Dear Fergus,

AGRICULTURAL REMEDIAL ORDER 2014

The Committee has received correspondence from Hendersons Surveyors, the representatives of eight tenant farming families who feel that they have been negatively impacted by the defect in the Agricultural Holdings (Scotland) Act 2003, and the subsequent actions of the Scottish Government. I understand that this is a complex, long running and sensitive subject which has caused significant distress to the families involved.

I am aware that our predecessor committee, the Rural Affairs, Climate Change and Environment (RACCE) Committee, published a report in October 2014 on the Agricultural Remedial Order 2014, which sought to correct the defect, and made a number of conclusions and recommendations. I would join with our predecessors in expressing my regret that the Agricultural Holdings (Scotland) Act passed in 2003 by the Scottish Parliament was found to be incompatible with the European Convention on Human Rights. It is unfortunate that the defect and actions to correct it have had negative consequences for a number of families.

I am aware that some of those affected by the legal defect are considering legal action to address their individual circumstances. Clearly, it would not be appropriate for the Committee to comment on such specific matters. However, the correspondence...
received raises concern that the Scottish Government has not responded appropriately to the predecessor committee's findings; in particular, around the issue of mediation and compensation.

The Scottish Government issued its response to the RACCE Committee report on the Order on 12 March 2014. Given the amount of time that has passed since this response was issued, I would be grateful if you could provide the Rural Economy and Connectivity Committee with a full update on how the Scottish Government is progressing these important issues, particularly in relation to the provision of mediation and support to those affected by the legal defect. Specifically, I should be grateful if you could confirm the extent to which the Scottish Government has, itself, participated in the mediation process. I have included an extract from the executive summary of the RACCE report for ease of reference.

I would appreciate a response setting out the Scottish Government’s position on this matter at the earliest opportunity.

Edward Mountain
Convener
Annexe A

Extract from the 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

6. 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.

7. 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.