
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Agricultural Holdings Act 1986 (“the 1986 Act”) and the Agricultural Tenancies Act 1995 (“the 1995 Act”), which regulate tenancies of agricultural land in England and Wales. The amendments affect rent reviews, succession under the 1986 Act, end of tenancy compensation, arbitration under the 1986 Act, the application of the 1986 Act to new tenancies, and notice periods under the 1995 Act. The amendments give parties to agricultural tenancies greater freedom of contract in these areas.

Article 3 amends section 12(2) of the 1986 Act, which provided that, where the rent payable in respect of a holding was referred to arbitration, the arbitrator determined the rent properly payable at the date of the reference. The effect of the amendment is that arbitrator now determines the rent properly payable at the next termination date (as defined in section 12(4)) following the date of the demand for arbitration.

Article 4 amends sections 34, 35 and 49 of the 1986 Act. These amendments are consequential on the insertion of section 4(1)(g) into the 1995 Act by Article 12(4). They ensure that, where the 1986 Act applies by virtue of section 4(1)(g) of the 1995 Act, the references to “substantial part” in those sections means a substantial part by reference to either area or value.

Article 5 amends sections 36, 41 and 50 of the 1986 Act, which set out some of the conditions of eligibility for succession to a 1986 Act tenancy. Sections 36 and 50 include a condition that the principal source of livelihood of the potential successor must be derived from his “agricultural work on the holding or on an agricultural unit of which the holding forms part”, for at least five out of the seven years before the death or retirement of the previous tenant (sections 36(3)(a) and 50(2)(a)). The effect of the amendment is that “agricultural work on the holding or on an agricultural unit of which the holding forms part” in those sections now includes agricultural work carried out by the potential successor from the holding or an agricultural unit of which the holding forms part, and other work carried out by him on or from the holding or an agricultural unit of which the holding forms part, of a description approved by the landlord in writing after entry into force of the RRO. Section 41(1), which makes provision for cases where the condition in section 36(3)(a) is satisfied to a material extent, is also amended.

Article 6 amends sections 69 and 73 of, and paragraph 5 of Schedule 9 to, the 1986 Act. Section 69(1) provides that where a tenant has remained on the holding for two or more tenancies, he does not lose the right to end of tenancy compensation for an improvement which was carried out during an earlier tenancy of the same holding. There are similar provisions relating to a landlord’s right to end of tenancy compensation in respect of dilapidations (section 73) and to old improvements (paragraph 5 of Schedule 9). Article 6 amends these provisions so that they also apply where the earlier tenancy was of a holding which comprised the whole or a substantial part of the land comprised in the holding. Article 6 also makes amendments consequential on the insertion of section 4(1)(g) into the 1995 Act by Article 12(4).

Article 7 amends section 84 of the 1986 Act and Article 9 repeals Schedule 11 to that Act. Section 84 of the 1986 Act provided that matters to be determined by arbitrations under the 1986 Act were to be determined in accordance with the provisions of Schedule 11 to the 1986 Act, and not in accordance with the Arbitration Act 1996. The Order re-enacts, with modifications, provisions of Schedule 11 relating to the appointment of an arbitrator, applications to the President of the Royal Institution of Chartered Surveyors to make such an appointment, and to the effect of certain agreements relating to compensation. The ouster of Part I of the Arbitration Act 1996 (in section 84(1)), and the Lord

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Chancellor's powers to make orders in connection with arbitration proceedings under the 1986 Act (section 84, subsections (2) to (5)), are repealed.

Article 8 adds a paragraph 7 to Schedule 2 to the 1986 Act. This amendment is consequential on the insertion of section 4(1)(g) into the 1995 Act by Article 12(4). The effect of the amendment is that, where the 1986 Act applies to a new tenancy by virtue of section 4(1)(g) of the 1995 Act, and the rent payable is unchanged from the rent payable under the previous tenancy, disregarding any changes resulting from adjustments to the boundary of the holding, the three year rent review cycle is uninterrupted.

Article 12 amends section 4 of the 1995 Act, which provides that the 1986 Act shall not apply in relation to any tenancy beginning on or after 1st September 1995, with certain exceptions.

Article 12(4) amends section 4(1)(f), which provides that the 1986 Act applies to certain tenancies granted under the doctrine of surrender and re-grant. Section 4(1)(f) only applied where the tenancy was granted "merely because a purported variation of the previous tenancy (not being an agreement expressed to take effect as a new tenancy between the parties) has effect as an implied surrender followed by the grant of the tenancy", and certain other conditions were satisfied. The amendment to this part of section 4(1)(f) widens the scope of that section and makes it easier for parties to determine when it applies.

Article 12(5) inserts a new paragraph (g) into section 4(1) of the 1995 Act, to allow parties to apply the 1986 Act to a tenancy by express provision in the contract of tenancy, provided the tenant previously held a 1986 Act tenancy of all or a substantial part of the holding.

Article 12, paragraphs (8) to (10) insert new subsections (2A) to (2C) into section 4 of the 1995 Act. Subsection (2B) limits the application of subsections (1)(f) and (g) to cases where the holding in existence at the date of entry into force of the subsection comprises the whole or a substantial part of the holding for which the new tenancy is granted. This prevents parties from using subsections (1)(f) and (1)(g) incrementally, to avoid the "whole or substantial part" requirement in those subsections.

New subsection (2C) allows parties to use the new subsection (1)(g) in cases where the old holding was a substantial part of the new holding in terms of area or in terms of value.

Article 12 also amends section 4(2)(b) of the 1995 Act and supplements it with the conditions set out in new section 4(2A) (Article 12 paragraphs (7) and (8)). Section 4(1)(d) provides that the 1986 Act applies to a new tenancy is where there is an agreed succession, and section 4(2) sets out what an agreed succession is for these purposes. The amended section 4(2)(b), and new section 4(2A), clarify when a succession is an agreed succession, to allow parties to rely on section 4(1)(d) with greater certainty.

Article 13 amends sections 5(1), 6(1)(c) and 7(1) of the 1995 Act, removing the 24 month upper limit on notice periods for farm business tenancies.

Article 14 amends section 9 of the 1995 Act, which provides that the rent review provisions in Part II of that Act apply to farm business tenancies, with certain exceptions. Article 14 adds to those exceptions, providing that where the tenancy agreement expressly states that Part II of the Act does not apply, or makes provision for the reference of rent reviews to an independent expert whose decision is final, Part II does not apply. These exceptions only apply where the tenancy agreement does not contain any provision which precludes a reduction in the rent during the tenancy. Article 14 also amends section 28(5), so that where the tenancy agreement makes provision for the reference of rent reviews to an independent expert, arbitration is excluded in relation to rent reviews.

Article 15 amends section 13(2) of the 1995 Act, which provided that on a statutory rent review, the arbitrator must take into account the terms of the tenancy, but not those relating to the criteria by reference to which any new rent is to be determined. The amendment replaces this restriction with one that the arbitrator must not take into account those terms of the tenancy which, apart from that subsection, would preclude a reduction in rent.

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Article 16 amends section 20 of the 1995 Act. Under section 20(1), the amount of end of tenancy compensation payable under the 1995 Act in respect of a tenant's improvement is based on the increase in value of the holding attributable to the improvement. The amendment gives landlords and tenants the option of agreeing an upper limit to the amount of compensation payable. Where they agree that there should be a limit but are unable to agree on the amount of the limit, the amount is the cost to the tenant of making the improvement.

Article 17 amends section 24, which applies the end of tenancy compensation provisions where there is a resumption of possession of part of the holding. The effect of the amendment is that, where the parties have agreed to a compensation limit, the tenant has received some compensation in respect of the improvement at the time he gave up the part, and the tenant is entitled to further compensation in respect of the improvement at the end of the tenancy, the total amount of compensation he receives does not exceed the compensation limit.

Schedules 1, 2 and 3 to the Order make consequential amendments, repeals and revocations. These arise mainly as a result of the amendments to section 84 of, and the repeal of Schedule 11 to, the 1986 Act.

A full regulatory impact assessment on the effect that this instrument will have on the costs of business is included in an explanatory document, which is available on the Defra website at <http://defraweb/farm/working/tenancies/index.htm>. Hard copies may be obtained from Defra, Innovation and Better Regulation for Farmers Division, Area 3A, Ergon House, Horseferry Road, London SW1P 2AL, telephone 020 7238 6026.