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SCOTTISH LAND COMMISSION
COIMISEAN FEARAINN NA H-ALBA

Amnesty on Tenant's Improvements

This leaflet provides information and case studies for tenant farmers on how the amnesty works and the procedures to be followed.



Examples of the eligibility of items that might be included under the Amnesty

EXAMPLE 1

A secure tenant contacted the TFC for advice regarding a building that was being considered under the amnesty. He had compiled a list of tenant's improvements which he had discussed with his landlord's agent. They had agreed most items but were still considering a particular building which the tenant had constructed at his own expense but which the landlord had refused to grant permission for at the time. The building is now used for a diversified activity for which the landlord accepts income.



TFC RESPONSE

The building was built after 1948 so it is classed as a Part 2 improvement which required the landlord to be notified and which could be objected to by the landlord. Whilst the Tenants' Amnesty allows certain improvements to be claimed, even if the proper procedures were not followed at the time, unfortunately this does not extend to this situation.

The building could, however, be discussed in the context of the Tenant's Amnesty and could be included as a tenant's improvement if the landlord agreed. Whilst there is not a requirement for the landlord to accept this building as a tenant's improvement, the fact that the building is now of value to both the tenant and the landlord would strengthen the case for its inclusion.

EXAMPLE 2

A landlord's agent is engaged in negotiating an amnesty agreement with a tenant and sought advice regarding a shed. The landowner says that when the tenant built a large shed he was given a period of reduced rent in recognition of the cost. Nothing was put down in writing and the tenant is seeking full recognition for the shed as an improvement.



TFC RESPONSE

The shed should be recognised as a tenant's improvement but that there should be an apportionment of ownership to the landlord in recognition of the benefit in kind that was given by means of a rent reduction. The extent of the shared ownership would need to be negotiated with the key factors being the extent of the rent reduction and the length of time that it operated. If the tenant disputes that a benefit in kind was given then, in the absence of any evidence, it may be necessary to accept that the shed is 100% tenant owned.



EXAMPLE 3

A tenant who was involved in discussions with the estate factor about the amnesty got in touch with the TFC to seek clarity on certain improvements.

The farm is a marginal holding which is very stony and at the commencement of the lease could be argued that the fields were not suitable for arable production and would be best laid out in grass. Over many years the tenant and his predecessor had removed lots of stones from the fields, some of which were removed by mechanical digger or a tractor/loader. The landlord said that this was reflected in a lower rent but the tenant claimed that a small difference in rent does not justify the poor quality of ground as in practice it takes longer to cultivate a stony field and causes much more wear and tear and breakages to machinery. Rent levels aside, the tenant was seeking clarification that under Schedule 5, Part III (29) the removal of stones, which are an obstacle to cultivation should be included in the amnesty, and asked how would it be valued at waygo.

The tenant also asked that where the estate had supplied the materials for boundary fences or drainage and the tenant the labour, whether the tenants labour would qualify for compensation at waygo.





TFC RESPONSE

The removal of obstacles to cultivation, including stones, is a part III improvement for which no notice to the landlord is required and which may be eligible for compensation at waygo. However it would be important to distinguish between the normal hand lifting of stones that might happen regularly after cultivation and the removal of large stones that would be a real barrier to cultivation and which would normally require the involvement of machinery. The former might be regarded as part and parcel of normal farming operations while the latter can probably be regarded as an operation that may be eligible for compensation at waygo. If the tenant could point to piles of large stones that had been removed or provide photographic evidence, that should be sufficient to provide proof that he had carried out the activity, particularly if it is recognised that the holding has stony soils.

When it comes to valuation, this will only be an issue if, and when, the tenancy comes to an end and the basis of the valuation will be the value to an incoming tenant. This is where the skill of a professional valuer comes to the fore. An assessment will need to be made of the extent to which the stone removal has made it easier for an incoming tenant to cultivate the land. The key thing for the tenant at this stage is to get the principle agreed that it is a legitimate tenant's improvement. The question of value can be reviewed at a later date.

With regard to the drainage and fencing, if the landlord has contributed to the cost of a tenants improvement, the valuer will take account of this when putting a value on the improvement at waygo. So, for example, if the landlord contributed, either in cash or in kind, half the cost of the work then the valuer, having calculated the value of the work to an incoming tenant, might reduce that by half.

Examples on Evidence required for the Amnesty

EXAMPLE 4

The TFC was contacted by a landlord's agent for advice. The landlord has an invoice which suggests that he paid for some of the construction of a shed that the tenant is claiming for. He wanted to know whether it is appropriate to ask for documentation such as planning consent, building warrants or electrical installation certificates etc in order to determine the date of construction. By determining the date of construction, they should be able to establish if this is indeed the shed that the landlord contributed to.



TFC RESPONSE

Under normal circumstances the key issues in determining whether a claimed tenant's improvement is eligible to be recorded as such, are:

1. The existence of the improvement can be demonstrated, either because it is clearly visible, as in the case of a shed, or because there is some other evidence in the form of photographs or an invoice to support the tenant's claim. It should not be necessary for the tenant to provide quotes, building warrants etc at this stage unless one of these documents is used to provide evidence that the improvement took place and was carried out by the tenant.
2. The improvement is one which is eligible under the statute, subject to any additional leeway provided by the amnesty.
3. The improvement is of a scale and nature which is appropriate to the holding and the improvement of its efficiency.

However in these circumstances in order to establish whether or not the landlord had contributed to the cost of the shed it is entirely appropriate to ask the tenant to provide some evidence that would determine the date of construction.

EXAMPLE 5

The TFC was contacted by both parties in an ongoing discussion about the procedures and handling of the amnesty. Tenants on the estate were providing a long list of claimed improvements without supporting evidence and, because there have been changes of estate staff, it was not possible to accept the tenants claims without searching through the files.



TFC RESPONSE

The intention behind the 'Code of Practice: Amnesty on Tenant's Improvements' is that both parties should play their part in assembling information and evidence as is necessary to establish 'ownership' of an improvement. Ideally, the landlord and tenant (or their agents) would meet on site, share that information and quickly agree on the majority of the improvements, leaving only the disputed ones to require the production of further evidence.

The onus is on the tenant to make the claim and to provide a degree of justification. The Code expects the landlord to play his part in providing information. It is suggested that:

1. Tenants do more than just provide a list of claimed improvements. It is not reasonable to expect the estate to do all the work of searching files and providing evidence. Where it is a simple matter of attaching a receipt to the claim this should be done. If it's more complicated than that the tenant should provide a note against the claim to say why he is claiming it. The proforma produced by the CAAV (available on the Land Commission website) provides a good way of recording and agreeing the final list.
2. The estate might consider ways of speeding up the process. Would it possible, for example, to employ someone for a few weeks to go through files and extract relevant information about who provided what?

In most cases a meeting on site is likely to be preferable to endless back and forward emailing. The aim should be to reach agreement on the majority of items and to avoid the need for formal claims, possibly leading to Land Court involvement. The use of expert determination to arbitrate in cases where agreement proves impossible is well worth considering.



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Completing the Amnesty

1

The tenant submits a list of claimed improvements which are within the scope of the eligibility rules and provides sufficient notes against each to enable the landlord to understand and, if necessary, verify the legitimacy of the claim.



2

Landlord and tenant (and/or their representatives) meet on the farm to review the list, to tick off agreed items and identify any items where there is dispute or uncertainty and where reasonable further evidence is required to verify the claim.



3

The tenant and landlord contribute as much evidence as they can assemble to resolve the remaining disputed items with the primary onus being on the tenant. If it is impossible to establish 'ownership' the default position is that the item is part of the landlords fixed equipment.



4

Landlord and tenant record their agreement to the final list, which may be by use of the amnesty agreement template provided by CAAV/SAAVA, available on the Land Commission's website. Both parties to retain a copy.



Find out more about the Code of Practice –
Amnesty of Tenant's Improvements and the Tenants
Improvements Amnesty Supplementary Guidance at
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