



The Scottish Parliament
Pàrlamaid na h-Alba

RURAL AFFAIRS, CLIMATE CHANGE AND ENVIRONMENT COMMITTEE

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Dear Richard,

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

As you will recall, in 2013 and 2014 the Rural Affairs, Climate Change and Environment (RACCE) Committee considered and reported on the Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014¹ which resulted from the Supreme Court ruling related to the Salvesen v Riddell case.

The Committee has recently become concerned by representations received from some of those involved in the mediation process suggesting that it is not progressing effectively.

During its considerations, the Committee was particularly concerned to establish the details of the mediation and potential compensation processes, and said in its first report—

“The Committee believes that mediation will have a central role to play in trying to minimise any negative impacts of the proposed draft order, particularly on tenants, and therefore welcomes the Cabinet Secretary’s confirmation that the Scottish Government will fully fund and participate (where that is agreed by both parties) in mediation for anyone affected by the defect, which will be provided by independent professional mediation service providers.

¹ Rural Affairs, Climate Change and Environment Committee, 1st Report, 2014 (Session 4) - Report on the proposed draft Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014. Available at: http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/Reports/ruR-14-01w-rev.pdf and 3rd Report, 2014 (Session 4): Subordinate Legislation. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/74609.aspx>.

The Committee also believes that payment of compensation may be required for some of those with a valid case if they have suffered financial or personal loss as a consequence of the defect or the proposed draft order coming in to force. Whilst acknowledging that it is difficult for the Scottish Government to accept general liability for all those disadvantaged by this situation, the Committee believes that the Government must accept liability for anyone disadvantaged by the remedy put in place, and for any stress suffered by those involved. The Committee therefore welcomes the Cabinet Secretary's helpful confirmation that compensation may be a valid outcome for some of those affected."

The Scottish Government's response² to that report stated—

"SG has already appointed an independent mediator to prepare a report on the process for mediation. This is being developed in conjunction with stakeholders and SG hopes that, where appropriate, mediation is used by parties affected. It is of note that an initial mediation workshop has taken place at which the independent mediator, SG and stakeholder groups were present. Mediation is however inherently a voluntary route.

In his opening statement to the Committee on 15 January 2014 the Cabinet Secretary acknowledged that harm had been caused and that the draft order may only be part of the route to just satisfaction. The purpose of the draft order is to remedy the defect identified by the judgment in *Salvesen v Riddell*. Given the complexity and differences between those affected it is simply not possible nor advisable to provide a generic compensation scheme which was accepted by the committee. If claims for compensation are submitted to SG these will be considered on their own facts and circumstances."

We intend to discuss this matter formally, as part of our work programme planning, at the Committee's first meeting back after the summer recess, on 2 September 2015. However, ahead of that, the Committee has agreed by correspondence that I should urgently write to you to request—

- **an update on the mediation process and how it is being conducted;**
- **confirmation of how many instances mediation has been sought and provided;**
- **details of any practical difficulties and challenges being encountered; and**
- **confirmation of whether resolution is close to being reached in any of the cases where mediation has been sought and provided.**

² Scottish Government response to the 1st Report 2014 (Session 4) by the Rural Affairs, Climate Change and Environment Committee – Report on the proposed draft Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014. Available at: [http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.03.12 - SG Response and annex.pdf](http://www.scottish.parliament.uk/S4_RuralAffairsClimateChangeandEnvironmentCommittee/General%20Documents/2014.03.12_-_SG_Response_and_annex.pdf).

The Committee would also welcome an assurance that Scottish Government lawyers and officials are fully engaged in working directly and positively with all those involved to seek fair and timeous resolutions to any outstanding and ongoing cases.

I would appreciate a response by Wednesday 26 August so that we can consider your comments at our meeting on 2 September 2015.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob Gibson', with a stylized flourish at the end.

Rob Gibson MSP
Convener