

Written evidence submitted by Tenant Farmers Association (TPW0025)

House of Commons Environment Food and Rural Affairs Select Committee

Tree Planting and Woodlands

1. Introduction

- 1.1 The Tenant Farmers Association (TFA) is the only organisation dedicated to representing the interests of those who do not own the land they use for agriculture, whether through tenancies or other means, in England and Wales. Its membership comprises farms of all types and sizes but active, family farms predominate. The TFA welcomes the opportunity of contributing to this Inquiry on tree planting and woodlands.
- 1.2 Trees and woodlands provide obvious benefits in terms of timber, landscape, biodiversity, access, health and wellbeing and carbon management. However, specific consideration must be given to trees and woodlands in the context of farm tenancies. Whilst this year's consultation on the Government's Tree Strategy makes reference to tenant farmers, the TFA does not believe that the needs and concerns of the tenanted sector of agriculture have been sufficiently considered in respect of this important policy area.
- 1.3 Therefore, in this written evidence we will focus on the interplay of trees and woodlands within farm tenancies and what wider policy responses are necessary to ensure that farm tenants can play their full part in the success of policy in this area. With the Government targeting the planting of trees on 30,000 ha every year, it will be important to ensure that, on the one hand, tenant farmers are able to participate in helping to reach that target whilst, on the other, being assured of protections against potential notices to quit from landlords who wish to take advantage of tree planting opportunities themselves.

2. Tree Planting by Tenant Farmers

- 2.1 In most cases farm tenants are barred from planting trees on their holdings by the terms of their tenancy agreements. This will either be due to the imposition of blanket clauses requiring tenants to use their holdings for agricultural purposes only, or clauses which specifically ban the planting of trees. Any trees which do exist, or are planted (excluding fruit trees), are usually reserved to the landlord. It is therefore very easy to see how tenants could be disenfranchised from participation in new planting schemes.
- 2.2 This potential exclusion needs to be addressed. However, we are not arguing for farm tenants to have carte blanche to plant trees anywhere and everywhere on tenanted holdings. Any relaxing of restrictions on tree

planting must be against the backdrop of landlords being able to object on reasonable terms. Providing farm tenants with too much scope to carry out tree planting on their tenanted holdings wherever they like, could have adverse consequences for the supply of land into the tenanted sector of agriculture.

- 2.3 In allowing for statutory and contractual clauses to be relaxed, specific guidance will be required to set out what is reasonable for farm tenants to do and what would be considered as reasonable objections from the landlord. For example, it should be deemed reasonable for tenants to take part in tree planting schemes which involve them planting up field margins, scrubby areas, difficult field corners, shelter belts, hedgerows and other unproductive areas of the holding. Outside of these areas, small-scale woodland planting on other areas of the holding should be allowed and grant aided. However, it would be reasonable to allow landlords to object to unilateral, widescale tree planting by their tenants on open areas of grass or arable land.
- 2.4 Some success will be achieved by landlords and tenants reaching agreements. To this end the TFA is engaging with the Country Land and Business Association (CLA) to produce a code of practice for landlords and tenants to use in dealing with matters relating to tree planting and management. Once finalised, we are encouraging DEFRA to include the code of practice as part of its forthcoming tree strategy, both to encourage its use and also to act as a reference point for what is considered the reasonable behaviour of both tenants and landlords in looking at the legislative provisions set out below.
- 2.5 There will always need to be the fallback to legislative provisions. Not only will these provide a useful stimulus to encourage the use of the aforementioned code of practice, they will also serve to provide a means to resolve situations where agreement cannot be reached between the parties. To that end, we welcome the provisions within the Agriculture Act 2020 which provide an opportunity for tenants of holdings let under the Agricultural Holdings Act 1986 to object to their landlord's unreasonable refusal to allow them to take part in a relevant Government financial assistance scheme. We are seeking an assurance from DEFRA that this would cover the incentives that will be provided for tree planting.
- 2.6 However, the Agriculture Act 2020 provisions fall short in not providing a similar mechanism for tenants occupying under Farm Business Tenancies (FBTs) under the provisions of the Agricultural Tenancies Act 1995. Failing to provide protection for FBT tenants makes no sense. FBTs are often very short term and contain extremely restrictive terms. Given that these arrangements now cover almost half of the tenanted sector in England, these tenants must be afforded the same protections as those occupying under the older style agreements. In the Parliamentary consideration of amendments to

the Agriculture Bill, the Government argued that as FBT tenancies are shorter term they are renegotiated more often and tenants have the opportunity of arguing for fairer terms. However, this completely misunderstands the nature of the marketplace for letting land. There are many more individuals looking for land than there are landlords offering land. Therefore, due to the disparity in the marketplace, landlords can insist on terms without providing an opportunity for prospective tenants to negotiate those terms. Tenants under these agreements need to have the same protection as tenants under older style arrangements.

- 2.7 Tenant farmers want to play their full part in schemes which enhance the environment, including by planting trees and there is no reason why they should be unreasonably locked out from taking part. Given the failure to include clauses which protect FBT tenants within the Agriculture Act, this must be addressed as part of any new scheme design.

3. The Problem of Short-Term FBTs

- 3.1 it is acknowledged that tree planting is a long-term commitment which could be a struggle for farm tenants occupying land under short term FBTs. The average length of FBT is under 4 years and 90% of all new tenancies are let for no more than 5 years. There is a significant and urgent need to move these metrics to create a longer-term horizon to ensure that farm tenants can play their full part in delivering the Government's strategy for trees.
- 3.2 There is a growing consensus that the taxation environment within which landlords make decisions is encouraging a plethora of short-term interests in land and that this is leading to unsustainable economic and environmental outcomes. This cannot be allowed to perpetuate. Long-term land use change, such as tree planting, will require longer security of tenure. It has been 25 years since the introduction of the Agricultural Tenancies Act 1995 and the evidence to date is that the market is unable to deliver the sustainable outcomes required. This market failure must be addressed by the Government through use of its fiscal levers to encourage longer term tenancies. The TFA has produced a set of proposals for reform to the taxation environment within which agricultural tenancies operate and these are summarised in Annex 2. These ideas have been around for a considerable length of time and the TFA is challenging DEFRA to encourage the Treasury to engage with these policy suggestions to encourage longer, more sustainable land occupation agreements.

4. Tree Planting by Landlords

- 4.1 Landlords with agricultural tenants may wish to resume land for tree planting purposes. This can occur through negotiation with farm tenants, using notices to quit or awaiting the termination of existing agreements. We would hope that the joint CLA/TFA code of practice will provide a framework for

landlords and tenants to negotiate arrangements for allowing land to be released for tree planting. However, we want to avoid situations where tenants are forced to give up land or to leave their holdings for tree planting to take place. We are already seeing situations where landlords are using the threat of taking land back for tree planting as leverage to require tenants to pay higher levels of rent for their continued occupation of land.

- 4.2 Whilst landlords are unable to use tree planting, which does not form part of a wider planning consent, as a reason for serving an incontestable notice to quit under Case B of the Agricultural Holdings Act 1986, they might choose to use the route of a standard notice to quit and argue their case based on the principles of sound estate management. Tree planting can be used to bring a FBTs to an end using contractual clauses within tenancy agreements.
- 4.3 Landlords may be encouraged to pursue notices to quit against their tenants if they are incentivised to do so through the availability of grant aid for tree planting. The TFA argues that landlords should not have access to grant aid for tree planting unless they have the consent of either an existing tenant or a tenant who had been in occupation at any time in the 12 months prior to the application for the grant being made. This would implement the same procedure already successfully applying within the Class Q Permitted Development Regulations which allows for the conversion of farm buildings into residential use. This is also not without precedent within Woodland planting grants. Previous versions of the Woodland Grant Scheme have had provisions which prevent a landlord from claiming grant aid in circumstances where they have resumed land from a tenant who has contested a landlord's notice to quit – see Annex 1.
- 4.4 Giving farm tenants greater rights in this respect should encourage landlords to be more willing to discuss tree planting schemes with their tenants rather than seeking to impose them. Without such rights being afforded to tenants, we fear that many will face eviction with consequential damage to their farm businesses, homes and family life.

5. Agroforestry

- 5.1 Alongside the encouragement of traditional tree planting within the farmed environment, the TFA is keen to see the promotion and expansion of opportunities for agroforestry. Farm tenants who are not specifically restricted from planting trees by their tenancy agreements would be able to take part in such initiatives. However, those with specific tree planting restrictions will need to seek the approval of their landlords or use the provisions within the Agriculture Act 2020 which, as noted above, the TFA believes should be extended from scheme design to bring into scope those tenants occupying land on FBTs.

6. Woodland Management

6.1 Since the mid-1980s there have been several schemes which have encouraged farm woodland planting including the Farm Woodland Scheme, the Farm Woodland Premium Scheme and the Woodland Grant Scheme. Although some of these schemes have created quality woodland which is being well managed, there are a considerable number of these woodlands which are of poor quality and are badly managed. Before we consider creating more such woodlands, we should be focusing on getting these woodlands into better management and ensuring that they are providing the wide suite of benefits also targeted in new woodland planting. To achieve this, occupiers of farmland including woodlands should have access to annual management grants for existing woodlands within the farmed environment. These payments must only go to the individuals who are directly responsible for carrying out the woodland management activities. Payments must not be made to landowners who pass on responsibility for woodland management to other individuals through contracts of tenancy or other land occupation agreements.

7. Changes to felling licences

7.1 Flexibility should be built into the felling licence requirements so that there is no longer a slavish adherence to the idea that once an area has been planted with trees it must always be planted with trees. We must not perpetuate the mistakes of the past. A badly planted wood, in the wrong location and perhaps causing wider environmental problems should not have to be replanted if it is felled. There will also be less resistance from landlords in allowing tenants to plant trees if there was the possibility that the land-use change is not considered permanent.

Annex 1

Woodland Grant Scheme and Agricultural Tenancies (extract from 2003 guidance)

Landlords planting on tenanted land

- 1.3.16 If a landlord wishes to plant trees he can;
- a) either resume part of the holding in accordance with a resumption clause in the lease. If there is no resumption clause, he cannot resume the land;
- or
- b) terminate the tenancy by means of a Notice to Quit (or a Notice to Quit part of the holding). If a tenant is given such notice, he may either accept it or contest it by means of a counter-notice.

Resumption

- 1.3.17 Resumption is not permitted if it is contrary to the "good faith of the lease". In other words, the landlord cannot resume land where this would render the farm non-viable or force the tenant into a radically different system of husbandry. Tenants can claim compensation for the loss of land. Aggrieved tenants can resort to arbitration and/or the Land Court. (The Land Reform Report has recommended simplification of arbitration procedures with fairer allocation of costs between parties.) Resumed land remains eligible for WGS.

Notices to Quit

- 1.3.18 If a tenant receives a Notice to Quit but wants to remain on the holding he can contest the Notice by means of a "counter notice". If a landlord repossesses a holding in this way he will not be eligible for WGS. Of course, if the tenant is prepared to vacate the holding and does not contest the Notice to Quit then the landlord remains eligible to apply for WGS.

Annex 2

TFA Proposals for changes in taxation to stimulate longer term Farm Business Tenancies

The TFA advocates the following fiscal changes to stimulate a more sustainable approach to letting land:

- 1. Restricting the generous, 100% Agricultural Property Relief from Inheritance Tax (currently available to all landlords regardless of the length of time for which they are prepared to let land) only to those prepared to let for 10 years or more, or on new tenancies (eg successions) with security of tenure under the Agricultural Holdings Act 1986 and allowing landlords to lock in their capital taxation status in respect of the land, houses, buildings and fixed equipment contained in the lease for the duration of the lease.***

In order not to disturb the availability of land for high value crops which need to be part of a rotational system, there should be an exemption for any land let for up to 2 years where the land was not let at any time in the 12 months immediately prior to the letting.

- 2. Offering landlords prepared to let land for 10 years or more the ability to declare their income as if it was trading income for taxation purposes.***
- 3. Clamping down on those land owners who, through schemes promoted by agents and accountants, are using share farming, contract farming, share partnerships and grazing licences as thin veneers of trading activity and as vehicles for aggressive tax avoidance where in practice they take no risk in the business, have little, if any, entrepreneurial input and lack any management control.***

Whilst there are many bona fide situations where contract farming, share farming, share partnerships and grazing licences are being used appropriately, there are many cases where these are being used in name only and where the practical out-working of the arrangements on the ground would be more akin to landlord/tenant type relationships. These latter arrangements are usually promoted by advisers assisting their clients to avoid tax. The TFA believes that HMRC should be using more of a gimlet eye to uncover these inappropriate practices to deny the landowners involved access to the tax benefits they are seeking to enjoy.

- 4. Reforming Stamp Duty Land Tax to end the discrimination against longer tenancies.***

Since Stamp Duty Land Tax (SDLT) is calculated on the basis of the net present value of the rental stream, it has a built-in level of discrimination

against longer term tenancies. This is working against the objective of other parts of Government seeking to encourage longer term lengths on agricultural land. The TFA understands that the SDLT scheme as we currently have it was introduced to tackle loss of taxation revenue from large urban developments; however, it is penalising good practice within a rural context. In keeping with the Chancellor's desire for tax simplification, TFA would propose that all agricultural tenancies are assessed for SDLT on the basis that they are assumed to be two-year agreements regardless of their actual length of term.

5. Requiring landlords over whom the Government has influence (for example The Crown Estate) to default to using 10 year plus farm tenancies.

As this is not a tax issue it will not have a direct fiscal impact. However, it will send an important signal to such landlords about the importance of letting sustainably and not only concentrating on enhancing the book value of their estates.