

2006 No. 2805

LANDLORD AND TENANT, ENGLAND AND WALES
REGULATORY REFORM, ENGLAND AND WALES

The Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006

Made - - - -

18th October 2006

Coming into force in accordance with article 1(1)

The Secretary of State has—

(1) consulted, in accordance with section 5(1) of the Regulatory Reform Act 2001^(a), such organisations as appear to him to be representative of interests substantially affected by his proposals for this Order, the National Assembly for Wales, and such other persons as he considered appropriate;

(2) following that consultation, considered it appropriate to vary part of his proposals, and undertaken such further consultation with respect to the variations as appeared to him to be appropriate;

(3) following those consultations, considered it appropriate to proceed with the making of this Order;

(4) laid a document containing his proposals before Parliament, in accordance with section 6 of the Regulatory Reform Act 2001, and the period for Parliamentary consideration under section 8 of the Act has expired;

(5) had regard to the representations made during that period and in particular to the 6th Report of the Regulatory Reform Committee of the House of Commons^(b) and the 21st Report of the Delegated Powers and Regulatory Reform Committee of the House of Lords^(c);

(6) laid a draft of this Order before Parliament with a statement giving details of those representations and of the changes he has made to his proposals in the light of them;

(7) reached the opinion that this Order does not remove any necessary protection, or prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise;

(8) as this Order creates burdens affecting persons, reached the opinion that—

- (a) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and
- (b) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made.

^(a) 2001 c.6.

^(b) Session 2005-06 HC 1309.

^(c) Session 2005-06 HL 193.

The draft of this Order has been approved by resolution of each House of Parliament.

Accordingly, the Secretary of State makes the following Order, in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001:

Citation, extent and commencement

1.—(1) This Order—

- (a) may be cited as the Regulatory Reform (Agricultural Tenancies) (England and Wales) Order 2006,
- (b) comes into force on the day after the day on which it is made, and
- (c) subject to paragraph (2), extends to England and Wales only.

(2) The amendment, repeal or revocation by a provision of Schedule 1, 2 or 3 to this Order of an enactment which extends to Scotland or Northern Ireland also extends there.

Amendments to the Agricultural Holdings Act 1986

2. Articles 3 to 9 amend the Agricultural Holdings Act 1986^(a).

Arbitration of rent

3. In section 12, in subsection (2), for the words from “date of the reference” to “arbitration” there shall be substituted “next termination date following the date of the demand for arbitration and accordingly shall, with effect from that next termination date”.

Meaning of “substantial part”

4.—(1) In section 34, after subsection (2) there shall be inserted—

“(3) Where this Act applies in relation to a tenancy by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995^(b), the reference in subsection (1)(b)(iv) above to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.”.

(2) In section 35, after subsection (2) there shall be inserted—

“(3) Where this Act applies in relation to a tenancy by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, the reference in subsection (2) above (in the definition of “related holding”) to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.”.

(3) In section 49, after subsection (3) there shall be inserted—

“(4) Where this Act applies in relation to a tenancy by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, the reference in subsection (3) above (in the definition of “related holding”) to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.”.

Succession on retirement or death of tenant - meaning of “eligible person”

5.—(1) In section 36, after subsection (5) there shall be inserted—

“(6) The reference in subsection (3)(a) above to agricultural work carried out by a person on the holding or on an agricultural unit of which the holding forms part includes—

- (a) agricultural work carried out by him from the holding or an agricultural unit of which the holding forms part, and

^(a) 1986 c.5.
^(b) 1995 c.8.

- (b) other work carried out by him on or from the holding or an agricultural unit of which the holding forms part,

which is of a description approved in writing by the landlord after the commencement of this subsection.”.
- (2) In section 41, after subsection (6) there shall be inserted—
 - “(7) The references in subsections (1) and (6) above to agricultural work carried out by a person on the holding include—
 - (a) agricultural work carried out by him from the holding, and
 - (b) other work carried out by him on or from the holding,

which is of a description approved in writing by the landlord after the commencement of this subsection.”.
- (3) In section 50, after subsection (4) there shall be inserted—
 - “(5) The reference in subsection (2)(a) above to agricultural work carried out by a person on the holding or on an agricultural unit of which the holding forms part includes—
 - (a) agricultural work carried out by him from the holding or an agricultural unit of which the holding forms part, and
 - (b) other work carried out by him on or from the holding or an agricultural unit of which the holding forms part,

which is of a description approved in writing by the landlord after the commencement of this subsection.”.

Compensation on termination of tenancy

- 6.—(1) In section 69, in subsection (1), after “in the holding” there shall be inserted “, or in any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding,”.
- (2) In that section, after subsection (1) there shall be inserted—
 - “(1A) Where this Act applies in relation to any tenancy referred to in subsection (1) above by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, the reference in that subsection to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.”.
- (3) In section 73, the existing provision shall be renumbered as subsection (1).
- (4) In that section, in subsection (1) (as renumbered by paragraph (3) above), after “on the holding” there shall be inserted “, or on any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding,”.
- (5) In that section, at the end there shall be inserted—
 - “(2) Where this Act applies in relation to any tenancy referred to in subsection (1) above by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, the reference in that subsection to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.”.
- (6) In paragraph 5 of Schedule 9, in sub-paragraph (1), after “in the holding” there shall be inserted “, or in any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding,”.
- (7) In that paragraph, after sub-paragraph (1) there shall be inserted—
 - “(1A) Where this Act applies in relation to any tenancy referred to in sub-paragraph (1) above by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, the reference in that sub-paragraph to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.”.
- (8) The amendments made by this article do not apply in relation to compensation payable on termination of a tenancy where that tenancy was granted before this article comes into force.

Arbitrations

7.—(1) In section 84, in subsection (1), the words from “in accordance with” to the end of the subsection shall be omitted.

(2) In that section, for subsections (2) to (5) there shall be substituted—

“(2) The arbitrator shall be a person appointed by agreement between the parties or, in default of agreement, a person appointed on the application of either of the parties by the President of the RICS.

(3) If the arbitrator dies, or is incapable of acting, a new arbitrator may be appointed as if no arbitrator had been appointed.

(4) No application may be made to the President of the RICS for an arbitrator to be appointed by him under this section unless the application is accompanied by such fee as may be prescribed as the fee for such an application; but once the fee has been paid in connection with any such application no further fee shall be payable in connection with any subsequent application for the appointment by him of a new arbitrator in relation to that arbitration.

(5) Where by virtue of this Act compensation under an agreement is to be substituted for compensation under this Act for improvements or for any such matters as are specified in Part II of Schedule 8 to this Act, the arbitrator shall award compensation in accordance with the agreement instead of in accordance with this Act.

(6) In this section “the RICS” means the Royal Institution of Chartered Surveyors.”.

(3) In section 94, in subsection (2)—

(a) after the words “section 22(4)” there shall be inserted “, 84(4)”, and

(b) the words “or paragraph 1(2) of Schedule 11” shall be omitted.

(4) In that section, in subsection (3), for the words “paragraph 1(2) of Schedule 11 to this Act” there shall be substituted “section 84(4) above”.

(5) In paragraph 2 of Schedule 4, for “paragraph 1 of Schedule 11 to” there shall be substituted “section 84(2) of”.

Frequency of arbitrations under section 12

8. In Schedule 2, after paragraph 6 there shall be inserted—

“7.—(1) This paragraph applies in any case where—

(a) a tenancy of an agricultural holding (“the new tenancy”) is granted to a person who, immediately before the grant of the new tenancy, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, under a contract of tenancy (“the previous tenancy”),

(b) this Act applies in relation to the new tenancy by virtue of section 4(1)(g) of the Agricultural Tenancies Act 1995, and

(c) the rent payable under the new tenancy is unchanged from that payable under the previous tenancy, disregarding any increase or reduction in rent solely attributable to an adjustment of the boundaries of the holding.

(2) The reference in sub-paragraph (1) above to a substantial part of the land comprised in the holding means a substantial part determined by reference to either area or value.

(3) In any case to which this paragraph applies—

(a) paragraph (a) of sub-paragraph (1) of paragraph 4 above shall be read as referring to the commencement of the previous tenancy, and

(b) references to rent in paragraphs (b) and (c) of that sub-paragraph shall be read as references to the rent payable under the previous tenancy,

until the first occasion following the commencement of the new tenancy on which any such increase or reduction of, or direction with respect to, the rent payable under the new tenancy as is mentioned in paragraph (b) or (c) takes effect.”.

Repeal of arbitration provisions

- 9.—(1) Schedule 11 is repealed.
- (2) Paragraphs 7 and 15 of Schedule 13 are repealed.

Transitional provision for arbitration

- 10.—(1) Nothing in this Order affects an arbitration under the Agricultural Holdings Act 1986 or the Agricultural Holdings Act 1948^(a) which commences before this Order comes into force.
- (2) For the purposes of paragraph (1) an arbitration commences when an arbitrator is appointed.

Amendments to the Agricultural Tenancies Act 1995

11. Articles 12 to 17 amend the Agricultural Tenancies Act 1995^(b).

Exclusion of the Agricultural Holdings Act 1986

- 12.—(1) Section 4 is amended as follows.
- (2) In subsection (1), after “except”, there shall be inserted “(subject to subsection (2B) below)”.
- (3) In that subsection, in paragraph (e), at the end, “or” shall be omitted.
- (4) In that subsection, in paragraph (f), for the words “(“the previous tenancy”)” to the end, there shall be substituted—
- “, and is so granted because an agreement between the parties (not being an agreement expressed to take effect as a new tenancy between the parties) has effect as an implied surrender followed by the grant of the tenancy, or”.
- (5) In that subsection, at the end there shall be inserted—
- “(g) is granted to a person who, immediately before the grant of the tenancy, was the tenant of the holding, or of any agricultural holding which comprised the whole or a substantial part of the land comprised in the holding, under a tenancy in relation to which the 1986 Act applied, and is so granted by a written contract of tenancy indicating (in whatever terms) that the 1986 Act is to apply in relation to the tenancy.”.
- (6) In subsection (2), at the end of paragraph (a), “and” shall be omitted.
- (7) In that subsection, for paragraph (b) there shall be substituted—
- “(b) the current tenancy is granted to a person (alone or jointly with other persons) who, if the tenant under that previous tenancy (“the previous tenant”) had died immediately before the grant, would have been his close relative, and
- (c) either of the conditions in subsection (2A) below is satisfied.”.
- (8) After that subsection there shall be inserted—
- “(2A) The conditions referred to in subsection (2)(c) above are—
- (a) the current tenancy is granted to a person (alone or jointly with other persons) who was or had become the sole or sole remaining applicant for a direction of an Agricultural Land Tribunal for a tenancy, and
- (b) the current tenancy—

^(a) 1948 c.63.
^(b) 1995 c.8.

- (i) is granted as a result of an agreement between the landlord and the previous tenant, and
 - (ii) is granted, and begins, before the date of the giving of any retirement notice by the previous tenant, or if no retirement notice is given, before the date of death of the previous tenant.”.
- (9) After subsection (2A) there shall be inserted—

“(2B) The 1986 Act shall not apply by virtue of subsection (1)(f) or (g) above in relation to the tenancy of an agricultural holding (“the current holding”) where—

 - (a) the whole or a substantial part of the land comprised in the current holding was comprised in an agricultural holding (“the previous holding”) which was subject to a tenancy granted after the commencement of this subsection in relation to which the 1986 Act applied by virtue of subsection (1)(f) or (g) above;
 - (b) the whole or a substantial part of the land comprised in the previous holding was comprised in an agricultural holding (“the original holding”) which was at the commencement of this subsection subject to a tenancy in relation to which the 1986 Act applied; and
 - (c) the land comprised in the original holding does not, on the date of the grant of the tenancy of the current holding, comprise the whole or a substantial part of the land comprised in the current holding.”.
- (10) After subsection (2B) there shall be inserted—

“(2C) The references in subsections (1)(g) and (2B) above to a substantial part of the land comprised in the holding mean a substantial part determined by reference to either area or value.”.
- (11) In subsection (3)—
 - (a) at the end of paragraph (a), “and” shall be omitted;
 - (b) at the end of paragraph (b), there shall be inserted—

“, and
 - (c) “retirement notice” has the meaning given by section 49(3) of that Act.”.
- (12) The amendments made by this article shall not apply in relation to any tenancy granted before this article comes into force.

Notice to terminate the tenancy

13. In sections 5(1), 6(1)(c) and 7(1) the words “but less than twenty-four months” shall be omitted.

Application of Part II of the Agricultural Tenancies Act 1995

14.—(1) In section 9—

- (a) at the end of paragraph (a), “or” shall be omitted;
- (b) at the end of paragraph (b), there shall be inserted—

“, or
- (c) does not contain any provision which precludes a reduction in the rent during the tenancy, and—
 - (i) expressly states that this Part of this Act does not apply, or
 - (ii) makes provision for the reference of rent reviews to an independent expert whose decision is final.”.

(2) In section 28(5)—

- (a) at the end of paragraph (b), “or” shall be omitted;
- (b) at the end of paragraph (c), there shall be inserted—

“, or

- (d) any dispute relating to rent review, in any case where Part II of this Act is excluded by virtue of section 9(c)(ii) of this Act.”.

(3) The amendments made by this article shall not apply where the provision in the instrument creating the tenancy referred to in section 9(c)(i) or (ii), as inserted by paragraph (1) above, is made before this article comes into force.

Factors to be taken into account on rent review

15. In section 13(2) for the words “relating to the criteria by reference to which any new rent is to be determined)” there shall be substituted “which (apart from this section) preclude a reduction in the rent during the tenancy)”.

Agreement to limit tenant’s compensation

16.—(1) In section 20(1), at the beginning there shall be inserted “Subject to subsection (4A) below,”.

(2) After section 20(4) there shall be inserted—

“(4A) Where the landlord and the tenant have agreed in writing, after the commencement of this subsection, to limit the amount of compensation payable under section 16 of this Act in respect of any tenant’s improvement, that amount shall be the lesser of—

- (a) the amount determined in accordance with subsections (1) to (4) above, and
- (b) the compensation limit.

(4B) In subsection (4A) above, “the compensation limit” means—

- (a) an amount agreed by the parties in writing, or
- (b) where the parties are unable to agree on an amount, an amount equal to the cost to the tenant of making the improvement.”.

Application of agreed limit on resumption of possession of part of holding

17.—(1) In section 24(2), for “(4)” there shall be substituted “(4A)”.

(2) In section 24(4), after “shall apply”, there shall be inserted “(subject to subsection (4A) below)”.

(3) After section 24(4) there shall be inserted—

“(4A) Where—

- (a) the landlord and the tenant have agreed in writing, after the commencement of this subsection, to limit the amount of compensation payable under section 16 of this Act in respect of any tenant’s improvement not consisting of planning permission,
- (b) that improvement is provided for both the relevant part and the land comprised in the tenancy after the termination date,
- (c) the case falls within paragraph (a) or (b) of subsection (1) above,
- (d) the tenant has already received compensation in respect of the improvement, determined in accordance with subsection (2) above, and
- (e) further compensation in respect of the improvement is payable under section 16 of this Act on termination of the tenancy,

the compensation limit referred to in section 20(4A) of this Act shall, for the purposes of determining that further compensation, be reduced by an amount equal to the amount of compensation already received by the tenant in respect of the improvement.”.

(4) In section 24(5), for “(4)” there shall be substituted “(4A)”.

Consequential amendments, repeals and revocations

18. Schedule 1 (which contains consequential amendments), Schedule 2 (which contains repeals) and Schedule 3 (which contains revocations) shall have effect.

18th October 2006

Jeff Rooker
Minister of State
Department for Environment, Food and Rural Affairs

SCHEDULE 1

Article 18

Consequential amendments

Part 1

Amendments of Primary Legislation

Tribunals and Inquiries Act 1992

1. In Schedule 1 to the Tribunals and Inquiries Act 1992^(a), in the column headed “Tribunal and statutory authority”, in sub-paragraph (b) of paragraph 1, for “Schedule 11 to” there shall be substituted “section 84 of”.

Part 2

Amendments of Subordinate Legislation

Agricultural Holdings (Arbitration on Notices) Order 1987

2. In Articles 10(b) and 12(a) of the Agricultural Holdings (Arbitration on Notices) Order 1987^(b), for the words “paragraph 1 of Schedule 11 to” there shall be substituted “section 84(2) of”.

Agricultural Holdings (Fee) Regulations 1996

3. In regulation 2(b) of the Agricultural Holdings (Fee) Regulations 1996^(c), for the words “paragraph 1(1) of Schedule 11 to” there shall be substituted “section 84(2) of”.

Dairy Produce Quotas Regulations 2005

4. In paragraph 4(2) of Schedule 1 to the Dairy Produce Quotas Regulations 2005^(d), for the words “paragraph 1(2) of Schedule 11 to” there shall be substituted “section 84(4) of”.

Dairy Produce Quotas (Wales) Regulations 2005

5. In paragraph 4(2) of Schedule 1 to the Dairy Produce Quotas (Wales) Regulations 2005^(e), for the words “paragraph 1(2) of Schedule 11 to” there shall be substituted “section 84(4) of”.

(a) 1992 c.53.

(b) S.I. 1987/710.

(c) S.I. 1996/337.

(d) S.I. 2005/465, to which there are amendments not relevant to this Order.

(e) S.I. 2005/537, to which there are amendments not relevant to this Order.

SCHEDULE 2

Article 18

Repeals

<i>Title</i>	<i>Reference</i>	<i>Extent of repeal</i>
Agricultural Holdings Act 1986	c. 5	<p>In section 84, in subsection (1), the words from “in accordance with” to the end of the subsection.</p> <p>In section 94, in subsection (2), the words “or paragraph 1(2) of Schedule 11”.</p> <p>Schedule 11.</p> <p>In Schedule 13, paragraphs 7 and 15.</p>
Agriculture Act 1986	c. 49	<p>In Schedule 1, in paragraph 11(5), the words from “but paragraph 18” to “three months”.</p>
Tribunals and Inquiries Act 1992	c. 53	<p>In Schedule 3, paragraph 18.</p>
Judicial Pensions and Retirement Act 1993	c. 8	<p>In Schedule 5, the words “Arbitrator appointed under paragraph 1(5) of Schedule 11 to the Agricultural Holdings Act 1986”.</p> <p>In Schedule 6, paragraph 45.</p> <p>In Schedule 7, paragraph 5(5), head (xxi) (arbitrator appointed under paragraph 1(5) of Schedule 11 to the Agricultural Holdings Act 1986).</p>
Agricultural Tenancies Act 1995	c. 8	<p>In section 4, in subsection (1)(e), at the end, the word “or”.</p> <p>In that section, in subsection (2)(a), at the end, the word “and”.</p> <p>In that section, in subsection (3)(a), at the end, the word “and”.</p> <p>In section 5, in subsection (1), the words “but less than twenty-four months”.</p> <p>In section 6, in subsection (1)(c), the words “but less than twenty-four months”.</p> <p>In section 7, in subsection (1), the words “but less than twenty-four months”.</p> <p>In section 9, in paragraph (a), at the end, the word “or”.</p>

		In section 28, in subsection (5)(b), at the end, the word “or”.
Private International Law (Miscellaneous Provisions) Act 1995	c. 42	Section 4(2).
Arbitration Act 1996	c. 23	In Schedule 3, paragraph 45.
Constitutional Reform Act 2005	c. 4	In Schedule 7, paragraph 4, part A, the words “Agricultural Holdings Act 1986 (c5) Schedule 11, paragraph 1(5)”. In Part 3 of Schedule 14, in the column headed “Office”, the words “Member of panel constituted for the purpose of Schedule 11”, and in the column headed “Enactment”, the words “Paragraph 1(5) of Schedule 11 to the Agricultural Holdings Act 1986 (c 5)”.

SCHEDULE 3

Article 18

Revocations

<i>Title</i>	<i>Reference</i>	<i>Extent of revocation</i>
Milk (Community Outgoers Scheme) (England and Wales) Regulations 1986	S.I. 1986/1611	In regulation 16, in paragraph (1), the words “Subject to paragraphs (2) to (5),”. In that regulation, paragraphs (2) to (5).
Milk (Cessation of Production) (England and Wales) Scheme 1987	S.I. 1987/908	In paragraph 16, in sub-paragraph (1), the words “Subject to sub-paragraphs (2) to (5),”. In that paragraph, sub-paragraphs (2) to (5).
Agricultural Holdings (Form of Award in Arbitration Proceedings) Order 1990	S.I. 1990/1472	The whole Order.
Civil Procedure Rules 1998	S.I. 1998/3132	In CCR Order 44, rules 1 to 3.
Dairy Produce Quotas Regulations 2005	S.I. 2005/465	In Schedule 1, in paragraph 1(2), the words “from amongst the members of the panel referred to in paragraph 7”. In that Schedule, in paragraph 1(5), the words “from amongst the members of the panel referred to in paragraph 7”. In that Schedule, paragraph 7.
Dairy Produce Quotas (Wales) Regulations 2005	S.I. 2005/537	In Schedule 1, in paragraph 1(2), the words “from amongst the members of the panel referred to in paragraph 7”. In that Schedule, in paragraph 1(5), the words “from amongst the members of the panel referred to in paragraph 7”. In that Schedule, paragraph 7.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Agricultural Holdings Act 1986 (“the 1986 Act”) and the Agricultural Tenancies Act 1995 (“the 1995 Act”), which regulate tenancies of agricultural land in England and Wales. The amendments affect rent reviews, succession under the 1986 Act, end of tenancy compensation, arbitration under the 1986 Act, the application of the 1986 Act to new tenancies, and notice periods under the 1995 Act. The amendments give parties to agricultural tenancies greater freedom of contract in these areas.

Article 3 amends section 12(2) of the 1986 Act, which provided that, where the rent payable in respect of a holding was referred to arbitration, the arbitrator determined the rent properly payable at the date of the reference. The effect of the amendment is that arbitrator now determines the rent properly payable at the next termination date (as defined in section 12(4)) following the date of the demand for arbitration.

Article 4 amends sections 34, 35 and 49 of the 1986 Act. These amendments are consequential on the insertion of section 4(1)(g) into the 1995 Act by Article 12(4). They ensure that, where the 1986 Act applies by virtue of section 4(1)(g) of the 1995 Act, the references to “substantial part” in those sections means a substantial part by reference to either area or value.

Article 5 amends sections 36, 41 and 50 of the 1986 Act, which set out some of the conditions of eligibility for succession to a 1986 Act tenancy. Sections 36 and 50 include a condition that the principal source of livelihood of the potential successor must be derived from his “agricultural work on the holding or on an agricultural unit of which the holding forms part”, for at least five out of the seven years before the death or retirement of the previous tenant (sections 36(3)(a) and 50(2)(a)). The effect of the amendment is that “agricultural work on the holding or on an agricultural unit of which the holding forms part” in those sections now includes agricultural work carried out by the potential successor from the holding or an agricultural unit of which the holding forms part, and other work carried out by him on or from the holding or an agricultural unit of which the holding forms part, of a description approved by the landlord in writing after entry into force of the RRO. Section 41(1), which makes provision for cases where the condition in section 36(3)(a) is satisfied to a material extent, is also amended.

Article 6 amends sections 69 and 73 of, and paragraph 5 of Schedule 9 to, the 1986 Act. Section 69(1) provides that where a tenant has remained on the holding for two or more tenancies, he does not lose the right to end of tenancy compensation for an improvement which was carried out during an earlier tenancy of the same holding. There are similar provisions relating to a landlord’s right to end of tenancy compensation in respect of dilapidations (section 73) and to old improvements (paragraph 5 of Schedule 9). Article 6 amends these provisions so that they also apply where the earlier tenancy was of a holding which comprised the whole or a substantial part of the land comprised in the holding. Article 6 also makes amendments consequential on the insertion of section 4(1)(g) into the 1995 Act by Article 12(4).

Article 7 amends section 84 of the 1986 Act and Article 9 repeals Schedule 11 to that Act. Section 84 of the 1986 Act provided that matters to be determined by arbitrations under the 1986 Act were to be determined in accordance with the provisions of Schedule 11 to the 1986 Act, and not in accordance with the Arbitration Act 1996. The Order re-enacts, with modifications, provisions of Schedule 11 relating to the appointment of an arbitrator, applications to the President of the Royal Institution of Chartered Surveyors to make such an appointment, and to the effect of certain agreements relating to compensation. The ouster of Part I of the Arbitration Act 1996 (in section 84(1)), and the Lord Chancellor’s powers to make orders in connection with arbitration proceedings under the 1986 Act (section 84, subsections (2) to (5)), are repealed.

Article 8 adds a paragraph 7 to Schedule 2 to the 1986 Act. This amendment is consequential on the insertion of section 4(1)(g) into the 1995 Act by Article 12(4). The effect of the amendment is that, where the 1986 Act applies to a new tenancy by virtue of section 4(1)(g) of the 1995 Act, and the rent payable is unchanged from the rent payable under the previous tenancy, disregarding any

changes resulting from adjustments to the boundary of the holding, the three year rent review cycle is uninterrupted.

Article 12 amends section 4 of the 1995 Act, which provides that the 1986 Act shall not apply in relation to any tenancy beginning on or after 1st September 1995, with certain exceptions.

Article 12(4) amends section 4(1)(f), which provides that the 1986 Act applies to certain tenancies granted under the doctrine of surrender and re-grant. Section 4(1)(f) only applied where the tenancy was granted “merely because a purported variation of the previous tenancy (not being an agreement expressed to take effect as a new tenancy between the parties) has effect as an implied surrender followed by the grant of the tenancy”, and certain other conditions were satisfied. The amendment to this part of section 4(1)(f) widens the scope of that section and makes it easier for parties to determine when it applies.

Article 12(5) inserts a new paragraph (g) into section 4(1) of the 1995 Act, to allow parties to apply the 1986 Act to a tenancy by express provision in the contract of tenancy, provided the tenant previously held a 1986 Act tenancy of all or a substantial part of the holding.

Article 12, paragraphs (8) to (10) insert new subsections (2A) to (2C) into section 4 of the 1995 Act. Subsection (2B) limits the application of subsections (1)(f) and (g) to cases where the holding in existence at the date of entry into force of the subsection comprises the whole or a substantial part of the holding for which the new tenancy is granted. This prevents parties from using subsections (1)(f) and (1)(g) incrementally, to avoid the “whole or substantial part” requirement in those subsections.

New subsection (2C) allows parties to use the new subsection (1)(g) in cases where the old holding was a substantial part of the new holding in terms of area or in terms of value.

Article 12 also amends section 4(2)(b) of the 1995 Act and supplements it with the conditions set out in new section 4(2A) (Article 12 paragraphs (7) and (8)). Section 4(1)(d) provides that the 1986 Act applies to a new tenancy is where there is an agreed succession, and section 4(2) sets out what an agreed succession is for these purposes. The amended section 4(2)(b), and new section 4(2A), clarify when a succession is an agreed succession, to allow parties to rely on section 4(1)(d) with greater certainty.

Article 13 amends sections 5(1), 6(1)(c) and 7(1) of the 1995 Act, removing the 24 month upper limit on notice periods for farm business tenancies.

Article 14 amends section 9 of the 1995 Act, which provides that the rent review provisions in Part II of that Act apply to farm business tenancies, with certain exceptions. Article 14 adds to those exceptions, providing that where the tenancy agreement expressly states that Part II of the Act does not apply, or makes provision for the reference of rent reviews to an independent expert whose decision is final, Part II does not apply. These exceptions only apply where the tenancy agreement does not contain any provision which precludes a reduction in the rent during the tenancy. Article 14 also amends section 28(5), so that where the tenancy agreement makes provision for the reference of rent reviews to an independent expert, arbitration is excluded in relation to rent reviews.

Article 15 amends section 13(2) of the 1995 Act, which provided that on a statutory rent review, the arbitrator must take into account the terms of the tenancy, but not those relating to the criteria by reference to which any new rent is to be determined. The amendment replaces this restriction with one that the arbitrator must not take into account those terms of the tenancy which, apart from that subsection, would preclude a reduction in rent.

Article 16 amends section 20 of the 1995 Act. Under section 20(1), the amount of end of tenancy compensation payable under the 1995 Act in respect of a tenant’s improvement is based on the increase in value of the holding attributable to the improvement. The amendment gives landlords and tenants the option of agreeing an upper limit to the amount of compensation payable. Where they agree that there should be a limit but are unable to agree on the amount of the limit, the amount is the cost to the tenant of making the improvement.

Article 17 amends section 24, which applies the end of tenancy compensation provisions where there is a resumption of possession of part of the holding. The effect of the amendment is that, where the parties have agreed to a compensation limit, the tenant has received some compensation in respect of the improvement at the time he gave up the part, and the tenant is entitled to further compensation in respect of the improvement at the end of the tenancy, the total amount of compensation he receives does not exceed the compensation limit.

Schedules 1, 2 and 3 to the Order make consequential amendments, repeals and revocations. These arise mainly as a result of the amendments to section 84 of, and the repeal of Schedule 11 to, the 1986 Act.

A full regulatory impact assessment on the effect that this instrument will have on the costs of business is included in an explanatory document, which is available on the Defra website at <http://defraweb/farm/working/tenancies/index.htm>. Hard copies may be obtained from Defra, Innovation and Better Regulation for Farmers Division, Area 3A, Ergon House, Horseferry Road, London SW1P 2AL, telephone 020 7238 6026.

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