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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of response

## Agricultural Tenancy Legislation

**Consultation on modernising the repair and maintenance of  
fixed equipment and end of tenancy compensation in relation to  
Agricultural Tenancies in Wales**

May 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

## **Introduction:**

### **Purpose of Consultation**

The consultation, published on the 1 December 2016 and closed on 23 February 2017, sought the views on proposed changes to secondary legislation governing the repair and maintenance of fixed equipment and end of tenancy compensation, in relation to agricultural tenancies in Wales which are governed by the Agricultural Holdings Act 1986.

The proposed changes are intended to update outdated provisions, introduce more flexibility and bring legislation in line with current farming practices. The objectives of the current review correspond to the Welsh Government's Working Smarter agenda to deliver better regulation within an appropriate framework, improve customer service and bring about an industry able and willing to embrace change to deliver increased profitability and professionalism.

The changes which the Welsh Government consulted on are designed to support the continued existence of an efficient and effective agricultural tenanted sector in Wales. Amendments to existing legislation aim to clarify regulatory requirements, such as liabilities between a landlord and tenant for fixed equipment on a holding. Other planned changes outlined a method to calculate compensation payable to outgoing tenants as the current legislation no longer compensate tenants adequately for the value of certain improvements they have made to the land. This, in turn, can encourage tenants to invest in and farm the land more sustainably in the last years of their tenancies.

The proposed changes have been based on the recommendations of the Tenancy Reform Industry Group (TRIG), a non-statutory advisory body which represents the interests of agricultural landlords and tenants. The UK Government already enacted similar changes following public consultation in England in 2014 to reform the agricultural tenancy legislative framework. The proposed changes will ensure tenants and landlords in Wales are subject to the same regulatory requirements as farmers in England and are not disadvantaged when it comes to the repair and maintenance of fixed equipment and the calculation of the level of compensation and the type of work compensation can be claimed for.

### **Consultation Period and Distribution**

The consultation document was available on the Welsh Government website and was also circulated directly to key stakeholders. Nine responses were received during the 12 week consultation period. All of these have been considered and analysed to provide the Welsh Government's formal response.

### **Summary of Responses**

List of respondents:

- Agricultural Land Tribunal (Wales)
- Pontypool Park Estate Office
- Messrs Sprackling – Tenant Farmers
- The Tenant Farmers Association
- NFU Cymru
- CAAV (Central Association of Agricultural Valuers)
- Anonymous
- CLA – Country Landowners Association

The consultation posed 13 questions in total. Seven questions related to proposals on the repair and maintenance of fixed equipment, three were posed on the calculation of end of tenancy compensation, two questions related to the Welsh language and a final question sought additional comments relevant to the consultation. Overall, the responses to the proposals were positive and supportive. A number of respondents agreed the relevant secondary legislation presently in force in Wales is outdated and welcomed the Welsh Government's willingness to update the regulatory requirements. There was widespread support for bringing forward legislative changes already enacted in England to increase consistency and avoid confusion and misunderstanding in the agricultural tenancy sector. The consultees have also expressed a few concerns which have been taken into full consideration in developing the Welsh Government's response.

### **Question 1 – Are you content with adding the liabilities proposed to the model clauses?**

In general, respondents were positive and welcomed the additional clarity the update to the model clauses offers. Comments which were raised in relation to the specific proposals are collated below.

#### **Model Clauses - New Liabilities**

- *Reed beds - landlord to repair/replace, tenant to keep clear and in good working order*

One respondent highlighted the use of the phrase "in good working order" lacks clarity and could cover items of repair or even replacement which are correctly part of the landlord's liability. In their view, it would be preferred if the tenant's liability was set in terms of keeping reed beds clear of blockages only, to avoid any confusion and potentially place additional burden on tenants.

- *Slurry, silage and effluent systems – landlord to repair and replace, tenant to keep clean and in good working order*

A number of respondents raised concerns in relation to this proposal. One respondent was concerned it may not be possible for a tenant to keep these systems in "good working order without carrying out substantial repairs or parts being replaced." This should be the landlord's responsibility. A consultee suggested the tenant's liability to be set in terms of keeping these systems "clean and free from blockages" only, rather than "in good working order" which lacks clarity.

- *Fixed equipment generating electricity/heat/power e.g. solar panels, heat pumps and wind turbines – landlord to replace, tenant to repair*
- *Fuel, oil tanks, gas pipework and fixed liquid petroleum and gas (LPG) tanks – landlord to replace, tenant to repair*

Most of the respondents were content with the suggested proposal. One of the stakeholders, whilst content for tenants to be responsible for repairs and replacements to freestanding fuel and oil tanks, argued the repair and replacement of gas pipework and fixed LPG tanks should fall to the landlord.

- *Fire, carbon monoxide, smoke and similar detection systems – landlord to repair and replace on the basis they must fulfil their obligations under the fire insurance. Given the health and safety aspect of this liability, provision will be made for the tenant to repair and replace, with the ability to recover reasonable costs.*
- *Radon pumps – landlord to replace, tenant to repair*
- *Insulation including roof, wall and pipes – landlord to replace, tenant to repair*

A major concern was raised by one of the responses in regards to this specific proposal. As cavity and other types of wall insulation are integral to the structure of buildings, landlords should be responsible for both replacement and repair of wall insulation, stated one of the respondents. Similarly, roof insulation should be the responsibility of the landlord to repair and replace. The consultee highlighted these changes would bring the proposals in line with the regulatory requirements already enacted in England.

- *Livestock handling systems and sheep dips – landlord to replace, tenant to repair.*
- *Flood banks – landlord to repair and replace.*
- *Tile and pipe for field drainage system – landlord to repair and replace, tenant to keep field drains and their outlets clear from obstruction.*
- *Signs and notices – tenant to repair and replace.*

**Question 2 – Are you content that the liability for fitted kitchens is clear or do you think there is a need to make specific reference to fitted kitchens in the model clauses?**

Four of the respondents were content with the proposal and raised no concerns. Two of the respondents believed fitted kitchens should be listed and defined separately with the liability for the tenant to repair and the landlord to replace. This would make it absolutely clear where the responsibility lies. One response recommended keeping the provisions in line with England where fitted kitchens are not listed exclusively in the relevant statutory instrument.

**Question 3 - Are you content with the inclusions proposed to existing liabilities and the prescribed terms for the maintenance, repair and replacement?**

There was a general consensus and respondents welcomed the proposals, although some concerns were raised. These are summarised below under the specific proposals.

**Model clauses – more detailed breakdown of existing liabilities or a change in existing liability**

- *Main walls and exterior walls expanded to include structural frames, cladding and internal plaster - landlord to repair and replace.*

- *The landlord is currently responsible for chimney stacks and pots – we propose to expand this to include chimney linings, fireplaces, firebacks and firebricks which would be for the landlord to repair and replace.*
- *We propose to expand roofs to include bargeboards, fascias and soffits with the landlord to execute all repairs and replacement. In respect of this work, we propose the landlord may recover one-half of the reasonable costs from the tenant with the caveat that if the work is completed before the fifth year of the tenancy, the sum which the landlord may recover from the tenant is restricted to one-tenth of such reasonable costs for each year that has elapsed between the start of the tenancy agreement and the work being completed.*

A number of respondents did not agree with bargeboards, fascia and soffits to be included with roofs. For example, in the case of listed buildings and large or asbestos roofs, the cost could be considerable and not recoverable within the earning capacity of the farm. Therefore, it was suggested roofs should be listed separately and the landlord should continue to have liability for repairs, with the exception to the repair of slipped or broken slates, which could then be capped at £500. This proposal was supported by another response.

One stakeholder was content to see specific references made to barge boards, fascias and soffits. They felt the landlord should be liable for repairs and replacements with the entitlement of the recovery of half the reasonable cost from the tenant. However, the consultee opposed the inclusion of these items within the definition of “roofs” as this would represent a significant move of liability from landlord to tenant. In addition, removing barge boards, fascias and soffits from the definition of roofs would mean the regulations in Wales were in line with those applicable in England.

- *Door and window furniture including glass, glass substitute, sashcords, sealed glazing units– tenant to repair as currently but now to also replace when such items become incapable of repair. This moves liability for replacing door and window furniture which is incapable of repair from the landlord to the tenant.*

Two of the respondents raised concerns regarding the proposal. They argued replacing windows and doors can be expensive and should not fall onto the tenant, unless they were directly responsible for the damage.

- *Electrical supply system including consumer boards except for switches, sockets and light fittings– landlord to maintain/repair/replace. This changes the repairing liability so that the landlord is solely responsible for the electric supply system except for items which fall more easily to the tenant to repair or replace due to ease of access namely switches, sockets and light fittings. This links to the change proposed in the paragraph below.*
- *Electrical switches, sockets and light fittings – tenant to maintain/repair and to replace when item becomes incapable of repair. The tenant is currently responsible for repairing the electrical system. Under our proposal their repairing obligation will be limited to sockets, switches and light fittings and they will be responsible for replacing these items if incapable of repair.*

One of the respondents questioned the rationale and practicality of the proposals regarding electrical equipment. They underlined the importance of safety and the

common practice of tenants adding new electrical connections and spurs to the existing circuits on farm. Moving the liability from the tenant to the landlord could expose the landlord to “unknown quality of workmanship and potentially increased costs of rectification”. The consultee suggested to have the liability remain the same, based on the tenant having responsibility for every part the electrical system beyond the distribution board. This would not only make tenants more aware of the need to be conscious of electrical safety in their business, but would also reduce the likelihood of dispute or confusion between landlord and tenant. The amendment, as drafted, may cause confusions as to whether the particular length of wiring or installation that is causing the problem is the landlord’s or tenant’s responsibility, especially if it was installed some time ago and without the landlord’s knowledge.

- *Fitted kitchens we believe are already provided for in law under the tenant’s obligation “to repair and keep and leave clean and in good tenantable repair, order and condition the farmhouse, cottages and farm building together with all fixtures and fittings...” and landlord’s obligation to replace. Our preference is not to include this item but would you find it helpful to have it covered explicitly in the model clauses.*

Responses regarding this item have been considered under Question 2.

- *We propose adding garden/yard gates and doors to the list of liabilities and propose that the liability to repair sits with the tenant and to replace with the landlord. In respect of this work, the landlord may recover one-half of the reasonable costs from the tenant with the caveat that if the work is completed before the fifth year of the tenancy, the sum which the landlord may recover from the tenant is restricted to one-tenth of such reasonable costs for each year that has elapsed between the start of the tenancy agreement and the work being completed.*

Two of the responses opposed the landlord’s ability to recover half of reasonable costs from the tenant for the replacement of garden/yard gates and doors. In their view, it would be preferable for the tenant to repair and the landlord to replace them.

- *We propose boilers, ranges and grates are expanded to include, central heating systems, immersion heaters, heating apparatus and ranges, – landlord to replace, tenant to repair.*
- *Underground water pipes - provision will be made for the tenant to carry out the necessary work without providing the landlord with prior notice with the ability to recover up to a cap of £2,000 per incident. This is without prejudice to the existing provision that the tenant can serve written notice to the landlord calling on him to do the work and if the landlord has not done that work in a week, then the tenant can do the work and recover the reasonable cost.*

Although the majority of the respondents agreed and raised no issues, one of the consultees suggested additional clarification to ensure any works undertaken are “reasonable” and “receipts are provided for any claims that are made against the landlord”. This would ensure easier management of the provision and the maintenance of a proper audit trail.

#### **Question 4 – Are you content with the proposed increase to the monetary cap?**

All respondents agreed to the proposal.

**Question 5 – Are you content with permitting tenants to recover their reasonable costs for replacements in a single payment, rather than the tenant having to recover up to a cap for each year of the tenancy until reasonable cost of the works involved is fully recovered**

Five of the respondents agreed to the proposal but underlined the importance of the cost being reasonable and receipted for audit purposes.

One of the consultees did not agree with the proposed amendment and wished to see the limit increased from £2000 to £10,000 in any one year and to remain subject to the rent for the holding. In their view, this would be fairer to landlords. Another respondent also argued the proposal was unfair and the existing claim model is fairer.

One response suggested there should be agreement between tenant and landlord on proof of obtaining the best value quote for the necessary repair, where the tenant or landlord is seeking to recover costs. This should take place before the work is completed with subject to strict time limits.

**Question 6 – Are you content that the legislation is consolidated as proposed?**

Eight out of nine respondents agreed with the proposal and one made no comment.

**Question 7 – Do you consider that a transitional period is required? If yes, please state why?**

The majority (seven) respondents were happy no transitional period would be required providing it was clear as to when the new regulations come into force. One respondent felt a three year period would be appropriate to allow better planning for estates and the changes to be incorporated into rent reviews.

One consultee argued a transitional period would be required in order to give fair warning of potential increased costs to landlords.

**Question 8 – Do you agree that the tenant should be compensated for inputs that have not been purchased, trace elements in addition to magnesium and copper, and other beneficial material such as soil conditioners?**

One respondent disagreed with the proposal, five agreed and three provided no opinion.

**Question 9 – Do you agree that compensation to an outgoing tenant for manurial value from consumption of corn and bought-in feed should include that by any animals kept on the holding for agricultural purposes?**

Two of the respondents did not comment on this question whilst six agreed with the proposal without raising any concerns.

One stakeholder felt “if consumed feeds are to be retained as a head of claim under Schedule 8, then this would be an appropriate change in modern circumstances.” However, they highlighted the English revisions to Schedule 8 moved to consider manures in store as the direct benefit being left for the incoming occupier, removing the reference to previously consumed feeds.

**Question 10 – Do you agree with the proposal to remove the prescribed method for calculating compensation and the tables specifying the unit value of commodities,**

**i.e. To revoke The Agricultural (Calculation of Value for Compensation) Regulations 1978 (as amended)?**

The majority of the respondents agreed with the proposal and two provided no comments.

One of the respondents suggested additional changes to be made to the regulations, allowing the Agricultural Lands Tribunal Wales to consider disputes in relation to end of tenancy compensation, if the 1978 Compensation Regulations are revoked. They highlighted the Tribunal would have the necessary knowledge and expertise in these matters.

**Question 11 – We would like to know your views on the effects that these proposals would have on the Welsh Language, specifically on i) opportunities for people to use Welsh and ii) on treating the Welsh language no less favourably than English. What effects do you think there would be? How positive effects could be increased, or negative effects be mitigated?**

**Question 12 – Please also explain how you believe the proposed policy could be formulated or changed so as to have i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourable than the English language, and ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourable than the English language.**

Five of the respondents did not answer these questions. One stakeholder stated they do not see these issues as having any direct relevance to the Welsh language, but agreed “anything that eases the functioning of the agricultural tenancy system could be seen to remove problems for a sector in which many farmers are at the core of Welsh speaking communities.”

**Question 13 – We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.**

Some of the respondents utilised this opportunity to raise additional concerns and make additional comments. These are summarised below.

One of the responses re-iterated the benefits of following the changes made in England which would place the tenancy sector in Wales on the same level.

One respondent suggested the transition period should also include time for landlords for improvement works to make the farm a safer place but should not be able to claim compensation for these as this would bring “unfair competition to small private farms”.

Another comment stated Councils should make every effort to preserve the opportunity for future farmers by protecting and maintaining Council owned farms in Wales.

### **The Welsh Government Response**

The changes which were summarised in the consultation exercise seek to update outdated regulations, provide clarification on regulatory requirements and support the functioning of the agricultural tenancy sector. It is the Welsh Government’s intention to introduce regulatory changes and implement the outlined proposals with some minor modifications.

The Welsh Government welcomes the general support to the proposed amendments and is thankful for the additional comments and suggestions.

### ***Model Clauses and Liabilities***

#### Reed beds and slurry stores

In light of the consultation responses and additional stakeholder feedback, it is proposed the tenant's responsibility regarding reed beds will be specified as keeping these clear of blockage only. Similarly, provision on slurry stores will be amended slightly to set the tenant's liability for keeping the systems clean and free of blockage, rather than in good working order. The Welsh Government accepts the term "good working order" could be regarded as ambiguous and could imply additional and unintended responsibility for agricultural tenants in Wales.

#### Fuel and oil tanks, gas pipework and fixed LPG tanks

In regards to the liability affecting freestanding fuel and oil tanks, gas pipework and fixed LPG tanks, the Welsh Government has reconsidered the proposal in light of the consultation outcome and additional stakeholder feedback. It is now proposed the tenant's responsibility will only apply to freestanding oil and fuel tanks in the amended regulations. The repair and replacement of pipework and LPG tanks will fall to the landlord.

#### Insulation of roof, wall and pipes

The Welsh Government considered the comments received in relation to the proposal affecting insulation of roof, wall and pipes. As highlighted by some of the respondents, wall and roof insulation form an integral aspect of a building's structure, hence the responsibility to repair and replace should fall to the landlord. The Welsh Government agrees with this assessment and will not include these specific liabilities as the tenant's in the amended regulations. The tenant will have the responsibility for the repair and replacement of pipe insulation under the new regulations.

#### Fitted kitchens

The consultation sought the views of stakeholders on whether a specific reference to fitted kitchens should be included in the new Regulations. A number of the respondents highlighted the term fitted fixtures may not be sufficient to cover fitted kitchens, making the regulations unclear and open to interpretation. Based on this feedback, the Welsh Government will add fitted kitchens as a specific liability for the tenant to repair and the landlord to replace in the new statutory instrument.

#### Bargeboards, fascias and soffits

The proposal to expand the definition of roofs to include bargeboards, fascias and soffits divided opinion. A number of respondents disagreed with this change raising concerns this would represent a significant move of liability from the landlords to tenant. Following the consideration of the responses, the Welsh Government proposes to list roofs separately in the regulations with the landlord having the liability for repairs and replacement, bar small repairs of broken and slipped tiles, without the ability to recover cost from the tenant. Bargeboards, fascias and soffits will not be included under the term roofs but will be listed separately with the landlord having liability for their repairs and replacement and the ability to recover half the reasonable cost from the tenant.

## Doors and window furniture

Some concerns were raised regarding the proposal on doors and window furniture, including glass, glass substitute, sashcords, and sealed glazing units. The Welsh Government considered these objections and the counterarguments carefully. In the amended regulations, the tenant will have responsibility for repair, replacement and keeping these in good working condition in the amended regulations, except for glass or glass substitute which requires repair or replacement as a consequence of the condition of the door, window, skylight or their frames. The landlord will have responsibility for doors, windows and skylights and their frames.

## Electrical equipment

Although the majority of the respondents agreed with the proposals affecting electrical equipment, i.e. moving the liability for repair and replacement of electrical systems to the landlord, one consultee has expressed their concern over safety issues. In the Welsh Government's view, safety is paramount and the proposal is expected to ensure landlords have sufficient overview and management of all electrical repairs, combating unsafe practices of tenants adding new connections to the systems without the knowledge and consent of the landlord. Electrical circuits and equipment form an integral part of the farm systems and farm buildings such as the farm house itself, and it is reasonable to expect the responsibility for the repair and replacement of these to fall onto the landlord, rather than the tenant.

## Garden gates and doors

There was opposition to the proposed ability of the landlord to recover half the reasonable cost for the replacement of garden/yard gates and doors. In light of the consultation responses, this proposal will not be taken forward as originally outlined. Under the new regulations the tenant will have the liability to repair and the landlord to replace these items, without any cost recovery.

The other proposals regarding model clauses and liabilities will be progressed as detailed in the consultation document.

## Monetary cap and end of tenancy compensation

The increase to the monetary cap was supported by all respondents and will be progressed by the Welsh Government, as proposed.

The proposal on changes to the recovery of cost for tenants was supported by the majority of the respondents. However, there were some concerns raised regarding the impact on landlords. The Welsh Government has considered these concerns but believes the proposed change and monetary limit are fair and are designed to support the functioning of the tenancy sector in Wales.

The Welsh Government accepts a best value quote for repairs is a sensible way forward, as suggested by one of the respondents. However, it would not be appropriate to make this a mandatory requirement because such provision could be open to interpretation and would increase regulatory burden. Landlords and tenants will be able to come to an agreement under the terms and conditions of their individual contracts without prescriptive provisions being introduced under the amended regulations.

## Consolidation

The Welsh Government will consolidate the model clauses with the Agriculture (Miscellaneous Time-Limits) Regulations 1959 and revoke the Agriculture (Time-Limit) Regulations 1988. Also, the Agriculture (Miscellaneous Time-Limits) Regulations 1959 will be consolidated with the model clauses in order to simplify the legislation governing agricultural tenancies.

## Transitional period

The Welsh Government considers there is no need for a transitional period, as stated by the overwhelming majority of the respondents.

## Compensation

There was majority support for the proposals amending end of tenancy compensation arrangements and the proposal will be progressed by the Welsh Government.

One specific suggestion related to the extension of the remit of the Agricultural Land Tribunal Wales (ALTW) to include disputes over end of tenancy compensation. The potential extension of the ALTW's jurisdiction is part of a separate workstream and will be considered independently from the current consultation.

## Additional Comments

Improving farm facilities and farm safety should be a priority for the whole industry. The Welsh Government believes the changes proposed in the consultation will help streamline and clarify regulatory requirements and account for more modern farm practices, hence also supporting the effective functioning of the agricultural tenancy sector. Not all aspects of this sector can be regulated and landlords and tenants need to work in cooperation to achieve better safety and proficiency on their farms.

Local Authority farms are widely regarded by the industry and the Welsh Government as an important resource that provides an attractive introduction to agriculture for new and young entrants. The management of the Local Authority Smallholding estate is a matter for the individual Local Authorities and Welsh Ministers do not have legal powers either to directly control the management practices, or to prevent the rationalisation of Local Authority estates. Nevertheless, the Welsh Government is supportive of the continued existence of Local Authority farms because of their added benefits to the sector, particularly in supporting new entrants.