
WELSH STATUTORY INSTRUMENTS

2019 No. 1279 (W. 223)

LANDLORD AND TENANT, WALES
AGRICULTURAL HOLDINGS

**The Agriculture (Model Clauses for Fixed
Equipment) (Wales) Regulations 2019**

<i>Made</i>	- - - -	<i>24 September 2019</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>26 September 2019</i>
<i>Coming into force</i>	- -	<i>1 November 2019</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 7(1) and (2) of the Agricultural Holdings Act 1986(1).

In accordance with section 7(1) of that Act, the Welsh Ministers have consulted such bodies appearing to represent the interests of landlords and tenants of agricultural holdings.

Title, application, commencement and interpretation

1.—(1) The title of these Regulations is the Agriculture (Model Clauses for Fixed Equipment) (Wales) Regulations 2019.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 1 November 2019.

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

Incorporation of provisions in tenancy agreements

2.—(1) Schedule 1 contains model provisions for the maintenance, repair and insurance of fixed equipment for incorporation in every contract of tenancy of an agricultural holding to which the Act applies, whether made before or after the commencement of the Act, except in so far as they would impose on one of the parties to an agreement in writing a liability which under the agreement is imposed on the other.

(1) 1986 c. 5; section 96(1) defines “prescribed” as prescribed by the Minister by Regulations, and “the Minister” as the Secretary of State in relation to Wales. Functions of the Minister under the Act are now exercisable by the Welsh Ministers (in relation to Wales) by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), and section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Section 7(2) was amended by section 13 of, and paragraph 4 of Schedule 4 to, the Deregulation Act 2015 (c. 20) to include “third party determination”. See also section 84A inserted by paragraph 21 of that Schedule.

(2) Paragraph 2(1) of Schedule 1 requiring the landlord to insure against loss or damage by fire does not apply to the following landlords—

- (a) where the interest of the landlord is held for the purposes of a Government Department,
- (b) where a person representing Her Majesty or the Duke of Cornwall under section 95 of the Act is deemed to be the landlord, and
- (c) where the landlord has made provision approved by the Welsh Ministers for defraying the cost of any works of repair or replacement as referred to in paragraph 2(2) of Schedule 1.

Prescribed periods for the purposes of section 9 of the Act

- 3.**—(1) The prescribed period for the purposes of section 9(1) of the Act is one month.
(2) The prescribed period for the purposes of section 9(3) of the Act is one month.
(3) The prescribed period for the purposes of section 9(4) of the Act is three months.

Revocations

- 4.** The Regulations specified in Schedule 2 are revoked.

Lesley Griffiths
Minister for Environment, Energy and Rural
Affairs, one of the Welsh Ministers

24 September 2019

SCHEDULE 1

Regulation 2

Maintenance, repair and insurance of the fixed equipment of an agricultural holding

PART 1

Rights and liabilities of the landlord

Repairs and replacements

1.—(1) The landlord must repair or replace the following parts of the farmhouse, cottages and farm buildings—

- (a) roofs, bargeboards, fascias and soffits, eaves guttering and downpipes;
- (b) chimney stacks, chimney linings and chimney pots;
- (c) main walls and exterior walls, however constructed, including structural frames and cladding;
- (d) interior repair or decoration made necessary as a result of structural defect to the parts specified in paragraphs (a), (b) and (c);
- (e) walls and fences of open and covered yards and garden walls;
- (f) floors and floor joists;
- (g) ceiling joists and timbers;
- (h) exterior and interior staircases and fixed ladders (including bannisters or handrails) of the farmhouse and cottages;
- (i) doors, windows and skylights and their frames and sills but not door and window furniture including sash cord, locks, fastenings and glass and glass substitute unless the repair or replacement of glass or glass substitute is a consequence of the condition of the doors, windows, skylights or their frames;
- (j) roof and wall insulation; and
- (k) fireplaces, firebacks and firebricks.

(2) The landlord must repair or replace the following water and drainage systems—

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

(3) The landlord must repair or replace the following gas, electrical and safety detection systems—

- (a) gas pipes, fixed liquid petroleum and gas tanks;
- (b) the electrical supply system including the consumer board but excluding sockets, switches, light fittings and similar electrical furniture; and
- (c) fire and carbon monoxide detectors and alarms.

(4) In respect of sub-paragraph (3)(b), the landlord must—

- (a) have the electrical supply system regularly inspected, maintained and serviced;

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- (b) keep full records of any work carried out; and
- (c) make the records of work available to the tenant if the tenant asks to see them.

(5) The landlord must replace anything specified in paragraph 9(1) (tenant's liability to repair) which has worn out or become incapable of repair unless the tenant is liable to replace it under paragraph 9(3).

Insurance

2.—(1) The landlord must insure the farmhouse, cottages and farm buildings to their full value against loss or damage by fire.

(2) Where any of the farmhouse, cottages and farm buildings, or any part of them, is damaged or destroyed by fire the landlord must—

- (a) execute all repairs and replacements to make good such damage or destruction; and
- (b) cause all money received from insurance entered into under sub-paragraph (1) in respect of such damage or destruction to be expended on those repairs and replacements.

(3) The recovery of one-half of the reasonable costs provided for under paragraph 7(1) does not apply to repairs and replacements falling within sub-paragraph (2) of this paragraph.

Maintenance

3.—(1) The landlord must paint, decorate or treat, as appropriate, to a proper standard using materials of suitable quality at intervals of not more than five years or whenever necessary to prevent deterioration, the following (which have been previously painted, decorated or treated or which it is necessary to paint, decorate or treat to prevent deterioration)—

- (a) all outside wood and ironwork of the farmhouse, cottages and farm buildings;
- (b) the inside wood and ironwork of all external outward opening doors and windows of farm buildings; and
- (c) interior structural steelwork of open-sided farm buildings.

(2) In this paragraph “open-sided” means having the whole or the greater part of at least one side or end permanently open, apart from roof supports, if any.

No liability

4. The landlord is under no liability—

- (a) to repair, replace or insure buildings or fixtures which are the property of the tenant including buildings or fixtures erected or provided by the tenant during their tenancy; or
- (b) subject to paragraph 2(2), to execute repairs or replacements rendered necessary by the wilful act or the negligence of the tenant or of any of the tenant's household members or employees.

Landlord may execute repairs or replacements which are tenant liabilities

5. Where the landlord has given the tenant written notice (other than a notice to quit under section 26 of, and Schedule 3 to, the Act which includes a statement in accordance with Case D that is given by reason of the tenant's failure to comply with a notice to do work) specifying necessary repairs, replacements or maintenance to be executed by the tenant for which the tenant is liable under paragraph 9 or 11(a) to (e), the landlord may enter and execute those repairs, replacements or maintenance—

- (a) if the tenant does not start work on the repairs, replacements or maintenance within two months of receiving that written notice; or
- (b) if the tenant fails to complete the repairs, replacements or maintenance within three months of receiving that written notice.

Tenant may contest liability

6.—(1) Subject to sub-paragraph (2), a tenant who wishes to contest liability to execute any repairs, replacements or maintenance specified in a notice from the landlord under paragraph 5 must within one month of the service of that notice serve a counter-notice in writing upon the landlord specifying the grounds on which, and the items of repair and replacement in respect of which, liability is contested and requiring that the question of liability be determined by arbitration under the Act.

(2) Alternatively, the landlord and tenant may agree to refer the question of liability for third party determination.

- (3) The operation of a notice given under paragraph 5 is suspended upon—
 - (a) a counter-notice being served by the tenant on the landlord (to the extent of the items specified in the counter-notice); or
 - (b) the parties referring the question of liability for third party determination (to the extent of the items specified in the referral).
- (4) The suspension operates under—
 - (a) sub-paragraph 3(a) until the date on which the arbitrator's award is delivered to the tenant; and
 - (b) sub-paragraph 3(b) until the date on which the third party's determination is delivered to the tenant.

Recovery of costs

7.—(1) The landlord may recover from the tenant one-half of the reasonable cost of repairs or replacements executed under paragraph 1(1) to—

- (a) bargeboards, fascias and soffits, eaves-guttering and downpipes;
- (b) floorboards;
- (c) interior staircases and fixed ladders (including bannisters or handrails); and
- (d) doors, windows and opening skylights and their frames and sills (including glass or glass substitute repaired or replaced as a consequence of the door, window, skylight and frame repair or replacement).

(2) The landlord may recover from the tenant one-half of the reasonable cost of work carried out under paragraph 3(1) but, if such work is completed before the start of the fifth year of the tenancy, the sum which the landlord may recover from the tenant is restricted to an amount equal to the total of one-tenth part of such reasonable cost for each year that has elapsed between the commencement of the tenancy and the completion of the work to—

- (a) bargeboards, fascias and soffits, eaves-guttering and downpipes; and
- (b) doors and windows.

(3) Subject to sub-paragraph (4), the landlord may recover the reasonable cost of the works under paragraph 5 from the tenant without delay.

(4) Where the question of liability to execute repairs, replacements or maintenance under paragraph 5 has been referred to arbitration or third party determination, the landlord's right to recover the reasonable cost of the repairs, replacements or maintenance does not arise unless the

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question of liability to execute that work is first determined by arbitration or third party determination in favour of the landlord, and then arises from the date on which the arbitrator's award or third party's determination is delivered to the tenant.

PART 2

Rights and liabilities of tenant

Application

8. This Part does not apply in so far as any liability falls to be undertaken by the landlord under Part 1.

Repairs and replacements

9.—(1) The tenant must repair and leave clean and in good tenable repair, order and condition the farmhouse, cottages and farm buildings together with the following (which are in or upon the holding, or which during the tenancy may be erected or provided upon the holding)—

- (a) fixtures and fittings (including fitted kitchens);
- (b) space heating and water heating systems (including the repair of any boiler but not its replacement), ranges, grates;
- (c) drains, sewers, gulleys and grease traps;
- (d) manholes and inspection chambers;
- (e) water supply systems and fittings situated above ground (including pipes, tanks, cisterns, sanitary fittings and drinking troughs), pumping equipment, and hydraulic rams whether above or below ground;
- (f) fences, hedges, field walls, stiles, cattle grids, gates and posts, and garden and yard doors;
- (g) bridges, culverts, ponds, watercourses, sluices and ditches;
- (h) roads and yards;
- (i) fixed equipment generating electricity, heat or power (including solar panels, heat pumps, wind turbines and anaerobic digesters) which is wholly for the use or benefit of the tenant;
- (j) vehicle fuel and oil tanks;
- (k) radon pumps;
- (l) insulation on water pipes; and
- (m) livestock handling systems and sheep dips.

(2) The tenant must repair or replace and leave in good tenable repair, order and condition the following—

- (a) door and window furniture including sashcords, locks and fastenings, glass and glass substitute 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;
- (b) removable covers to any manhole, inspection chamber, sewage disposal system, slurry, silage or other effluent system excluding anaerobic digesters;
- (c) electrical sockets, switches, light fittings on or outside the surface of walls, ceilings and floors excluding switches that are part of the consumer board;
- (d) signs and notices; and

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- (e) all broken or cracked roof tiles or slates and all slipped roof tiles or slates, as the damage occurs, providing that the reasonable cost of the work does not exceed £500 in any one year of the tenancy.
- (3) Subject to paragraph 2(2)—
- (a) the tenant must repair or replace and, upon repair or replacement, adequately paint or otherwise treat with effective preservative material as may be proper, all items of fixed equipment, and to do any work, where such repair, replacement or work is rendered necessary by the wilful act or negligence of the tenant or of any of the tenant's household members or employees; and
 - (b) the tenant must replace anything mentioned in sub-paragraph (1) which has worn out or otherwise become incapable of repair if its condition has been brought about by or is substantially due to the tenant's failure to repair it.

Careful use

10. For the parts of the holding listed in paragraph 1 which are the responsibility of the landlord to repair or replace, the tenant must—

- (a) use those parts carefully to protect from damage; and
- (b) report in writing immediately to the landlord any damage, however caused, to those parts of the holding.

Maintenance

11. The tenant must carry out the following maintenance—

- (a) keep 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;
- (b) keep clear reed beds for water and sewage treatment;
- (c) keep clean and free of blockage all slurry systems;
- (d) properly clean, paint or otherwise treat with materials of suitable quality the inside of the farmhouse, cottages and farm buildings, including the interior of outward opening doors and windows of the farmhouse and cottages, which have been previously so treated, whenever necessary, and in any case at intervals of not more than seven years;
- (e) in the last year of the tenancy to lime wash the inside of buildings previously lime washed;
- (f) dig out, scour and cleanse all ponds, watercourses, ditches and grips as necessary to maintain them at sufficient width and depth; and
- (g) cut, trim and lay a proper proportion of the hedges in each year of the tenancy to maintain them in good and sound condition.

Tenant may execute repairs or replacements which are landlord liabilities

12.—(1) The tenant may execute repairs or replacements for which the landlord is liable in the following circumstances—

- (a) where the landlord fails to execute repairs or replacements, other than repairs to an underground waterpipe, within three months of receiving from the tenant a written notice specifying the necessary repairs or replacements and calling on the landlord to execute them;

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- (b) where the landlord fails to execute repairs to an underground waterpipe within one week of receiving from the tenant a written notice specifying the necessary repairs and calling on the landlord to execute them;
 - (c) where underground waterpipes are damaged; and
 - (d) where fire or carbon monoxide detectors or alarms are not working.
- (2) The tenant must serve a written notice upon the landlord of repairs or replacements executed under sub-paragraph (1)(c) or (d) immediately after their execution.

Landlord may contest liability

13.—(1) Subject to sub-paragraph (2), a landlord who wishes to contest liability to execute any repairs or replacements specified in a notice from the tenant under paragraph 12 must within one month of the service of that notice serve a counter-notice in writing upon the tenant specifying the grounds on which, and the items of repair or replacement in respect of which, liability is contested and requiring that the question of liability be determined by arbitration under the Act.

(2) Alternatively, the landlord and tenant may agree to refer the question of liability for third party determination.

- (3) The operation of a notice given under paragraph 12(1)(a) is suspended upon—
- (a) a counter-notice being served by the landlord on the tenant (to the extent of the items specified in the counter-notice); or
 - (b) the parties referring the question of liability for third party determination (to the extent of the items specified in the referral).
- (4) The suspension operates under—
- (a) sub-paragraph 3(a) until the date on which the arbitrator’s award is delivered to the tenant; and
 - (b) sub-paragraph 3(b) until the date on which the third party’s determination is delivered to the tenant.

Payment and recovery of costs

- 14.**—(1) If the last year of the tenancy is not a year in which—
- (a) cleaning, decorating or other treatment as stated in paragraph 11(d) or (e) is due to be carried out, the tenant must pay to the landlord at the end of that last year the estimated reasonable cost of that work or a sum equal to the total of one-seventh of that cost for each year that has elapsed since the last cleaning, decorating or other treatment was completed, whichever is less;
 - (b) the landlord is liable under paragraph 3 to paint or otherwise treat the doors, windows, eaves-guttering and downpipes of buildings, the tenant must pay to the landlord at the end of that last year either one-half of the estimated reasonable cost of that work or a sum equal to the total of one-tenth of that cost for each year that has elapsed since the last painting or other treatment was completed, whichever is less.
- (2) In the assessment of any compensation payable by the tenant on the termination of the tenancy in respect of dilapidation, any accrued liability under sub-paragraph (1) must be taken into account.
- (3) Subject to sub-paragraph (4), the tenant may recover the reasonable costs of repairs or replacements from the landlord—
- (a) in relation to repairs or replacements executed under paragraph 12(1)(a), without delay;
 - (b) in relation to repairs or replacements executed under paragraph 12(1)(b) or (d), upon the expiry of one month from the execution of the repairs or replacements; and

- (c) in relation to repairs or replacements executed under paragraph 12(1)(c), upon the expiry of one month from the execution of the repairs or replacements and not to exceed £2,000 for each repair or replacement.

(4) Where the question of liability to execute repairs or replacements under paragraph 12(1) has been referred to arbitration or third party determination, the tenant's right to recover the reasonable cost of the repairs or replacements does not arise unless the question of liability to execute those repairs or replacements is first determined by arbitration or third party determination in favour of the tenant, and then arises from the date on which the arbitrator's award or third party's determination is delivered to the landlord.

PART 3

General provisions

Redundant fixed equipment

15.—(1) If the landlord or tenant is of the opinion that an item of fixed equipment is, or before the same was damaged or destroyed by fire was, redundant to the farming of the holding, the landlord or tenant may, by two months notice in writing served on the other, refer the question to arbitration under the Act unless the landlord and tenant agree to refer the question for third party determination.

(2) In any such arbitration or third party determination, no item of fixed equipment may be determined to be, or to have been before damage or destruction by fire, redundant to the farming of the holding, unless the arbitrator or third party is satisfied that the repair or replacement of such item is or was not reasonably required having regard to—

- (a) the landlord's responsibilities to manage the holding in accordance with the rules of good estate management;
- (b) the period for which the holding may reasonably be expected to remain a separate holding; and
- (c) the character and situation of the holding and the average requirements of a tenant reasonably skilled in husbandry.

(3) Where an arbitrator awards or a third party determines that the said item of fixed equipment is, or before such damage or destruction by fire was, redundant to the farming of the holding then, as from the date of the award or determination—

- (a) paragraph 16(b) applies to that item and both the landlord and tenant are relieved from all liability in respect of any antecedent breach of any obligation to maintain, repair or replace that item of fixed equipment; and
- (b) the landlord is entitled to demolish and remove that item of fixed equipment and to enter the holding for those purposes.

No liability for landlord and tenant

16. Nothing contained in Part 1 or Part 2 of this Schedule creates any liability for either the landlord or tenant—

- (a) to maintain, repair, replace or insure any item of fixed equipment which the landlord and the tenant agree in writing to be obsolete or redundant to the farming of the holding;
- (b) to maintain, repair, replace or insure any item of fixed equipment which, in the event of any dispute between the landlord and tenant as to whether it is, or before being damaged or destroyed by fire was, redundant to the farming of the holding, is awarded or determined to be redundant by an arbitrator or third party under paragraph 15; or

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- (c) to execute any work if and so far as the execution of such work is rendered impossible (except at prohibitive or unreasonable expense) by reason of subsidence of any land or the blocking of outfalls which are not under the control of either the landlord or tenant.

Dispute mechanism

17. Any matter arising under these Regulations, unless otherwise provided for under these provisions, may, in default of agreement, be determined by arbitration or third party determination under the Act.

SCHEDULE 2

Regulation 4

Revocations

<i>(1)</i>	<i>(2)</i>
<i>Regulations revoked</i>	<i>References</i>
The Agriculture (Miscellaneous Time-Limits) Regulations 1959	S.I. 1959/171
The Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973	S.I. 1973/1473
The Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) (Amendment) Regulations 1988	S.I. 1988/281
The Agriculture (Time-Limit) Regulations 1988	S.I. 1988/282

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace, in relation to Wales, the Agriculture (Maintenance, Repair and Insurance of Fixed Equipment) Regulations 1973 (the “1973 Regulations”). They prescribe terms, set out in Schedule 1, as to the maintenance, repair and insurance of fixed equipment which are deemed to be incorporated in every contract of tenancy of an agricultural holding except where they would impose on one of the parties to a written agreement a liability which under the agreement is imposed on the other. Schedule 1 divides between the landlord and the tenant of a holding the responsibility for maintaining, repairing and insuring fixed equipment, and imposes upon each party certain specific liabilities in regard to those matters.

The main changes to the 1973 Regulations are as follows, references being to paragraphs in Schedule 1.

Certain items have been added to the general repair and replacement obligations of the landlord under paragraph 1 including the repair and replacement of the electrical supply system. The list of

items in respect of which the landlord may recover one-half cost from the tenant has been extended (paragraph 7).

Certain items have been added to the general repair and maintenance obligations of the tenant under paragraphs 9 and 11 including fixed equipment generating heat or power and slurry, silage and effluent systems.

The circumstances in which the tenant may execute repairs or replacements which are the liability of the landlord has been extended under paragraph 12 so that the tenant may repair fire and carbon monoxide detectors and underground water pipes without notice served on the landlord. (See also paragraphs 14(3)(b) and (c)).

The limit on the tenant's liability for replacement of roof tiles or slates is increased from £100 to £500 (paragraph 9(2)(e)).

Paragraphs 6, 13 and 17 include provision for third party determination as an alternative to arbitration.

Regulation 3 prescribes time limits for the purposes of section 9 of the Agricultural Holdings Act 1986. Regulation 4 and Schedule 2 contain revocations.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Government, Cathays Park, Cardiff CF10 3NQ.