



The Scottish Parliament  
Pàrlamaid na h-Alba

## **RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE**

Richard Lochhead MSP  
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and Environment

c/o Clerk to the Committee  
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Dear Richard,

### **Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 – mediation and compensation processes**

Thank you for your response to our letter of 12 August requesting an update on how the planned mediation process is progressing.

The Committee has also received a copy of a letter from the Scottish Tenant Farmers Association to the First Minister and has received correspondence from Hendersons, Chartered Surveyors, which I attach as an annexe. As Hendersons represent all the affected tenants we take their comments very seriously. The Committee discussed your response and this additional correspondence at our meeting on Wednesday 2 September.

The Committee remains extremely concerned about the lack of progress in the mediation process, particularly as we understand that the last date by which mediation could be completed is 28 November 2015 i.e. the last date by which landlords can serve a Remedial Order Notice to correct the defect.

The Committee also understands that tenants were invited by the Scottish Government, in a letter dated 5 December 2014, to lodge claims which could be considered at stage one of any mediation process and seven tenants have intimated their willingness to enter into negotiation. We heard that no response to these claims has been provided by the Scottish Government, and in your letter to the Committee of 1 September you refer to only one case coming forward to mediation. You will note the concern expressed in the annexed correspondence that one of the affected tenants will lose their tenancy on 28 November this year. The Committee would be grateful if you could clarify what the process is for bringing a Limited Partnership Tenancy under section 73 of the 2003 Act if the tenancy is a relevant tenancy under subsection 72A(2)(a).

We would ask you, as a matter of urgency, to engage in a dialogue with those affected tenants to achieve a resolution and equitable settlement and, if is necessary, to explore the possibility of halting the serving of notices to quit.

The Committee would welcome a written response from you by Wednesday 16 September and I invite you to provide oral evidence to the Committee on the concerns raised in relation to the progress of the mediation and compensation process on Wednesday 23 September

Yours sincerely

A handwritten signature in black ink that reads "Rob Gibson". The signature is written in a cursive style with a horizontal line under the name.

Rob Gibson MSP  
Convener

## **ANNEXE**

### **Scottish Tenant Farmers Association – Letter to Nicola Sturgeon MSP, First Minister**

#### **Tenant farmers affected by the Remedial order 2014**

I wrote to you on 26<sup>th</sup> July with regard to the plight of the tenant farmers affected by the Remedial order passed by the Scottish Parliament in April 2014 to rectify defects in the Agricultural Holdings Act (2003) identified by the Supreme Court.

I have not yet received any reply to that letter and I am writing you again to not only highlight the situation in which these unfortunate tenants find themselves through no fault of their own, but also to reinforce the unfair way in which these tenants have been treated and the distress it has caused.

All farmers develop a close relationship with the land they farm, and tenant farmers are no different. Although it may be argued that these particular farmers entered into a tenancy lease of a limited duration, it must be remembered that during the 1980s and 1990s these were the only leases available and, in most situations, it was expected that these leases would be extended far beyond their contractual period, as was commonly the case.

The 2003 Act allowed some of these leases to become secure tenancies, thus changing what could have been seen as a casual relationship between the farmer and his land to a more permanent one. The Remedial Order has now brought this relationship to an abrupt end without any provision for a soft landing to cushion the blow of losing the farm and the farmer's livelihood. This can only be seen as callous treatment of victims of a mistake made by a previous parliament and surely not what we have come to expect from a Scotland which espouses values such as social justice, equality and fairness.

In its judgment, the Supreme Court directed the Scottish Parliament, guided by Scottish Ministers, to formulate proposals which would deal with the situation in a way which would respect the ECHR rights of both parties. Whilst the Remedial Order deals with and satisfies landlords' rights, STFA believes the tenants' rights have not been given equal consideration. Furthermore, STFA has obtained Counsel Opinion which argues that the tenants' property rights have been breached under A1P1 as has the right of respect for the home under Article 8. The Scottish Parliament must have a duty to ensure that these tenants achieve a fair and just settlement which respects their rights and allows them to plan their future.

We would ask the First Minister to meet with these tenants to hear first-hand of the distress and anxiety they have suffered over the last few years with the threat of losing their farms hanging over them. We would also ask your Government to engage in dialogue with the tenants, as a matter of urgency, to work towards an equitable settlement rather than forcing them into a long drawn out legal battle to achieve just satisfaction for the harm that has befallen them through no fault of their own.

I would point out again that after 16 months of prevarication, the tenants' lives are still on hold and they are no further forward in knowing their future

**Angus McCall**  
**Scottish Tenant Farmers Association**

## **Hendersons Chartered Surveyors – Letter to Rural Affairs, Climate Change and Environment Committee**

### **Observations on Cabinet Secretary’s Letter to RACCE Committee on 1 September 2015**

I am grateful to the RACCE Committee for raising the matter with the Cabinet Secretary and indeed pleased to see they have been able to obtain a response. To date one of the recent issues is that the Scottish Government have now refused to discuss matters since March 2015 with the affected Tenants. Can I also suggest reference back to the RACCE Committee Report of 2014 into the draft Remedial Order 2014.

#### **Observations**

1. The primary issue is the Remedial Order 2014 and the far reaching implications it has for those tenants and their families (paragraph 155 of the Committee Report). It is these principal families who need to be protected in line with what was presented to the Rural Affairs Committee and indeed reported on by the Committee.
2. Mediation arose as a function of part of the Remedial Order “softening” process. It was intended to run during the cooling off period. It might have gone some way to help bridge and repair broken relationships between Landlord and Tenant caused by this defect in legislation.
3. Despite all parties, Landlord and Tenant sides and other stakeholder groups participating in the consultation and an external mediator appointed the Scottish Government have still not joined the mediation process as confirmed by the Cabinet Secretary’s letter of 5 December 2014. It would have been helpful if mediation as intended had been available from April 2014, ie Order commencement. The last date by which mediation could be completed is by definition 28 November 2015, ie the last date by which Landlords can serve a Remedial Order Notice to correct the defect. That is at best only three months away. The only parties thwarting that process are Scottish Government themselves. We are still no wiser as to their participation in the mediation process as originally promised for all Tenants
4. The Cabinet Secretary by way of the letter of 5 December 2014 outlined as reiterated in his most recent correspondence the need for tenants to lodge formal claims. These could be considered at stage one of any mediation process. This was a significant exercise for Tenants at that stage of the process but it was undertaken by Tenants and their advisors and duly provided to the Scottish Government in March 2015. The Minister had confirmed that they would endeavour to make initial responses within three weeks of receipt of those intimations. To date no response to those claims has been provided by the Scottish Government. Indeed the exact opposite in so far as the Scottish Government have gone into a complete lock down and refused to engage in any aspect of discussion. Where does that fit with regard to what was presented to the Rural Affairs Committee or what were the aspirations of the Scottish Minister? Are officials therefore acting outwith their remit?
5. There is an issue of time bar. The concerns and the affect on Tenant’s Human Rights were articulated during the Parliamentary process and reiterated and shared as discussion continued post the Remedial Order. It was explained that Tenants would also have to lodge their cases to protect their position by April 2015 which was duly done. However the aspiration was for parties to use the medium of mediation to perhaps resolve those issues rather than costly litigation. Landlords may not wish to enter into mediation since they saw nothing beneficial to be derived from the outcome

of the process. Tenants are being deprived of their Secure Tenancy and indeed more fundamentally their livelihoods and indeed their homes. It is noted that the Committee also asked for much clearer clarity with regard to this whole issue of time bar (paragraph 170 applies). To my knowledge that has not been forthcoming. I can only reiterate that the only party who have thwarted, frustrated and continue to prevent mediation is the Scottish Government.

6. All Tenants (seven) have intimated their willingness and desire to enter into mediation. That is not to say that all Landlords will be willing to come forward to mediation but nevertheless it was seen by way of the enabling discussions that even where that may come to pass the Scottish Government and the Tenants could resolve their individual cases through mediation. It is therefore factually inaccurate to state that only one case has come forward for mediation. It is noted however that we sought was to run the first case to help clarify the mediation process further to aid the ones to follow primarily because the Scottish Government had been so slow in failing to confirm and to come forward to the mediation process. This has involved changing parameters and therefore if we did not advance with the mediations themselves we would run out of time.
7. The Cabinet Secretary has alluded to the fact that it was difficult and acknowledged that a generic compensation scheme may not have been feasible to bring forward with the Remedial Order. The RACCE Committee however also did recognise from the evidence ingathered and summarised by way of paragraph 156 that *“the Government must accept liability for anyone who is financially and/or personally disadvantaged by the remedy put in place, and for any stress suffered by those involved.”* With great respect that must be those Tenants who now lose their business and their homes in some cases not only for one generation but to two generations where both father and son are now involved. There is a real stress and a real financial loss to those people. They acted within the letter of the law as was. They will lose essentially the Secure Tenancy from which they had benefited but again they should not be penalised further by the inaction of the Scottish Government.
8. Tenants have all intimated their claims therefore the Scottish Government are fully conversant with the claims and are in a position to respond to all of those cases. The Tenants cannot compel Landlords who do not wish to come forward to mediation but that does not prevent or stop mediation taking place to address the claims between the Scottish Government and the those families affected in Groups 2 and 3. The Tenants therefore have sought to engage in that mediation process as confirmed by the Cabinet Secretary by way of the intimation of claims in March 2015 but to date contrary to the stated position from the Scottish Government they have continued to thwart reasoned resolution of matters and indeed have gone even further by refusing any shape or form of dialogue. That merely adds to the anxiety and stress of those Tenant families. I would point out the first of those Tenant families will now lose their Tenancy as of 28 November this year. How does he reconcile that position against what has been given to the Parliamentary Committee and as has been stated previously by the Scottish Government officials. They appear to have quite clearly misled the stakeholders and the evidence before the Parliamentary Committee which informed to the Remedial Order 2014.
9. Scottish Government seem intent on trying to drive parties to litigation against defective legislation when every effort had been sought to find a means of dialogue through mediation to resolve these matters.

**Action**

We would ask the Rural Affairs Committee as a matter of urgency to pull matters back before the Committee to examine the failings since it is having a huge impact on those families who are worst affected by the Remedial Order namely the Tenants who are about to lose their homes and livelihoods. They do not deserve to be treated in this manner and that was never put forward in evidence to the Rural Affairs Committee.

**E C Henderson**  
**Agent for Affected Tenants**