



Scottish Land Commission
Coimisean Fearainn na h-Alba

Issued by the Tenant Farming Commissioner

A GUIDE TO – The use of Comparables in Rent Reviews



The Legislative Background

Rents of Short Limited Duration Tenancies (SLDTs) are not regulated and in the case of Limited Duration Tenancies (LDTs) and Modern Limited Duration Tenancies (MDTs), the parties to the lease are at liberty to agree on how rent reviews will be carried out. In the case of 1991 Act tenancies, and LDTs and MLDTs where no alternative methodology has been agreed, section 13 of the 91 Act sets out the process to be followed by the Land Court in the event that the parties cannot reach agreement.

Should a dispute be referred to the Land Court, the Court is required to determine the rent properly payable in respect of a holding, which should normally be the rent at which, having regard to the terms of the tenancy, the holding might reasonably be expected to be let in the open market by a willing landlord to a willing tenant. For the purposes of determining the rent payable, regard is to be had to information about rents of other agricultural holdings and any factors affecting those rents, except any distortion due to scarcity.

Because of the possibility that the review will end in a dispute which has to be referred to the Land Court, it is usual for parties involved in a rent review to use the above methodology but this is the default position and the parties are free to use whatever methodology can be agreed between them in order to arrive at an agreed rent.



What Comparables May be Used

In the ideal world, a rent review involving a 91 Act tenancy would draw on comparables from open market lettings of similar tenancies but, in the continued absence of open market lettings of 91 Act tenancies, the Land Court has determined that “other agricultural holdings” includes 2003 Act fixed duration tenancies so open market lettings of SLDTs and MLDTs can be used as comparables, as can negotiated rents for both 91 Act and 2003 Act tenancies as long as appropriate adjustments are made.

Identifying the Comparable Holding

Comparables should be as close to the holding under review as possible in terms of the physical nature of the holding, the terms of the lease, in as much as those terms affect the rent, and the date on which the rent was set. Ideally, they will be in the same region and ideally the comparable holding will be identified so that there is full transparency for both landlord and tenant and an ability for both parties to assure themselves that appropriate adjustments have been made. Landlords and tenants are encouraged to make the appropriate information available so that the sector as a whole can benefit from the availability of sound evidence in rent reviews.

It is recognised however that not all landlords and tenants are willing to disclose the name of the holding and it is common therefore for comparables to be advanced as Farm A, Farm B etc. In such cases it is particularly necessary to provide as full a description of the relevant aspects of the comparable holding as possible. The Land Court guidance on rent reviews is clear that when faced with a dispute, the Court will normally visit the subject farm and may also visit any farms advanced as comparables. That may raise an issue about the Court’s willingness to accept unidentified holdings as comparables. In any event, the Court will expect the parties using comparables as evidence to be prepared to show that the comparable is relevant and has been appropriately adjusted.



Providing Details of the Comparables

Building on the Land Court Guidance, the following is a list of the key details that should be provided when a comparable holding is used as evidence.

- a. A description of the land and its potential. This could be by reference to the area in each land class (e.g. 140 acres class 3.1 and 200 acres class 4.1) and/or by reference to its use (e.g. 250 acres arable, 100 acres improved pasture and 200 acres unimproved hill). Any other factor affecting the productivity of the holding should be identified. e.g. the land is particularly stony, or part is subject to regular flooding.
- b. Any aspects of the lease that are relevant to the rent. Are there any restrictions or obligations that are non-standard. For example, is there a Post Lease Agreement (PLA) in place that transfers obligations for replacements and renewals from the landlord to the tenant. Are there any restrictions on how the holding can be used.
- c. Details of the level of fixed equipment provided by the landlord. Is it a bare land let, is the fixed equipment basic and, therefore limits the productivity of the holding, or is it a well-equipped holding with a substantial input of landlords fixed equipment that enables the tenant to farm efficiently and productively.
- d. Details of the extent of tenant's improvements. Since the rent can only be levied on the fixed equipment provided by the landlord, if a comparable with a similar land type is used as evidence it will be important for the other party to know whether that is the condition in which the holding was provided or if the current land use and productivity is a result of significant investment by the tenant.
- e. Details of any particular advantages or disadvantages that the comparable has and how this might affect the rent. For example, the rent may reflect the fact that the tenant is allowed to use two surplus farm cottages as holiday lets or that the farming type is restricted in some way.
- f. The type of tenancy (91 Act, SLDT, LDT or MLDT) and the origin of the current rent for the comparable. (e.g. an open market letting of a SLDT in 2023 or a rent review of a 91 Act tenancy in 2022).

Adjusting the Rent of the Comparables

This is not an exact science, but the party advancing the comparable as evidence must show what adjustments have been made to reflect significant differences between the subject holding and the comparable. In particular, the question of scarcity must be addressed where the comparable involves an open market letting. The party submitting the comparable must use their best judgment, and as such supporting evidence can be gathered, to adjust the rent of the comparable, normally by showing what percentage has been added or subtracted for each factor where an adjustment has been required.

Scarcity

The principle behind adjusting for scarcity is that, in an unbalanced market place with an excess of demand over supply, a person bidding for a tenancy in an open market competition may be tempted to offer a premium over what, in a balanced market place, might be considered to be a rent that is sustainable and which reflects a fair share of the profits between landlord and tenant. In the ideal world, the range of offers would be available and it would be apparent whether the landlord had accepted the highest offer or one which appeared to be sustainable, and in line with the productive capacity of the holding, but such information is seldom available. The parties involved in the review, must use their experience and judgement to assess and agree what adjustment for scarcity is appropriate.

Marriage Value

Where a holding has been let to someone who has an existing holding that is adjacent to, or in the immediate vicinity of, the holding that has been let it is reasonable to assume that there will be cost advantages and that, therefore, a premium will have been included in the rent offered. A downward adjustment for marriage value is likely to be appropriate in such circumstances.

The Use of Fixed Duration Tenancies (FDTs)

The ability to use rent of FDTs as comparables raises some interesting issues. It is self evident that, all other things being equal, a tenant would be inclined to offer more for a 91 Act tenancy than for a FDT, reflecting all the additional advantages and opportunities that come with the former. That would suggest that the rent of a FDT should be adjusted upwards and the introduction of the Relinquishment and Assignment provisions, which effectively attribute a capital value to a 91 Act tenancy, might strengthen that argument. However, the advantages attached to a 91 Act tenancy do not necessarily bring an increase in productivity and a greater ability to support a higher rent. The capital value, for example, can only be realised should the tenant decide to quit the holding and makes no contribution to the productive capacity, which is the main determinant of the rent that can be supported. In the Roxburgh Mains case, the Land Court acknowledged the issue but declined to offer a view on any influence it should have, preferring to leave that to be argued in a future case. That would seem to be an appropriate position to adopt.

Land Quality

The rent of the comparable will need to be adjusted upwards or downwards to reflect significant differences in land quality and productivity. Attributing a rent/acre to each land class/use then adjusting the average rent/acre for the holding to account for the different proportions of each land class is an appropriate way to deal with this.

Diversification

Many holdings will have some type of non-agricultural activity in the form of, for example, a bed & breakfast business or a farm shop. In consenting that activity, the landlord and tenant may have reached an agreement on how the benefits will be shared. That may involve an addition to the overall farm rent or a separate arrangement for profit sharing. If either the subject holding, or the comparable, has a non-agricultural business, the extent to which that is reflected in the farm rent must be identified and appropriate adjustments made.

Post Lease Agreements

Where responsibility for repairs, maintenance, renewal and replacement of fixed equipment is not in accordance with the standard arrangement (tenant responsible for repair and maintenance, landlord for renewal and replacement) this should be identified and an upward or downward adjustment made to reflect the transfer of additional responsibilities to the tenant or landlord.

Landlord's Fixed Equipment

A holding where the landlord has provided a high level of fixed equipment, such that the tenant can run the holding productively and efficiently would be expected to attract a higher rent than one where the level of fixed equipment provided is basic and limits the tenant's ability to farm efficiently and productively. An indication of the level of fixed equipment provided in the subject and comparable holdings should be provided along with a transparent adjustment, upwards or downwards, to the comparable to reflect significant differences from the subject holding.



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