responses received from the consultation and the survey;
- By considering the experiences of various publicly funded schemes to assist new entrants and early retirements reported in the literature;
- By ensuring that they are consistent with TFF's defining of a 'healthy tenant farming sector' (Appendix II);
- By considering their feasibility, practicality and, in so far as it has been possible, value for money; and finally
- By noting the measure of support that the representative members of TFF give to each of the recommendations.

The TFF recommendations focus principally on those solutions that in its view will have the greatest potential to provide new entrants access to capital, have equality of opportunity, and provide access to land.

For the purposes of the recommendations 'new entrants' are defined in the same terms as used by the European Commission, the TFF believing that any support coming from the SRDP for new entrants would require to fall within the Commissions' eligibility criteria. These criteria are as follows:

- applicants must be under 40 and setting up as head of a farm business for the first time;
- applicants must possess adequate occupational skills and competence
- and the maximum payment is €40,000.

The findings of the consultation have shown that the European Commission definition for a new entrant is over restrictive. There are a number of people who are denied support under the SRDP because they started farming more than 12 months ago. These individuals may have gained a small but precarious foothold in the industry but still face the same obstacles as those deemed new entrants. The TFF believe that any support coming from an alternative source to the SRDP should consider using alternative criteria for defining a new entrant.

SUMMARY OF RECOMMENDATIONS

In making its recommendations to the Cabinet Minister the TFF would wish to emphasise the important role that the tenanted sector has traditionally played in the Scottish rural economy, and the opportunities used by new entrants (identified during the course of the consultation) to gain a foothold into the industry: these opportunities require to be encouraged and facilitated. There is no doubt that facilitating access to working capital is crucial and that is why despite some of the identified constraints of the proposed SRDP package the TFF supports it. Ultimately, however, the test of any scheme or proposal that is put forward either from the public or private sectors is that where land is let to a new entrant there is a minimum of uncertainty as to the future security of both the tenant's and landlord's interests, and that there is a mutual understanding, respect and agreement as between tenant and landlord as to each others aims and objectives. The recommendations from the TFF have unanimous support of all the TFF stakeholders unless specifically stated otherwise.

Equality of Opportunity

In addressing the question of access to capital and achieving an equitable financial environment for the new entrant, while at the same time ensuring that the broader public interest in land use is satisfied through cross-compliance, the TFF makes the following recommendation.

Recommendation 1

- **The TFF recommend that arrangements require to be put in place as soon as is practicable to ensure that all new entrants have access to the Single Farm Payment or whatever support arrangements emerge following the CAP Health Check.**

Access to Capital

A further recommendation is made that is designed to preferentially but proportionately create a competitive edge for the new entrant to facilitate access to working capital. The TFF note the significant disadvantage to new entrants to livestock farming of the European Commission's regulations that debar the purchase of breeding livestock from the subsidised loan scheme permitted through the Scottish Rural Development Programme. Similarly the TFF regard the requirements that all grant applications have to be made in the first year of entering a new business as unduly restrictive.

Recommendation 2

- **The TFF support and recommend that the proposed subsidised interest loan scheme be introduced within the context of the Scottish Rural Development Programme with clear eligibility criteria for selected candidates and encourages Regional Proposal Assessment Committees to prioritise funding for new entrants.**

Recommendation 3

- **The TFF recommend that the Scottish Government consider how more favourable arrangements can be delivered with respect to both the eligibility criteria for the use of the interest rate subsidy for the purchase of breeding livestock, and the period over which applications for grants can be made.**

Confidence to Let Land

During the course of introducing the agricultural holdings legislation that was ultimately enacted in 2003 there was discussion about giving secure tenants the right to buy their holdings. The prospect of such a policy has led many landowners to take land back in-hand to avoid loss of ownership in the event of a policy change. All TFF members recognise the importance of the evidence from the consultation regarding the perceived uncertainty about 'right to buy' legislation and the impact that this is having on the confidence of the owners of land to let land.

The STFA acknowledges the evidence from the consultation that landlords appear reluctant to let land because of a perceived threat of an extension of existing right to buy legislation. In the interests of encouraging landowners to let land to new entrants, STFA wishes to emphasise that existing provisions of right to buy legislation, as embodied in the Agricultural Holdings Act 2003, should not be extended to tenancies established since the commencement of the Act.

Recommendation 4

- **The TFF, with the exception of the STFA, recommend that there should not be any extension of the 'right to buy' legislation beyond that embodied in the Agricultural Holdings (Scotland) Act 2003 in relation to secure (1991 Act) tenancies.**

Tenant Confidence and Flexibility of Tenure Arrangements

In relation to flexibility of tenure and the need to help those who may succeed to an existing farming business the TFF makes the following recommendation.

Recommendation 5

- **The TFF recommend that consideration should be given to reducing the minimum term for a Limited Duration Tenancy except on conversion from a 1991 Act Tenancy where the minimum term should remain 25 years. The TFF is committed to closely examining an appropriate length of term for an LDT and will come forward with a recommendation.**

Succession

For some new entrants existing secure tenancies are routes into farming. In order to facilitate this means of succession the TFF makes the following recommendation.

Recommendation 6

- **The TFF supports the FarmBASS Whole Farm Review Scheme and suggests that the scheme needs to provide advice on the whole range of matters that need to be taken into account when planning for succession. In addition the TFF urges SRDP Regional Proposal Assessment Committees when identifying and agreeing regional priorities with local stakeholders to give recognition on their regional priority list to assistance for new entrants.**

Fiscal Arrangements

The tax system has an important bearing on the way that land is let. Recognising this to be the case the TFF makes the following recommendation.

Recommendation 7

- **Despite the fact that tax is a reserved matter the TFF recommend that the Scottish Government should commission a review of the fiscal arrangements that affect the letting of land in relation to the agricultural holdings legislation in Scotland with particular consideration given to changes that would help new entrants gain access to let land.**

New Opportunities

The respondents to the consultation indicated that there is a need for creating systems that allow a phased entry into farming. Recognising this the TFF make the following recommendation.

Recommendation 8

- **The TFF asks the Scottish Government to support the principle of phased entry into agriculture and TFF's commitment to explore the feasibility of providing options, and to come forward with suggestions on what assistance, if any, will be required in order that, for example, starter units be provided.**

Role of Existing Tenants and Releasing Land through Retirements

The TFF acknowledges the role that retirements in the tenanted sector plays as a source of entry for new entrants into agriculture. The TFF is not persuaded that retirement schemes on the basis of experience elsewhere achieve their objectives of releasing land to new entrants in a cost effective manner. The TFF acknowledges that tenants do not expect a retirement funded by public money but rather by realising capital (both tenants improvements and stock & equipment), which has been invested in the holding during the period of their tenancy, and currently, which is also represented by their SFP entitlements. The TFF recognises that the availability of affordable housing for potential retirees and planning permission for housing in rural areas is a problem. It therefore makes the following recommendation.

Recommendation 9

- **The TFF recommend that:**
 - a. Wide ranging measures should be adopted to facilitate the availability of affordable housing in rural areas; and that**
 - b. A presumption should be granted in favour of allowing a new house development for a retiring farmer where the incomer would be a new tenant.**

RATIONALE, CONCLUSIONS AND RECOMMENDATIONS

Access to Capital and Equality of Opportunity

The availability of land to sell, its cost, access to capital and agricultural profitability are interrelated. They are significant in their effect on the ability of new entrants to gain a foothold in the industry not least because they are deemed to be a greater risk when applying for loans or new tenancies.

Cost of Land

In many areas of Scotland agricultural land values bear little relation to the profitability of agriculture. The high cost of land for purchase can be attributed to a combination of factors which include:

- Limited supply;
- Buyers who do not intend to farm commercially;
- Those who invest in land as a means of protecting some of their assets from inheritance tax;
- Those who have received high returns from land sales in areas of even higher land values than those pertaining to Scotland (e.g. Northern Ireland).

Competition from existing farmers is driven by a wish to achieve (and this drive may be greater where profits are low) economies of scale to enhance profits: the result is that there are fewer small units and fierce competition for any that become available. **The TFF acknowledge that land sales are subject to a variety of influences but essentially are subject to market forces. This allows farmers to compete for land and develop their businesses but TFF conclude that this can only operate with fairness if access to public support (e.g. the Single Farm Payment) in relation to agricultural activity is available to all potential buyers.** The impact of the Single Farm Payment entitlement in relation to new entrants is far reaching. Their ability not only to compete equitably with other farm businesses and be able to cover interest on capital investment, whether in land, machinery or stock, is crucial. When new entrants purchase land they will almost certainly require to borrow funds to do so: they need to be able to operate on at least a similar basis to that of competitors to make a relevant bid and business case.

Equality of Opportunity

Lack of profitability is a major concern and one that the TFF acknowledges to be of fundamental importance in restoring confidence in the industry generally and in particular in creating circumstances whereby new entrants can be reasonably assured of an income that justifies their investments. While there has been significant recent improvement in the arable and dairying sectors, the livestock sector remains in a parlous state. Income is still highly dependent upon the Single Farm Payment (SFP) for all sectors but particularly so in the case of the livestock sector which would be unprofitable without this payment. The justification of the SFP and the way it is allocated is a matter for further review within the CAP Health Check but nevertheless **the TFF conclude that the unavailability of the SFP to the new entrant is a fundamental disincentive and requires to be addressed as soon as possible.**

TFF notes that aspirant new entrants regard the opportunities to build up capital whether inside or outside the industry as crucial to their ability to gain entry. Even if this is achieved without access to the SFP they have to run a business on an inequitable basis. Some have done so successfully and it could be argued that the ‘new blood’ required in the industry should be of a kind and an ability that can operate profitably without access to public funds. The TFF encourages the development of new business opportunities and imaginative entrepreneurship but the TFF also recognises that the SFP is there to deliver, in principle, a set of goods in terms of cross compliance that have environmental and welfare benefits that are valued by the public. **On these grounds, in addition to achieving equality of opportunity, the TFF concludes that it is in the public interest that Single Farm Payments should be available to new entrants.** The TFF is makes the following recommendation.

Recommendation 1

The TFF recommend that arrangements require to be put in place as soon as is practicable to ensure that all new entrants have access to the Single Farm Payment or whatever support arrangements emerge following the CAP Health Check.

Access to Capital

Unless they are of demonstrative exceptional ability new entrants are regarded as carrying greater risk, both in terms of applying for tenancies and gaining access to capital, than their competitors already ‘inside’ the industry. Yet it is generally acknowledged that there is a need for ‘new blood’ that introduces new thinking, creates new business opportunities and challenges the *status quo*. This will be good for the industry and good for Scotland. To achieve this objective requires incentives that preferentially but proportionately create a competitive edge for the new entrant, reduces his financial risk and addresses one of the most significant barriers to gaining a foothold in the industry, that of accessing capital. The consultation report notes that a need for a ‘graduated entry’ mechanism was a common response and a matter of discussion at the workshops with a particular emphasis on ways to own and manage breeding livestock. Such a mechanism needs to be encouraged both with respect to appropriate share farming and/or partnership arrangements but also with respect to gaining access to working capital.

The TFF note that research shows the most successful new entrant schemes that address the question of access to capital are based on loans rather than grants where loans are taken from commercial banks rather than from government organisations. Such systems of support still put the onus on the new entrant to come up with a business plan that a commercial lender would be prepared to support. The public sector assistance is to reduce the cost of the loan below the market rate of borrowing. **The TFF conclude that a subsidised interest loan scheme with clear criteria developed for selected candidates would assist the successful new entrant’s ability to access capital without incurring significant public sector transaction costs.** The responsibility for evaluating the business case and for the greater part of any financial risk would be carried by the commercial banking sector as it is with existing farmers; the public sector would be supporting an explicit policy of encouraging new blood into the industry without interfering with the normal commercial criteria used for assessing the viability of an agricultural or other associated business.

The proposed new entrants’ scheme within the Scottish Rural Development Programme (SRDP) has both an element of interest rate subsidy and a 10% uplift in grants that relate to the establishment of the farm business. The grants aim to assist in the setting up, development and restructuring of new businesses including skills development, upgrading infrastructure, diversification, farm processing, manure/slurry storage and renewable energy

provision. The SRDP package, grants combined with the subsidised loan scheme, has the advantage that it forces the lender along with the client to consider the risks associated with the loan as well as the ability to pay. It is, however, of significant disadvantage to new entrants to livestock farming that within European rules the subsidised loan scheme cannot be used for the purchase of breeding livestock. The requirements that all grant applications have to be made in the first year of entering a new business is also unduly restrictive. The TFF encourage the Scottish Government to seek a more favourable arrangement with respect to both the eligibility criteria for the purchase of breeding livestock and the period over which applications for grants can be made.

Eligibility criteria for candidates for subsidised loans will need careful development. Though education and training needs were not given a high priority during the course of the consultation it is clear that the new entrant will require to be of above average competence and have business and entrepreneurial skills that give him/her the competitive edge needed to be successful. The TFF regard the skills development grant as part of the SRDP package as important in this respect.

The allocation of funds within the SRDP will be subject to decisions made at the regional level by the Regional Proposal Assessment Committees (RPACs). The TFF would encourage RPACs to prioritise funding for new entrants as an important way of creating innovation and new business development within their regions.

To facilitate access to capital the TFF makes two recommendations as follows.

Recommendation 2

The TFF support and recommend that the proposed subsidised interest loan scheme be introduced within the context of the Scottish Rural Development Programme with clear eligibility criteria for selected candidates and encourages Regional Proposal Assessment Committees to prioritise funding for new entrants.

Recommendation 3

The TFF recommend that the Scottish Government consider how more favourable arrangements can be delivered with respect to both the eligibility criteria for the use of the interest rate subsidy for the purchase of breeding livestock, and the period over which applications for grants can be made.

The Availability of Land to Let

The TFF considered the priority issues regarding the lack of availability of land to let as being the need to restore confidence among landowners regarding the perceived uncertainties surrounding 'right to buy' legislation; the wish for a greater flexibility in tenure arrangements; and a recognition that there are taxation issues that increasingly mitigate against landowners letting land.

Confidence to Let Land

Those completing the forms confirmed the conventional understanding of what are perceived to be the barriers and what causes them; lack of tenancies is attributed to legislation and the uncertainty of an extension of legislation regarding 'the right to buy'. During the course of introducing the agricultural holdings legislation that was ultimately enacted in 2003 there was discussion about giving secure tenants the right to buy their holdings. The prospect of such a policy has led many landowners to take land back in-hand to avoid loss of ownership in the

event of a policy change. **On the basis of the evidence from the consultation (from owner occupiers, tenants and landlords but particularly landlords) restoring landowners' confidence to let land will require assurances that the legislature will not extend the right to buy.** All TFF members recognise the importance of the evidence from the consultation regarding the perceived continuing uncertainty about 'right to buy' legislation and the impact that this is having on the confidence of the owners of land to let land. It is noted that even aspirant farmers recognise the strong disincentives of prudent landowners seeking to manage risk to let land and this partly explains the widespread use of short term lets, contract farming and other arrangements most of which, however, favour established farmers rather than new entrants.

STFA acknowledges the evidence from the consultation that landlords appear reluctant to let land because of a perceived threat of an extension of existing right to buy legislation. In the interests of encouraging landowners to let land to new entrants, STFA wishes to emphasise that existing provisions of right to buy legislation, as embodied in the Agricultural Holdings Act 2003, should not be extended to tenancies established since the commencement of the Act.

Recommendation 4

The TFF, with the exception of the STFA, recommend that there should not be any extension of the 'right to buy' legislation beyond that embodied in the Agricultural Holdings (Scotland) Act 2003 in relation to secure (1991 Act) tenancies.

Tenant Confidence and Flexibility of Tenure Arrangements

It also explains why, in terms of solutions, respondents (both tenants and landlords) suggested quite strongly that freedom to negotiate any length of tenancy would be desirable. However, as indicated in the full report there is a dichotomy of view. On the one hand there is a wish to have greater security of tenure, even the wish expressed by some to have the 'absolute right to buy'. On the other hand there is a greater willingness to consider wider forms of relationship that provide access to land including short annual lets, contract farming agreements, share farming arrangements and sub-contracting deals. However, the TFF believes that these relationships must be attractive not only to traditional landlords but also to current owner-occupiers. As the report indicates such new entrant opportunities are few because established farm households are the more likely beneficiaries of such adjustment processes, although some determined new entrants are using such entry routes to gain a foothold in the industry and these routes into farming require to be encouraged and facilitated. However, the TFF recognises also that structural adjustment in relation to farm size is a necessary development in providing businesses with the capacity to give an adequate return.

The Short Limited Duration Tenancy (SLDT) was specifically designed to accommodate cropping lets with a minimum of fixed equipment included. SLDTs cannot be extended beyond 5 years. This can cause unnecessary disturbance for businesses and means there is a limited ability for land to be made available for a suitable length of time to allow for a business to grow and develop. This is particularly of concern in the case of a livestock farm. There is also a need to match periods of tenancy more closely to the requirements of many of the schemes that operate under the Scottish Rural Development Programme (SRDP). Ultimately, and importantly, an incoming new tenant needs the confidence of a realistic minimum duration of tenancy to allow for forward business planning against which he will be able to access bank and other borrowings.

In considering these issues TFF conclude, notwithstanding the opportunities that new

tenants and landlords may take to tailor specific contractual arrangements to suit their circumstances, that in relation to the Agricultural Holdings (Scotland) Act 2003, the minimum period of let for a Limited Duration Tenancy needs to be reconsidered since there appears to be a reluctance to commit land for the minimum length of 15 years required. It concludes that there needs to be an adjustment of the minimum term length to meet both the aspirations of new tenants and landowners and is committed to closely examining an appropriate length of term for an LDT.

Recommendation 5

The TFF recommend that consideration should be given to reducing the minimum term for a Limited Duration Tenancy except on conversion from a 1991 Act Tenancy where the minimum term should remain 25 years. The TFF is committed to closely examining an appropriate length of term for an LDT and will come forward with a recommendation.

Succession

For some new entrants existing secure tenancies are routes into farming. A clear understanding of the issues surrounding farm succession is required to encourage young entrants into farming and ensure that a transition is successful. It is clear that succession planning is an issue that often receives little or no attention in farm businesses. Failure to plan for succession can prove costly and so it is necessary to raise awareness of succession planning as a key component of farm business planning. The TFF recognises the role that industry stakeholders must play in encouraging succession planning and actively encourages those involved with the industry to promote the need for succession planning. TFF note that research shows that the case for supporting succession planning is strong. **The TFF welcomes the FarmBASS Whole Farm Review Scheme which provides an opportunity for farmers to take a fresh look at their business with the help of a professional accredited adviser and suggests that the scheme be actively promoted to provide advice on the whole range of matters that need to be taken into account when planning for succession.**

As identified in the report, most new entrants to farming will come as inheritors from existing businesses, whether tenanted or owned. In many cases succession will not take place for a long period of time and the inheriting successor may take off-farm employment elsewhere. It is important that retiring farmers are able to plan their succession and that inheritors are adequately prepared to take over the farm business when the time comes. Rural Development Contracts through the SRDP can assist this process as long as the issue is recognised as a regional priority. The recognition on the regional priority list of providing assistance to new entrants will be critical in the ability for a new entrant to access funding through the SRDP and hence the vehicle of a rural development contract. **Measures in the SRDP should be used to provide awareness in succession planning and to provide technical and business training to successors to farming businesses.**

Recommendation 6

The TFF supports the FarmBASS Whole Farm Review Scheme and suggests that the scheme needs to provide advice on the whole range of matters that need to be taken into account when planning for succession. In addition the TFF urges SRDP Regional Proposal Assessment Committees when identifying and agreeing regional priorities with local stakeholders to give recognition on their regional priority list to assistance for new entrants.

Fiscal Arrangements

The tax arrangements surrounding the letting of land are complex and are generally unfavourable to the letting of land, but nevertheless landowners do let land and many have a continuing interest to do so. However, within a climate of legislative uncertainty apart from retaining land in-hand, the landlord is likely to opt increasingly towards organising his business and assets in such a way as to minimise his tax burden.

The letting of land is made unattractive by its treatment under income and capital taxation.

With regard to Income Tax, income (rent) from land and property is given schedule A status for tax purposes, whereas income from trading activities (e.g. land farmed in-hand and contract farming agreements) is given Schedule D status. The treatment of losses under Schedule D is more generous than under Schedule A and, importantly for many individuals, Schedule D profits are available to make pension scheme contributions, which is not the case for Schedule A profits.

The Inland Revenue is, at present, tightening up on the treatment of land attracting Schedule D status. The TFF recognise that any adjustment to Schedule A or D status could impact upon the commercial letting sector. Consideration should be given to limiting any change to new entrants thus limiting the financial impact of a change to the Treasury.

With regard to Capital Gains Tax, gains on the sale of business assets (e.g. land in-hand and contract farming agreements) can qualify for rollover relief, subject to proper re-investment of the funds. This can be an important consideration in deciding whether to let or not, if the owner thinks that at some point in the future the sale of the property is likely.

With regards to Inheritance Tax, Agricultural Property Relief (APR) is available on land either farmed in-hand or let. However, the relief is available at only 50% on pre-September 1995 leases. Post-1995 leases attract relief at 100%. However, recent case law, and treatment of APR by HMRC, has restricted the value of the relief with deductions made for assets on holdings not deemed to be directly used for agriculture. This can include consideration of the scale of the farmhouse. Trading assets (e.g. in-hand land and contract farming) often also attract Business Property Relief (BPR). This is not available to let land. BPR is an important relief covering the entire value of the assets if the assessment is that, on balance, the assets constitute a trading entity. Whilst this is a complex field, most farm businesses would qualify. For Estates, the calculation can be particularly complex and can result in the situation where the letting of a single farm could shift the balance between trading and investment status with the loss of a very significant IHT relief. In general terms, IHT planning is likely to encourage retaining agricultural land in hand.

On retirement farmers liquidate business assets protected from IHT by Business Property Relief and usually invest the funds in assets fully exposed to IHT. Similarly, their income stream moves from assessment under Schedule D to a more onerous regime with tax paid significantly earlier, this can be a disincentive to retirement.

There may be measures that could be put in place to provide incentives for landowners to let land to new entrants and there may also be concessions which could be made available to new entrants to provide them with a competitive advantage in bidding for rented land against existing farmers. These matters require further more in-depth analysis and consideration, and therefore the TFF makes the following recommendation.

Recommendation 7

Despite the fact that tax is a reserved matter the TFF recommend that the Scottish Government should commission a review of the fiscal arrangements that affect the letting of land in relation to the agricultural holdings legislation in Scotland with particular consideration given to changes that would help new entrants gain access to let land.

New Opportunities

The report identified the need to create more progressive entry routes into the industry. The report suggests that contract farming arrangements, cropping lets and seasonal grazings are already being used as an entry route. These are, however short-term and do not provide any degree of security and progression for a new entrant.

The report notes that there were a number of proposals for phased ownership or phased entry into farming. High capital costs associated with land ownership indicate for most, the only practical and affordable route for a phased entry will be through farm tenancies. **The TFF conclude that arrangements for phased entry require further consideration.**

For example, starter units for businesses outside agriculture are common. Many local authorities provide premises for small businesses on commercial terms in order to assist business establishment. In agriculture, starter farms in economic terms, as full time units, are fragile often because of scale of operations, their fragility being further exacerbated by a willingness only to let land on a five year term. However, many young farmers would appear to welcome the opportunity to “get a foot in the door” with a view to using a starter unit as a base from which to farm, supplement income from other sources such as contracting, and build up capital. Reducing the minimum period of letting on an LDT may also allow a starter unit to be let for a duration that would satisfy lending requirements and SRDP schemes. To establish an equivalent principle of farm starter units will require the cooperation and facilitation of landowners. **The TFF believe that the concept of phased entry should be revisited as a means of allowing a limited number of young people into the industry. The TFF will explore the feasibility of providing options and come forward with suggestions on what assistance, if any, will be required in order that, for example, starter units be provided.**

Recommendation 8

The TFF asks the Scottish Government to support the principle of phased entry into agriculture and TFF’s commitment to explore the feasibility of providing options, and to come forward with suggestions on what assistance, if any, will be required in order that, for example, starter units be provided.

Role of Existing Tenants and Releasing Land through Retirements

During the course of the consultation there were many responses concerning the blockage to releasing land for let created by not only tenant farmers but also owner occupiers with no heirs, who were of retirement age but for a variety of reasons would not or could not retire. Some continue to farm in a minimal way and rely on the Single Farm Payment as a source of income and ‘pension’. Others are unable to retire because they cannot afford to do so or because they do not have access to a house. While some landowners facilitate retirement by offering alternative accommodation it is acknowledged that there is, in general, a shortage of affordable housing in rural areas and difficulties in acquiring planning permission to build new houses.

The TFF anticipates that the outcomes of the Government's consultation on the future of housing in Scotland, 'A Firm Foundation', will be important in determining the way forward in creating a greater affordable housing stock in rural areas both for purchase and rent. This potentially could have a significant impact on the ease with which potential retirees from farming can obtain housing for their retirement.

The TFF is also aware of the Gateway Scheme developed by the Royal Scottish Agricultural Benevolent Institution (RSABI) which aims to establish a charitable fund, as a part of RSABI, which will provide affordable homes for retiring agricultural tenants in Scotland who wish to give up farming and surrender their tenancies, but who cannot "afford" to do so, in circumstances where the estate owner agrees to make the vacated holding available, on a Limited Duration Tenancy, to a new entrant to the industry. The TFF acknowledges this proposals intent.

The justification for publicly funded assistance is more equivocal. The literature review of such schemes indicates that these have not been particularly successful in releasing land to new entrants. The French have used such an approach in a variety of ways since 1962 but their own evaluation of the schemes concludes that costs are high with an effect that simply brings forward retirement by a few years and has only very modest effects on new entrants or farm structures. In Northern Ireland the conclusion is that the benefits of early retirement schemes are significantly outweighed by the costs.

Most tenants retiring after a lifetime of investment in, and work on, a tenanted farm do not expect to be funded by a state aided scheme but rather by realising capital (both tenants improvements and stock & equipment), which has been invested in the holding during the period of their tenancy, and currently, which is also represented by their SFP entitlements. The 2003 Act has made provision for proper compensation for tenants' improvements. While the TFF agree that tenants should be compensated for any tenant's improvements, it recognises that the valuation of these is now more complex. The effect of this has been that instead of compensation being agreed by both parties at the point of waygo, as was generally the case in the past the level of compensation is now often not agreed until some point in time post waygo. It is imperative that both landlord and tenant ensure that the necessary records are kept so that these provisions in the Act can be implemented both objectively and expeditiously. The TFF believes that best practice would be to reach agreement on what is to be compensated before the notice of intention to quit is given.

In considering the question of early retirement schemes and their potential for releasing land, **the TFF conclude that the most immediate way to facilitate retirement is to ensure that tenants receive their proper compensation promptly at waygo, that there is affordable housing in rural areas and that there is a change in approach by planners to allow the building of a new house in the countryside. Permission to build a new house by a farmer that allows his old house and farm buildings to be made available to a new entrant is required.**

Recommendation 9

The TFF recommend that

- (a) Measures should be adopted to facilitate the availability of affordable housing in rural areas; and that**
- (b) A presumption should be granted in favour of allowing a new house development for a retiring farmer where the incomer would be a new tenant.**

Concluding Comment

In making its recommendations to the Cabinet Minister the TFF recognises that the **opportunities** used by new entrants (identified during the course of the consultation) to gain a foothold into the industry require to be encouraged. There is no doubt that facilitating access to working capital is crucial and that is why despite some of the identified constraints of the proposed SRDP package the TFF supports it. Ultimately, however, the test of any scheme or proposal that is put forward either from the public or private sectors is that where land is let to a new entrant there is a minimum of uncertainty as to the future security of both the tenant's and landlord's interests, and that there is a mutual understanding, respect and agreement as between tenant and landlord as to each others aims and objectives.

March 2008

Appendix I

Tenant Farming Forum

The primary purpose of the Tenant Farming Forum is to help to promote a healthy* farm tenanted sector in Scotland.

It aims to fulfil this purpose by

1. Providing a discussion forum among those representing groups/organisations with a direct involvement in the sector, *and who are committed to consensus building through fair and equitable discussion and representation;*
2. Contributing to an understanding of the significance, and the practical implications of implementing current legislation, (for example, at this time, the Agricultural Holdings (Scotland) Act 2003), and any future proposed legislation governing the sector;
3. Identifying specifically, and raising awareness of issues that may inhibit or act as impediments to achieving effective relationships within the sector;
4. Formulating views and opinions as to how effective relationships and 'best practice' can be developed and secured;
5. Consulting and liaising with government departments, agencies and other bodies about matters that may directly affect relationships within the sector; and
6. Having a vision as to how the future well being of the sector can be assured in the context of proposed changes in European and UK agricultural and environmental policies, and their implications for the rural economy; and continually reviewing the implications for the sector of new initiatives, for example, such as contract farming, and rural planning developments.

*By a 'healthy farm tenanted sector' we mean

- One in which it is possible for prospective tenants to gain access to productive agricultural land for lease;
- One in which it is possible for landlords to let land with confidence;
- One in which there is mobility allowing for new entrants and retirements;
- One in which there is a mutual understanding, respect and agreement as between tenant and landowner as to aims and objectives regarding the subjects of let;
- One in which there is a 'minimum' of uncertainty as to the future security of each party's interests;
- One that secures sustainable outcomes for both tenant and landowner as well as for the land, buildings and the environment that they 'hold in trust'.