EXPLANATORY MEMORANDUM TO

THE AGRICULTURAL HOLDINGS ACT 1986 (VARIATION OF SCHEDULE 8) (ENGLAND) ORDER 2015

2015 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends Schedule 8 of the Agricultural Holdings Act 1986 ("the 1986 Act") to increase the range of short-term improvements and matters for which compensation can be paid for at the end of agricultural tenancies which are governed by the 1986 Act. This will bring Schedule 8 of the 1986 Act in line with current farming practices.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is laid after making however it cannot come into force unless and until it is approved by a resolution of each House.

3.2 We have allowed a number of months between the making of this instrument and the common commencement date of the 6th April 2016 to enable industry to become familiar with the changes before they come into force.

Other matters of interest to the House of Commons

3.3 This entire instrument applies only to England.

3.4 In the view of the Department, for the purposes of House of Commons Standing Order 83P the subject matter of this entire instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament and the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

4. Legislative Context

4.1 This instrument is linked to another instrument relating to end of tenancy compensation consulted on at the same time. A negative instrument, the Agriculture (Calculation of Value for Compensation) (Revocations) (England) Regulations 2015, revoking the Agriculture (Calculation of Value for Compensation) Regulations 1978

(and amending regulations) came into force on 1st October 20151. This removes the prescribed approach for calculating end of tenancy compensation claims, giving landlords and tenants autonomy to settle compensation claims using calculation methods that best suit their individual circumstances and that better reflect market values at the time the tenancy ends.

4.2 Together these two instruments modernise and update legislation governing end of tenancy compensation for agricultural tenancies governed by the 1986 Act.

5. Extent and Territorial Application

5.1 The extent of this instrument is England.

5.2 The territorial application of this instrument is set out in Section 3 under "Other matters of interest to the House of Commons".

6. European Convention on Human Rights

6.1 The Minister of State for the Department for Environment, Food and Rural Affairs, George Eustice, has made the following statement regarding Human Rights:

"In my view the provisions of the Agricultural Holdings Act 1986 (Variation of Schedule 8) (England) Order) 2015 are compatible with the Convention rights."

7. Policy background

7.1 The relationship between landlord and agricultural tenant is governed partly by the terms of their individual tenancy agreements and partly by agricultural tenancy legislation. The 1986 Act applies to agricultural holdings entered into before the 1st September 1995 and to some tenancies granted after this date, namely succession tenancies. There are approximately 21,500 tenancies in England governed by the 1986 Act accounting for approximately 17% of agricultural land.

7.2 In order to incentivise tenants to farm sustainably and keep the land productive during the last years of their tenancy, Schedule 8 of the 1986 Act makes provision for outgoing tenants to be compensated for the value of fertilised land or crops they leave behind at the end of their tenancy. This also helps incoming tenants who may take up the holding too late in the year to cultivate the land or improve soil condition. We estimate that on average about 450 tenancies will qualify for end of tenancy compensation in a given year.

7.3 Schedule 8 of the 1986 Act is now out of date with current farming practices which limit its intended impact as an effective incentive to outgoing tenants to farm the land sustainably at the end of their tenancy and leave the soil in good productive condition for the incoming tenant.

7.4 Compensation for manure produced on the farm is limited to that produced from horses, cattle, sheep, pigs and poultry. This therefore excludes manure from other livestock species that are kept on farms today such as deer and camelids (e.g. alpaca and llama). As the application to land of manure produced by these excluded animals deliver improvements, the compensation regulations should be updated to recognise the fact that manure these days is derived from a wider range of livestock than was the case when the legislation was drafted.

[1] The Agriculture (Calculation of Value for Compensation) (Revocations) (England) Regulations 2015 (No. 2015/327)

7.5 In addition, the current restriction to compensate only for the application to land of manure and fertiliser means that no recognition is given for the productive value that can be gained from other beneficial inputs used in modern farming practice, specifically digestate (a by-product of anaerobic digestion) and soil conditioners including compost. As these inputs are now also used on farms to improve soil fertility and structure they should be included in the compensation regulations.

7.6 We have removed the restriction to compensate only for "purchased" input applied to the land, and amended this to "brought in" inputs applied to the land. This is to better incentivise good land management as it recognises and compensates for the benefit derived by the incoming tenant irrespective of how the inputs used were obtained as this is immaterial to the level of the benefit.

7.7 To address these limitations and modernise Schedule 8 this instrument applies the following variations:

- broadening the list of species from which such manure may originate to reflect modern farming by providing for compensation to be paid for manure from "livestock and equidae"[2];
- broadening the list of improvements eligible for compensation to include "soil improvers" and "digestate" applied to the land; and
- providing for compensation to be paid for manure and fertilisers applied to the land regardless of whether they were purchased or otherwise acquired.

7.8 These changes will update and modernise the legislation to provide a more effective incentive to outgoing tenants to continue to farm sustainably and keep the land productive in the last years of their tenancy. The changes are supported by the Tenancy Reform Industry Group ("the TRIG") which includes representatives of tenant farmers, landlords and agricultural valuers.

8. Consultation outcome

8.1 Between August 2014 and October 2014 we ran an 8-week public consultation seeking views on a number of policy proposals including broadening the scope of compensation for improvements and matters that can be paid to outgoing tenants governed by the 1986 Act.

8.2 We received 19 responses to the consultation. On the proposal to allow compensation for inputs that have not been purchased, trace elements, in addition to magnesium and copper, and other beneficial material such as soil conditioners, twelve consultees agreed, six disagreed and one did not answer. Those that agreed felt it would incentivise good land management and deliver improved soil fertility and quality. Those that disagreed felt that the tenant may have already benefited from increased yields so did not necessarily need compensating.

8.3 On the issue of whether compensation should be provided for manurial value from any species of animal kept on the holding for agricultural purposes**,** fourteen consultees agreed, four disagreed and one did not answer. Those who agreed felt including manure from a wider range of agricultural animals would bring Schedule 8 up to date with farming practices today and incentivise improved soil fertility. Those that disagreed felt the proposal would permit compensation to be paid for manure applied

[2] Equidae includes horses and related species such as asses.

to the land obtained from livestock that might not be kept for businesses purposes and that such manure should only be compensated for if prior agreement from the landlord was given.

8.4 As the majority of consultees agreed with our proposals including key industry representatives such as the Country and Land Business Association representing landowners and the Tenant Farmers Association and National Farmers Union representing tenant farmers we will be taking forward the changes outlined in 7.7 above. A full analysis of responses can be found on the GOV.UK website at: https://www.gov.uk/government/consultations/agricultural-tenancies-in-england-modernising-end-of-tenancy-compensation-and-repair-of-equipment.

9. Guidance

9.1 No Government guidance will be issued. We will work with members of the TRIG who will disseminate information about this change across the sector.

10. Impact

10.1 The impact on businesses will be an estimated annual net cost of £0.08m over 45 years driven by the small additional cost of negotiating the value of compensation through a professional agricultural valuer. There is no impact on charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 This legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 Landlords and tenants of agricultural holdings mainly operate as small businesses (employing up to 50 people) which are already subject to Schedule 8 of the 1986 Act. Rather than imposing a regulatory burden, this instrument will modernise Schedule 8 to bring it up to date with current farming practices. It will incentivise sustainable farming practices by increasing the range of improvements for which outgoing tenants can receive compensation.

12. Monitoring & review

12.1 A statutory review provision is not appropriate for this instrument because the regulatory provision that is being varied is contained in primary legislation. This is outside the scope of the policy objectives for the statutory review duty which is focused on ensuring frequent review of regulatory provisions contained in secondary legislation not primary legislation as set out in the Small Business Enterprise and Employment Act 2015 Statutory Review Guidance for Departments found at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438068/bis-15-327-statutory-review-guidance-SBEE-2015.pdf.

12.2 The success measures for this instrument are that outgoing tenants are incentivised to farm sustainably and keep the land productive in the end years of their tenancy and disputes over end of tenancy compensation are reduced. The Department for

Environment, Food and Rural Affairs will seek regular feedback from members of the TRIG on these success measures.

13. Contact

13.1 Jenny Barker at the Department for Environment, Food and Rural Affairs can answer any queries regarding this instrument. Tel: 0117 372 3638 email Jenny.Barker@Defra.gsi.gov.uk