

**CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS
SCOTTISH AGRICULTURAL ARBITERS AND VALUERS ASSOCIATION**

MODEL FORMS FOR AN AMNESTY AGREEMENT - INTRODUCTION

The Amnesty - The Land Reform (Scotland) Act 2016 created a three year time window from 13th June 2017 until 12th June 2020 (the Amnesty Period) for agricultural tenants and their landlords to recognise some works by the tenant as qualifying improvements for waygo compensation. With many undocumented, this process can record their eligibility for compensation, but not their valuation which is to be done when the tenancy ends. When those works have been identified and agreed, the signed record of that is the Amnesty Agreement.

Under the law, this applies to works, such as buildings, created by the tenant that:

- are in the statutory list in the Appendix to this note – these will almost always be in its Part II but can include some land clearance in Item 29 of Part III. No other works qualify under the law. The changes proposed to the statutory list by the Tenant Farming Commissioner are not relevant to the Amnesty.
- were completed by 13th June 2017.

It applies even if the tenant had not given prior notification of Part II items to the landlord.

While there is a formal procedure, triggered by an Amnesty Notice which then sets a timetable, many may prefer to proceed by discussion and agreement.

A Good Chance to Settle Matters - The Amnesty also gives a useful and practical opportunity for many other issues about the tenancy to be considered, agreed and recorded. These include:

- recognising other items to be treated as tenant's improvements
- recording items that are tenant's fixtures, with the tenant having a right to remove them if the landlord does not buy them when offered
- any items (such as machinery) that are tenant's moveables
- any sub-lettings
- any non-agricultural uses

These can all form part of a Statement of Facts than can assist with rent review and waygo.

More Information - Further guidance on the Amnesty can be found:

- in this industry agreed Code of Practice from the Tenant Farming Commissioner – https://landcommission.gov.scot/wp-content/uploads/2018/01/AMNESTY-CODE_web-Jan-2018.pdf
- from professional advice, for which it is reviewed in the CAAV/SAAVA paper, *Guide to the Amnesty for Tenant's Improvements in Scotland* (2017)

Model Forms - This note is accompanied by model forms for:

- an Amnesty Agreement
- an example of how to list and describe the items and how it suggested or agreed they be treated - as a Schedule attached the Amnesty agreement.

Think of the Amnesty Agreement as recording what will be needed to settle these issues in many years time, when all now involved may be dead. It is very useful to link the items listed to a clear plan or map with photographs and include copies of any relevant documents. Once the Amnesty Agreement is agreed between tenant and landlord, each should keep it safe.

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APPENDIX

**The Tenant's Works Covered by the Amnesty
Landlord and Tenant can agree to record other items and how they are to be treated**

NB – This list is for works since 1948. There may be other items in older tenancies.

**SCHEDULE 5 OF THE AGRICULTURAL HOLDINGS (SCOTLAND) ACT 1991
NEW IMPROVEMENTS FOR WHICH COMPENSATION MAY BE PAYABLE**

PART I IMPROVEMENTS FOR WHICH CONSENT IS REQUIRED

- 1 Laying down of permanent pasture.
- 2 Making of water-meadows or works of irrigation.
- 3 Making of gardens.
- 4 Planting of orchards or fruit bushes.
- 5 Warping or weiring of land.
- 6 Making of embankments and sluices against floods.
- 7 Making or planting of osier beds.
- 8 Haulage or other work done by the tenant in aid of the carrying out of any improvement made by the landlord for which the tenant is liable to pay increased rent.

PART II IMPROVEMENTS FOR WHICH NOTICE IS REQUIRED

- 9 Land drainage.
- 10 Construction of silos.
- 11 Making or improvement of farm access or service roads, bridges and fords.
- 12 Making or improvement of watercourses, ponds or wells, or of works for the application of water power for agricultural or domestic purposes or for the supply of water for such purposes.
- 13 Making or removal of permanent fences, including hedges, stone dykes and gates.
- 14 Reclaiming of waste land.
- 15 Renewal of embankments and sluices against floods.
- 16 Provision of stells, fanks, folds, dippers, pens and bughts necessary for the proper conduct of the holding.
- 17 Provision or laying on of electric light or power, including the provision of generating plant, fixed motors, wiring systems, switches and plug sockets.
- 18 Erection, alteration or enlargement of buildings, making or improvement of permanent yards, loading banks and stocks
- 19 Erection of hay or sheaf sheds, sheaf or grain drying racks, and implement sheds.
- 20 Provision of fixed threshing mills, barn machinery and fixed dairying plant.
- 21 Improvement of permanent pasture by cultivation and re-seeding.
- 22 Provision of means of sewage disposal.

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- 23 Repairs to fixed equipment, being equipment reasonably required for the efficient farming of the holding, other than repairs which the tenant is under an obligation to carry out.

PART III IMPROVEMENTS FOR WHICH NO CONSENT OR NOTICE REQUIRED

NB – In Part III, only Item 29 falls within the statutory provisions for the Amnesty

- 24 Protecting fruit trees against animals.
- 25 Clay burning.
- 26 Claying of land.
- 27 Liming (including chalking) of land.
- 28 Marling of land.
- 29 Eradication of bracken, whins or broom growing on the holding at the commencement of the tenancy and, in the case of arable land, removal of tree roots, boulders, stones or other like obstacles to cultivation.
- 30 Application to land of purchased manure and fertiliser, whether organic or inorganic.
- 31 Consumption on the holding of corn (whether produced on the holding or not) or of cake or other feeding stuff not produced on the holding by horses, cattle, sheep, pigs or poultry.
- 32 Laying down temporary pasture with clover, grass, lucerne, sainfoin, or other seeds, sown more than 2 years prior to the termination of the tenancy, in so far as the value of the temporary pasture on the holding at the time of quitting exceeds the value of the temporary pasture on the holding at the commencement of the tenancy for which the tenant did not pay compensation.