

DAVIDSON & ROBERTSON

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Amnesty on Tenants' Improvements
Practical Implications of the Code

- About the Amnesty
- What is eligible for the Amnesty?
- Preparing for the Amnesty Discussion
- Conducting the Amnesty Discussion
- Recording Outcome
- Disagreements & Dispute resolution
- Wider implications

About the Amnesty

- What the Code means / does not mean:
- Amnesty allows parties to agree on improvements with non-existent, lost, vague or improper documentation
- Amnesty is about agreeing what is / is not to be treated as Tenants' Improvements
- The improvements do **not** need to be valued
- The improvements are **not** paid for now – only at way-go
- Clarifying Tenants' Improvements – implications for Rent Reviews



What is eligible for the Amnesty?

- Should be within scope of Amnesty
- Should be investment “reasonable and desirable” on agricultural grounds
- Should be appropriate to the holding
- Involved upgrading living accommodation to reasonable level

Preparing for the Amnesty Discussion 1

- Tenant's responsibility to start the discussion
- Look at records eg letters, past agreements, transactions
- Look at lease
- Is there a Record of Condition?
- Is there an existing list of fixed equipment?
- Time limited process – don't delay
- As a first trawl exercise write down everything

Preparing for the Amnesty

Discussion 2

At this stage it might be worth getting professional help which will:-

- Get you to consider practicality of pursuing items which may be improvements but worthless.
- Check leases/Act to see what is potentially eligible.
- Check items are potentially within amnesty.
- Check that they are potentially compensatable for THAT holding.
- Challenge evidence of expenditure tenant only or joint landlord tenant.
- Draw up a practical list to discuss with the Landlord.

Conducting the Amnesty Discussion

- Landlord and Tenant should meet on farm
- Agree what might qualify as improvement
- Record what is discussed
- Aim to conclude process within nine months

Recording Outcome – Amnesty Agreement

- Write down what has been discussed
- Record fixed equipment which is agreed as Tenant's Improvements
- Use a plan in addition to list
- May be helpful to prepare / update Record of Condition

Disagreements & Dispute resolution

- Landlord & Tenant should make every effort to agree first
- Alternative Dispute Resolution mechanisms:
 - Mediation
 - Expert Determination
 - Arbitration
- Amnesty Notice
 - Landlord has two months to object – in writing – with reasons
 - Tenant can refer to Land Court within two months



Wider Implications of Amnesty

- Future Rent Reviews
- New basis to look at Productive Capacity
- Provides clarity on Tenants' Improvements to be removed from assessment
- Landlord / Tenant relationship may be improved
- Often other issues in background and provides a forum for these discussions

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