

SL(6)507 – The Agricultural Tenancies (Requests for Landlord’s Consent or Variation of Terms) (Wales) Regulations 2024

Background and Purpose

These Regulations make provision for the resolution of disputes in relation to landlord’s consent and variations to the terms of a contract of tenancy of a farm business tenancy under the Agricultural Tenancies Act 1995 (“the 1995 Act”).

Part 1 of the Regulations contains introductory provisions.

Part 2 of the Regulations allows a tenant to refer a request to arbitration where they need the landlord’s consent or the variation of terms of a farm business tenancy under the 1995 Act to enable the tenant to request or apply for relevant financial support under the Agriculture Wales Act 2023, or to meet a statutory duty.

Part 3 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 seven 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, the terms “farm business tenancy” and “statutory duty” are defined as having a meaning “In these Regulations”. But both of those terms are only used in regulation 3 of these Regulations. Therefore, the definitions of those terms should appear in regulation 3 as recommended by the Welsh Government’s drafting guidelines – see WLW 4.14(1).

2. 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 support”, 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.

3. 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 support”, there is a difference between the English and Welsh text. In the English text, there is a conjunction “or” after paragraph (f) but there is no conjunction in the corresponding place in the Welsh text. The existence and choice of conjunction is significant as it indicates to the reader whether the paragraphs are cumulative or alternative – see WLW 2.9(7).

4. Standing Order 22.1 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;

In regulation 2, in the definition of “relevant financial support”, in paragraph (g), the description in parentheses after the reference to section 22 of the 2023 Act states “(powers of Welsh Ministers to give financial **assistance** in exceptional market conditions)”. However, it should state “financial **support**” as noted in section 22 of that Act.

5. Standing Order 22.1 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;

In regulation 2, in the definition of “statutory duty”, in paragraph (c), there is an incorrect, outdated use of terminology in the reference to a category of legislation known as “retained direct EU legislation”. This category of legislation should be referred to as “assimilated direct legislation” as noted in section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

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

In regulation 3(8), 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(9) of the Agricultural Holdings (Requests for Landlord’s Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024. These Regulations give the tenant a “period of 2 months”, but the other set of Regulations give the tenant a “period of 4 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.

7. 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 Holdings (Requests



for Landlord's Consent or Variation of Terms and the Suitability Test) (Wales) Regulations 2024. In these Regulations, it states "at which **the award** takes effect" but in the other set of Regulations it states, "at which **the award or determination** takes effect". It is unclear why there is a difference between the two sets of regulations, because an award or determination may be made in both sets of Regulations.

Merits Scrutiny

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

8. 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 Tenancies (Requests for Landlord's Consent **and** Variation of Terms) (Wales) Regulations 2024" each time the title is used. We ask that the correct title of these Regulations is confirmed.

9. 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 36A(3) of the 1995 Act. This states that a statutory instrument containing regulations made under section 8A(7) is subject to annulment in pursuance of a resolution of Senedd Cymru.

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.

Section 5 of the Explanatory Memorandum describes the consultation undertaken in advance of making these regulations:

The Agriculture (Wales) White Paper set out Welsh Government's proposals to introduce new dispute resolution provisions for 1986 Act tenancies, and asked whether the proposals should be extended to FBTs. No clear pattern emerged, with conditional support appearing to be more prevalent amongst a small subset.

Those in favour of extending the provisions to Farm Business Tenancies (FBT) felt market conditions limit tenants' power and influence to renegotiate agreements. Whereas those opposed noted the flexibility of the FBT framework has resulted in fewer disputes, and felt any further change could undermine the law of contract and confidence in the let sector.

On balance, Welsh Government decided to proceed with an amendment to the 1986 Act only. However, some stakeholders continued to make strong representations to Welsh Government as the Bill progressed through the Senedd. Subsequent discussions suggested existing provisions within the Act do not, in practice, offer a comprehensive



route to vary clauses in FBTs that extend beyond tenants' improvements, or which are the subject of a consent clause. As a result, some tenants may find their ability to vary restrictive clauses within their lease limited, particularly given their often weak negotiating position. This could then limit their ability to access financial support or comply with statutory obligations, thus risking financial loss and penalties.

Welsh Government conceded there could be a gap in provisions, albeit minimal, and amendment could remove ambiguity in the application of the current rules and be of benefit in a small number of cases without detrimental impacts elsewhere.

Welsh Government response

A Welsh Government response is required in respect of reporting points 1 to 9.

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.

