

Scottish
Landowners'
Federation

NATIONAL
FARMERS'
UNION OF
SCOTLAND



HIGHLAND BIRCHWOODS



INFORMATION SHEET 5

MANAGING WOODLAND AS A TENANT FARMER

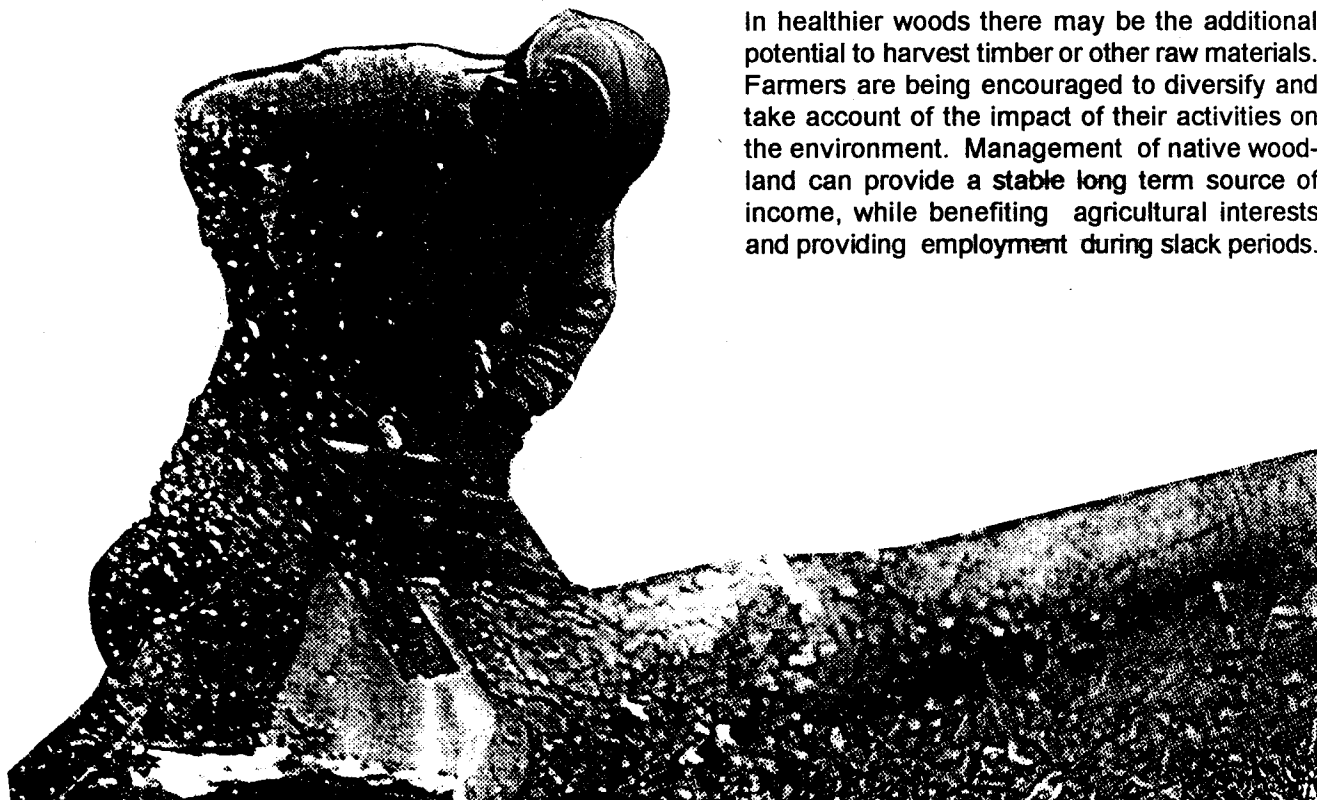
This information sheet provides a framework for tenant farmers who wish to manage areas of native woodland on their tenanted units. It has been prepared by Highland Birchwoods legal advisers in consultation with the Scottish Landowners' Federation and the National Farmers' Union of Scotland.

This framework may be an appropriate mechanism for a tenant to reach agreement with a willing landlord to manage woodland on land let to him under the Agricultural Holdings (Scotland) Act. The tenant will then be eligible to apply for forestry grants.

A number of forestry grants are directed at farmers and crofters running agricultural businesses, as an incentive for diversification. To qualify for the grants the land must be within the agricultural holding.

Tenanted farms support a significant proportion of remnant native woodland within the Highlands. Managing these areas is fundamentally different from establishing a primarily commercial plantation. Often the woods are already of value to the farmer from the shelter they provide his stock. Frequently they are over mature and in need of management to prevent their eventual disappearance.

In healthier woods there may be the additional potential to harvest timber or other raw materials. Farmers are being encouraged to diversify and take account of the impact of their activities on the environment. Management of native woodland can provide a stable long term source of income, while benefiting agricultural interests and providing employment during slack periods.



MODEL FRAMEWORK FOR AGREEMENT RELATING TO MANAGEMENT OF NATIVE WOODLAND ON AGRICULTURAL HOLDINGS

between

"the Landlord"
..... of
and his successors in title to the Holding

and

"the Tenant"
..... of
and his successors in title to the Lease

CONSIDERING THAT the Tenant is the tenant of (the 'Holding') in terms of the lease between the Landlord and Tenant dated ("the Lease") and that the Landlord and Tenant have agreed to vary the Lease to permit the establishment and management by the Tenant of trees and woodlands on the Holding in the manner aftermentioned for purposes ancillary to the farming of the Holding for agricultural purposes.

NOW THEREFORE IT IS AGREED between the parties that the Lease shall be varied with effect from the of 19.... in accordance with the following terms and the schedule or schedules as referred to below:-

FIRST : Areas of Woodland Management

The Tenant may manage trees and woodlands on those parts of the Holding hereinafter referred to as "Agreed Areas", being :

Firstly, such parts of the Holding described in the Schedule annexed and signed as relative hereto and as indicated on the plan comprising part of the said schedule;

Secondly, such other parts of the Holding as may be agreed in writing between the Landlord and the Tenant shall be made subject to the terms of this Agreement, in accordance with any subsequent Schedule to this Agreement.

The trees and timber on the Agreed Areas shall remain in the ownership of the Landlord unless and until the Tenant exercises his rights under Clause THIRD hereof to cut, fell or sell any such trees and timber.

Note: The areas of woodland remain subject to the existing lease, the terms of which are varied by the Minute of Agreement. The whole arrangement is therefore subject to the Agricultural Holdings Acts, including the provisions relating to arbitration for disputes.

In most cases it will be appropriate for there to be no change in the rent on entering into the Minute of Agreement, although the existence of the Minute of Agreement is relevant for the purpose of any future rent review.

A schedule to the Minute of Agreement is to be prepared covering each agreed area. Examples of the type of information to be included in the schedule are provided on the back page.

SECOND : Management Plans

Each of the Agreed Areas will be managed in accordance with a Management Plan agreed between the parties and drawn up in accordance with the Forestry Authority guidelines. Each Management Plan shall be reviewed at five yearly intervals or at such intervals as may be agreed. The Management Plan which is relevant for the time being and any amendment thereto which has been agreed in writing shall be deemed to be incorporated in the Lease and shall be binding on the Landlord and the Tenant. The preparation of the initial Management Plan and all subsequent Management Plans will be the Tenant's responsibility in consultation with the Landlord, and the Landlord's agreement thereto will not be withheld unreasonably.

Note: The Management Plan will be an important aspect of the arrangement. This requires agreement between the landlord and the tenant and must comply with Forestry Authority guidelines. This will provide details of management and permitted felling. It might also incorporate provisions relating to insurance and possible replanting. In some cases the parties may prefer longer intervals for review of the Management Plan, eg. 10 years.

THIRD : Tenants Rights

Subject to the normal rules and practices of good husbandry and forestry and where permitted by the Management Plan in force at the time, the Tenant will have the following additional rights, beyond those contained in the Lease in respect of each of the Agreed Areas:

- (a) to regenerate, manage, cut and use trees and associated vegetation;
- (b) to sell timber standing, felled or processed, except that no standing timber shall be sold or cut by the Tenant unless the Management Plan in force at the time permits such timber to be felled;
- (c) subject to the Landlord's approval which shall not be unreasonably withheld, to enter into grant schemes and similar commitments, the Tenant accepting liability thereunder for any repayments and other obligations called for in respect of any of the Agreed Areas;
- (d) to control deer, ground game and vermin as necessary to protect the trees and associated vegetation.

Note: It is intended that the benefits of the arrangements for the tenant should be in woodland grants and in a steady, although modest, supply of timber. The tenant would not be permitted to clear fell unless this were permitted by the relevant Management Agreement. Likewise the standing timber could not be sold by the tenant except where the relevant Management Agreement permits those trees to be felled.

The appropriate provisions relating to control of ground game, vermin and deer will depend on local arrangements for game and vermin management.

FOURTH : Further Obligations of the Tenant

The Tenant shall at all times manage the trees and timber on the Agreed Areas in accordance with the terms of the Management Plan which is relevant for the time being and the rules and practices of good forestry applicable to the management of native woodlands.

FIFTH : Landlord's Rights

The Landlord renounces for the duration of the Agreement the right to resume or otherwise remove any of the Agreed Areas from the Lease and the right to cut, manage or sell trees or timber on any Agreed Areas.

Note: Although the landlord would renounce his rights to the trees (other than ownership until the trees are felled or sold), and the right to resume these areas from the agricultural holding, the landlord's other reserved rights, including sporting rights, would be unaffected by the Minute of Agreement. In some cases reference to the detail of the landlord's rights in relation to reserved sportings may be appropriate.

SIXTH : Termination

This agreement shall terminate in any of the following circumstances:

- (a) in respect of any of the Agreed Areas on agreement in writing to that effect between the Landlord and the Tenant;
- (b) on the termination of an agreed Management Plan if the Landlord and the Tenant fail to reach agreement for a subsequent Management Plan in accordance with Clause SECOND hereof;
- (c) at the option of the Landlord on the breach by the Tenant of the agreed Management Plan in force for the time being where such breach has not been remedied within three months of service on the Tenant by the Landlord of a notice requiring the Tenant to remedy such a breach.

Note: The framework document does not have a fixed duration and it may therefore continue for as long as the lease endures. However, in some cases the parties may wish to enter into an agreement for a fixed period, which might be linked to the Forestry Authority's grant scheme requirements.

SEVENTH : Effects of Termination

Where this agreement is terminated and where the Lease remains in force, the Lease shall with effect from the date of termination of this agreement be amended as if this Minute of Agreement had not been entered into.

For the avoidance of doubt, fencing and certain other capital works carried out by the Tenant on the Agreed Areas may comprise Tenants improvements for the purpose of compensation under the Agricultural Holdings (Scotland) Act 1991.

The trees and timber on the Agreed Areas shall not be regarded as Tenants improvements unless expressly provided for in this Agreement. Without that provision, the Tenant shall not be entitled to compensation in respect of trees, timber or woodlands on the Agreed Areas on termination of this agreement or at waygoing.

On succession, or change of tenant, the Landlord will encourage the incoming tenant to continue with an existing woodland management plan by applying to the Forestry Authority for a Transfer of Obligations.

Note: If the Minute of Agreement is terminated the lease would revert to its previous terms.

If it is desired to allow compensation at waygoing for the value of the timber this could be provided for in the Minute of Agreement. The value of timber at the start of the Minute of Agreement would have to be taken into account as would grants received by the tenant. For most areas of naturally regenerated woodlands the value of timber would not be great. Unless otherwise agreed between the parties the tenant would not be entitled to compensation for the trees and timber.

Fencing and some other capital works permitted by the Management Plan would be treated as tenants improvements and would be relevant for calculating compensation at waygoing on the normal principles, the value of grants being taken into account.

It is in the interests of both parties that once a woodland scheme has been started it is continued. In this respect, the Landlord, having agreed to the scheme will encourage any succeeding tenant to take on the scheme through the use of the Forestry Authority's Transfer of Obligations under the Woodland Grant Scheme.

EIGHTH : Consent to Registration

The Parties hereby confirm the terms of the Lease except as hereby varied and the Parties consent to registration hereof for preservation and execution : IN WITNESS WHEREOF

The agreement should be signed by both parties and witnessed as normal in Scottish legal practise.

Additional Notes:

Schedule, referred to in FIRST. The schedule will detail specific information as agreed between the parties. Most schedules will include information under the following headings:

Date of Commencement; Description of Area (including a plan); Extent of Area (ha); Existing Trees (species, number, origin, size etc); Management Plan (covering aims, constraints and prescriptions); On-going Commitments (eg FC contract ref. no.);

Other considerations may include: Rent, where there is agreement this should vary from that paid on the surrounding land; Compensation, where agreement provides for compensation at outgo; Deer control, any arrangements in the event of damage within the Agreed Area; etc.

Additional Agreed Areas, referred to in FIRST. These may be covered simply by an exchange of letter signed by both parties, an amendment of the Schedule and the production of a Management Plan for the new area.