

Tenant Farming Forum

Submission of Evidence to the Land Reform Review Group

INTRODUCTION

The Tenant Farming Forum (TFF) is a membership organisation of specialist professional and industry bodies with a direct involvement in Scottish agricultural land use and land management, and with a particular emphasis on agricultural tenancies and the tenanted agricultural land sector. Member bodies include: NFU Scotland; RICS Scotland; Scottish Agricultural Arbiters & Valuers Association (SAAVA); Scottish Land & Estates (SLE); Scottish Tenant Farmers Association (SFTA); and Scottish Association of Young farmers Clubs (SAYFC).

The primary purpose of the TFF is to help promote a healthy farm tenanted sector in Scotland. It aims to fulfil this purpose by:

1. Providing a discussion forum amongst those representing groups and organisations with a direct involvement with the tenanted 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 and any future proposed legislation governing the sector.
3. Identifying 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.
6. Having a vision as to how the future well-being of the sector can be assured in the context of policy implications for the rural economy and developments affecting farming and land management.

Defining a Healthy Tenanted Sector

In defining a 'healthy farm tenanted sector' TFF has directed its focus and emphasis on the sector being:

- One in which it is possible for prospective tenants to gain access to productive agricultural land for lease;
- One in which there is mobility allowing for new entrants and retirements;
- One in which there is a mutual understanding, respect and agreement between tenant and landowner as to aims and objectives regarding the subject 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 environment that they 'hold in trust'.

LAND REFORM REVIEW GROUP

The TFF has noted the remit and call for evidence of the Land Reform Review Group (LRRG); and we anticipate that individual member organisations of TFF may submit evidence to the LRRG on a variety of specific topics.

With regard to the TFF itself, we would be happy to contribute to the LRRG's deliberations in any way that would be helpful, recognising that agricultural and land law is a complex area in which TFF has particular expertise and experience. We accept there are areas of the LRRG's deliberations where TFF has no locus of opinion or where its remit and objectives are divergence from those of the LRRG. However, we equally believe that there are some areas where the LRRG's considerations could potentially overlap with work that the TFF has completed or which the TFF presently has under consideration. We believe such overlap and any resulting confusion should be avoided, so far as possible, and that matters related to agricultural holdings should be dealt with through the TFF, which includes all the relevant industry partners. We would be happy to liaise with the LRRG on this if there are specific topics which it wishes to discuss.

LRRG Remit and Scope

It is apparent from the topics that are listed in the LRRG's call for evidence that the group has interpreted the scope of its remit very widely: it is therefore slightly difficult to know precisely the topics which the LRRG might ultimately seek to encompass or what TFF might offer in terms of specialist contributions. However, the main LRRG remit is to identify how land reform will:

1. Enable more people in rural and urban Scotland to have a stake in the ownership, governance, management and use of land, which will lead to a greater diversity of land ownership, and ownership types, in Scotland;
2. Assist with the acquisition and management of land (and also land assets) by communities, to make stronger, more resilient and independent communities which have an even greater stake in their development;
3. Generate, support, promote and deliver new relationships between land, people, economy and environment in Scotland.

The TFF has no specific 'community' locus under (2), although there are many situations where 'communities' may be acting as landlords, or alternatively tenants, and therefore will have direct interest in the kinds of issues on which TFF is focused. Likewise, whilst TFF is wholly supportive of a close and fulfilling relationship between Scotland's people and its

land resources, TFF's focus is on more practice-focused issues than we would infer from the description given in (3). By contrast, under (1), TFF does have a major professional and industry interest in the 'governance, management and use of land', but specifically from the standpoint of land that is owner-let and tenanted or involves any aspect of agricultural tenancy.

At present TFF is actively engaged in a schedule of work to improve various aspects of the tenanted land sector. This specifically covers the topics of: rent review; arbitration; fixed equipment; investment in holdings; diversification; and waygo. (Consideration of succession and assignation of agricultural tenancies is also planned to be addressed in the first half of 2013.)

In all instances TFF's approach is to seek consensus amongst its members on the best way forward and to put in place the initiatives that will address identified problems, either by the adoption of guidance and best practice or, where necessary, by working closely with the Scottish Government to effect changes in legislation. In this last regard the TFF recently made important contributions in the development of the *Public Services Reform (Agricultural Holdings) Scotland) Order 2010* and the *Agricultural Holdings (Amendment) (Scotland) Act 2011*.

The TFF would be happy to provide the LRRG with a briefing of its ongoing programme of work, but such a briefing would be better dealt with on a contemporary basis, since progress on the topics under consideration will advance substantially during the early months of 2013. We also feel this approach would also be most effective in the use of the LRRG's time, since many of its priorities may take its focus away from areas within the TFF's remit. For the avoidance of doubt, we strongly believe that matters related to agricultural holdings would best be addressed through TFF, where all the relevant parties and interests are represented and there is the requisite legal and practitioner expertise.

List of Topic Areas

In addition to the LRRG remit, the call for evidence also contains a list of topic areas that are referred to as 'potential reforms'. These mainly reflect broad objectives which are outwith the TFF's areas of specialism or main concerns. However, as an initial response we would make the following observations on the specific points listed. We trust this will be helpful.

1. *Expand community ownership of land, housing and other assets in both town and country and in all parts of Scotland.* This is a broad socio-political objective on which the TFF has no expressed view. However, TFF has been active in seeking greater opportunities for agricultural tenancies through the creation of new tenancies on publicly owned land and we would continue to see that as a priority.

2. *Diversify and broaden ownership of land in Scotland, where more land is owned by fewer people than anywhere else in Europe.* This is a broad socio-political objective on which the TFF has no expressed view other than to highlight the importance of maintaining a healthy tenanted land sector. New entrants into agriculture are facilitated by adopting the tenant route (See, *A Guide to Methods for a Phased Entry into Farming*, 2009: <http://www.tenantfarmingforum.org.uk/tff/pubs.aspx>). The ability to share the capital cost of land purchase and of business development between a landowner and a tenant is an important feature of Scottish agriculture.
3. *Encourage (or oblige legislatively) owners of land to give local communities greater say in how land is managed.* Whilst all businesses, including land-based, agricultural businesses, have an understandable interest in 'good neighbour' policies, they must be operated and managed as businesses. Their economic, social and environmental sustainability depends on the decisions and skills of their owners and managers, and they must be able to make the decisions necessary to allow them to respond to markets, climate, production requirements and land management needs to maintain their short-term and long-term viability.
4. *Make it easier and cheaper for Forestry Commission land and other land in public ownership to be transferred to others.* The TFF has actively supported and encouraged the Forestry Commission's initiatives in letting land for new farm tenancies. We would wish to see that initiative expanded and also rolled out across other land-owning public bodies (see (1) above). Releasing appropriate land for new agricultural tenancies is one of the best ways of creating opportunities for new entrants to the agricultural industry (See, *A Guide to Methods for a Phased Entry into Farming*, 2009: <http://www.tenantfarmingforum.org.uk/tff/pubs.aspx>).
5. *Improve the supply and lower the price of land for affordable and other housing in both town and country.* The TFF has not determined a view or policy on this matter. However, it is self evident that there are major economic and technical challenges to public intervention in the land market – not least the issue of disproportionate profits being made on 'land-subsidised houses' at their point of subsequent sale.
6. *Help create new pathways for younger people especially to enter farming.* The TFF and several of its member bodies have been active in promoting new entrants into farming (for TFF reports see, *Barriers to New Entrants to Scottish Farming*, 2008; and *Assisting New Entrants into Scottish Farming – Recommendations to the Cabinet Secretary*, 2008: <http://www.tenantfarmingforum.org.uk/tff/pubs.aspx>). Agricultural tenancies are one of the most effective ways of creating affordable opportunities for new entrants to agriculture.

7. *Enhance the position of tenant farmers by giving them the right to buy.* It is self evident that if automatic right to buy policies were adopted in Scotland it would fundamentally alter the dynamics of the tenanted sector, with a potential reduction in existing tenancies through exercise of right to buy and a potential reduction in new tenancies because of landowner concerns about future loss of land ownership. During the course of passage of the Agricultural Holdings (Scotland) Act 2003 there was discussion about giving secure tenants the right to buy their holdings, and this led many landowners to take land back in-hand to avoid loss of ownership in the event of a policy change. Following an industry survey and consultation, TFF reviewed the topic of right to buy in 2008. TFF members unanimously recognised that the evidence from the consultation was that the perceived uncertainty about 'right to buy' legislation had had a negative impact on the confidence of landowners to let land. The TFF, with the exception of one member, recommended to the Cabinet Secretary that there should not be any extension of the right to buy legislation beyond that embodied in the Agricultural Holdings (Scotland) Act 2003 (*New Entrants into Scottish Farming – Recommendations to the Cabinet Secretary*, 2008: <http://www.tenantfarmingforum.org.uk/tff/pubs.aspx>).
8. *Replace Council Tax and Business rates with a tax on land values.* The TFF has not considered this matter and has no established position. However, the concept raises a wide range of technical issues related to which measures of land value would be applied and how they might relate to the purposes for which land is used. These technical issues will require careful evaluation in considering the utility of the concept.
9. *Change the way in which fresh water resources are owned and managed in order to secure wider community benefit from these resources.* Ownership and rights of freshwater resources are legally complex matters to which TFF has given some consideration in relation to the application of the Agricultural Holdings Acts. However, we believe this will be outwith the considerations of the LRRG. We would, however, note that the rights to fish for salmon and sea trout in Scotland are heritable titles that can be held separately to the title of the land. Thus community access to freshwater resources may depend on who owns the fishing rights rather than who owns the land.
10. *Change the law of succession as it affects ownership of land.* TFF has formed the impression that this LRRG reference relates to the general laws of succession and we anticipate several TFF members may have views on the matter. With regard to tenanted farms these might also be affected by changes in Succession Laws, although the position is complex and will depend on the detail ownership arrangements of the property under consideration. In so far as changes in Succession Laws might affect tenanted farms we regard it essential that the TFF is advised on any proposals for change. The consequential impacts on tenanted properties can then be considered in detail by the TFF members. As already indicated, the TFF will consider succession in

regard to agricultural tenancies during 2013 when 'succession' and 'assignation' will be considered at the same time. We should also note, some relevant changes in law were made as a result of the *Agricultural Holdings (Amendment) (Scotland) Act 2011*.