

# Preparing for the Improvements Amnesty

## Guidance Note for Landlords, Tenants and their Agents

Issued by the  
The Scottish Government's  
Independent Adviser on Tenant Farming

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### Introduction

In 2014 the Agricultural Holdings Legislation Review Group recommended that there should be a time limited amnesty for tenants who do not have an agreed and up to date record of their improvements. The amnesty was introduced by the Land Reform (Scotland) Act 2016 and will commence in mid 2017 (date to be confirmed). It will last for a period of **three years only**.

The purpose of this guidance note is to help landlords, tenants and their agents prepare for the amnesty. This is not a guide to implementing the provisions of the amnesty itself.

### What Does the Legislation Say?

Landlords and tenants are strongly advised to speak with a professional adviser who can explain what the legislation means and how it will apply in specific circumstances.

The full text of the legislation can be accessed by following the link [www.legislation.gov.uk/asp/2016/18/contents/enacted](http://www.legislation.gov.uk/asp/2016/18/contents/enacted) and going to part 10 chapter 8 on page 122 but we have summarised the main provisions below:

- The tenant can send an amnesty notice to the landlord detailing an improvement which falls within the categories of improvements listed in the agricultural holdings legislation but will not be eligible for compensation at termination of the tenancy because the correct statutory procedure was not followed.
- The amnesty notice must set out the details of the improvement and why it is fair and equitable for compensation to be payable at termination of the tenancy.
- Not all improvements will qualify for the amnesty. For example, where the landlord's consent was required for the improvement and consent was not granted, an amnesty notice cannot be served.
- The landlord can object to the tenant's notice on the following grounds: (i) it is not fair and equitable for compensation to be payable, (ii) the landlord carried out the improvement or (iii) the tenant received a benefit for carrying out the improvement.
- If the landlord objects to the amnesty notice, the tenant can refer the matter to the Land Court (the matter can also be referred to arbitration if the parties agree).
- If the landlord does not object to the amnesty notice, the improvement will be eligible for compensation at the termination of the tenancy.
- The usual rules apply for determining the level of compensation payable at the termination of the tenancy – the compensation will be based on the value to an incoming tenant.

### Why Should You Prepare?

The amnesty will only last for a period of three years from the summer of 2017. Those who prepare early will be able to get improvements agreed and recorded promptly once the amnesty period starts, while those who have not prepared in good time may miss the opportunity. If the correct procure is not followed within the amnesty period, the improvement will **not** qualify for compensation at the termination of the amnesty.

### **Initial Landlord/Tenant Dialogue**

All landlords and tenants should aim to reach informal agreement on amnesty improvements as soon as possible. There is no need to wait until the amnesty comes into force.

An effective way to discuss what improvements may fall within the amnesty would be a meeting on the farm between the landlord and the tenant (or their agents). At that meeting, the parties can discuss which improvements will qualify under the amnesty and whether it would be fair and equitable for compensation to be payable.

Where the parties agree what improvements will fall within the amnesty and whether it would be fair and equitable for compensation to be payable at termination of the tenancy, the tenant can simply begin the process of drafting a formal amnesty notice for delivery as soon as the amnesty comes into effect (or the parties can enter into an amnesty agreement which avoids the need for notices). Where there is uncertainty or disagreement however, further work may be required to collect supporting evidence and resolve uncertainties.

### **Collecting Evidence**

Landlords and tenants are both likely to have evidence in their business records that is relevant to the amnesty. This may be invoices and other records which show who has paid for what. There may also be evidence about more complex arrangements which have been agreed on informal basis. For example a landlord may have paid for materials while the tenant provided the labour or a tenant may have carried out the improvement in lieu of paying rent. In these kinds of situations, the parties need to find evidence of what was agreed and carried out.

Evidence may be most difficult to find where a landlord or tenant has changed, for example through succession or sale, and records have been lost. In these cases it may be necessary to contact the previous owner/tenant or their family members to see if anyone can remember what was agreed. Local contractors and others may be able to help, as may the local authority planning department in some cases. Where there is a risk of referral to the Land Court, evidence will be extremely important to both parties.

### **Finally – Sources of Help**

For most landlords and tenants their main source of help will be their professional adviser. Some advice of a general nature may also be available from the industry bodies, and (until 31<sup>st</sup> March) from the Scottish Government Independent Adviser. Contact details can be found as follows:

National Farmers Union of Scotland – [www.nfus.org.uk](http://www.nfus.org.uk)

Scottish Land and Estates – [www.scottishlandandestates.co.uk](http://www.scottishlandandestates.co.uk)

Scottish Tenant Farmers Association – [www.tfascotland.org.uk](http://www.tfascotland.org.uk)

