**EXPLANATORY MEMORANDUM TO**

**THE AGRICULTURAL HOLDINGS (FEE) REGULATIONS 2022**

**2022 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 His Majesty.

## 2. Purpose of the instrument

2.1 This instrument increases the prescribed statutory fee that can be charged by a professional authority[1] for the appointment of an independent arbitrator to resolve disputes or to make certain records in relation to agricultural tenancies governed by the Agricultural Holdings Act 1986 ("the 1986 Act"). The prescribed fee has not been updated since 1996 and in line with inflation this instrument increases the fee from £115 to £195. The instrument also introduces a new statutory duty on the Secretary of State and Welsh Ministers to carry out a review of the regulations every five years.

## 3. Matters of special interest to Parliament

***Matters of special interest to the Joint Committee on Statutory Instruments***

3.1 None.

## 4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales.

## 5. European Convention on Human Rights

5.1 Mark Spencer MP, Minister of State for Environment, Food and Rural Affairs has made the following statement regarding Human Rights:

"In my view the provisions of the Agricultural Holdings (Fee) Regulations 2022 are compatible with the Convention rights."

## 6. Legislative Context

6.1 Section 22 and 84 of the 1986 Act (as amended by paragraphs 4 to 6 of Schedule 3 of the Agriculture Act 2020) provides that landlords and tenants can apply to a professional authority for the appointment of an independent arbitrator to resolve disputes that may arise in relation to tenancies governed by the 1986 Act (section 84) or to appoint an arbitrator to make certain records (section 22). Sections 22(4) and

[1] As set out in section 84(6) of the 1986 Act the definition of a professional authority (as amended by paragraph 6(5) of Schedule 3 to the Agriculture Act 2020) is the President of the Royal Institution of Chartered Surveyors, the President of the Central Association of Agricultural Valuers, or the Chair of the Agricultural Law Association.

84(4) state that applications for such appointments must be accompanied by a prescribed fee and section 96(1) establishes that the fee must be prescribed by the Minister in regulations, currently the Agricultural Holdings (Fees) Regulations 1996[2] ("the 1996 Regulations"). The 1996 Regulations apply to England and Wales to ensure the same level of prescribed fee applies in both countries.

## 7. Policy background

***What is being done and why?***

7.1 The 1986 Act enables landlords and tenants to apply to a professional authority for the appointment of an independent arbitrator to resolve any disputes that may arise in relation to their tenancy agreement or to make formal records such as records on the condition of the holding and its fixed equipment. The 1986 Act also provides that a fee must be paid to the professional authority for this appointment service and that the level of the fee must be prescribed in secondary regulations. This fee is either paid for by the applicant (so either the tenant or the landlord making the application) or in the case of requests to appoint a person to make certain records the fee is shared equally by the tenant and landlord.

7.2 The prescribed fee is currently set in the 1996 Regulations at £115 and as it has not been updated since 1996 it no longer covers the cost of delivering the appointments service. Therefore, the fee needs to be updated in line with inflation over this period to ensure that the appropriate authorities can recover the cost of delivering this service in future. The 1996 regulations also need updating to reflect recent amendments made to the 1986 Act by paragraphs 4 to 6 of Schedule 3 to the Agriculture Act 2020 which expands the list of organisations able to make arbitration appointments to include the President of the Central Association of Agricultural Surveyors (CAAV), and the Chair of the Agricultural Law Association (ALA) alongside the President of the Royal Institution of Charted Surveyors (RICS).

7.3 The 1996 Regulations are also being updated to include a five yearly review clause as recommended by responses to the consultation on this issue. This will ensure that the level of the fee is reviewed on a regular basis in future. Reviews will be carried out in consultation with industry to check if the level of fee is appropriate and in line with cost recovery principles.

7.4 The 1996 Regulations apply to England and Wales so that the same level of prescribed fee applies in both countries. The UK Government and Welsh Government have agreed to continue with a composite approach to this instrument so that there continues to be consistency and fairness in the level of the prescribed fee across both countries.

***Explanations***

*What did any law do before the changes to be made by this instrument?*

7.5 The Regulations currently set the prescribed fee for an application to the President of RICS to appoint an arbitrator at £115.

[2] http://www.legislation.gov.uk/uksi/1996/337/made

*Why is it being changed?*

7.6 This instrument revokes and replaces the 1996 Regulations to increase the prescribed fee from £115 to £195 so that the costs incurred by the professional authorities in delivering the appointments service are covered by the appointment fee in future. It also reflects amendments made through the Agriculture Act 2020 which widened the list of professional authorities that can appoint independent arbitrators under the 1986 Act. It also includes a review clause to ensure the statutory fee is reviewed and updated (if needed) more regularly in future.

*What will it now do?*

7.7 The instrument will set a new prescribed fee of £195 which must be paid by applicants to the professional authority to appoint a person to make formal records or to appoint an arbitrator to resolve a dispute for tenancies governed by the 1986 Act. It also updates the definition of professional authorities to include the President of the CAAV and the Chair of the ALA alongside the President of the RICS. The instrument also places a duty on the Secretary of State and Ministers of Wales to review the Regulations every five years.

## 8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## 9. Consolidation

9.1 No consolidation exercise has been carried out.

## 10. Consultation outcome

10.1 In 2019 Defra consulted on increasing the prescribed fee in England from £115 to £195 to ensure that the appointments service can operate on a cost recovery basis in future which is in line with HMT guidance "Managing Public Money" chapter 6 on fees, charges, and levies[3]. The consultation also proposed that in future the Agricultural Holdings (Fee) Regulations should be subject to a review every five years so that the level of the fee is regularly reviewed and updated if needed.

10.2 As shown in the published consultation response[4] the majority of respondents (73%) agreed with the proposal to update the prescribed appointments fee to £195. Many commented that it was fair to update the fee on cost recovery principles as it has not been updated for many years. Most responses also agreed with the proposal to review the regulations every five years.

10.3 In 2021 the Welsh Government consulted members of the Tenancy Reform Industry Group (industry representatives of tenants, landlords and professional advisors) to seek assurance that they support the proposal for the same increased prescribed fee of £195 applying in Wales as well as in England. The majority of TRIG members agreed that for consistency and fairness the same level of fee should be applied in Wales as in

[3] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

[4] Agricultural tenancy consultation government response (publishing.service.gov.uk)

England. Some responses noted it is important to have consistency to avoid potential issues with cross border holdings.

10.4 Defra will continue to engage with industry stakeholders to consider the recommendations of the recently published Rock Review on improving the operation and oversight of arbitration for resolving agricultural tenancy disputes in England.

## 11. Guidance

11.1 The professional authorities (the CAAV, the ALA and RICS) provide guidance for applicants on the application fee and process on their websites. In addition, the Government will work with industry bodies such the Tenant Farmers Association, the National Farmers Union Tenancy Forum, and the Country Land and Business Association to communicate the changes that this instrument delivers to their members and the wider sector.

## 12. Impact

12.1 The impact on business is that there will be a relatively small increase to the application fee that agricultural landlords and tenants governed by the 1986 Act will have to pay for an arbitrator to be appointed. However, as this is an existing statutory fee no new regulatory burdens are being imposed on business. There is no impact on charities or voluntary bodies.

12.2 There is no significant impact on the public sector.

12.3 A full impact Assessment has not been prepared for this instrument because of the low level of impact and because it relates to the maintenance of existing regulations.

## 13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

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

13.3 The basis for the final decision on what action to take to assist small businesses is that no assistance is needed as no new regulatory burdens are being applied through this instrument as it updates existing regulations.

## 14. Monitoring & review

14.1 This instrument includes a duty on the Secretary of State to review the regulations in relation to England every five years and on Welsh Ministers to review the regulations in relation to Wales every five years. Reviews will be carried out in consultation with the professional authorities and other industry stakeholders including members of the Tenancy Reform Industry Group representing tenants, landlords and professional advisors to monitor the impact of these regulations to check if the level of fee remains at an appropriate level and is in line with cost recovery principles.

## 15. Contact

15.1 Jenny Barker at the Department for Environment, Food and Rural Affairs Telephone: 02080268773 or email: Jenny.Barker@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tim Mordan, Deputy Director for Agri-Food Chain Innovation, Productivity & Science, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Mark Spencer MP, Minister of State for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.