

Explanatory Memorandum to the Agricultural Holdings Act 1986 (Variation of Schedule 8) (Wales) Order 2019.

This explanatory Memorandum has been completed by the Economy Science and Natural Resources Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Ministers Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Agricultural Holdings Act 1986 (Variation of Schedule 8) (Wales) Order 2019. I am satisfied the benefits justify the likely costs.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

24 September 2019

Part One – Explanatory Memorandum

1. Description

The Agriculture Holdings Act 1986 ("the 1986 Act") provides outgoing tenants compensation for the value of fertilised land or crops they leave behind. These terms are deemed to be incorporated in every tenancy contract of an agricultural holding that falls under the Agricultural Holdings Act 1986 (the "1986 Act"), except where a written agreement by the parties specifies different values and terms of the compensation.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

This Order amends Part 1 of Schedule 8 to the Agricultural Holdings Act 1986. The Order is made in exercise of the powers conferred by section 91(1) of the Agricultural Holdings Act 1986.

This amending Statutory Instrument brings the Agricultural Holdings Act 1986 up to date with modern farming practices and the compensation for short term land improvement methods.

3. Legislative Background

This Statutory Instrument amends Part 1 of Schedule 8 to the Agricultural Holdings Act 1986 to broaden the scope of matters for which end-of-tenancy compensation is paid so that outgoing tenants are incentivised to farm sustainably.

The 1986 Act applies to agricultural tenancy agreements entered into before 1 September 1995, and to some tenancies granted after this date, namely succession tenancies ("AHA tenancies"). It is accepted that approximately 30% of agricultural land in Wales is farmed through tenancy agreements and therefore an important element in Welsh agriculture.

Under section 91(1) of the Agricultural Holdings Act 1986 the Welsh Ministers may make amendments to short-term improvements for which compensation is payable (Schedule 8).

4. Purpose and Intent of the Legislation

The relationship between a landlord and their agricultural tenant is governed partly by the terms of their individual tenancy agreement and partly by agricultural tenancy legislation.

The agricultural tenancy sector is crucial to Wales' rural economy and the proposed reforms will help maintain cohesive farming communities across Wales to include areas where the Welsh language is prevalent. The goals of the Wellbeing of Future Generations (Wales) Act include making Wales prosperous. These proposals have the capacity to contribute towards the development a rural economy which generates wealth, provides employment opportunities and one which is ecologically, economically and socially resilient whilst promoting and protecting heritage and culture.

This Statutory Instrument is part of the Welsh Government's endeavour to simplify and update the regulation of farming businesses. The changes introduced by this instrument are supported by the Tenancy Reform Industry Group ("TRIG") which includes representatives of tenant farmers, landlords and agricultural valuers.

The relationship between a landlord and their agricultural tenant is governed partly by the terms of their individual tenancy agreement and partly by agricultural tenancy legislation. These changes will streamline and modernise the legislative framework governing agricultural holdings in Wales and will help farm businesses to become more professional, resilient and prosperous in the future.

The changes implemented by this instrument are supported by the Tenancy Reform Industry Group ("TRIG") which includes representatives of tenant farmers, landlords and agricultural valuers.

5. Consultation

Consultation Period and Distribution

The consultation period ran from 1 December 2016 to 23 February 2017. It sought views on proposed changes to secondary legislation governing the repair and maintenance of fixed equipment and end of tenancy compensation, for agricultural tenancies in Wales governed by the Agricultural Holdings Act 1986.

The proposals are designed to support an efficient and effective agricultural tenanted sector in Wales. Amendments to existing legislation aim to clarify regulatory requirements, such as calculating compensation payable to outgoing tenants as the current legislation no longer compensate tenants adequately for the value of certain improvements made to the land. This may encourage tenants to invest in and farm the land more sustainably in the last years of their tenancies.

The proposed changes are based on the recommendations of the Tenancy Reform Industry Group (TRIG), a non-statutory advisory body which represents the interests of agricultural landlords and tenants. The UK Government has enacted similar changes following public consultation in England in 2014. The proposed changes will ensure tenants and landlords in Wales are subject to the same regulatory requirements as farmers in England and are not disadvantaged.

<https://beta.gov.wales/agricultural-tenancies-repair-and-maintenance-fixed-equipment-and-end-tenancy-compensation>

Responses were received from:

- Agricultural Land Tribunal (Wales)
- Pontypool Park Estate Office
- Messrs Sprackling – Tenant Farmers
- The Tenant Farmers Association
- NFU Cymru
- CAAV (Central Association of Agricultural Valuers)
- Anonymous

- CLA – Country Landowners Association
- S Robertson

Summary of Changes

The list of improvements and tenant right matters that can be compensated for as specified in the Agriculture Holdings Act 1986 is out of date compared to current farming practices. The provision limits compensation to purchased items which is not helpful in achieving the policy outcome of good land management practices and farm sustainability. Government intervention is necessary as the provisions of the 1986 Act are incorporated into every agricultural tenancy agreement made under it unless alternative arrangements are made in a written agreement. They need updating and modernising to be fit for current use by industry.

The matters which we propose to be eligible for end-of-tenancy compensation include the application of:

- Inputs that have not been purchased;
- Digestate;
- Soil conditioners – including compost; and
- Manure produced by certain livestock species.

Objectives of the Order

The policy objective of the proposed changes is to ensure an efficient and effective agricultural tenanted sector in Wales. The planned changes will set out a method to calculate compensation payable to outgoing tenants as the current legislation no longer compensates tenants adequately for the value of certain improvements they have made to the land. This in turn will encourage tenants to adopt good land management practices and farm sustainably in the last years of their tenancy by ensuring they are adequately compensated for the value of fertilised land and crops they leave behind.

Rationale for intervention

The current Schedule 8 generates a market failure whereby there is a disincentive to maximise long-term output in favour of the less sustainable short-term interests of outgoing AHA tenants. The market failure is likely to reduce future output from the land or require remedial action by the incoming tenant. This is a sub-optimal outcome which is not the best use of agricultural resources.

Government intervention is necessary to implement these changes because the provisions of the 1986 Act are incorporated into every agricultural tenancy agreement made under it (unless alternative arrangements are made in a written agreement).

6. Regulatory Impact Assessment

Policy Options

Option 1

Do Nothing:

Leaving the Schedule unchanged was considered. This will cause them to become even further out of date compared to current farming practices and will result in dis-incentivising long-term outputs in favour of the less sustainable short-term interests of outgoing AHA tenants.

Option 2

Update and consolidate this instrument:

Amend Part 1 Schedule 8 of the 1986 Act to broaden the scope of items that an outgoing tenant can be compensated for and remove the restriction for compensation to purchased inputs only.

The preferred option is Option 2. It has the support of industry representatives of landlords, tenants and agricultural valuers on the Tenancy Reform Industry Group and 63% of respondents to the public consultation. This will bring Welsh legislation in line with other UK regions that were put in place in 2015 and no negative impacts have been identified at this point in time for the tenanted sector or the wider agricultural industry in Wales.

Summary of Preferred Option

The preferred option is to require compensation be paid for:

- a) improvements arising from the application to the land of soil improvers and digestate, as well as manure and fertiliser;
- b) manure from the consumption of corn (whether produced on the holding or not) or of cake or other feeding stuff not produced on the holding by a wider range of animals held for agricultural than is currently permissible.

We propose amending Schedule 8 as follows:

- 1) After Paragraph 4A insert-

“4B. Application to land in Wales of manure, fertiliser, soil improvers and digestate”.

- 2) Broaden the list of improvements for which compensation is payable to tenants, to include “soil improvers” and “digestate” which are now in common use to

improve soil fertility and structure in keeping with the policy to incentivise good land management by offering adequate compensation at the end of a tenancy.

3) No longer restricting compensation to “purchased” items by omitting Paragraph 5. This has no bearing on the benefits derived and is not in keeping with the policy stated above.

4) After Paragraph 5A insert-

“5B (1) In relation to Wales, production of manure arising from the consumption on the holding of relevant feeding stuff by livestock and equidae where the manure is held in storage on the holding.

(2) In this paragraph “relevant feeding stuff” means—

- a) corn (whether produced on the holding or not), or
- b) cake or other feeding stuff not produced on the holding”

5) To compensate for manure produced from a wider range of animals held for agricultural purposes by omitting Paragraph 6.

Costs and Benefits

The proposed changes will directly affect the outgoing tenant and the landlord as the two parties to an expiring tenancy as well as the incoming tenant or other farming occupier. These three parties are considered separate businesses participating in the same market.

The focus of costs and benefits is the difference between existing eligibility criteria for compensation and the preferred option.

Costs

The preferred option is not expected to generate additional familiarisation costs. Interested parties are unlikely to be immediately familiar with the legislation until the end of a tenancy and instead seek to instruct professional advisers such as agricultural valuers. TRIG advise the familiarisation costs for the new Schedule 8 would be the same as for the current Schedule 8 and do not change for the preferred option.

Amending Schedule 8 of the Agricultural Holdings Act 1986 is expected to generate two monetised costs on the main affected groups:-

1) Compensation for additional materials; and

Three new elements either purchased or non-purchased are identified in the preferred option. These are:

- a) manure from ‘other’ livestock (where other covers all agricultural livestock apart from pigs, poultry, horses, cattle and sheep);
- b) digestate; and

c) compost (the principal soil improver).

An assessment of the costs and benefits associated with the proposed changes would require a projection of the future state of AHA agreements. This will principally be determined by (a) the rate at which AHA tenancies fall over time and (b) the projected future value of manure, digestate and compost. This information is not available and as such it has not been possible to produce a quantified assessment of the aggregate cost of the proposed changes.

There will be a transfer between landlords and outgoing tenants, with the former having to compensate the latter for any expenditure on the three elements identified above. This will incentivise tenants to adopt good land management practices and farm sustainably in the last years of their tenancy by ensuring they are adequately compensated for the value of fertilised land and crops they leave behind.

2) In addition, there will be a negotiation cost to agree the value of compensation. This may require a small amount of additional agricultural valuer time beyond what is already required at the end of a tenancy.

TRIG advise that:

- Each terminated AHA requires one hour of professional time to prepare claim;
- A further hour is required for further review and discussion;
- Tenancy work is overwhelmingly charged on a time basis and a reasonable charge out rate is £120 per hour. This is based on a weighted average of an hourly rate of a partner/associate (33.33%) with support from an associate/assistant (66.7%); and
- This cost remains constant in real terms over time.

The estimated negotiation cost in any given year is dependent on the number of terminated AHA agreements.

Benefits

Incoming tenants will benefit from landlords increased expenditure in compensation payments. They will now receive land in a more productive condition than it would otherwise have been under current legislation thus avoiding the need for remedial action.

Non-monetised benefits are also expected to occur through improvements in environmental practice from better land management of 1986 Act agricultural tenancies.

The financial cost to landlords and productive benefits to incoming tenants depends on the ability of landlords to recover their costs through increasing land rents. If compensation costs can be wholly recovered through future land rents then landlords and incoming tenants are not expected to experience any changes. It is the expert opinion of TRIG that rental prices will not be sensitive to the level of compensation paid.

6.1. Conclusions

In conclusion, Option 2 will offer the greater benefit to the tenanted farming sector. This new legislation will achieve more through better regulation.

7. Sector Impacts

7.1. Impacts on Local Government

The changes in legislation will result in local authorities facing increased costs from having to compensate outgoing tenants on local authority farms at the going market value for a larger number of improvements eligible for end-of-tenancy compensation. This is consistent with private landlords.

7.2. Impact on Voluntary Sector

There are no foreseen impacts on the Voluntary Sector

7.3. Impact of Small Business

There are no foreseen impacts on small businesses

8. Duties / Impact Assessments

An Integrated Impact Assessment has been carried out. No negative impacts have been foreseen in equality, Welsh language or biodiversity; the Welsh Government's three mandatory areas for assessment.

9. Competition Assessment

Please see **Annex A**

10. Post Implementation Review

The Welsh Government will monitor the impact of the legislation and will continue to gather data regarding farm tenancies in Wales. The Welsh Government will also continue to have a dialogue with key stakeholders in order to collate feedback on the impact of the new legislation and consider future changes to the regulatory regime. Amendment to the policy and legislation may be considered following then UK's exit from the European Union.

Guidance will be also be considered issued once the new legislation comes into force.

Annex A

The competition filter test

Question	Answer yes or no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No