



CYMRU

gwd/1605
18 June 2020

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

Dear Lesley

Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019

I write further to my letter of 13 November 2019 which was in response to your letter of 04 November 2019 indicating that you had asked your officials to meet with me to discuss the way forward for the necessary amendments to be made to the above Regulations to include field drainage and flood banks, omitted from the Regulations in error. Whilst I had heard from your officials just prior to writing on 13 November that plans were in place to bring forward the necessary amending legislation, I was subsequently provided with a different position.

The meeting with your officials took place on Monday, 25 November 2019 at the Welsh Winter Fair. It was explained that rather than moving towards tabling the amending Regulation I was told that there would be a delay due to the need to re-brief you, take your instructions and then seek sufficient resource from your legal services to draw together the necessary Statutory Instrument. However, I expressed the view that you had already given your clear decision as set out in the response to the consultation exercise which said, in terms, that flood banks and field drainage would be included in the new Regulations as landlords' responsibilities. Given also at that point you had instructed officials to resolve matters, I did not see why a new submission to you was required.

I also suggested that there would be little impact on legal services given the relatively straightforward procedure for a negative resolution Statutory Instrument. On 29 November 2019 I followed up the meeting with an email to your officials asking for a timeframe within which matters would be taken forward. I received a substantive response to that email on the 17 December advising me that matters were not straightforward and that "a number of stages" needed to be gone through before putting advice to you. My response of the same day expressed concern that nothing had moved forward since the meeting on 25 November and again questioned why it was considered not to

5 Brewery Court
Theale | Reading
Berkshire | RG7 5AJ

Tel: 0118 930 6130
Fax: 0118 930 3424
Email: wales@tfa.org.uk

www.tfacymr.org.uk

Chief Executive:
George Dunn

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be a straightforward matter. I repeated my contention that it was a relatively simple issue in that two matters were inadvertently missed off the list of items to be included as responsibilities of landlords (namely field drainage and flood banks) and that having had the consultation and set out the clear determination of Welsh Government to give effect to those responsibilities, a straightforward amending Regulation was all that was required.

I received a further email from your officials on 03 January 2020 explaining the responsibility upon officials to provide advice to Ministers which is robust, clear and with the possible implications of any decision laid out. It was further explained that the original advice provided to you did not include the two items in question and that they therefore did not form part of the detailed policy and legal considerations required to give you sufficient information upon which to make a fully informed decision. I was told that the necessary advice would be put to you in mid-January.

In my response of the same day, I expressed concern that you were not given complete advice following the conclusion of the consultation and the publication of the Government response to the consultation (which included the two items left out of the final Regulations) which I assumed was produced following full advice to you. I noted the intention to provide you with further advice.

Having heard nothing by 28 January 2020, I wrote to your officials again asking for an update and received a response the following day. In the response I was told that having considered the matter further, your officials were content that a policy decision was taken in spring 2017 to retain a parallel policy position to England in order to align regulatory requirements, thus establishing a level of consistency for the industry. The email went on to suggest that it was especially important for there to be a level playing field between England and Wales for cross border holdings and this was supported by stakeholders in both Wales and England. I was offered a meeting to discuss this further if required.

I responded on 31 January 2020 suggesting that this new piece of information lacked any credibility when the Welsh Government response to the consultation published in May 2017 clearly stated that the proposals contained within the consultation "with minor modifications" would be implemented. There was no suggestion in that document that a policy decision had been taken to align with the English Regulations.

I also asked if it had always been the intention to follow the English Regulations, what was the point of having a consultation in Wales? If the position as stated by your officials was correct, then the Welsh Regulations have in fact been framed and informed by the English consultation only which cannot be a reasonable line in the context of Devolution.

As TFA Cymru was one of the principal stakeholders involved in this consultation, I expressed surprise at the statement made that the policy decision had been made in consultation with stakeholders. We had no record of any conversation or correspondence in that regard. I therefore requested details of any information held by Welsh Government to support the contention being made by your officials. I also asked for the internal policy papers to be published showing how the decision was taken in the spring of 2017 to align with the English regulations. I further asked for the latter to be considered as a formal Freedom of Information request if necessary.

I then had a meeting with your officials in your London office on 11 February during which no further progress was made and it was agreed that my request made on 31 January would be treated as a request under the Freedom of information rules and that the request would formally be deemed to have been made on 11 February.

I received the information requested on 31 March by email. The documentation extended to over 100 pages although much of it was repetitive and heavily redacted. Obviously, since that time we have all been dealing with the Covid-19 crisis and therefore I did not feel it appropriate to press this matter further whilst in the heat of the crisis. Whilst we are by no means through the crisis, I feel that we are now at a time when these matters can be considered.

Having gone through the paperwork provided I could find no evidence to support the contention explained by your officials that a policy decision was made in spring 2017 to align with the English regulations. However, on page 87 and 88 of the disclosure there is clear evidence which supports the contention that TFA Cymru has held all along – ie that the two items (field drainage and flood banks) had been left out of the final SI in error rather than by design. I attach the two pages for ease of reference.

The paragraphs provided appear to form part of a Handover Note dated 05 June 2017 (after spring 2017) making reference to the "remit of LDT". On page 87 under the heading "Agricultural tenancy legislation and reform" there is a section headed "Amendment to the repair and maintenance of fixed equipment and end of tenancy compensation legislation". It refers to the consultation which closed on 23 February and provides a link to the Welsh Government response to which I referred earlier.

A specific reference is given to "land drainage" in respect of discussions with DEFRA. It states as follows:

"The only issue DEFRA had with the Sis related to the Model Clauses where they decided not to include a new liability on the landowner to repair and replace pipes and tiles used for field drainage because the consultation

responses were mixed and inconclusive on this issue (please see email from DEFRA's policy lead)"

After a further redaction, the document goes on as follows on page 88:

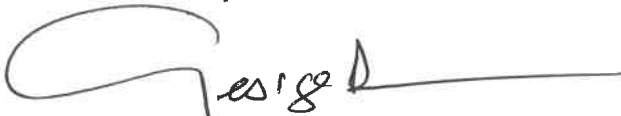
"However, we had no substantial comments on this proposal so we will be including it in the SI affecting model clauses. This is what we consulted on "tile and pipe for field drainage system – landlord to repair and replace, tenant to keep field drains and outlets clear from obstruction" no respondent opposed to this proposal."

Therefore, contrary to the contention that a policy decision was taken to align with the English regulations, there is clear evidence to support the fact that a unambiguous policy decision was taken not to align with the English regulations.

In summary and with apologies for the length of this letter (although I thought it useful to provide a full narrative) I would again call for the necessary amending SI to be laid to bring into effect the two missing elements set out within the Welsh Government response to the consultation to cover landlords' liability for field drainage and flood banks.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'George Dunn', with a long horizontal line extending to the right.

**George Dunn BA MSc FRAgS
Chief Executive**

[REDACTED]

[REDACTED]

Agricultural tenancy legislation and reform

There are number of work-streams which are being progressed under this policy area, mostly in close cooperation with Defra.

Key stakeholder contacts:

[REDACTED]

A full stakeholder list with additional contacts has been compiled and is saved on IShare.

Amendment to the repair and maintenance of fixed equipment and end of tenancy compensation legislation

Consultation closed on 23 February and the WG response is available online: <https://consultations.gov.wales/consultations/agricultural-tenancies-repair-and-maintenance-fixed-equipment-and-end-tenancy>.

The legislative reform follows the changes which were introduced in England in 2015 with some minor modifications in Wales – the WG response summarises the position. For example, we will be including “fitted kitchens” as a separate liability in our SIs on model clauses, unlike England.

- Land drainage

The only issue Defra had with the SIs related to the Model Clauses where they decided not to include a new liability on the landowner to repair and replace pipes and tiles used for field drainage because the consultation responses were mixed and inconclusive on this issue (please see e-mail from Defra’s policy lead)..



However, we had no substantial comments on this proposal so we will be including it in the SI affecting model clauses. This is what we consulted on: "Tile and pipe for field drainage system – landlord to repair and replace, tenant to keep field drains and their outlets clear from obstruction." No respondent opposed to this proposal.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref gwd/1605
Ein cyf/Our ref LG/01612/20

George Dunn
Chief Executive
Tenant Farmers Association

george@tfa.org.uk

13 July 2020

Dear Mr Dunn

Thank you for your letter dated 18 June regarding the Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019.

The Freedom of Information response issued on 31 March 2020 provided all our internal documents concerning the development of the Model Clauses regulations. The release contained all email traffic and policy documents concerning the formulation of the legislation. The release was heavily redacted as it contained details of other unrelated policy areas outside the scope of your request.

The Model Clauses regulations have now been in place since November 2019 and to date no concerns have been raised. I do not intend to revisit these regulations at this time.

I look forward to continuing to work closely with the TFA and thank you for your ongoing positive engagement, not least of which, on the forthcoming Agricultural White Paper.

Regards

Lesley Griffiths AS/MS
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig
Minister for Environment, Energy and Rural Affairs

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Lesley.Griffiths@llyw.cymru
Correspondence.Lesley.Griffiths@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



gwd/1605
14 July 2020

CYMRU

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs
Welsh Government
5th Floor
Tŷ Hywel
Cardiff Bay
CF99 1NA

Dear Lesley

Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019

I am in receipt of your letter dated 13 July in response to my letter of 18 June regarding the above.

I am grateful for your confirmation that the freedom of information response issued on 31 March 2020 provided all of your internal documents concerning the development of the Model Clauses regulations.

However, you have failed to answer the central point in my letter of 13 July which I repeat below.

Having gone through the information issued on 31 March 2020 I could find no evidence to support the contention explained by your officials that a policy decision was made in spring 2017 to align with the English regulations. However, on page 87 and 88 of the disclosure there is clear evidence which supports the contention that TFA Cymru has held all along – ie that field drainage and flood banks had been left out of the final SI in error rather than by design.

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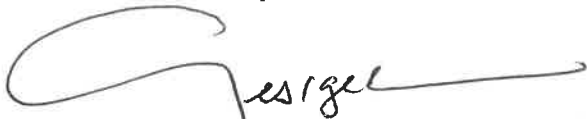
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Therefore, contrary to the contention that a policy decision was taken to align with the English regulations, there is clear evidence to support the fact that a unambiguous policy decision was taken not to align with the English regulations.

In your response of 13 July you say correctly that the model clauses have been in place since November 2019 but incorrectly that no comments have been raised in relation to them. As you know, since the date of their publication, TFA Cymru has raised concerns that they were implemented incompletely as set out above.

I am immensely disappointed by your statement that you do not intend to revisit the regulations at this time. In view of this I am copying this letter and my previous correspondence to the Chair of the Welsh Parliament Climate Change, Environment and Rural Affairs Committee to suggest that the committee holds a short enquiry into this matter and also to the Shadow Minister for Environment, Energy and Rural Affairs, Andrew RT Davies so that he can raise questions about this matter through the usual channels as he has done previously.

Yours sincerely



**George Dunn BA MSc FRAGS
Chief Executive**

Copies to:

Mike Hedges AM - Chair of the Welsh Parliament Climate Change, Environment and Rural Affairs Committee

Andrew RT Davies AM - Shadow Minister for Environment, Energy and Rural Affairs