

Agricultural Rent Reviews – practical steps when applying to the Scottish Land Court for a rent determination



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Agricultural tenancies are a key feature of the Scottish agricultural landscape and certainty of rent levels for tenanted farms is fundamental to the stability of the tenanted market and the wider agricultural economy.

Introduction

The majority of agricultural tenancies are secure tenancies under the Agricultural Holdings (Scotland) Act 1991. Section 13 of the Act provides a framework for the determination of agricultural rent reviews where the parties cannot reach agreement.

Section 13 allows an application to be made to the Scottish Land Court. Certain practical steps should be borne in mind when such an application is made.

Rent review process

Either the landlord or tenant can initiate the rent review process by formally writing to the other party in terms of Section 13(1) of the Act. The letter must be served no less than one year and no more than two years prior to the date when the revised rent is due to come into effect. Service can be done following informal discussions between the parties, and will kick-start a more formal negotiation process to determine the level of the revised rent.

Parties should consider the recommended guidance published jointly by the NFU, Scottish Land and Estates and the Scottish Tenant Farmers Association earlier this year, available [here](#). This guidance should be used as a first step in a rent review process between landlords and tenants that is designed to be open, practical and based on an assumption of reason and reasonableness amongst all involved. The purpose of the guidance is to eliminate prolonged rent review disputes that have been seen in the agricultural tenancy market in recent years.

Factors to be considered in a rent review

Open market rent is the current method for agricultural rent reviews under the Act. Open market comparables and the rentals achieved under SLDTs and LDTs are accepted as evidence in determining the rent. However, the security of tenure created by the Act has resulted in limited movement in the open market, with the effect that a rent review mechanism is really required to enable parties to successfully determine the rent. An Inflation Linked Sense Test was established by guidance issued by the NFU, Scottish Land and Estates and the Scottish Tenant Farmers Association in 2014. The updated 2015 guidance expands on this and should be borne in mind in rent review discussions.

When should an application be made to the Land Court?

In the rare cases when agreement cannot be reached by negotiation, it is open to either party to make an application to the Scottish Land Court, or otherwise seek to have the dispute resolved by an expert or via arbitration. An application to the Scottish Land Court is really a last resort and only relates to disputes about the level of rent – the court cannot be asked to resolve any other issues between the parties.

Parties must make the application to the Scottish Land Court before the review date, otherwise the rent review notice which was previously served will be treated as spent. However, this does not mean that parties should stop discussing and negotiating. Court proceedings are costly and it is in parties' interests to agree the reviewed

rent without the need for court involvement. Often the application is made to the court in advance of the review date simply as a protective measure to leave open the option to have the rent determined by the court if negotiations break down.

The application to the Scottish Land Court

Applications are made using a form prescribed by the court. It includes a statement of facts setting out the dispute and level of rent sought. There are no strict rules about what the statement of facts should include. Enough needs to be said to give the other party fair notice of the applicant's case. Essentially, this means setting out the arguments in sufficient detail to allow the other party to understand the basis for the level of rent sought.

What should the statement of facts cover?

The court does not lay down any firm rules on what material they expect parties to provide. Their guidance states:

- It is up to the parties to decide what evidence to present and clearly much will depend on what is truly in dispute.
- Matters not in dispute but which are relevant to the determination of the rent should be set out.
- Similarly other relevant matters which are in dispute need to be spelled out, so that both sides and the court know in advance of the hearing where the differences between parties lie and what relevance they have.

As a general guide, the court normally expects the application to include the information noted below:

- Description of the land — areas and categories of land together with comment on stocking and cropping capacity.
- Aspects of the lease relevant to rent, including detail of any post-lease agreement and other conditions. This would include obligations relating to how the subjects are to be used and how responsibility for maintenance of fixed equipment is allocated.
- Detail of the fixed equipment provided by the landlord.
- Detail of the tenant's improvements (on which rent will not normally be paid).
- Details of any particular advantages or disadvantages which the various farms have and how this might bear on the rent.
- Photographs and plans also assist the court.

Next steps

Once the application is made, the court will send a copy of it to the other party and ask for a response, which should include confirmation about any points made in the application that are not disputed.

Negotiations between the parties should continue but if agreement still cannot be reached, the court will fix a hearing at which each party will be given the opportunity to present its case with witnesses. The court will normally inspect the subject farm and may also inspect any farms on which the parties rely as comparables.

The court will then give its decision as to the level of reviewed rent.

Costs

Applications to the Scottish Land Court for determination of an agricultural rent are costly. The fee for the initial application is a flat fee for the first £500 of rent sought, and a further fee of £7.50 for each additional £100 of rent sought. If the parties resolve matters themselves then instead the fee will only be £80 for dismissing the court action.

If matters do require further court procedure and a hearing is fixed, the general rule is that the successful party will be entitled to recover a proportion of its expenses from the other party. The successful party rarely sees full recovery of its costs.

Proposed reform

The Land Reform (Scotland) Bill 2015 contains proposals that may impact on agricultural rent reviews. A distinction must be made between secure tenancies under the 1991 Act and the new Modern Limited Duration Tenancies proposed by the Bill.

The Bill provides specific procedures for initiating a rent review and a subsequent application to the Scottish Land Court for a rent determination relating to secure tenancies. At present there is no reference in the Bill to the determination of rent by the Scottish Land Court in the event of a dispute regarding rent reviews in a Modern Limited Duration Tenancy.

For more information regarding agricultural rent reviews in general, please contact [Peter Misselbrook](#) or for more specific guidance on applications to the Scottish Land Court, please contact [Stephanie Hepburn](#) in our litigation department.