



SCOTTISH LAND COMMISSION  
COIMISEAN FEARAINN NA H-ALBA

## **Guidance From the TFC on Dealing with Amnesty Discussions that are Continuing after the End of the Amnesty Period on 13 December 2020**

### **Scope of this Guidance**

This guidance is intended to provide advice on dealing with the situation where an Amnesty Agreement was not completed within the amnesty period and an Amnesty Notice was issued by the tenant during the amnesty period, requiring it to be dealt with after the end of the amnesty period.

Parties should consider whether they require professional advice on their particular individual positions. The guidance in this note is in general terms only.

### **Current Situation**

Many landlords and tenants have been proceeding on the basis that a properly formulated and recorded agreement made after the expiry of the amnesty period, while not constituting an Amnesty Agreement as defined within the act (because an Amnesty Agreement has to be completed within the amnesty period), would be sufficient to render the agreed items of tenant's improvements as being eligible for compensation at waygo. Legal advice suggests that there may be doubt whether such agreements, which landlords may choose to honour, are legally enforceable.

Therefore, wherever possible, to provide certainty, landlords and tenants should ensure that the statutory procedures as set out below, are followed.

### **1. General Legal Position**

Following the date of receipt of an Amnesty Notice, the landlord has two months within which to object to any or all of the items contained in the notice. The grounds for an objection are:

- a) that it is not fair and equitable for compensation to be payable for the relevant improvement on the tenant quitting the holding at the termination of the tenancy,
- b) that the landlord carried out the improvement in whole or in part, or
- c) the landlord gave or allowed a benefit to the tenant (under the lease or otherwise) in consideration of the tenant carrying out the improvement, whether or not the landlord agreed such benefit in writing.

## 2. In What Ways can the Landlord Object to the Amnesty Notice?

- a) The landlord can object to some or all of the items in the notice within a two month period following the date of receipt of the Notice.
- b) If the landlord does not object to any of the items in the notice within the two month period the landlord is deemed to have agreed to them as potentially eligible for compensation at waygo.
- c) If the landlord objects within the two month period to some but not others, the items to which **no** objection is made will be potentially eligible for compensation at waygo.

## 3. If an Objection is Raised, what can the Tenant Do?

Where a landlord has raised an objection to one or more items, the tenant has two months from the date of receiving that objection within which to apply to the Land Court to have the objection overturned. Failure to apply to the Land Court within that time period will mean that the disputed item is not agreed and it will not be eligible for compensation at waygo on the strength of the Notice.

Where, within this period, the parties have reached agreement about the disputed items that will be potentially eligible for compensation, it is still necessary for the tenant to lodge an application to the Land Court to have the Court approve that agreement.

## 4. After a Land Court Application

Where an application is made by the tenant to the Land Court, the process can proceed in three different ways:

- a) The tenant asks the Court to grant an Order approving the items that the landlord and tenant have already agreed upon and the landlord agrees to the Order being granted.
- b) The tenant and landlord maintain their disagreement over an item or items and the Land Court is required to make a determination and issue an Order.
- c) Having made the application, landlord and tenant may be able, possibly with the help of additional time gained for discussion by sisting the application, ('sisting' – is a legal expression for 'pausing' the court procedure allowing more discussion between the parties), to reach agreement. The tenant then asks the Court for an Order approving as being eligible for compensation those items that the parties have agreed upon, with the landlord consenting to the request.

In any of these situations, the Land Court order will regulate the legal position between the parties about the claimed improvements.

This guidance was issued on 22 January 2021. For more information please contact the Scottish Land Commission by telephone on 01463 423 300, by email at [info@landcommission.gov.scot](mailto:info@landcommission.gov.scot) or [tfc@landcommission.gov.scot](mailto:tfc@landcommission.gov.scot) or visit [landcommission.gov.scot](http://landcommission.gov.scot).