

**EXPLANATORY MEMORANDUM TO
THE AGRICULTURE (MODEL CLAUSES FOR FIXED EQUIPMENT) (ENGLAND)
REGULATIONS 2015**

2015 NO. 950

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 prescribes terms for the maintenance, repair and insurance of fixed equipment. These terms are deemed to be incorporated in every tenancy contract of an agricultural holding that falls under the Agricultural Holdings Act 1986 (the “1986 Act”), except where a written agreement by the parties specifies a different split of those responsibilities. It also prescribes periods during which a referral to arbitration may be made where liability for fixed equipment is transferred.

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 This instrument revokes and replaces the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 (the “1973 Regulations”) and sets out responsibilities of the landlord and tenant for maintaining, repairing and insuring specified fixed equipment on agricultural holdings. It applies to agricultural holdings, governed by the 1986 Act, entered into before the 1st September 1995 and to some tenancies granted after this date, namely succession tenancies. There are approximately 21,500 tenancies in England governed by the 1986 Act accounting for almost 17% of agricultural land.

4.2 The Deregulation Act 2015 amends the 1986 Act to include third party determination as an alternative dispute mechanism to arbitration; third party determination is included in this instrument.

4.3 This instrument consolidates the Agriculture (Miscellaneous Time-Limits) Regulations 1959 and revokes the Agriculture (Time-Limit) Regulations 1988.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

6. European Convention on Human Rights

6.1 As this 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 part of the Government's Red Tape Challenge to simplify, update and reduce the burden of regulation on business and it delivers a Farming Regulation Task Force commitment to update the 1973 Regulations. The changes implemented by this instrument are supported by the Tenancy Reform Industry Group ("TRIG") which includes representatives of tenant farmers, landlords and agricultural valuers.

7.2 The relationship between a landlord and their agricultural tenant is governed partly by the terms of their individual tenancy agreement and partly by agricultural tenancy legislation. Under the 1986 Act the Minister may make regulations allocating liabilities between landlords and tenants for the maintenance, repair and insurance of fixed equipment on the holding. These are referred to as model clauses in the 1986 Act and were prescribed in the 1973 Regulations (amended in 1988).

7.3 The Government's policy objective is to allocate clear liabilities for fixed equipment so that agricultural holdings run efficiently and productively and disputes between landlords and tenants over responsibilities are minimised.

7.4 The 1973 Regulations are viewed as out of date by industry as they do not cover items now in common use, monetary caps are out of date, new technologies are not recognised and the drafting makes the liabilities difficult to understand. This instrument makes the changes below to address these issues.

- a) New liabilities are included for items now in common use on holdings. For example, central heating, slurry and silage systems, renewable energy equipment, livestock handling systems and fixed equipment generating electricity or power.
- b) Monetary caps are updated to reflect current market costs. For example, the cap on tenant spend for minor repairs to roofs (renewing and replacing slipped, broken or cracked tiles or slates as the damage occurs) is increased from £100 to £500 to reflect the increased cost of carrying out such repairs since 1988.
- c) Existing liabilities are expanded or amended to include new items and deliver a more pragmatic split of responsibilities between the parties. For example, expanding the landlord's liability to repair or replace main and exterior walls to include frames and structural cladding and changing the liability for repairing the electrical supply system from the tenant to the landlord (as set out in the consultation section below).
- d) Modernises the language and structure of the 1973 Regulations so that the liabilities are easier to understand.

- e) Consolidates the Agriculture (Miscellaneous Time-Limits) Regulations 1959 prescribe periods in which the landlord or tenant can seek arbitration to determine a dispute where liability for fixed equipment is transferred between the parties.
- f) Revokes the Agriculture (Time-Limit) Regulations 1988 which provided a three month transitional period where a party could refer to arbitration the right to a written tenancy agreement and enabled the arbitrator to disregard the 1988 amendments to the 1973 Regulations. A similar period is provided in this instrument.

8. Consultation outcome

8.1 Between August and October 2014 we ran an 8 week public consultation. This was deemed sufficient time for industry to consider and respond to the proposals as we worked closely with industry groups to prepare the consultation document, consequently there was a high level of awareness of the proposed changes across industry. We received 19 responses to the consultation. The majority voiced their support for updating the 1973 Regulations (saying it was much needed and overdue) but on some items we received mixed views on who should be responsible and on being precise in allocating responsibility to avoid ambiguity which may lead to disputes.

8.2 For example we consulted on amending an existing item on boilers, ranges and grates to include space and water heating with the landlord to replace and the tenant to repair. Some respondents expressed concern that tenants should not be liable for replacing the boiler as part of the liability to repair the space or water heating system. To address this we have specifically provided that the replacement of the boiler is not part of the tenant's repairing obligation of the space or water heating system.

8.3 Another example is the electrical supply system, where we have introduced a more pragmatic split of liabilities. We are changing the liability for repair from the tenant to the landlord as it is deemed reasonable that the landlord is responsible for what is an integral part of the building. All respondents were supportive apart from one who wanted to see the current position retained. The tenant will be responsible for repairing and replacing electrical sockets, switches and light fittings as these are in daily use by the tenant and they are best placed to carry out necessary work on these fittings.

8.4 Following the consultation we continued to work with industry experts to finalise the proposals. An analysis of the changes can be found in the Impact Assessment. In addition the Government response to the consultation 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 TRIG who will disseminate information about this change across the industry.

10. Impact

10.1 The impact of the changes is expected to result in zero net cost to business. Any direct welfare gains to one party from updating these regulations is expected to come at the expense of the other party leading to zero net cost overall.

10.2 The impact on the public sector is zero.

10.3 An Impact Assessment is attached 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 or small businesses already subject to the 1973 Regulations. This instrument will make the division of liabilities between landlord and tenant clearer providing greater certainty to all affected businesses.

12. Monitoring & review

12.1 The success measures for this instrument are: that responsibility for the repair, maintenance and insurance of fixed equipment is clearly allocated between the landlord and tenant of an agricultural holding, that disputes over these responsibilities are reduced and that this leads to more efficient and productive holdings. The Department for Environment, Food and Rural Affairs will seek regular feedback from members of TRIG on these success measures.

12.2 The monetary caps within this instrument will be reviewed within 10 years to enable them to be amended (if necessary) to reflect market costs and prices.

13. Contact

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