

The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021

Tenanted land – Frequently Asked Questions

Important: The information below provides a general overview, however individual circumstances and agreements may vary.

In this document the term ‘*must*’ means a specific legal requirement. You must comply with these requirements. The terms ‘*should*’ and ‘*may*’ are used for things regarded as best practice, but for which there is no specific legal requirement. You should take these suggestions into account, and NRW will consider all cases on an individual basis when undertaking enforcement action.

Tenants who may be impacted by the introduction of The Water Resources (Control of Agricultural Pollution) (Wales) Regulations 2021 (“the regulations”) should speak to their landlord at the earliest opportunity to ensure that the holding is compliant with the regulations.

Where needed, specialist independent legal advice should be sought as early as possible. If there is a risk that the holding will not be compliant with the regulations, in full, by the end of any relevant transition period due to issues related to the tenancy agreement, the tenant must seek specific advice from NRW at the earliest opportunity.

General

Q. Who is responsible for the record keeping under a tenancy and who will be inspected?

A. In nearly all cases, the tenant, as occupier of the holding, will be responsible for the keeping of any relevant records and liable for any breaches found during inspections.

Q. My tenancy is due to end within the year, do I need to calculate limits for the whole year?

A. Yes, you should calculate all limits required under the regulations for the whole calendar year.

You may be required to provide copies of any records to your landlord and any new tenant by the terms of your tenancy agreement. In all cases and where possible copies of records should be provided to new tenants to allow for continuation. However, this is not a requirement of the regulations.

You must retain all required records for a minimum of 5 years and provide any information if requested.

Q. I have taken over a farm tenancy, do I start the records from new or do I carry over the existing records?

A. This will depend on when you take over the tenancy. If you take over a tenancy during a calendar year, you should use the existing records to ensure continued compliance with the limits that have been set for that calendar year. Where records are not available you should seek advice from NRW.

If you take over a tenancy at the start of a calendar year, you must calculate the relevant limits for that calendar year and begin record keeping from the first day of your tenancy.

Q. I have restrictive clauses preventing compliance with the regulations e.g. the export of slurry and exceed the spreading limit, what can I do?

A. Resolving issues arising out of specific clauses will be a matter for the parties to each individual agreement.

If, as a tenant, you are being prevented from bringing the holding into compliance with the regulations as a result of a clause in your agreement, you should raise the matter with the landlord as soon as possible in order to try and resolve the matter. If that is not possible, you may wish to seek independent specialist legal advice.

If restrictive covenants in your tenancy agreement are preventing you from carrying out certain works, you may also wish to consider whether there are alternative options relating to the management of the holding, which would bring the holding into compliance with the regulations but without needing to carry out any structural work to the farm infrastructure.

If there is a risk that the holding will not be compliant with the regulations, in full, by the end of any relevant transition period due to issues related to the tenancy agreement, the tenant must seek specific advice from NRW at the earliest opportunity.

Q. A dispute currently in arbitration or before a tribunal is preventing my holding from being compliant with the regulations, am I exempt from the relevant regulations.

A. There is no exemption in the regulations in these circumstances. If there is a risk that the holding will not be compliant with the regulations, in full, by the end of any relevant transition period due to issues related to the tenancy agreement, the tenant must seek specific advice from NRW at the earliest opportunity.

Where there are any potential disputes, tenants and landlords should liaise with each other at the earliest opportunity to try and reach an amicable solution. Where this is not possible, parties may wish to seek independent specialist legal advice and may wish to consider their options with regard to commencing arbitration or tribunal proceedings.

NRW will consider all cases on an individual basis when undertaking enforcement action.

Q. Where can I get further help and advice?

You may be able to get help or advice from:

- a land or managing agent
- your farming union
- the [Tenant Farmers' Association](#)
- [the Country Land and Business Association](#)
- a [solicitor](#)
- Professional organisations such as
 - the [Agricultural Law Association](#)
 - the [Central Association of Agricultural Valuers](#)
 - the [Royal Chartered Institute of Surveyors](#)

Q. Will the FAQ document be updated to include any future changes to agricultural tenancy legislation or funding in Wales?

A. Yes, the FAQ document will be updated to include any future changes to the legislation affecting agricultural tenancies or future funding streams. Please visit the Welsh Government website for the latest information www.gov.wales/land-management .

Farm Business Tenancies (FBTs)

The use of the term FBTs refers to tenancies under the Agricultural Tenancies Act 1995.

Q. I am a farm business tenant and I do not have sufficient capacity to store slurry during the closed period in compliance with the regulations and do not control the farm infrastructure. How can I upgrade my on-farm storage capacity?

A. Most tenants of FBTs should be able to make physical improvements (and intangible advantages) to the holding with landlord consent, depending on the terms of their tenancy agreement. Less commonly, tenants of FBTs may be able to make physical improvements without landlord consent. This will be a matter for the parties to each individual agreement to negotiate and reach agreement on.

Where consent is given, the tenant may be entitled to end of tenancy compensation for the value of physical improvements made, provided the improvements remain on the holding.

Where consent is refused and agreement is unable to be reached between the parties, you may wish to seek independent specialist legal advice.

Where there is insufficient storage capacity to meet the requirements of the 'storage period', you may also wish to consider whether there are alternative options relating to the management of the holding, which would bring the holding into compliance with the regulations without needing to carry out any structural work to the farm infrastructure.

So long as a tenant has not already begun the improvement works, tenants may also wish to consider arbitration. A tenant must give notice to the landlord in writing of their intent to refer the matter to arbitration within 2 months of being refused consent

(or within 4 months from the date of their original request for consent, if they do not hear anything).

If there is a risk that the holding will not be compliant with the regulations, in full, by the end of any relevant transition period due to issues related to the tenancy agreement, the tenant must seek specific advice from NRW at the earliest opportunity."

Please see the following helpful link regarding arbitration:

<https://www.rics.org/uk/upholding-professional-standards/sector-standards/dispute-resolution/rural-arbitration/>

Q. I am farm business tenant but I am at risk of being/have been served a 'regulation 30 notice' as the storage is non-compliant. Who is responsible for completing and paying for the required works?

A. Natural Resources Wales (NRW) may serve a regulation 30 Notice on the person who has custody or control of silage or slurry, or who is responsible for the silo or slurry storage system, requiring that person to carry out works. The notice could therefore be served on a landlord, or tenant (or 3rd party) depending on who NRW deems to be the relevant person.

Prior to serving any notice, NRW will discuss and work with all parties to establish who has the relevant responsibilities under the tenancy agreement, and will liaise with the relevant individual or organisation.

Having copies of tenancy agreements available will assist NRW to identify the responsible party and ensure that any improvements are undertaken in a satisfactory manner and timescale.

Q. How can I raise a dispute with my landlord?

A. Contractual disputes under a tenancy agreement are matters for the parties to the agreement to resolve between themselves.

In the event a dispute arises, landlords and tenants should liaise with each other at the earliest opportunity to try and reach an amicable solution. If there is a risk that the holding will not be compliant with the regulations, in full, by the end of any relevant transition period due to issues related to the tenancy agreement, the tenant must seek specific advice from NRW at the earliest opportunity.

Where this is not possible, parties may wish to seek independent specialist legal advice and may wish to consider their options with regard to commencing arbitration or determination by an independent expert.

Agricultural Holdings Act Tenancies (AHA)

The use of the term AHAs refers to those holdings where the tenancy agreement has been entered into in line with the provisions of the Agricultural Holdings Act 1986.

Q. I am an AHA tenant and I do not have sufficient capacity to store slurry during the closed period and do not control the farm infrastructure. How can I upgrade my on farm storage capacity?

A. The Agricultural (Model Clauses for Fixed Equipment) (Wales) Regulations 2019 (known as the 'model clauses' regulations) set out various responsibilities of landlords and tenants regarding the repair and maintenance of fixed equipment. The model clauses are deemed to be incorporated in every agricultural tenancy agreement (whether oral or in writing) made under the Agricultural Holdings Act 1986, except in instances where the terms of a written tenancy agreement are inconsistent with the model clauses, whereby the express terms of the written contract will prevail.

It is imperative that you review the provisions of the terms of your tenancy agreement to determine who is responsible for making improvements to infrastructure and what consent is needed, and whose responsibility it is to update said infrastructure.

Under the model clauses the landlord must repair or replace the following water and drainage systems (not an exhaustive list):

- underground water supply pipes, wells, boreholes, reservoirs and all connected underground installations (excluding removable covers and tops);
- sewage disposal systems including septic tanks, filtering media, and cess pools (excluding removable covers and tops);
- reed beds for water and sewage treatment; and
- slurry, silage and other effluent systems excluding anaerobic digesters (excluding removable covers and tops).

Conversely, the tenant is under an obligation to carry out maintenance, which includes keeping clean and in good working order all roof valleys, eaves-guttering and downpipes, wells, septic tanks, cesspools, sewage disposal systems, silage and effluent systems excluding anaerobic digesters, and keeping clean and free of blockage all slurry systems (except in so far as any liability falls to be undertaken by the landlord as above).

The tenant should give written notice to the landlord of repair/replacement works that are required to be undertaken. However, where the landlord fails to execute such repairs or replacements within three months of receiving a written notice from the tenant, the tenant may themselves execute repairs or replacements.

If you are unable to reach agreement with your landlord to ensure compliance with the regulations by undertaking improvement works, you may also wish to consider whether there are alternative options relating to the management of the holding, which would bring the holding into compliance with the regulations without needing to carry out any structural work to the farm infrastructure.

Where consent is refused and agreement is unable to be reached on any options for bringing the holding into compliance with the regulations, you may wish to seek independent specialist legal advice.

You can find out more about the Tribunal at www.agriculturallandtribunal.gov.wales

Q. I am an AHA tenant but I am at risk of being/have been served a 'regulation 30 notice' as the storage is non-compliant? Who is responsible for completing and paying for the required works?

A. Natural Resources Wales (NRW) may serve a regulation 30 Notice on the person who has custody or control of silage or slurry, or who is responsible for the silo or slurry storage system, requiring that person to carry out works. The notice could therefore be served on a landlord, or tenant (or 3rd party) depending on who NRW deems to be the relevant person.

Prior to serving any notice, NRW will discuss and work with all parties to establish who has the relevant responsibilities under the tenancy agreement, and will liaise with the relevant individual or organisation.

Having copies of any written tenancy agreements available will assist NRW to identify the responsible party. NRW will ensure that any improvements are undertaken in a satisfactory manner and timescale.

If the tenancy is unwritten, the Agricultural (Model Clauses for Fixed Equipment) (Wales) Regulations 2019 (known as the 'model clauses' regulations) apply. Who is responsible for the works will depend on the nature of them.

Under the model clauses the landlord must repair or replace the following water and drainage systems (not an exhaustive list):

- underground water supply pipes, wells, boreholes, reservoirs and all connected underground installations (excluding removable covers and tops);
- sewage disposal systems including septic tanks, filtering media, and cess pools (excluding removable covers and tops);
- reed beds for water and sewage treatment; and
- slurry, silage and other effluent systems excluding anaerobic digesters (excluding removable covers and tops).

Conversely, the tenant is under an obligation to carry out maintenance, which includes keeping clean and in good working order all roof valleys, eaves-guttering and downpipes, wells, septic tanks, cesspools, sewage disposal systems, silage and effluent systems excluding anaerobic digesters, and keeping clean and free of blockage all slurry systems (except in so far as any liability falls to be undertaken by the landlord as above).

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In the event a dispute arises, landlords and tenants should liaise with each other at the earliest opportunity to try and reach an amicable solution. If there is a risk that the holding will not be compliant with the regulations, in full, by the end of any

relevant transition period due to issues related to the tenancy agreement, the tenant must seek specific advice from NRW at the earliest opportunity.

Where this is not possible, parties may wish to seek independent specialist legal advice and may wish to consider their options with regard to commencing arbitration or tribunal proceedings.