

EXPLANATORY MEMORANDUM TO
THE AGRICULTURAL LAND TRIBUNALS RULES ORDER 2007
2007 No. 3105

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.

2. **Description**

2.1 The Agricultural Land Tribunals Rules Order sets out the rules of procedure to be used by the Agricultural Land Tribunals in England and Wales in determining matters within their legislative remit.

3. **Matters of Special Interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 Agricultural Land Tribunals were established under section 73 of the Agriculture Act 1947. Their original role was to hear appeals against decisions given by the then Minister of Agriculture and Fisheries or County Agricultural Executive Committees, but this was changed by the Agriculture Act 1958, which made them “courts of first instance”. The Agricultural Land Tribunals now play a role under agricultural legislation (principally the Agricultural Holdings Act 1986) in determining disputes between landlords and tenants, particularly in relation to succession to tenancies. They also have a role under section 28 and 30 of the Land Drainage Act 1991 in settling drainage disputes between neighbours. There are eight Agricultural Land Tribunals, each covering a specific geographical area, seven for England and one for Wales.

4.2 The 1947 Act provided that the Minister may by Order make provision for the procedure of the Agricultural Land Tribunals. This function was transferred to the Lord Chancellor by the Agriculture Act 1958. The current rules are laid down in the Agricultural Land Tribunals (Rules) Order 1978 and the Agricultural Land Tribunals (Succession to Agricultural Tenancies) Order 1984.

5. **Extent**

5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. **Policy Background**

7.1 The two existing Rules Orders are outdated and hamper the ability of the Agricultural Land Tribunals and their Chairmen to carry out their duties effectively and in the best interests of parties. The new rules will reflect the modern civil procedure rules and the new “Guide to Drafting Tribunal Rules” published by the Council on Tribunals in 2003.

The Agricultural Land Tribunals are due to move to the Tribunal Service in 2009 and it would facilitate integration if their rules of procedure were aligned to those of other Tribunals.

8. Impact

8.1 A Regulatory Impact Assessment has been prepared for the instrument. There is minimal impact on businesses as a result of the new Order.

8.2 The only impact on the public sector will be the requirement for the Agricultural Land Tribunal secretaries to introduce administrative procedures and documentation to reflect the new rules.

9. Contact

9.1 Judith Marsden at the Department for Environment, Food and Rural Affairs. Tel: 0207-238-5748 or e-mail: Judith.marsden@defra.gsi.gov.uk who can answer any queries regarding the Order.

FINAL REGULATORY IMPACT ASSESSMENT

1. The Agricultural Land Tribunals (Rules) Order

2. Purpose and Intended Effect

The Agricultural Land Tribunals Rules Order updates and consolidates the Agricultural Land Tribunals (Rules) Order 1978 and the Agricultural Land Tribunals (Succession to Agricultural Tenancies) Order 1984. The new Order will apply to England and Wales and will ensure equal and consistent procedures across all of the eight Tribunals.

(a) Objective - The existing rules on ALT procedure are laid down in two Orders dating from 1978 and 1984. They refer to legislation which has been superseded and are generally in need of updating. The objective of the new Order, which will replace the above Orders is to streamline and modernise the ALT system for the benefit of users and bring it into line with current best practice for Tribunals as set out in the 'Model Rules for Procedure for Tribunals' published in 2003 by the Council on Tribunals, and to ensure compliance with the Human Rights Act 1998. Under the present system, there is a great deal of latitude for Chairmen and Tribunals to take individual decisions on procedures as they think fit. The new Order will ensure that cases are dealt with in an even-handed and consistent manner, regardless of which ALT handles the matter.

(b) Background - ALTs were set up by section 73 of the Agricultural Act 1947. Their original role was to hear appeals against decisions given by the Minister to County Agricultural Executive Committees, but this was changed by the Agriculture Act 1958, which made them "courts" of first instance. They now play a role under the agricultural holdings legislation (principally the Agricultural Holdings Act 1986), in deciding family succession matters and settling other disputes between agricultural landlords and tenants and also under sections 28 and 30 of the Land Drainage Act 1991, in settling drainage disputes between neighbours. There are eight ALTs, each covering a specific geographical area, seven for England and one for Wales. The 1947 Act provides that the Lord Chancellor may, by order make provision for the procedure of the ALTs.

(c) Rationale for Government Intervention - Risks attached to the introduction of the new Order are minimal. The existing Orders are out of date and accordingly ALT procedures are not in line with current best practice for Tribunals. If the current Orders remain unamended there is a risk that the ALT procedures could be criticised, which would damage the credibility of the ALT and its reputation amongst the farming industry and potential users. In addition, if the status quo remains there could be a risk of legal challenge to the Order itself as the current legislation is not aligned with Human Rights legislation. Therefore there are clear grounds for government intervention.

The Government has set up a unified Tribunal Service (TS) and it is anticipated, subject to confirmation, that the ALTs will be moving to this in 2009/10. It would be helpful if the ALT Rules are brought up to date before then to facilitate smooth integration into the new body.

3. Options

The options are:

- (a) to leave the existing Orders in place;
- (b) to amend the Agriculture Act 1947 to remove the need to make the ALTs Rules by statutory instrument and instead make them administratively;
- (c) to introduce the new Order.

The first option is contrary to the Government's Modernising Government programme of removing unnecessary regulations and would perpetuate the problems that currently exist. The second option would require either primary legislation, or an Order under the Regulatory Reform Act. Waiting for a suitable vehicle for primary legislation is likely to insert significant delays into the process. A Regulatory Reform Order may not be an appropriate vehicle to make such an amendment to the 1947 Act. These Orders are generally designed for non-controversial amendments, and it is possible that there could be resistance to removing the ALT procedures from statutory control. Both primary legislation and a Regulatory Reform Order would therefore considerably delay the introduction of a new Order. It is also doubtful whether it would be appropriate for the Rules to be made administratively since this would not guarantee a consistent approach across all ALTs.

4. Unintended consequences

At this stage no unintended consequences have been identified.

5. Costs and Benefits

Between 250 and 300 cases are considered by the ALTs each year. Under any of the above options those affected will be the users of the ALT system, landlords, tenant farmers and parties in drainage disputes, and those who operate the system, such as the ALT Chairmen and Deputies and the ALT Secretaries. The costs to any of these parties will be minimal under any of the options. With regard to benefits, the new Rules are intended to provide for a more user friendly system and should therefore result in reduced administrative costs.

6. Sustainable Development

None of the options is likely to have any social, environmental or economic consequences.

7. Compliance Costs

The business sectors affected by the proposed legislation are the relatively small number of landlords, tenant farmers, parties involved in drainage cases and their agents or professional representatives, who need to submit an application to an ALT.

There is no charge for submitting an application to be heard by an ALT. There would be a minimal compliance cost in training ALT Chairmen, Deputies and Secretaries in the new rules and revising the Secretariat procedures and stock letters. There would be no additional administration costs to businesses such as solicitors, land agents and surveyors, although they would need to familiarise themselves with the new arrangements.

8. Consultation

The ALT Chairmen have been consulted and consider that the current rules hamper their ability to carry out their duties effectively and in the best interests of the parties.

The majority of small businesses affected by the proposal will be agricultural tenants and landlords who need to have a tenancy issue resolved by reference to an ALT. The consultation exercise, which included the Tenant Farmers' Association, National Farmers' Union, Farmers Union of Wales and the Country Land and Business Association supported the introduction of new Rules and did not raise any concerns regarding any additional impact on businesses.

9. Small Firms Business Test

None of the options will have an appreciable impact on the small number of businesses that submit a claim to an ALT.

10. Competition Assessment

There will be no effects on competition.

11. Monitoring, Sanctions and Enforcement

There are no monitoring, sanctions or enforcement activities required by any of the options. The effectiveness of the proposed Order will be monitored by the ALT Chairmen and their secretaries.

Summary Table of Costs and Benefits

| Option | Cost | Benefits |
|----------|-------------------------------|---|
| Option 1 | No additional compliance cost | No benefit and risk that ALT Rules could be criticised for not being compatible with Council on Tribunal Model Rules and Human Rights legislation |
| Option 2 | Minimal compliance costs | Would remove a layer of statutory procedures, but could not be achieved without primary legislation. |
| Option 3 | Minimal compliance costs | Updated procedures for the Agricultural Land Tribunals which will benefit those using and operating the Tribunal system. |

12. Summary and Recommendation

Option 1 would retain the status quo and would not bring any additional benefit to either those who use or those who operate the Agricultural Land Tribunal system. Option 2 would remove a layer of legislation, but could not be achieved without amending primary legislation and there is unlikely to be an opportunity to do this for some time. Option 3 would provide the opportunity to update the Agricultural Land Tribunal Rules of procedure and to bring them into line with best Tribunal practice and current Human Right legislation. This will bring benefits for farmers, their professional representatives as well as the Agricultural Land Tribunal Chairmen, who have to operate the system. The recommendation is therefore to adopt Option 3 to introduce the new Order.

Declaration and Publication

I have read the Regulatory Impact Assessment and I am satisfied that benefits justify the costs.

Signed... Jeff Rooker

**Jeff Rooker
Minister for Sustainable Food and Farming and Animal Health
Date... 9th October 2007**

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