Our Ref: ECH/AB
By email

Mr R Gibson MSP
Convener
Rural Affairs, Climate Change and Environmental Committee
Room T3.40
The Scottish Parliament
Edinburgh EH99 1SP

Dear Mr Gibson

**Agricultural Remedial Order**

The Remedial Order 2014 was necessitated as a function of a judgement from the Supreme Court against the Scottish Government. This judgement was quite clear.

The Scottish Government opted per the engagement process with stakeholder groups and subsequently before you as a Committee to pursue a ‘remedial process’ which took away the secure tenancy either granted (Group 2) or awaiting Scottish Land Court Confirmation (Group 3). One alternative proposal was to leave the rights granted with the tenants and compensate landlords. Not considered appropriate by Scottish Government.

This is a legacy issue arising from a defect created under a previous administration. Their intentions were genuine but it is clear despite seeking legal advice from the Government’s Legal Directorate this advice was subsequently ruled to be wrong.

Continued efforts have been made for Scottish Government to participate in the agreed tri-party mediation intended to address possible landlord/tenant resolutions but also the Government’s liability stemming from their defect and Remedial Order fix.

In email from Government at 7 January 2016 to landlord’s adviser, tenant’s adviser and John Sturrock (Mediator) the Government position was repeated:-

"It might be helpful for me to set out the position on liability, compensation and full mediation again. As my colleagues have explained previously, we can’t consider paying compensation unless there is liability in principle. That’s why the proposal in the Cabinet Secretary’s letter was developed after discussions in October 2014. We have repudiated the claims put to us in these cases, but we are still open to considering any other claim put to us that makes a strong enough legal and factual case that we can accept liability in principle. If such a case were made to us concerning liability in principle then our involvement could involve full mediation, as John suggests. But in the absence of a claim with a fully reasoned basis demonstrating liability which we accept, we can only take part in mediation on the terms I set out above, without discussion of liability or compensation.”

This is very clear reiteration by Government.

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This position never formed part of the consultation process nor as tenants understood evidence before the Committee. To the contrary Scottish Government advice and communications at the time was clear compensation formed part of the resolution process.

Tenants are grateful to the Committee and its members for reiterating to Scottish Government their responsibility and accountability. Sadly the Minister will not or cannot act against the position now adopted by the Legal Directorate. This seems wholly inappropriate.

Andrew Stoddart and his family are the first of eight families to face removal from their tenancy. The ground swell of public opinion and support generated by this case has been heartening to the family but even this did not inspire the Government to honour their commitments made through the process. Government’s failure to address its financial liability to Mr Stoddart and those to follow is shameful.

In any other walk of life the Legal Directorate would be held accountable for their failings. The Supreme Court passed clear judgement on its legal failings and yet the Scottish Government despite the view and guidance of Parliament still support their lawyers post Order standpoint! Why and how can they continue to defy your Committee?

Parliament will break in the coming months. Despite assurances to the contrary, tenants’ face the prospect of Court to challenge the Government’s position. The Scottish Government Legal Directorate will get their wish and the plea or intervention by Parliament to see fairness and justice delivered will be ‘buried’ by legal process and with it perpetuate the clear failings of the Legal Directorate.

Tenants and the wider public have called upon the support of Parliament. Surely the ‘flawed’ action of the Scottish Government Legal Directorate cannot be allowed to repeat their failings from previous administrations?

As MSPs you have championed the case of constituents to ensure fairness and just treatment for many years. As a Committee the tenants ask that your positive legacy and hard work is not blighted in this case by the failure of the Government to accept in full their liability as acknowledged by Parliament and the Supreme Court to those families due to the frankly ‘discredited’ role of the Legal Directorate in this whole sorry tale over many years.

In the time left available to this Committee we implore members to seek to add an addendum to the Remedial Order 2014 to ensure full compensation is paid to those eight families affected by the consequences of the same, namely Group 2 and 3 cases.

Kind regards,

Yours sincerely

ECHENDERSON