

2021 No. 619

LANDLORD AND TENANT, ENGLAND

**The Agricultural Holdings (Requests for Landlord’s Consent or
Variation of Terms and the Suitability Test) (England)
Regulations 2021**

Made - - - - *24th May 2021*

Laid before Parliament *25th May 2021*

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 19A and section 39(8) of the Agricultural Holdings Act 1986(a).

PART 1

Introductory

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Agricultural Holdings (Requests for Landlord’s Consent or Variation of Terms and the Suitability Test) (England) Regulations 2021.

(2) These Regulations come into force—

- (a) as regards Part 1, Part 2 and Part 4 on 21st June 2021;
- (b) as regards Part 3 on 1st September 2024.

(3) These Regulations apply in England only.

(4) In these Regulations “the 1986 Act” means the Agricultural Holdings Act 1986.

PART 2

Requests for Landlord’s Consent or Variation of Terms

Interpretation

2. In this Part—

“relevant financial assistance” means financial assistance under—

(a) 1986 c. 5. Section 19A was inserted by paragraph 7 of Schedule 3 to the Agriculture Act 2020 (c. 21), section 39(8) was substituted by paragraph 17 of that Schedule.

- (a) section 1 of the Agriculture Act 2020^(a) (powers of Secretary of State to give financial assistance),
 - (b) section 21 of that Act (powers of Secretary of State to give financial assistance in exceptional market conditions), or
 - (c) a scheme of the sort mentioned in section 2(4) of that Act (third party schemes);
- “statutory duty” means a duty imposed by or under an Act of Parliament or retained direct EU legislation.

Request for landlord’s consent or variation of terms

3.—(1) A tenant of an agricultural holding may refer a qualifying request to arbitration under the 1986 Act.

(2) In this Part, a qualifying request is a request which meets the following conditions—

- (a) it is a request for—
 - (i) the landlord’s consent to a matter which under the terms of the tenancy requires such consent, or
 - (ii) a variation of the terms of the tenancy;
- (b) it is made for the purposes of—
 - (i) enabling the tenant to request or apply for relevant financial assistance, or
 - (ii) complying with a statutory duty applicable to the tenant in respect of the use of the holding;
- (c) no agreement has been reached with the landlord on the request.

(3) Where the tenant has the right to refer a request to arbitration under paragraph (1), the landlord and tenant may instead agree in writing to refer the request for third party determination^(b) under the 1986 Act.

(4) A qualifying request may not be referred to arbitration under paragraph (1) unless the following conditions are met—

- (a) the tenant must have paid any rent due under the tenancy to which the request relates subject to any agreement in writing between the landlord and tenant to the contrary;
- (b) the tenant must have raised the request in writing with the landlord;
- (c) the tenancy must not be the subject of a valid notice to quit under Part 1 of Schedule 3 to, or Schedule 5 to, the 1986 Act which can no longer be contested by the tenant under the provisions of that Act.

(5) To make a reference for arbitration in respect of a request in accordance with this regulation, the tenant must serve on the landlord a notice in writing, further to that given under paragraph (4)(b), requesting landlord’s consent to a matter which under the terms of the tenancy requires consent or to a variation of the terms of the tenancy.

(6) A notice under paragraph (5) must include the following—

- (a) details of the request being made under paragraph (1);
- (b) a statement as to which of the following purposes the request is being made for—
 - (i) enabling the tenant to request or apply for relevant financial assistance;
 - (ii) complying with a statutory duty applicable to the tenant in respect of the use of the holding;
- (c) where the request is for a variation of the terms of the tenancy—
 - (i) the proposed new terms of the tenancy, and

^(a) 2020 (c. 21)

^(b) See section 96(1) of the 1986 Act for the definition of “third party determination” inserted by paragraph 24 of Schedule 4 to the Deregulation Act 2015 (c. 20).

- (ii) a demonstration that the requested variation of the terms of the tenancy represents the minimum change that is reasonably necessary to enable the tenant to request or apply for the relevant financial assistance or to meet the statutory duty;
- (d) where the request is made in order to access relevant financial assistance—
 - (i) a description of the activities proposed on the holding if the request is granted and any application for relevant financial assistance is successful, and
 - (ii) evidence to support a reasonable expectation that the tenant will be eligible to request or apply for relevant financial assistance if the request is granted;
- (e) a statement that there are provisions in these Regulations under which requests may be referred to arbitration, or third party determination, in the absence of agreement.

(7) The arbitrator or third party appointed may subsequently modify the tenant's notice under paragraph (5) if it is necessary and justified to do so taking into consideration all the relevant circumstances.

(8) Within the period of 2 months from the tenant giving a notice which meets the requirements in paragraph (6), the landlord may serve a counter-notice which—

- (a) consents to the request,
- (b) consents to the request subject to conditions which are set out in the counter-notice, or
- (c) refuses the request.

(9) The tenant may refer the request to arbitration or, as the case may be, third party determination in accordance with paragraph (3), within the period of 4 months from the service of the tenant's notice if the landlord—

- (a) does not serve a counter-notice;
- (b) serves a counter-notice which consents to the request subject to conditions which are not acceptable to the tenant;
- (c) serves a counter-notice refusing the request.

Awards or determinations by the arbitrator or third party

4.—(1) When a reference is made to an arbitrator or, as the case may be, a third party to determine a request in accordance with regulation 3, the arbitrator or third party may order the landlord to comply with the request (either in full or to the extent specified in the award or the determination) or make such other award or determination as the arbitrator or third party considers reasonable and just as between the landlord and the tenant having regard to all relevant matters including—

- (a) the tenant's quiet enjoyment of the holding;
- (b) the landlord's reversionary interest in the holding;
- (c) other property of the landlord and the tenant;
- (d) evidence as to the settled objectives of the landlord and tenant;
- (e) the desirability of making the least change to the tenancy that is reasonably necessary to give effect to such variation or approval that the arbitrator or third party may direct.

(2) As part of any award or determination made under paragraph (1), the arbitrator or third party may include such awards or determinations as they consider reasonable and just as between the landlord and the tenant in respect of—

- (a) the payment of costs;
- (b) where a request is made for the purposes of enabling the tenant to request or apply for relevant financial assistance, conditions relating to the making of a successful application;
- (c) conditions restricting a tenant's ability to make any subsequent reference to arbitration or third party determination under this Part in respect of the same request and in relation to the same tenancy;

(d) conditions relating to other matters including the time at which the award or determination takes effect.

(3) The arbitrator or third party must not make any award or determination which includes a variation to the rent of the holding as part of any award or determination made under paragraph (1).

(4) Subject to paragraph (5), the arbitrator or third party must not make any award or determination in respect of any compensation payable to the landlord or tenant as part of any award or determination made under paragraph (1).

(5) Where an award or determination made under paragraph (1) requires a landlord to give consent or imposes a variation to the tenancy, the arbitrator or third party may make an award or determination that the consent or variation must be disregarded for the purposes of assessing a claim for compensation made by the landlord on the tenant's quitting the holding on the termination of the tenancy under sections 71 to 73 of the 1986 Act (compensation for deterioration of holding).

(6) The award of an arbitrator or determination of a third party under this Part has effect as if the terms and provisions specified and made in the award were contained in an agreement in writing entered into by the landlord and tenant and having effect (by way of variation of the agreement previously in force in respect of the tenancy) as from the making of the award or determination or, if the award or determination so provides, from such later date as may be specified.

PART 3

The Suitability Test

The Suitability Test

5.—(1) This Part applies where the Tribunal^(a) is determining a person's suitability to become the tenant of a holding in the case of a particular applicant under section 39(2), as between two or more applicants under section 39(6), or under section 53(5) of the 1986 Act^(b).

(2) When determining an application as to whether a person is suitable to become the tenant of a holding under a provision referred to in paragraph (1), the Tribunal must have regard to all relevant matters including—

- (a) the person's likely capability and capacity to farm the holding commercially, with or without other land, taking into account the need for high standards of efficient production and care for the environment in relation to managing that holding;
- (b) the person's experience, training and skills in agriculture and business management;
- (c) the person's financial standing and their character;
- (d) the character, situation and condition of the holding;
- (e) the terms of the tenancy,

and having had regard to all relevant matters, the Tribunal must be satisfied that, if the applicant had applied in an open competition for a tenancy of this holding, that is assumed to be available under the 1986 Act, a prudent and willing landlord could reasonably be expected to regard the applicant as among the candidates to whom they would be willing to grant the tenancy.

(3) When determining an application under paragraph (1), the Tribunal must disregard—

- (a) all offers as to rent in relation to the holding;
- (b) the age of the person applying.

^(a) See section 96(1) of the 1986 Act for the definition of "the Tribunal".

^(b) By virtue of section 53(6A), inserted by paragraph 18 of Schedule 3 to the 2020 Act, section 39(8) and (8A) applies to section 53 determinations as regards suitability.

Transitional and Revocation Provisions

6.—(1) Paragraph (2) applies to any application to the Tribunal made under Part 4 of the 1986 Act after 1st September 2024 for a direction entitling the applicant to a tenancy of an agricultural holding on the death or retirement of a tenant where the date of death or the date of the giving of the retirement notice, as applicable, was before 1st September 2024.

(2) In relation to any application to which this paragraph applies, the provisions of section 39(8) of the 1986 Act as they had effect immediately before 1st September 2024 continue to apply for the purposes of section 39 of the 1986 Act (other than subsection (8A)).

(3) In this regulation “application” includes any proceedings arising out of any such application or any direction given in any such proceedings.

7. The Agricultural Holdings (Transitional Provision) (England) Regulations 2021(a) are revoked.

PART 4

Review

Review

8.—(1) The Secretary of State must from time to time—

- (a) carry out a review of these Regulations,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) The first report under this regulation must be published before 1st June 2026.

(3) Subsequent reports under this regulation must be published at intervals not exceeding five years.

24th May 2021

Victoria Prentis
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about the resolution of disputes in relation to landlord’s consent and variations to the terms of a contract of tenancy of an agricultural holding under the Agricultural Holdings Act 1986 (c. 5) (“the 1986 Act”) and about applications to succeed to a tenancy of an agricultural holding under the 1986 Act.

Part 1 contains introductory provisions.

Part 2 provides for a tenant to refer a request to arbitration or, by agreement in writing with the landlord, third party determination where a landlord’s consent or a variation of the terms of a contract of tenancy of an agricultural holding under the 1986 Act is required either to enable a tenant to request or apply for relevant financial assistance under the Agriculture Act 2020 (c. 21) as defined in regulation 2 or in order to meet a statutory duty.

(a) S.I. 2021/324

Regulation 3 sets out the scope of requests that may be made under this Part, the requirements that must be met before a request can be made and the information that must be included in a formal notice to the landlord that a request for arbitration is being made.

Regulation 4 provides that when considering a request, an arbitrator or third party may order the landlord to comply with the request, in full or in part, or make any award or determination they consider reasonable and just as between the landlord and tenant having regard to all relevant matters. Regulation 4(1) sets out a list of some of those matters that must be considered.

Regulation 4(2) provides for additional considerations that may form part of the award or determination including costs, the time when the award or determination takes effect and any conditions to which the award or determination is subject. Regulation 4(3) provides that the arbitrator or third party must not make an award or determination which varies the rent of the holding. Regulations 4(4) and 4(5) provide that the arbitrator or third party must not make an award or determination which provides for compensation except to provide that any consent or variation to the tenancy must be disregarded for the purposes of assessing a claim for compensation made by a landlord under sections 71 to 73 of the 1986 Act. Regulation 4(6) provides that any award or determination takes effect as if the terms and provisions in it were contained in an agreement in writing entered into by the landlord and tenant by way of variation to the agreement previously in place in respect of the tenancy from the making of the award or determination or at any specified later date.

Part 3 sets out the criteria which a Tribunal must have regard to when determining an application by a person as to whether they are suitable to succeed to a tenancy of an agricultural holding under Part 4 of the 1986 Act following the death or retirement of a tenant. The Tribunal is required to consider all relevant matters and regulation 5(2) sets out a list of some of the matters which must be taken into account, including that the Tribunal is required to consider the person's likely capacity to farm the holding commercially, with or without other land, taking into account the need for high standards of efficient production and care for the environment in relation to managing the holding. It goes on to provide that, having considered all relevant matters, the Tribunal must be satisfied that if the applicant had applied in an open competition for that tenancy, assuming it were available under the 1986 Act, a prudent and willing landlord could reasonably be expected to regard the applicant as one of the candidates to whom he would be willing to grant the tenancy. All offers as to rent in respect of the holding and the age of the applicant must be disregarded under regulation 5(3).

Regulation 6 makes transitional provision.

Regulation 7 revokes The Agricultural Holding (Transitional Provision) Regulations 2021 (S.I. 2021/324).

Regulation 8 provides for a review of these Regulations by 1st June 2026 and at intervals not exceeding 5 years thereafter.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.

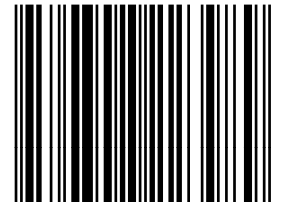
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