Central Association of Agricultural Valuers
RICS Scotland
Scottish Agricultural Arbiters & Valuers Association

Summary Guide to Scottish Agricultural Rent Reviews

RICS

The Central Association of Agricultural Valuers

SAAVA Scottish Agricultural Arbiters & Valuers Association

FOREWORD

Agricultural rent reviews have been the subject of much recent discussion, reacting to changing agricultural economics, the Court of Session's decision in *Morrison-Low v Paterson* and other factors. In 2012 the Scottish Government commissioned the Rent Review Working Group to review the position. In its report. that Group saw a need to improve the understanding of the process and recommended that three papers be produced to aid this. This is the third of those papers, completing that process.

In April, the Tenant Farming Forum issued its leaflet – *Farm Rent Review – Introduction and Guide to Good Practice*. That urges a practical approach to negotiation, allowing time for proposals to be put and considered.

A Practitioner's Guide to Scottish Agricultural Rent Reviews was published in September. Resulting from a working group of members of the CAAV, SAAVA and RICS Scotland, it is a detailed review of the law and practice to assist those acting in rent reviews, covering procedure, valuation and dispute resolution within the framework set by the law.

This *Summary Guide to Scottish Agricultural Rent Reviews* has been prepared from that larger manual to provide the middle tier of briefing recommended by the Rent Review Working Group, as an aid to farmers and owners and a summary for professionals.

If there is one simple message, it is to emphasise the importance of practicality and negotiation throughout a rent review. Regular rent reviews allow for the discussion of all issues between landlord and tenant, to the good of the people and involved, the holdings and the industry.

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APPENDIX

Section 13 of the Agricultural Holdings (Scotland) Act 1991 as amended: Provisions on the Variation of Rent **13**

1. General

1.1 This publication briefs agents on approaches to agricultural rent reviews under the Agricultural Holdings (Scotland) Acts of 1991 and 2003. It offers a practical commentary on the law and its application, alerting them to factors they should consider in preparing for a rent review. It illustrates the processes that should be undertaken and suggests ways of approaching particular difficulties. It is not mandatory guidance to professionals.

1.2 A rent review is the formal opportunity for tenant and landlord to agree to vary the rent, and the great majority of rents are indeed agreed by negotiation. It can also be a chance to discuss any other issues between them.

1.3 Section 13 of the Agricultural Holdings (Scotland) Act 1991 provides a framework of procedure and a valuation basis to determine the rent if the parties cannot agree. Parties, their advisers and agents should be familiar with this statutory approach and its rules, as they set the basis on which any dispute will be determined. This means both applying a legal framework and exercising practical judgment. Both parties should adopt compatible approaches, enabling as many facts as possible to be agreed, so that the remaining differences can be established clearly and focussed upon for resolution.

1.4 S.13 is anything but a formula; there are no mechanical routes in finding the proper rent. It is a matter of valuation judgment under the statute with a practical appraisal of the circumstances of each case, considering a wide range of factors in the light of the possible (but often uncertain) interpretations of the law. This Summary offers a general guide to that practical appraisal of circumstance and evidence within the legal framework which is reviewed in much greater detail in the Practitioners Guide. If it reaches the Scottish Land Court (the Land Court), it is also subject to the limitations of the actual evidence submitted by the parties.

1.5 As the Tenant Farming Forum (TFF) Guide to rent reviews recommends, the person wanting to change the rent, whether up or down, should drive the review, explain their position and lead negotiations – and, if necessary, make any reference for third party determination.

1.6 Agents should be aware of any special circumstances of the subject holding in determining the appropriate treatment of any particular point at issue. There may be limitations on available evidence, the relevance of which will vary from case to case – in practice, it may rarely be a text book exercise. There are a number of problem areas and the Practitioners' Guide seeks to cast light on them so far as the legislative drafting, limited case law and good valuation practice can aid their consideration.

2. Initiating the Review

2.1 The agent undertaking a rent review is advised to:

- check that no issues disrupt the intended timing of the review
- ensure that the initial s.13 notice is correctly prepared and served well within the time limits.
- allow time for the negotiations not to be pressured.
- ensure, should it appear that the negotiations will not be resolved before the term date, that a reference has been made to the Land Court in good time (or, if agreed, to arbitration or expert determination).

2.2 Either landlord or tenant can initiate the formal rent review process by serving a written notice under s.13(1) on the other party. This notice simply enables either party to refer the review to determination in the event of sustained disagreement. Once served, it may only be withdrawn with the consent of both parties. That gives force to the process and makes it sensible for the parties to respect the legal provisions for setting the rent. If circumstances change between the service of the notice and the review date, the party who did not serve the notice can nonetheless rely on it to seek an outcome that was not expected when the notice was served.

2.3 The notice must have been served no less than one year and no more than two years prior to the intended review date, the next termination date. If the tenancy has a fixed term, that chance might not arise until the end of the term. If, as is conventional, it is drafted for a specific date, it will be of no further use for any later date.

2.4 It may be prudent to serve the notice in good time to avoid the risk if it being invalid or questioned by leaving service until close to the deadline.

3. The Minimum Three Year Rent Review Cycle

3.1 The basic principle is that a rent review cannot be enforced within three years of the commencement of the tenancy (including when there has been a surrender and regrant), the rent last changing or a third party determination of the rent. Care should be taken to establish when the total rent (not the rent per acre) for the holding last changed and in what circumstances.

3.2 S.13 excludes some rent changes from re-triggering the cycle which will only operate in the circumstances defined by statute:

- a variation of the rent by the Land Court when considering the terms of the lease or fixed equipment
- a rent increase under the procedures of s.15 for a landlord's improvement
- a reduction in rent following the landlord's exercise of an early resumption clause or a notice to quit part of the holding under s.31 – but not a surrender of land.
- any change in the incidence or rate of VAT on the rent.

3.3 Any other variation of the tenancy and the total rent will be by agreement and will re-trigger the rent review cycle, so that no statutory review can then be triggered for three years.

4. Drafting and Serving the S.13 Notice

4.1 The agent drafting the notice should ensure that it is correctly prepared and served on the other party. It is often helpful for it to be accompanied by a covering letter, especially as the style effectively required by the law may look heavy handed where the party receiving it is unfamiliar with the procedure. The TFF also recommends including a copy of its *Farm Rent Reviews – Introduction and Guide to Good Practice* and give relevant contact details.

4.2 The Act sets out specific rules for the service of notices which are to be delivered to the recipient, left at his proper address or sent to him by "registered post" or "recorded delivery". Where the landlord has changed, the tenant can still validly serve notices or other documents on the old landlord until the tenant has received both

(c) notice that the old landlord has ceased to be entitled to receive the rents and profits of the holding, and

(d) notice of the name and address of the person now so entitled.

Proof may be required that the notice was served; evidence of service should be kept. While that can be done where the notice is served in person with a witness, it can be harder for fax and e-mail. Posting brings convenience but also risks, another reason for serving in good time.

5. Once the Notice is Served – Negotiations

5.1 In the period between the service of the s.13 notice and the review date, the party promoting the review should open discussions and pursue negotiations with the opportunity for advised reflection by both parties. Timely progress should usually preclude the need to refer the review to external determination at all.

5.2 The agents should seek to negotiate. The role of the professionals in negotiation is often effectively one of mediation between the parties while honouring their duty to the clients. This may include considering many more issues than the rent. In almost all cases, parties should be able to settle a review without needing to refer to the Land Court or arbitrator. If the review becomes difficult, the agents should identify the issues, list the areas of agreement and address areas of disagreement

5.3 The review is one aspect within the overall relationship between the landlord and the tenant, which is likely to be a long term one. The professionals involved need to be sensitive to this, with the potentially larger consequences that may flow from actions taken only on an assessment of shorter term issues.

5.4 As general principles and to assist the sensible conclusion of a review:

- the agent for the party promoting the review should have a timetable in mind to allow for timely resolution of the issues, with neither party having to negotiate against a deadline.
- the parties to a review should put all relevant facts on the table at an early stage rather than produce them piecemeal in the discussions. They should agree on as many facts and points as possible to crystallise any remaining points in dispute.
- the parties should communicate with each other, considering and responding timeously to proposals with a view to a practical, and, if more issues than the rent are involved, a mutually beneficial outcome.

The TFF's Guidance outlines a proposed timetable for this and, while the exact timetable may not, in practice, always be feasible, these principles should be borne in mind.

5.5 Perhaps the two most essential points made by the Court of Session in *Morrison-Low v Paterson* are that the task is to find a single figure as the rent for the holding and that the watchword in doing this is realism. That realism is not only a sensible cross-check at the end of any valuation but also an important approach throughout the process, to ensure that the issues in dispute are real ones and that concern over them is proportionate. The better the evidence and the more that can be agreed, the easier it should be to focus efficiently on areas of legitimate and significant difference.

5.6 If, as the term date approaches, there is no agreed conclusion to the review, it becomes important to consider reserving the possibility of third party determination, whether by the Land Court, arbitration or other means, while continuing to negotiate up to and after the review date. This reference is not a reason to stop negotiations. However, a s.13 notice only enables the Land Court to resolve the rent and not any other issues that may be between the parties.

6. Valuation Date

The valuation date for the rent review is the date for which the s.13 notice is effective, requiring consideration of the actual (or clearly foreseen) conditions at that date which the market would really take into account.

7. Define the Holding

The subject of the valuation is the holding itself, a physical and a legal entity with opportunities and difficulties. The agent should identify and appraise its key features. What are the opportunities, restrictions on and obligations of the parties in the context of the holding? It has to be considered as a single unit and not on the basis that it could have been let in separate parts.

8. The Valuation Basis – The Rent Properly Payable

8.1 S.13 sets out the statutory basis for assessing the rent. It is the rent that would reasonably be expected to be agreed between hypothetical willing parties in the open market on specified assumptions. The word "reasonable" is applied to the expectation about the rent, not to the resulting rent itself. Beyond the specific directions of s.13, there are no limits on what factors may influence that expectation. The parties should have evidence on all matters they consider relevant and of potential weight for this assessment.

8.2 The rent is such as would be agreed between a hypothetical landlord and a hypothetical tenant, not the actual landlord and actual tenant, both willing to enter into the tenancy but acting reasonably in that.

8.3 The open market basis requires evidence of the lettings market affecting the subject holding. Where available, comparables can give direct evidence of this but budgets on their own do not show what the hypothetical parties would agree. Evidence as to that value in the open market will include what others (rather than one special purchaser) might bid for the holding to run it as a part of their existing businesses – its marriage value.

8.4 The **tenant's own occupation** of the holding is to be disregarded so that matters personal to him and not inherent in the land are not relevant. Neither are the costs and potential disruption of having to leave in the event of an unsuccessful bid.

8.5 Any increase in rental value due to the certain **improvements,** as defined by the law, whether made by the tenant (irrespective of landlord's consent) or to the extent that they were grant-aided, is to be disregarded. This requires:

- a schedule of all improvements and description of each (perhaps with a plan).
- checking whether the lease obliged the tenant to make any of the improvements and whether the landlord was obliged to have provided any of these at the beginning of the lease.
- recognising the grant aid to any landlord's improvements.

8.6 Of the various methods of taking this disregard into account the most practical, especially for more significant improvements, is to apply a "black patch" and assume it is not there. It may then be possible to use comparable evidence to assess the difference in rental value due to the improvement. Where a budgetary approach can be linked to rents, that may assist, offering a crosscheck. Where the improvement has released a latent value in the holding (the value of the opportunity to make the improvement), that is part of the rent and not disregarded.

8.7 Any distortion in the rent due to "a **scarcity** of lets" is to be disregarded. Developing the analysis of court decisions finds this to require assuming a "reasonably balanced market", not "a general scarcity of broadly suitable farms overall". This "does not suppose an exact equality of supply and demand" and will still see competition for some farms.

8.8 Two tests should be applied: is there scarcity? And, if so, does it distort the rental value? Each is a matter of evidence and any distortion must be assessed. That is an expectation placed on the expert and has now come forward for closer consideration than previously. This may develop with further experience and discussion. It suggests forming a view of the larger market for the holding (rather than just its immediate locality). Scarcity in general should be distinguished from any specific limitations of the individual holding. The number, type and distribution of potential bidders may affect the issue, whether found by analysis of the market or from recent patterns of tenders for holdings – recognising that not all bids are likely to be of equal quality – and evidence of the number of farms that have been let. This may be aided by the views of the Land Court in previous cases, perhaps now dated, in which discounts range from 5 to 25 per cent.

8.9 **Other matters** that must be disregarded under s.13 include:

- dilapidations, deterioration or damage by the tenant
- use for a non-agricultural purpose or conservation activity that reduces the rent.

8.10 The determination of the rent is a matter of evidence and analysis for which the courts will look to expert witnesses. Regard is to be had to evidence as to:

- the **terms of the tenancy** (other than those relating to rent)
- **information about rents** of other agricultural holdings and the factors affecting them. This exposes the holding to evidence of rent settlements on other holdings – decisions taken by real owners and farmers. It is not limited to comparables but the more closely the evidence can be related to the subject holding and the valuation date, the more effective it is likely to be. "Factors affecting those rents" draws attention to the dynamics in the market.
- **current economic conditions** in the relevant sector of agriculture. As well as prices and margins, this might touch on economic points in the minds of parties, including price volatility and market developments relevant to the holding. Some of this might be revealed by current rent settlements.
- any increase in rental value due to a **use of the land for a purpose that is not an agricultural purpose**.

The force of evidence on these will depend on the quality and weight of the actual evidence submitted. Consideration can also be given to evidence of any other relevant factors except for the statutory disregards.

8.11 Farms are individual and information is rarely complete or perfect. Weighing the balance between the evidence of such comparables as are available and the lessons that may be drawn from budgets as to the behaviour of hypothetical parties is a matter of judgement and appraisal. However, good and available comparables are direct evidence of actual market behaviour and budgets are not.

8.12 **Comparables as Evidence** – When considering information as to rents, well presented, relevant and analysed evidence of recently settled comparable farms available for inspection may prove very effective evidence of the decisions taken by real owners and farmers. Any particular reasons affecting the way the rent was settled should be known.

8.13 Comparison is an essential valuation skill in appraising real economic decisions in other cases and applying them to the subject holding. A component valuation, attributing values to any farmhouse, cottages, buildings and land from the evidence of comparables may prove valuable. As an identical comparable is unlikely to be available, judgment and evidence need to be applied to adjusting a comparable's rent to make it directly relevant. The more adjustments there are in the comparison, the less weight it is likely to have as evidence.

8.14 The Court of Session has stated that the best evidence would be open market lettings of 1991 Act tenancies. In their probable absence, evidence from the lettings of LDTs and SLDTs can be relevant though needing to be adjusted. The Court of Session was clear that such rents are admissible evidence. Sitting tenant rent reviews rank next.

8.15 **Budgets as Evidence** – The economics of the holding can be brought together in a budget, with the resulting outcome used as evidence towards determining the reasonable expectation of the rent for the holding. The budget is not a valuation method in its own right but perhaps a means to support a valuation, using an approach usually based on standard farming accounts. It is not evidence of actual behaviour in the rental market but of the expectations of profit that may very often be a factor conditioning the offers of hypothetical bidders. It does not shield the tenant from the wider marketplace, though that may reveal how parties are acting in the light of the budgets before them.

8.16 It may help the preparation for negotiations to draft a budget to understand the economics of the holding, not only in terms of farming but also CAP direct payments, non-agricultural uses, agri-environment agreements, sub-lettings and other factors. It is an assessment of the holding, not of the actual tenant – and so may not necessarily use the present farming system. Familiarity with farm accounting may make a budget format a means to resolve many important questions about the agricultural performance of the holding – such as the probable farming system and yields.

8.17 It will both help reduce costs and assist the Land Court if the agents involved:

- can agree on the format that best suits the holding and
- settle as many of the elements of it as they can so that any argument can focus on the areas of genuine and significant contention.

8.18 The budget should be consistent with s.13, most obviously in disregarding the benefit of certain improvements. In considering the prices for inputs and outputs to be used in the budget, the underlying requirement is to form a reasonable expectation as to the rent that would be agreed. That may not follow the actual prices and costs at the review date but the approach that might be taken at the time to prices and costs by parties settling a rent that cannot be reviewed for three years.

8.19 It is conventional for the budget to give a pre-rent surplus available to pay a return to both the landlord (rent) and the tenant (his entrepreneurial return on management investment and labour). There is no prescribed approach for calculating this or as to how that figure is then taken into account in determining the rent. There is no statutory basis for any particular division. History shows this to have moved over time and it may vary between sectors. How might it be linked to the market place for holdings? That might be done by considering the equivalent budgets for comparables, linking their calculated pre-rent surpluses to their real rent settlements, subject to this

being appropriate to the case in hand and the extent of the dispute warranting the effort and cost of this work.

8.20 However, there is no rule that the pre-rent surplus, however calculated, sets a ceiling for the rent, any more than for any particular split.

9. Forming A View

The agent should consider all the relevant evidence available to him and the effects of the statutory disregards on the rent of the subject holding. In practice, both the quantity and quality of the available evidence on each of these matters will vary. Not all evidence potentially admissible at the Land Court will have the same weight: some will be less relevant, more remote or harder to substantiate than other evidence. Inevitably, only limited information will be available in any one case. While evidence of recent real agreements on rents may, in principle, be strong evidence, limitations on the quantity or quality of that evidence may make other factors more persuasive. Strong points of potentially great weight may be advanced by the other party and so should be considered carefully. The weight given to each piece of evidence will be a matter of opinion, on which it will be important for the agent to give the client his considered professional judgment and advice.

10. Rent Reviews for LDTs and SLDTs

10.1 S.9 of the 2003 Act makes specific default provision, very similar to s.13, for rent reviews under LDTs where no provision is made by the tenancy agreement. While there is the freedom to agree alternative provisions, they may not provide for review to be initiated only by the landlord and upwards only clauses are barred. Any contractual terms in the lease should be considered carefully.

10.2 No statutory provision is made for rent reviews for SLDTs with their shorter term. As a result, if any need is seen for a rent review within, say, a five year SLDT, it must be provided contractually.

11. Third Party Determination of a Rent Review

11.1 **General** – Since the 2003 Act, disputes over rent reviews under the 1991 and 2003 Acts between the landlord and the tenant of an agricultural holding can be referred by either party unilaterally to the Land Court. Even if a s.13 notice has been served, the parties can agree to use other methods of dispute resolution.

11.2 Determination by the Land Court

11.2.1 Unless agreed otherwise, the Land Court is the body to determine rent review disputes that cannot be settled by negotiation, doing so in accordance with s.13. The Court has published its *Plain Guide to Litigation* to assist. As the process of an application unfolds, so the Court will tell the parties, stage by stage, what has to be done and what happens next. The Court makes its decision on the basis of the evidence provided by the parties.

11.2.2 Case law has held that the application should be made before the term date for the rent review. It must be made in writing – the Land Court offers *Application Form General 1991* for applications.

11.2.3 **Can It Be Settled?** – The Court will encourage the parties to try and settle the matter by negotiation rather than press ahead with litigation and its costs and uncertainty. The Court can sist (freeze) an application to assist this

11.2.4 **Pleadings** – These are to identify the issues in the dispute, so that all parties and the Court can understand the issues, with as many facts as possible agreed. Focusing on the real arguments also helps reduce the costs of the parties and may assist negotiations. The Court expects the parties to be both practical and realistic in their evidence and discourages skeletal applications. Where a party does not take this approach, the Court may impose a penalty for costs incurred as a result.

11.2.5 The application, supported by documents, should set out the issue, giving the other party and the Court clear notice of:

- the basic points of the case
- what outcome is wanted (such as the rent sought)
- the justification for the rent sought

with enough detail for the other party to understand the basis on which the suggested rent is sought.

11.2.6 The Court will ask the other party for a response with the same requirements as for the applicant, and confirming any points where the respondent agrees with the applicant.

11.2.7 At the hearing, each side will be able to present its case with witnesses and to question the other's witnesses with the applicant usually presenting his case and evidence first. The Court will inspect the holding and any available comparables and then give a decision and deal with expenses. The general rule is that the successful party will be found entitled to recover its expenses from the other party but that is subject to taxation while the Court's award may reflect the parties' conduct. Despite this, a successful party rarely sees full recovery of costs.

11.2.8 Appeals from the Land Court are to the Court of Session on points of law or misdirection.

11.3 Arbitration

11.3.1 Arbitration can be a more appropriate forum than a court for a practical dispute such as a rent review, using a skilled professional to determine a dispute on the basis of the evidence. The law requires him to be impartial and independent, to treat the parties fairly (including giving each the chance to put their case and deal with the other party's case) and to conduct the arbitration without unnecessary delay or incurring unnecessary expense. It requires the parties to ensure that the arbitration is conducted without unnecessary delay and without incurring undue expense.

11.3.2 Even if a s.13 notice is served, the parties can exclude the Land Court and agree to refer the rent to arbitration, whether by someone they appoint or nominating someone to make that appointment. Both the President of SAAVA and the Chairman of RICS Scotland can undertake this function. The arbitrator should be in place before the termination date in question. The procedure is to be agreed by the parties or (if they do not agree) as the arbitrator considers appropriate – he may hold a pre-meeting to discuss this. The SAAVA Short Form Arbitration Rules 2013 offers a template for this. The arbitrator will then issue his directions, confirming the procedure and timetable in writing so that both parties know what is expected of them. They have a duty to comply with those directions. Unless dealt with by written representations, there will be a hearing and the arbitrator will inspect the holding and any comparables that are available.

11.3.3 Arbitration is based on the evidence put and tested. The parties usually exchange statements of claim and each must have the chance to answer the other. Each party should have had the opportunity to respond to and cross-examine the evidence submitted by the other, testing it for the benefit of the arbitrator. The arbitrator cannot consider facts and arguments that have not been put to him and to the other party. He can himself pose questions to the parties, request further evidence on particular points or canvass assumptions and other matters provided that both parties have a full opportunity to comment on it and then respond to and cross examine the other's submission.

11.3.4 An appeal may be made against the award on a question of law to the Land Court with appeals over irregularity or jurisdiction to the Court of Session.

11.4 Independent Expert Determination

11.4.1 As the issues in a rent review may be more for expert knowledge than about contested evidence, the parties might agree to appoint an independent expert to make a final and binding determination of the rent, using his expertise, knowledge and skills, rather than just the evidence of the parties. He is required to act honestly, independently and fairly and has a duty of care to the parties. The expert is still likely to want the parties to make submissions, clarifying facts and issues, but he can proceed to his conclusion and is not bound by the evidence. There is effectively no appeal against a reasonably conducted determination.

11.4.2 The parties will need to provide the procedure to make it work and to ensure a conclusion, lest they come to disagree on the process.

11.5 Expert Witnesses

11.5.1 Evidence at any hearing by expert witnesses can offer analysis and insights from their experience. In doing this, they owe their duty to the court, not to any client, and are to fulfil this duty in a professional and objective way. Whether at the Land Court or in an arbitration, an expert witness is to draw on the full range of his experience,

disclose all relevant evidence of which he is aware and advise the court professionally. He is not to be selective or partial in this. He has a duty to explain how he has used that evidence in arriving at his conclusion.

11.5.2 This is a very different role from presenting the client's case. It is outlined in guidance such as the RICS Practice Notes for Surveyors acting as Expert Witnesses (a matter of mandatory professional discipline for RICS members acting as experts). These obligations may mean that someone who has negotiated in the review may not be able to act as an expert witness. On occasion, clients may need to be prepared for this consequence of professional obligations, perhaps sometimes a delicate task.

11.6 Treatment of Costs

11.6.1 All involved in a rent review are urged to bear costs in mind, especially as they can escalate towards a hearing. Much can be saved by identifying early those points on which the parties are agreed and clarifying the areas of dispute.

11.6.2 One way to draw attention to and potentially influence costs is to use a settlement offer. If negotiations are not moving to a conclusion, it can be useful to consider carefully with the client whether and when to make a settlement offer and at what figure. Careful consideration should be given to any settlement offer that is received – it is an incentive to realism since all litigation carries risks.

11.6.3 Parties should try to keep an objective view of the issues, their prospects and positions to help manage their liabilities. In particular, their advisers should counsel them as to the risks at stake.

12. Mediation

The parties may also consider mediation. This is a private process, facilitated by a person acting as a mediator, to try to find an agreed resolution of the issues between the parties. Unlike the formal methods for dispute resolution, it is expressly not an adversarial method. It is not limited to the issue in hand (such as the rent) but can look at all the issues troubling each of the parties and so can result in a "package" settlement. It is not guaranteed success – it cannot be used to impose a settlement. The parties must be willing to enter the process in that light and develop their concerns and solutions. If they do come to an agreement and that agreement is properly recorded, then it is final and binding between them. If they do not come to an agreement, then their recourse is to the formal methods already discussed, so far as they are still available, having already incurred the costs of mediation.

13. Recording the Agreement

Once agreement is reached, its terms relating to rent and other matters which have been resolved become part of the terms of the tenancy and should be recorded to avoid subsequent uncertainty or dispute.

APPENDIX

AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991

Provisions on the Variation of Rent: Section 13 (as amended)

NB – The separate but related provisions of s.9 of the 2003 Act for Limited Duration Tenancies are set out in the Annexe to Chapter 25 of the Practitioner's Guide.

13 Variation of rent.

(1) Subject to subsection (8) below, the landlord or the tenant of an agricultural holding may, whether the tenancy was created before or after the commencement of this Act, following notice in writing served on the other party, have determined by the Land Court the question what rent should be payable in respect of the holding as from the next day after the date of the notice on which the tenancy could have been terminated by notice to quit (or notice of intention to quit) given on that date.

(2) In relation to such a question, the Land Court shall determine, in accordance with subsections (3) to (7A) below the rent properly payable in respect of the holding as from the "next day" mentioned in subsection (1) above.

(3) For the purposes of this section the rent properly payable in respect of a holding shall normally be the rent at which, having regard to the terms of the tenancy (other than those relating to rent), the holding might reasonably be expected to be let in the open market by a willing landlord to a willing tenant disregarding –

(a) any effect on rent of the fact that the tenant is in occupation of the holding, and

(b) any distortion in rent due to a scarcity of lets,

but having regard to the matters referred to in subsection (4) below.

(4) For the purposes of determining the rent properly payable under subsection (3) above, the Land Court shall have regard to the following—

(a) information about rents of other agricultural holdings (including when fixed) and any factors affecting those rents (or any of them) except any distortion due to a scarcity of lets; and

(b) the current economic conditions in the relevant sector of agriculture.

(5) The Land Court shall not take into account any increase in the rental value of the holding which is due to improvements—

(a) so far as—

(i) they have been executed wholly or partly at the expense of the tenant (whether or not that expense has been or will be reimbursed by a grant out of moneys provided by Parliament) without equivalent allowance or benefit having been made or given by the landlord in consideration of their execution; and

(ii) they have not been executed under an obligation imposed on the tenant by the terms of his lease;

(b) which have been executed by the landlord, in so far as the landlord has received or will receive grants out of moneys provided by Parliament in respect of the execution thereof,

nor fix the rent at a higher amount than would have been properly payable if those improvements had not been so executed.

(6) The continuous adoption by the tenant of a standard of farming or a system of farming more beneficial to the holding than the standard or system required by the lease or, in so far as no system of farming is so required, than the system of farming normally practised on comparable holdings in the district, shall be deemed, for the purposes of subsection (5) above, to be an improvement executed at his expense.

(7) The Land Court shall not fix the rent at a lower amount by reason of –

(a) any dilapidation or deterioration of, or damage to, fixed equipment or land caused or permitted by the tenant; or

(b) any reduction in the rental value of the holding resulting from –

(i) the use of the land or part of the land, or changes to the land, for a purpose that is not an agricultural purpose; or

(ii) the carrying out of conservation activities on the land.

(7A) The Land Court shall take into account any increase in the rental value of the holding, resulting from the use of the land for a purpose that is not an agricultural purpose.

(8) Subject to subsection (9) below, a reference to the Land Court under subsection (1) above shall not be demanded in circumstances which are such that any increase or reduction of rent made in consequence thereof would take effect as from a date earlier than the expiry of 3 years from the latest in time of the following—

(a) the commencement of the tenancy;

(b) the date as from which there took effect a previous variation of rent (under this section or otherwise);

(c) the date as from which there took effect a previous direction under this section that the rent should continue unchanged.

(9) There shall be disregarded for the purposes of subsection (8) above—

(a) a variation of rent under section 14 of this Act;

(b) an increase of rent under section 15(1) of this Act;

(c) a reduction of rent under section 31 of this Act.

(d) a variation of rent arising from—

(i) the exercise or revocation of an option to tax under Schedule 10 to the Value Added Tax Act 1994; or

(ii) a change in the rate of value added tax applicable to grants of interests in or rights over land in respect of which such an option has effect.

Notes

In addition to the substantial revisions made by the Agricultural Holdings (Scotland) Act 2003:

1. The words “following notice in writing served on the other party” were added to s.13(1) by s.5 of the Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 (SI 232)

2. S.13(9)(d) was added by s.3 of the Agricultural Holdings (Scotland) (Amendment) Act 2012.

A Practitioner's Guide to Agricultural Rent Reviews

This 203 page book reviews the law, procedure, practice, valuation and dispute resolution for rent reviews under the Agricultural Holdings (Scotland) Acts of 1991 and 2003. It outlines the legal procedures to initiate a rent review and the process, urging the importance of negotiation. Having reviewed the valuation basis set by law, it offers a commentary on the issues involved including marriage value, scarcity, tenant's improvements, comparables, budgets and other matters, supported by illustrative examples for particular points and consideration of some areas that can be found difficult. It concludes with the mechanisms for dispute resolution whether by the Land Court or other means including arbitration.

It is available from the Central Association of Agricultural Valuers at Market Chambers, 35 Market Place, Coleford, Gloucestershire GL16 8AA for £80.

The Central Association of Agricultural Valuers (CAAV) is the specialist professional body representing, briefing and qualifying over 2,600 professionals who advise and act on the very varied matters affecting rural and agricultural businesses and property in Great Britain. Instructed by a wide range of clients, including farmers, owners, lenders, public authorities, conservation bodies and others, this work requires an understanding of practical issues and a professional approach which the CAAV brings to its advice to governments throughout the UK and in Brussels. Fellows of the CAAV are designated by the letters FAAV.

Royal Institution of Chartered Surveyors (RICS) is the world's leading organisation for professionals in property, land, construction and related environmental issues. Since 1868, RICS has been committed to setting and upholding the highest standards of excellence and integrity – providing impartial and authoritative advice on key issues affecting businesses and society. Over 140,000 professionals working in the major established and emerging economies of the world have already recognised the importance of securing RICS status by becoming members.

Scottish Agricultural Arbiters & Valuers Association (SAAVA) is the representative body for agricultural valuers and related professionals in Scotland and is affiliated to the CAAV. With some 200 members, it provides a forum for discussion of practical and legal problems, the promotion of good practice, training and continuing education. It is a member of the Tenant Farming Forum and a statutory Arbitral Appointments Referee, able to appoint arbitrators and offers a short form of arbitration for agricultural tenancy disputes.