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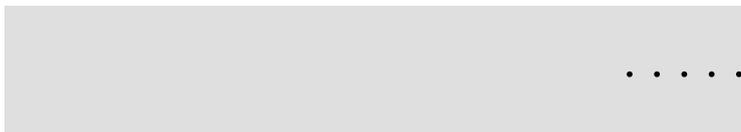
LAND REFORM REVIEW

**Submission of evidence in response to the first call for evidence
from the Land Reform Review Group**



Dr Reginald Melton

January 2013



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I write as a member of the public living in a rural area of North East Scotland. I have close contacts with tenant farmers in the area, and, as an individual who has a strong sense of right and wrong, I have been shocked by the way in which I have seen tenant farmers treated over the past ten years.

In the paragraphs that follow I will provide examples of what I perceive as *the unacceptable treatment of tenant farmers* by their lairds and factors. In doing this the intent is to highlight the fact that we are talking about human beings whose lives can be totally destroyed by the way in which they are treated.

Bearing in mind that there will be those who will argue that the events that I describe are isolated incidents that do not reflect a true picture of the current situation, I will go on to provide some facts and figures that suggest that what I have observed locally is simply the tip of the iceberg, and that what we are witnessing is *a second highland clearance* in which tenant farmers are being ruthlessly evicted from their land in ever increasing numbers without the public being aware of what is going on.

Despite the changes envisaged in the Agricultural Holdings Act (2003) I believe that considerable problems remain on the ground, and I hope that the Land Reform Review Group will be able to address some of those that I raise in the body of this submission. In my final comments I will include a number of broad *recommendations*. However, these will be more to do with issues that need to be addressed rather than with the solutions.

1 The unacceptable treatment of tenant farmers

My intent in the first part of this paper is to provide examples of the treatment of tenant farmers that I find so unacceptable, and I shall do this by describing the way in which three tenant farmers – all of them personal friends – have been treated by their lairds and factors. For the moment these friends will remain anonymous, and I will simply refer to them as *tenant farmers one, two and three*.

Tenant Farmer One

The first of my friends was forced to give up his farm after 30 years of tenancy. During this period he had had three contracts, each one of ten years, and his problems arose out of the fact that in 2002 he was pressurised into signing a ‘partnership agreement’. At that time the estate told him that this agreement would not replace his rights as a tenant farmer under the Agricultural Holdings Act (1949), but that it would simply complement his existing rights. This was clearly untrue. The new agreement focused totally on the rights of the estate and, in so doing, stripped him of many of his rights. Although my friend was not very comfortable with the terms of the agreement, he believed that he had no option other than to sign it, as he felt that if he refused to do so he would lose his tenancy. So what happened under this agreement that I found so unforgivable?

My friend had an outstanding reputation as a tenant farmer, and had no reason to believe that his tenancy would not be renewed when the current contract expired in 2012. He was therefore profoundly shocked to be told, twelve months prior to

the expiry date, that his contract would not be renewed for a fourth term. He was also shocked to be told by his landlord that under the terms of his partnership agreement the estate had no obligation to compensate him for the improvements he had made to his farm during his period of occupancy, despite the fact that these included such items as a new track to the farm, two barns that he had erected at his own expense, and extensive work that he had done on fencing only months prior to receiving his notice. Not surprisingly, he fought long and hard over the final twelve months of his contract to gain compensation for the improvements that he had made, but in the end he only obtained about half of the compensation that his 'land valuer' believed would have been a fair settlement.

Why was he ejected in such a brutal manner after working so hard over thirty years to create a reasonable living out of his farm? With the benefit of hindsight one might highlight a number of factors that could have been involved.

The first factor was to do with the increase in rent that occurred every three years. The rent was typically broken down into components, and following one of the earlier rental reviews he was staggered to find that the rent on a 12 acre field had been doubled. This was because, over the previous four years, he had transformed the field from a hillside covered with dense gorse bushes into good quality grazing land for his cattle. Needless to say, he objected to the increase, but to no avail. Over the years that followed he found history repeating itself with rent increases still being imposed when he made subsequent improvements to his land and farm buildings. On several occasions he objected to the logic behind such increases, and inevitably this created a degree of tension between him and his landlord.

The second factor that raised tension between him and his landlord was the Single Farm Payment. My friend had applied for, and obtained, the right to Single Farm Payments under the terms of the Common Agricultural Policy, but once the laird became aware of this, he claimed that he should have been the recipient of the payments. When my friend disagreed with this the laird then modified his claim to press for an equal share in the payments under the existing partnership agreement - even though he had only invested a nominal sum in the partnership. Again my friend said that this was not acceptable to him, and the issue was raised again and again until the end of his tenancy. It was in fact only during the final weeks of his tenancy, when the question of compensation for improvements was being argued out, that the laird finally accepted that he had no right either to the Single Farm Payment or to a share in it.

There were probably other factors that contributed to my friend's eviction, but I will only refer to one more. This emerged during the final months of his tenancy when it became clear that, once he had departed, the estate intended to use large areas of his farm for the planting of trees. Needless to say, they were expecting to get substantial grants from the EEC for this purpose.

Tenant Farmer Two

The second of my friends was a secure tenant farmer following in the footsteps of his father and grandfather before him. He was recognised as an outstanding breeder of high quality pedigree cattle, and was very much respected in the area. He was a very proud man who kept his farm in immaculate condition.

In the spring of 2010 he found himself unable to cope any longer with extreme knee problems, and he was advised that he would need to have both knee joints replaced. He therefore arranged to have the first joint replaced in March of that year and the second five months later. Advised that he would need the rest of the year to recover, he set about making arrangements to keep his farm going in his absence. He arranged for his cattle to be ‘farmed out’ to a neighbouring farmer for the rest of the year, and to cover the related costs he arranged to sublet two of his fields for the planting of crops. However, in his haste to get the arrangements in place, he failed to request permission from the laird for the planting of the crops, and he paid heavily for this mistake. When he returned home, following his operations, he found that he had been given notice ‘to quit’ the farm within six months because of his failure to obtain the necessary permission for the planting of the crops. My friend tried to explain to his landlord how this had happened, but his laird refused to accept his explanation, and a long legal dispute followed. However, in the end my friend had to accept the termination of his tenancy, as he could not afford to pursue the case any further, and he finally left the farm in November 2012.

How is it possible for a secure tenant farmer to lose his tenancy and livelihood under such circumstances? Why did the estate behave so ruthlessly? Surely, some sort of fine would have been more appropriate in such extenuating circumstances? Once again one might surmise on possible reasons for his summary eviction, and I will mention two of these here.

In common with Tenant Farmer One my friend found the tri-annual rental reviews extremely stressful, as he found himself increasingly challenging the magnitude of the increases to be imposed and the logic behind them. For example, at one point he upgraded two of the cottages on his farm – one to accommodate his stockman and the other to accommodate his dairyman, both much valued workers on his farm. However, in the subsequent rental review he was shocked to find that his rent had been increased once again without taking any account of the investment he had made in the cottages. Although he objected to the increase it was to no avail. He was aware that he could have taken his case to the Land Tribunal, but he didn’t because of the cost involved and because it would have increased the tension between himself and the estate.

Another possible reason for my friend’s eviction only became clear following his departure. It was then that he learnt that the rental of much of his land had been taken over by a neighbouring dairy farmer who was in the process of increasing the scale of his operations. With two very large modern buildings housing up to a thousand cattle in each, the dairy farmer in question had been searching for additional land for his cattle, and when my friend had departed he immediately took over a considerable amount of my friend’s land at double the rent he had been paying - a very significant financial gain for the estate.

Tenant Farmer Three

The third of my friends has a secure tenure - having followed in the steps of his father and grandfather before him. Over the years he has become a very successful tenant farmer with much of his gains deriving from his diversification of use of his land and buildings. Unfortunately, as he became more and more successful, he ran into ever increasing problems with the estate.

His problems began around 2005 when he asked the estate for permission to make use of his two large Dutch Barns for commercial storage, and they agreed verbally to this request. However, a few months later, when they observed how his business was expanding and thriving, they decided to withdraw their permission. Believing that he had a right to diversify the use of his land and buildings, my friend decided to take his case to the Land Tribunal.

With this in mind he drew up plans for the complete renovation of the two Dutch Barns and for the construction of two new, very large Storage Facilities, and presented his case to the Land Tribunal. However, just before the case was to be heard in court the estate withdrew its objections, and my friend was able to go ahead with his plans and the development of what proved to be a very successful business.

Once the estate saw how successful he had become they wanted a significant share in the profits – even though they had made no financial contribution to the conversion of the barns and the erection of the new storage facilities. The rent they demanded for the new facilities increased in leaps and bounds with each tri-annual review until it became ridiculous. In the latest review, which is still being disputed, the estate demanded an annual rent that exceeded the combined annual income gained from the farm and the storage facilities. At this point my friend decided he had no choice but to submit his objections to an independent ‘arbiter’, and he is now awaiting their findings.

My friend finds himself spending half of his working life fighting what he perceives as the unreasonable demands of the estate, and the resultant conflict and stress appears to be never ending. In fact, he is convinced that the estate hope that he will give way under the ever increasing financial and mental pressure and give up his tenancy. Why should they want him to give up his tenancy? The estate could well benefit from his departure in a number of ways, and the following is simply one of these.

In 2007 my friend discovered that some 15 acres of his land had been included in the County Development Plans for the building of houses. No one had discussed this with him, and he therefore asked for a meeting with his landlord and his factor. They agreed to the meeting, but they then took the line that there was nothing to discuss, as it was possible that the plans would never come to fruition. However, they did make it clear that there was no way in which they would object to the plan since, as owners, they had everything to gain from such a change in use of their land. Following this response my friend then wrote to the County Council objecting strongly to the proposal and to the fact that he had not been consulted. The Council acknowledged receipt of his letter, but he has heard nothing further from them. Clearly, there is something very wrong when discussion can take place on the use of a tenant farmer’s land without involving the tenant farmer in that discussion.

In perspective

Almost a hundred years ago a report, *Scottish Land Rural and Urban*, produced by the Scottish Land Enquiry Committee (Hodder and Stoughton, London, 1914), said that

most people will admit that the land laws are wrong when the following things are not only possible, but are, and have been, actually done, and that not seldom:

- *Confiscation of a tenant's improvements.*
- *Raising rent on a tenant's improvements*
- *Eviction of a tenant who has improved and sunk capital in permanent improvements, and re-letting the farm to a new tenant at a higher rent.*
- *Eviction of a tenant because he enforced his rights re ground game, heather burning, etc.*
- *Eviction on capricious grounds.*

It would seem that many of these forms of abuse continue to this day.

2 A Second Highland Clearance

You might be tempted to think that the individual cases that I have reported on are isolated incidents, and that the events highlighted in the report of the Scottish Land Enquiry Committee (1914) are a thing of the past. I would argue that this is not the case. In my experience tenant farmers continue to be treated unfairly and continue to be removed from the land on an unprecedented scale. In backing up my arguments in this part of the paper I shall refer repeatedly to the book by Andy Wightman entitled *The Poor Had No Lawyers* (Berlinn Ltd, Edinburgh, 2011). Apart from his book containing a great deal of useful data I have another reason for referring repeatedly to Wightman, and I will explain this in my final recommendations.

Let's begin with my claim that tenant farmers are being removed from the land on an unprecedented scale. According to Wightman (p178) between 1950 and 2000 the percentage of farmers who were tenants (as opposed to owners) fell from 60% to 32%, and the percentage is continuing to fall. There are several reasons for this dramatic change, and in the paragraphs that follow I will try to identify some of them.

Partnership Agreements

Partnership agreements legalised under The Agricultural Holdings Act (1991) were typically designed to look after the rights of the landowner and not the individual tenant, and it made it much easier for landlords to evict tenant farmers for spurious reasons. Although partnership agreements were made illegal under the Agricultural Holdings Act (2003), any partnerships already in existence at the time of the Act have been allowed to continue for the period of the contract, and many are still in existence. In fact, Tenant Farmer One, described in the first part of this paper, was evicted under the terms of such an agreement some nine years after the Act was passed. I don't believe that those instigating the Act expected this to happen, and landlords were certainly not expecting this at that point in time. Thus, in the period immediately prior to the Act coming into being, according to Wightman (p173), there was a great rush of eviction notices being served on tenant farmers in the belief that once the Act came into being this would no longer be possible.

Farm Payments under the Common Agricultural Policy

Under the terms of the Common Agricultural Policy landowners can often earn more in grants and subsidies than they can from their tenant farmers. For example, between 2000 and 2009 the Scottish estates receiving the 50 largest farm subsidies had incomes from these sources that averaged between £223,000 per annum at the lower end of the scale to £855,000 per annum at the upper end, while in the year 2009 four estates received over £1,000,000 in such subsidies (Wightman, p 181).

In order to maximise their income from such sources landowners are increasingly moving towards managing their farms themselves rather than relying on tenant farmers. In the case of Tenant Farmer One the landlord did everything in his power to have the Single Farm Payments paid to him rather than to the tenant farmer, and his failure to achieve this was possibly one of the reasons why he was finally evicted.

Financial Gains from Land Ownership

One of the greatest financial benefits that accrue from land ownership is the inexorable rise in land values year upon year ensuring that ownership of land in itself is an excellent investment. This partially explains why there are more than one hundred estates in Scotland with holdings exceeding 20,000 acres, while the largest holdings range from 100,000 to more than 200,000 acres (Wightman, pp 115-120).

With such financial benefits available, it is not surprising to find that most landlords nowadays are more concerned with ensuring that they obtain the maximum financial returns from their land than with the welfare of the tenant farmers on their land.

The pressure suffered by most tenant farmers

As we have seen, ever increasing rents following tri-annual rent reviews can place enormous stresses on tenant farmers. However, very few tenant farmers are willing to speak out publicly about such pressures, as they are afraid that in doing so they might well place their tenancy at risk. Having said this, the reality of these pressures is there for all to see in the number of tenant farmers who have committed suicide following the loss of their tenancies. In 2012 two such cases caught my attention.

The first was the case of a tenant farmer in the Highlands who, faced with an increase in rent that he simply could not afford, took his own life – by hanging himself.

The second was the case of a tenant farmer from Fife, who had inherited the tenancy of his farm from his uncle (rather than from his father and grandfather before him). Faced with an eviction notice he took his case to court, but failed to gain its support. Faced with the reality of losing his farm, he committed suicide – by shooting himself.

3 Recommendations

In the first part of this paper I have provided examples of Tenant Farmers who in my opinion have been the subject of unacceptable treatment by their landlords. They are rare in that they are willing to speak out about the problems faced by tenant farmers. They also have a wide circle of tenant farmer friends, and are able to provide numerous examples of the stresses and strains placed on tenant farmers. As such they are a valuable source of information. If any members of the Land Reform Review Group would like to meet any of the tenant farmers I have referred to, I will be happy to arrange this.

In the first part of the paper I also highlighted the way in which tenant farmers have continued to be evicted from their farms under the terms of partnership agreements, even though the Agricultural Holdings Act (2003) made such agreements illegal. Since 2003 many tenant farmers have not only lost their farms and livelihoods, but they have often failed to gain adequate compensation for improvements that they made to their farms. Faced with eviction tenant farmers have been placed under extreme stress, and some have even been driven to suicide. I don't believe that this is acceptable in a civilised society, and, although it would not be simple, I would like to see consideration given to ways in which such tenant farmers could be helped to claim compensation for the financial losses and the mental stresses they have suffered through such evictions. At present the law does not help.

In the second part of this paper I included a number of references to the work of Andy Wightman, whom I see him as a valuable source of information in the field of land reform. He is the author of several highly relevant books and has an up to date website, www.andywightman.com, providing information on the latest land reform issues. In referring repeatedly to his work the intent was to bring his work to the attention of the Review Group. I believe he has a great deal to offer, and I would like to suggest that he be given a role within the group. It could be as an Adviser, but I would hope something more than this might be contemplated. For example, he could be invited to make a presentation to the group on the type of land reforms he would like to bring into being, and this would provide the Review Group with a valuable opportunity to question him in depth on his views.

There is one further issue that I would like to highlight, and that is the fact that land, as a scarce commodity, increases in value year upon year, and yet there is no tax on these incremental increases in wealth. I would strongly support an annual tax on the increases in value reported. However, Wightman (p284) suggests an alternative approach (possibly because it would be simpler to administrate) which is to impose a tax on land values, and he claims that a Land Value Tax of 3.2% could yield a tax return equivalent to that which is currently achieved through Council Tax and Business Rates combined. (Where land values increase on average at about 9.8% per annum, this would still leave landowners with a substantial profit on their investments). Clearly, a Land Value Tax could be used to reduce our existing taxes or it could be used to reduce our current national debt, and I would like to suggest that the Land Reform Review Group gives serious consideration to the introduction of some form of Land Value Tax.