

**EXPLANATORY MEMORANDUM TO
THE AGRICULTURE (CALCULATION OF VALUE FOR COMPENSATION)
(REVOCATIONS) (ENGLAND) REGULATIONS 2015**

2015 No. 327

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument revokes the Agriculture (Calculation of Value for Compensation) Regulations 1978 and its amending regulations (“the Compensation Regulations”). The Agriculture (Calculation of Value for Compensation) Regulations 1978 were last amended in 1983. This will remove the prescribed approach for calculating end of tenancy compensation claims, for tenancies governed by the Agricultural Holdings Act 1986.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 The Compensation Regulations made provision in England and Wales for calculating compensation payable, by setting out a calculation method and fixed prices, to outgoing tenants of an agricultural holding for short-term improvements they have made during their tenancy and other tenant right matters as set out in Schedule 4 to the Agricultural Holdings Act 1948.

4.2 The Agricultural Holdings Act 1948 was repealed by the Agricultural Holdings Act 1986. The Compensation Regulations now have effect as if they were made under section 66(2) of the Agricultural Holdings Act 1986 (“the 1986 Act”), and make provision in relation to improvements and other tenant right matters set out in Schedule 8 to that Act.

4.3 This instrument is linked to another instrument relating to end of tenancy compensation consulted upon at the same time. An affirmative procedure Order will follow amending Schedule 8 to the 1986 Act increasing the range of matters that can be compensated for to bring it in line with current farming practices.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 This instrument is deregulatory and is a part of the Government's Red Tape Challenge to simplify, update and reduce the overall burden of regulation. It has the support of the Tenancy Reform Industry Group which includes representatives of tenant farmers, landlords and agricultural valuers.

7.2 In England, around a third of agricultural land is rented. The relationship between landlord and agricultural tenants is governed partly by the terms of their individual tenancy agreements and partly by agricultural tenancy legislation.

7.3 The 1986 Act¹ requires that outgoing tenants must be compensated for the value of fertilised land or crops they leave behind at the end of a tenancy at "the value of the improvement or matter to an incoming tenant". This encourages tenants to farm sustainably in the last years of the tenancy and it helps incoming tenants who may take up the holding too late in the year to cultivate the land or improve soil condition.

7.4 The Compensation Regulations contain reference to absolute values for certain improvements, including fertiliser and manurial values amongst other matters, which were last updated in 1983. Accordingly they do not compensate tenants adequately for the value of these improvements. Consequently tenants have less incentive to invest to keep the land productive at the end of their tenure. In turn this may reduce productivity in the early years of a new tenancy. In addition the Compensation Regulations set out a specific methodology for calculating compensation which may not be suitable for all agricultural holdings as farming practices and circumstances differ from holding to holding.

7.5 The requirement to compensate outgoing tenants for improvements they have made will remain unchanged as set out in the 1986 Act. By revoking the Compensation Regulations agricultural tenants and landlords will be able to settle compensation claims under the 1986 Act at current market values of the improvements concerned on the date the tenancy ends thereby providing an effective incentive for outgoing tenants to keep the land productive in the last years of their tenancy. It also gives landlords and tenants more autonomy and flexibility to agree a method of calculating compensation which best suits the circumstances of their particular agricultural holding.

7.6 The proposed change will affect approximately 21,500 tenancies in England governed by the 1986 Act accounting for almost 17% of the agricultural land. We

¹ The Agricultural Holdings Act 1986 applies to all tenancy agreements entered into before the 1st September 1995 and to some tenancies granted after this date but only where they are succession tenancies that were originally entered into under the 1986 Act.

estimate that on average about 450 tenancies will qualify for end-of tenancy compensation in a given year.

7.7 Updating the Compensation Regulations, to reflect current market values, rather than revoking them was considered. Whilst updating provides a short term solution to tenants, enabling compensation at present day values, it is not possible to reflect changes in commodity prices over time and the Compensation Regulations would soon be out of date again rendering the incentive to keep land productive ineffective. In addition the problem of a prescriptive calculation method that is inflexible to the needs of different agricultural holdings would remain.

8. Consultation outcome

8.1 Between August 2014 and October 2014 we ran an 8 week public consultation seeking views on a number of policy proposals including revoking the Compensation Regulations. We received 19 responses to the proposal to revoke the Compensation Regulations. Fourteen were in favour of revoking the Compensation Regulations, 3 disagreed and 2 did not answer the question. Those in favour of revocation included all the key business sector organisations representatives of landlords and tenants. A full analysis of responses can be found on the Gov. UK website at: <https://www.gov.uk/government/consultations/agricultural-tenancies-in-england-modernising-end-of-tenancy-compensation-and-repair-of-equipment>

9. Guidance

9.1 No Government guidance will be issued. We will work with members of the Tenancy Reform Industry Group who will disseminate information about this change across the sector.

10. Impact

10.1 The impact of the change will result in zero net cost to the business sector.

10.2 The impact on the public sector is zero as compensation claims are settled by parties privately.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business (firms employing up to 20 people) as both landlords and tenants of agricultural holdings in England are in the main micro and small businesses.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach is deregulatory. By revoking the Compensation Regulations we are providing small businesses with more flexibility to settle compensation claims as they wish using current market values and calculation methods that suite their individual needs.

11.3 The basis for the final decision on what action to take to assist small business is founded in the responses to the consultation from representatives of small business (both tenants and landlords) who were overwhelmingly in favour of this change.

12. Monitoring & review

12.1 The success criteria for this instrument is that outgoing tenants are incentivised to farm sustainably in the end years of their tenancy.

12.2 The Department for Environment, Food and Rural Affairs will seek feedback from members of the Tenancy Reform Industry Group on whether tenants are farming sustainably in the last years of tenancy. Defra will monitor the number of annual disputes relating to end of term tenancy compensation that go to the First-tier Tribunal (Property Chamber), Agricultural Land & Drainage.

13. Contact

Jenny Barker at the Department of Environment, Food and Rural Affairs Tel: 0117 3723638 or email: Jenny.Barker@Defra.gsi.gov.uk can answer any queries regarding the instrument.