

Explanatory Memorandum to The Agricultural Holdings (Fee) Regulations 2022

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Agricultural Holdings (Fee) Regulations 2022.

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

25 October 2022

PART 1

1. Description

This instrument increases the prescribed statutory fee that can be charged by a professional authority for the appointment of an independent arbitrator to resolve disputes or to make certain records in relation to agricultural tenancies governed by the Agricultural Holdings Act 1986 (“the 1986 Act”). The prescribed fee has not been updated since 1996 and in line with inflation this instrument increases the fee from £115 to £195. The instrument also introduces a new statutory duty on Welsh Ministers to carry out a review of the Regulations every five years. There is also an equivalent duty on the Secretary of State in Relation to England.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

This is a composite statutory instrument which applies to England and Wales only and is subject to the affirmative procedure in the Senedd and both Houses of Parliament.

The professional authorities to which this Regulation applies operate on a UK wide basis. A composite approach is considered appropriate as it will ensure the increase will take effect at the same time in England and Wales, ensuring a fair and consistent approach whilst avoiding unnecessary bureaucracy. It will also minimise confusion and complexities for cross border holdings. This approach is supported by stakeholders.

Furthermore, the instrument revokes and replaces the Agricultural Holdings (Fee) Regulations 1996 which were also made on an England and Wales basis.

As this instrument will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for it to be made or laid bilingually.

3. Legislative background

Section 22 and 84 of the 1986 Act (as amended by paragraphs 4 to 6 of Schedule 3 of the Agriculture Act 2020) provides that landlords and tenants can apply to a professional authority for the appointment of an independent arbitrator to resolve disputes that may arise in relation to tenancies governed by the 1986 Act (section 84) or to appoint an arbitrator to make certain records (section 22). Sections 22(4) and 84(4) state that applications for such appointments must be accompanied by a prescribed fee and together with section 94(3) establish that the fee must be prescribed by the Minister in regulations, currently the Agricultural Holdings (Fees) Regulations 1996 (“the

1996 Regulations”). The 1996 Regulations apply to England and Wales to ensure the same level of prescribed fee applies in both countries.

4. Purpose and intended effect of the legislation

The 1986 Act enables landlords and tenants to apply to a professional authority for the appointment of an independent arbitrator to resolve any disputes that may arise in relation to their tenancy agreement or to make formal records such as records on the condition of the holding and its fixed equipment. The 1986 Act also provides that a fee must be paid to the professional authority for this appointment service and that the level of the fee must be prescribed in secondary legislation. This fee is either paid for by the applicant (so either the tenant or the landlord making the application) or in the case of requests to appoint a person to make certain records the fee is shared equally by the tenant and landlord.

The prescribed fee is currently set in the 1996 Regulations at £115 and as it has not been updated since 1996 it no longer covers the cost of delivering the appointments service. Therefore, the fee needs to be updated in line with inflation over this period to ensure that the appropriate authorities can recover the cost of delivering this service in future, bringing it in line with HM Treasury’s ‘Managing Public Money’¹ and Welsh Government’s ‘Managing Welsh Public Money’² guidance on fees, charges and levies. The 1996 Regulations do not reflect recent amendments made to the 1986 Act by paragraphs 4 to 6 of Schedule 3 to the Agriculture Act 2020 which expands the list of organisations able to make arbitration appointments to include the President of the Central Association of Agricultural Surveyors (CAAV), and the Chair of the Agricultural Law Association (ALA) alongside the President of the Royal Institution of Chartered Surveyors (RICS).

The new Regulations include the changes above and also include a five yearly review clause. This will ensure that the level of the fee is reviewed on a regular basis in future. Reviews will be carried out in consultation with industry to check if the level of fee is appropriate and in line with cost recovery principles.

The 1996 Regulations apply to England and Wales so that the same level of prescribed fee applies in both countries. Based on feedback from stakeholders, the Welsh Government has agreed to continue with a composite approach so there continues to be consistency and fairness in the level of the prescribed fee across England and Wales.

5. Consultation

As the Regulations simply update a statutory fee in line with inflation and do not alter Welsh Minister’s policy or its impact in a significant way, a formal public consultation was not undertaken.

¹ [Managing public money - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/managing-public-money)

² [Managing Welsh public money | GOV.WALES](https://gov.wales/managing-welsh-public-money)

Nevertheless, in 2021 the Welsh Government consulted members of the Tenancy Reform Industry Group (industry representatives of tenants, landlords and professional advisors) to seek assurance that they supported the proposal for the same increased prescribed fee of £195 applying in Wales as well as in England. Most TRIG members agreed that for consistency and fairness the same level of fee should be applied in Wales as in England. Some responses noted it is important to have consistency to avoid potential issues with cross border holdings.

6. Regulatory Impact Assessment (RIA)

An RIA has not been prepared for this instrument as it increases the statutory fee in line with consumer price inflation. This is in line with the policy set out in the Welsh Ministers' code of practice for carrying out regulatory impact assessments for subordinate legislation.