

SL(6)508 – The Agricultural Holdings (Requests for Landlord’s Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024

Background and Purpose

These Regulations make provision about the resolution of disputes in relation to landlord’s consent and variations to the terms of a contract of tenancy of an agricultural holding under the Agricultural Holdings Act 1986 (“the 1986 Act”) and about applications to succeed to a tenancy of an agricultural holding under the 1986 Act.

Part 1 contains introductory provisions.

Part 2 provides for a tenant to refer a request to arbitration or, by agreement in writing with the landlord, third party determination where a landlord’s consent or a variation of the terms of a contract of tenancy of an agricultural holding under the 1986 Act is required either to enable a tenant to request or apply for relevant financial assistance under the Agriculture (Wales) Act 2023 as defined in regulation 2 or in order to meet a statutory duty.

Part 3 sets out the matters which the Agricultural Land Tribunal must have regard to when determining an application by a person as to whether they are suitable to succeed to a tenancy of an agricultural holding under Part 4 of the 1986 Act following the death or retirement of a tenant.

Part 4 provides for a review of these Regulations by 13 June 2031 and at intervals not exceeding 5 years thereafter.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following 9 points are identified for reporting under Standing Order 21.2 in respect of this instrument.

- 1. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation**



In regulation 2, in the definition of “relevant financial assistance”, in paragraph (a), there is a reference to “section 8 of the Agriculture (Wales) Act 2023”. However, that Act has been defined as “the 2023 Act” in these Regulations. It also means that paragraph (a) is inconsistent with the following paragraphs in that definition where the defined term has been correctly used when referring to that Act.

2. Standing Order 21.2(vii) - that there appear to be inconsistencies between the meaning of its English and Welsh texts

In regulation 2, in the definition of “relevant financial assistance”, in paragraph (f), there is a difference between the English and Welsh text. In the English text, the description in parentheses after the reference to section 19 of the 2023 Act is “(support for rural development)”. But in the Welsh text the meaning given by the corresponding words in parentheses is “(power to modify legislation relating to support for rural development)” which is the full heading of section 19 of that Act.

3. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 2, the term “statutory duty” is defined as having a meaning “In these Regulations”. But this term is only used in regulation 3 of these Regulations. Therefore, the definition of this term should appear in regulation 3 as recommended by the Welsh Government’s drafting guidelines – see WLW 4.14(1).

4. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 2, the term “third party determination” has been defined as having the meaning given in section 96(1) of the 1986 Act in these Regulations. However, the term “third party” is also used in these Regulations and is a defined term in section 96(1) of the 1986 Act. Therefore, it is unclear whether the intention is for the term “third party” to be given the same meaning in these Regulations as it has in section 96(1) of the 1986 Act.

5. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 2, there is no definition of the term “the tenancy” although it is used throughout these Regulations.

6. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 3 the term “the holding” is used, as this term is not defined, it is unclear whether it carries the same meaning as “agricultural holding”, which is used in regulation 3(1). In regulations 4 and 5 “the holding” and “a holding” are used, respectively, without an earlier reference to “agricultural holding” within the same regulations.



Further, regulation 5(1) refers to applications under provisions in sections 39 and 53 of the 1986 Act. For the purpose of section 39 “the holding” is defined in section 35(2) of the 1986 Act and for the purpose of section 53, “the holding” is defined in section 49(3) of the 1986 Act. It is unclear whether “a holding” is intended to carry the same meaning as defined in either sections 35(2) or 49(3) of the 1986 Act, in this regulation.

7. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 3(9), there is a difference in the period of time given to the tenant to refer the request to arbitration or third party determination when compared with the corresponding provision in regulation 3(8) of the Agricultural Tenancies (Requests for Landlord’s Consent or Variation of Terms) (Wales) Regulations 2024. These Regulations give the tenant a “period of 4 months”, but the other set of Regulations give the tenant a “period of 2 months”. It is unclear why there is a difference in the period of time given to the tenant by the corresponding provisions in the different sets of Regulations.

8. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

In regulation 4(2)(d), there is a difference in the drafting of the text when compared with the corresponding provision found in regulation 4(2)(d) of the Agricultural Tenancies (Requests for Landlord’s Consent or Variation of Terms) (Wales) Regulations 2024. In these Regulations, it states “at which the award or determination takes effect” but in the other set of Regulations it states, “at which the award takes effect”. It is unclear why there is a difference because an award or determination may be made in both sets of Regulations.

9. Standing Order 21.2(v) – that for any particular reason its form or meaning needs further explanation

Regulation 4(6) states “The award of an arbitrator or determination of a third party under this Part...”. This raises the question of whether an arbitrator can make a determination and whether a third party can make an award, and if they can, does regulation 4(6) apply to them? The other paragraphs of regulation 4 make reference to awards or determinations by the arbitrator or third party.

Merits Scrutiny

The following 3 points are identified for reporting under Standing Order 21.3 in respect of this instrument.

10. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

The title of these Regulations appear in the Explanatory Memorandum as “the Agricultural Holdings (Requests for Landlord’s Consent **and** Variation of Terms and the Suitability Test)



(Wales) Regulations 2024” each time the title is used. We ask that the correct title of these Regulations is confirmed.

11. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

These Regulations are subject to the negative procedure. It would have been helpful, in the preamble, to refer to section 94 of the 1986 Act in this regard.

12. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

Section 5 of the Explanatory Memorandum sets out the consultation undertaken in relation to the changes in these Regulations. We note that some time has passed since this consultation was undertaken in 2019, as part of a wider public consultation on agricultural tenancy reform.

Welsh Government response

A Welsh Government response is required in relation to reporting points 1 to 11.

Committee Consideration

The Committee considered the instrument at its meeting on 16 September 2024 and reports to the Senedd in line with the reporting points above.

