Dear Rob

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

Thank you for your letter of 3 September 2015 requesting an update on the above.

As you are aware, the tenants raised court proceedings in March 2015 which inevitably slowed progress in respect of mediation. These are multi-million pound claims and since the view of Scottish Ministers is that the Remedial Order which they made last year was within their competence, those claims have been rejected. As the matter is the subject of live litigation, I am unable to comment further on any issues relating to the litigation.

On mediation, although we are aware that other tenants may be willing to participate, at this stage there is only the one case where both parties have agreed. Although this case is one of those now in court, we are keen to explore solutions and have contacted the Mediator proposing that a date be fixed for the Stage 1 mediation.

The Committee specifically raises two further points.

The first relates to the importance of the 28 November date. We understand that, in a different case from that referred to above, one tenant has reached an agreement with his landlord to vacate at that date. If both parties would be willing, we would certainly be keen for the Mediator to explore whether there may be scope to find a mutually acceptable way forward and are in touch with him, with that in mind.

More generally, the 28 November date is the last date under the Remedial Order for a landlord to issue a conversion notice. There will, however, still be a significant period of time before vacant possession requires to be given. We still, therefore, see a role for a constructive approach to mediation in the period beyond that date.
Secondly, the Committee sought clarification on the process 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). These are Group 2 tenants.

While I cannot provide legal advice on the process involved (or whether on the facts arising in any one case it is open to any landlord to serve a conversion notice) and it is for parties involved to take their own advice, I can provide the following information to the Committee.

Other than where, for example, an agreed settlement has been reached, section 72A allows landlords a means of recovering vacant possession through section 73. Where this section applies, the landlord can seek vacant possession only if the following conditions are satisfied: (1) a valid dissolution notice was served before 1 July 2003; (2) a valid counter-notice in terms of section 72(6) was served by the tenant; and (3) the landlord has served a valid notice of the intention to bring the tenancy to an end within 12 months from 28th November 2014 (conversion notice).

Section 73 was enacted in 2003 to provide additional protection for tenants who were otherwise at risk of having to give their landlord immediate vacant possession, following service of a dissolution notice. This process ensures that all tenants served with a dissolution notice are given 3 years’ notice. The Remedial Order provides the same protection to Group 2 tenants in a consistent way with that afforded to other section 73 tenants, compared to the position that they would have been in prior to the 2003 Act.

Yours sincerely

RICHARD LOCHHEAD