**CENTRAL ASSOCIATION OF AGRICULTURAL VALUERS**

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**CAAV EXAMINATIONS 2020**

**12TH NOVEMBER 2020**

**NATIONAL ORAL QUESTIONS**

**Each Group is to choose TWO questions from the five and then ask those same**

**two questions of all the candidates in that Group.**

**Question 1 – *NOT FOR USE IN SCOTLAND***

**Model Clauses**

**a) What is the full name of the current model clauses and when do they take effect from?**

 **Answer**

**England**

The regulations are known as the Agricultural (Model Clauses for Fixed Equipment) (England) Regulations 2015 S.I. 950 **(½ mark)**

 They came into effect from 1st October 2015 **(½ mark)**

 **Wales**

The regulations are known as the Agricultural (Model Clauses for Fixed Equipment) (Wales) Regulations 2019 S.I. 1279 **(½ mark)**

 They came into effect from 1st November 2019 **(½ mark)**

**b) Do they apply in England, Wales and Scotland?**

 **Answer**

 Not in Scotland. Separate Model Clauses for Wales/England **(½ mark)**

**c) Whose liability is it to repair any roof and can a claim be made for a contribution from the other party?**

 **Answer**

 The Landlord **(½ mark)**

Yes, the Tenant can be asked to contribute up to £500 for broken/cracked/slipped tiles and slates n any one year of the tenancy

 **(½ mark)**

**d) Give three examples of repairs or replacement when a Landlord may recover half of the cost from the Tenant.**

 **Answer**

 Bargeboards, fascias and soffits

 Eaves guttering and downpipes

 Floorboards

 Internal staircase and fixed ladder

 Door, windows and opening skylights and their frames and sills

 External paintwork and decoration

 **(any three for 1½ marks)**

**e) Name two of the Tenant’s liability to repair introduced by the new Model Clauses?**

 **Answer**

 Repairing space and water heating systems

 Repairing garden and yard doors

 Repairing fixed equipment

 Generating electricity, heat or power that is wholly for the use/benefit of the Tenant

 Repairing vehicle fuel tanks and oil tanks

 Repairing radon pumps

 Repairing insulation and water pipes

 Repairing livestock handling systems and sheep dips

 **(any two for 1 mark)**

**Question 2**

**Compulsory purchase procedure in respect of a road scheme**

Your owner-occupier client has received a Notice to Treat in respect of a road scheme across part of his farm. You are in his kitchen and are asked the following:

**a) What is a Notice to Treat and what does it state?**

 **Answer**

 It is the first step in the compulsory purchase process following confirmation of a Compulsory Purchase Order.

 It is issued in accordance with:

* **England and Wales** – s.5 Compulsory Purchase Act 1965.
* **Scotland** – s.17 Land Clauses Consolidation (Scotland) Act 1845

 It describes the land to which it relates.

 It demands particulars of the interest in the land.

 It demands the claim of the recipient.

 It states the acquiring authority is willing to treat for the purchase of the land and the acquiring authority will pay compensation for any damage that may be sustained as a consequence of the execution of the works. **(2 marks)**

**b) How does the acquiring authority usually take possession of my land after a Notice to Treat?**

 **Answer**

**England and Wales** - The acquiring authority serves a Notice of Entry under s.11 of the Compulsory Purchase Act 1965 at least 14 days before possession is required.

**Scotland** – Most often by a statutory conveyance under s.80 of the Land Clauses Consolidation (Scotland) Act 1845 **(½ mark)**

**c) What is the date on which the values are assessed?**

 **Answer**

 Date of entry (determined by decisions of the courts) **(½ mark)**

**d) I understand I will be paid for my land taken, what else might I be compensated for?**

 **Answer**

Injurious Affection

Severance

Disturbance such as

* Loss of crop
* Extra costs of managing the land or business during the works
* Loss of Basic Payment
* Effect on any agri-environment agreement
* Extra costs of future maintenance of boundaries or tracks put in as a consequence of the works
* Client’s time
* Solicitor’s and agent’s fees

 (This is not an exhaustive list)

 **(any four for 2 marks)**

**Question 3**

**Grazing Licence (Tenancy in Scotland)**

Your client, an arable farmer, has recently purchased a block of land which includes 10 hectares of permanent grassland which cannot be ploughed out. A neighbour has agreed to graze the grass with his cattle but your client wishes to keep the Basic Payment Scheme payment.

**a) Advise your client on the type of agreement required.**

 **Answer**

**England and Wales** - The agreement will be a grazing licence as the neighbour will only be granted access to the land to graze it with his own cattle without exclusive occupation.

**Scotland** – The agreement will be a seasonal grazing tenancy under s.3 of the Agricultural Holdings (Scotland) Act 2003 with the tenant’s control limited by the terms of the lease

 **(½ mark)**

**b) What information do you require from your client to draft a grazing licence?**

 **Answer**

Names and addresses of the parties and contact details

Description of the land with a plan and any access details

Permitted access to the land

 Start and end date of the licence period

The licence fee and when payable

 The type of stock permitted, any stocking density limits, turn out and removal dates

Method of calculating water usage

 Details of any agri-environment schemes affecting the land

 Confirmation that the grazier is not to manage/fertilise/spray the land

 **(any five for 2½ marks)**

**c) What must the parties do to ensure the agreement remains as intended?**

 **Answer**

 The parties must follow the terms of the agreement ‘on the ground’ and not allow variations in management, husbandry and/or responsibilities which could affect the legal status of the agreement.

 **Scotland –** Also ensure a break between leases  **(½ mark)**

**d) What factors might influence the level of the licence fee?**

 **Answer**

 Location

 Access

 Topography

 Age and quality of the sward

 Any restrictions on fertiliser, manure and agrochemical applications by the grantor

 Condition of the boundaries and gates

 Availability of water

 Length of licence

 **(any three for 1½ marks)**

**Question 4**

**Permitted Development Rights**

Your client wishes to construct a new grain store on his 300 hectare holding. He believes he needs planning permission and has asked you for your advice.

**a) What information do you require from your client to determine if the proposed grain store can be constructed under Permitted Development Rights.**

 **Answer**

 Establish the size of the parcel of land on which the building is to be located. If on a separate parcel forming part of the unit it must not be less than one hectare

*In some districts of Scotland several parcels can be taken into account for this.*

**England only** - Establish if any development under Class Q or S of Part 3 of the Permitted Development Rights Schedule has been carried out within the last 10 years. If so, the proposal is not permitted under PDR.

 Establish the ground area of the proposed building and the area of any building, other than a house, belonging to the same farm and erected within 90m of the proposed building within the last two years. The ground area of the proposed building must not exceed:

* **England** - 1000m²
* Wales – 465m2
* **Scotland** – 465 m2

and the area of any building erected in the last two years as above must be included within this limit.

 Establish the height of the proposed building and if there are any aerodromes in the locality. The height of the building must not exceed 12m or 3m if within 3 kilometres of the perimeter of an aerodrome.

 Establish the location of any trunk road or classified road in relation to the site of the proposed grain store. No part of the development must be within 25m of the metalled part of a trunk road or classified road.

**England** - Establish if the proposed development is situated in a designated area such as a Conservation Area, a National Park, or an Area of Outstanding Natural Beauty. Is there a nearby listed building?

**Wales** – Would it affect an ancient monument, archaeological site or listed building or would it be within a Site of Special Scientific Interest or a local nature reserve?

 **Scotland** – Not in historic battlefields

**All areas** - The Secretary of State/Ministers or Local Planning Authority can impose an Article 4 direction which withdraws certain PDRs over a defined area.

 **(3 marks)**

**b) If the proposal meets the criteria of Permitted development Rights, what application form and supporting documents will you submit to the local planning authority and what is the current application fee?**

 **Answer**

 **‘**Application for prior notification of agricultural or forestry development – proposed building. Town and Country Planning General Permitted Development Order 2015 Schedule 2, Part 6’

 (*Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended)*

Location Plan (mandatory)

 Planning statement, landscaping details, elevations and floor plans (non-mandatory)

 **England** - Application fee - £96.00 (VAT exempt)

 If submitted via Planning Portal, add £25.00 (including VAT) service charge

 **Wales** - £100

 **Scotland** - £78

 **(1 mark)**

**c) What must the local planning authority consider and how and when must it make its decision?**

 **Answer**

The LPA must determine if the information provided on the application form constitutes a valid application, meets the PDR criteria and determine whether the prior approval of the authority will be required as to the siting, design and external appearance of the building.

 The LPA must issue a Notification of Decision within 28 days of deeming the application to be valid, confirming that either the Prior Approval of the Authority is not required or that Prior Approval is not granted, stating the reasons why full planning permission is required.

 **(1 mark)**

**Question 5**

**Letting of an agricultural building for commercial use**

Your client, an owner occupier, has phoned to advise you that his best friend, who is a furniture and cabinet maker, has been asked to leave his current premises and would like to use your client’s former general purpose machinery store, which is now redundant, for the next 5 years. You are stood in the farmyard with your client.

**a) Advise your client on the practical issues to consider regarding his friend’s request.**

 **Answer**

What is the building required for – storage/manufacturing/showroom? Would you impose any limitations on use?

 Suitability of the building for the proposed use including its current condition and any essential repairs required.

 Any alterations required and who pays for them.

 Provision of welfare facilities if use greater than storage only.

 Current services and any additional services required. Any separation required via separate meters or service charge.

 Access, parking and loading.

 Any conflicts with farm traffic.

 Any bio-security issues. **(2 marks)**

b**) Assuming the parties agree to the proposal, under which Act would the Tenancy Agreement be governed?**

 **Answer**

 **England and Wales** - The Landlord and Tenant Act 1954

 **Scotland** – None – though could say Leases Act 1449  **(½ mark)**

**c) England and Wales**

**The Act conveys security of tenure for the Tenant. Can this be avoided and, if so, what is the process?**

 **Note: if the candidate answers part b) incorrectly, please advise which Act applies.**

 **Answer**

 The parties can contract out of sections 24 to 28 of the Landlord and Tenant Act 1954.

 A notice of this must be served in writing by the Landlord on the Tenant at least 14 days before the commencement of the term.

 **(1 mark)**

 **Scotland**

**When would a commercial lease attract Land and Buildings Transactions Tax (LBTT)?**

**What is the position for this for Business Rates?**

**Answer**

**LBTT** – Only when the net present value of the rent over the period of the lease reached £150,000. That should not trouble a 5 year of this scale

**Rates** – this would be rateable with the charge to the occupier. However, it is likely that the prospective tenant would qualify for full relief under the Small Business Bonus Scheme.

 **(1 mark)**

**d) Please provide details of six terms you would expect to be included in the Tenancy Agreement.**

 **Answer**

 The parties

 Any guarantor

 The term

 The commencement rent

 The demise and rights of access

 Repairing liability

 Rent review cycle and method of assessment

 Liability for payment of rates

 Services provided - whether inclusive or not

 Liability for insurance

 User clause/restrictions

 Reservations

 Non assignment/subletting clause

 Termination details

 Resolution of disputes

 Costs of preparing the agreement

 (not an exhaustive list)

  **(¼ mark for each up to a total of 1½ marks)**