

Supplementary written evidence from the Scottish Tenant Farmers Association

Response to consultation on Draft Agricultural Holdings (Scotland) 2003 Remedial Order

The Scottish Tenant Farmers Association (STFA) would like to make additional comment to the RACCE committee after giving evidence on 18th December.

At that meeting Angus McCall, STFA Director, said that he considered that the Remedial Order will cause harm and impinge upon tenants' rights. This view has now been vindicated by Counsel Opinion obtained by STFA.

In Counsel Opinion obtained by STFA has stated that:

"It is a matter for the Scottish Parliament, guided by the Scottish Ministers, to decide how to deal with these matters in a way which respects the Convention rights of both landlords and tenants." He goes on to point out that the ECHR rights of landlords which might be affected by any change in legislation are property rights under A1 P1 and rights to a fair hearing under Article 6. On the other hand, tenants may also be affected by rights under A1P1, Article 6 and also procedural rights of respect for the home under Article 8. The Scottish Parliament has the challenge of balancing those competing sets of rights and this may be best achieved through the provision of compensation. At present the proposed Order does not make any reference to possible compensation for any tenant or landlord in any of the groups identified.

Conclusions based on Counsel Opinion:

Group 1: Counsel is critical of the different procedural remedies being proposed by the Order, for example tenants in Group 1 should perhaps have the same right to a hearing before the Scottish Land Court as tenants in Group 3, being in similar situations with identical outcomes (Para6). To avoid potential breaches of Articles 14 and 6 should the Scottish land Court be allowed to resolve these issues?

Group 2:

Landlords are to be permitted to gain vacant possession regardless of the circumstances of each situation. However, the Remedial Order should take account of the fact that a number of landlords in Group 2 will have undertaken the same decision making process as those in Group 5. Counsel considers there is no objective reason why they should be subject to different treatment just because one agreed to a secure tenancy whereas the other agreed to an LDT or a cash payment, or purchase of the farm. As a consequence the tenants in Group 2 face the loss of their tenancy and the disregard of their rights under A1P1 and Article 8. Counsel considers that a more equitable solution would be to empower the Land Court *"to make the appropriate order where a tenant in Group 2 argues that the termination of the tenancy would be disproportionate to their own Convention rights due to the circumstances in which the landlord previously failed to make an application to the Court under Section 72(7), or had abandoned such an application"*. (Para 13)

Group 3:

Despite the argument that tenants may consider their Convention rights to have been infringed by being denied their legitimate expectation of a secure tenancy, Counsel considers that in this case the interests of the tenants in this Group cannot be said to outweigh the interests of the landlords. However, he does consider that they may have claims for compensation arising from the loss of their tenanted farms.

Recommendations

STFA would make the following policy recommendations to the Scottish Parliament:

- The Remedial Order should make provision for compensation for those whose rights will be adversely affected by the changes proposed by the Order. Compensation will obviously have to be assessed on a case by case basis, but the principle must be recognised.
- All tenants will be entitled to statutory waygo compensation from their landlords as defined by statute. Provision should be made to ensure proper waygo compensation is paid and that any disputes arising do not become subject to lengthy and expensive litigation.
- The Scottish Parliament and the Scottish Government should revisit the proposals for dealing with Group 2 landlords and tenants. Each circumstance will be different and some of the tenancy arrangements may have been subject to the same decision-making process as cases in Group 5 and therefore should be treated in the same way. If this is not taken into account by the Remedial Order there may be challenges from tenants in Group 2 that their rights under A1P1, Article 8 Article 6 and Article 14 have been breached.
- The proposed “cooling off” period for those in Group 2 should be of sufficient length to encourage negotiated or mediated settlements between the parties. The Government must be part of a tri-partite mediation process and compensation for any disadvantaged parties must be part of the mix.
- Both parties in Group 3 will have incurred expense and stress and consequent suffering to their businesses and must receive compensation over and above the costs incurred through the litigation process.