

## Guidance Booklet: Receiving an Application

This guidance document is also available in Welsh. Please contact the tribunal for a Welsh version of this document.



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**It is important that you read the following guidance before completing any application form.**

Please note that this booklet is intended to provide general guidance only. It is not in any way a substitute for the legislation governing applications to the Agricultural Land Tribunal for Wales, or for professional advice given in the light of personal circumstances.

It is essential for anyone applying to the Agricultural Land Tribunal or involved in Agricultural Land Tribunal proceedings to familiarise themselves with the relevant legislation, or to seek professional advice.

You should contact the ALT if you have any questions about how to make an application or if anything is unclear about the process. We cannot however give legal advice or help with making or responding to an application.

## What is the Agricultural Land Tribunal for Wales

The Agricultural Land Tribunal for Wales (ALT Wales) plays an important role in determining disputes and other issues between agricultural landlords and tenants, arising from tenancy agreements held under the Agricultural Holdings Act 1986.

Almost all new tenancies entered into on or after 1 September 1995 are Farm Business Tenancies and are subject to the provisions of the Agricultural Tenancies Act 1995.

The ALT Wales also determines certain disputes relating to the drainage of agricultural land under the Land Drainage Act 1991.

The ALT Wales is an independent statutory body with jurisdiction for the geographical area of Wales.

### Tribunal Membership

The Lord Chancellor is responsible for the appointment and re-appointment of the Chairman (Principal Judge), Deputy Chairman and Lay Members. Appointments are made following the advertisement of vacancies and competitive interview by the Judicial Appointments Commission.

Chairman	The Chairman has responsibility for the overall judicial administration of the Tribunal.
Lay Members	Lay Members have a wide range of relevant knowledge and experience which they bring to each Hearing. They sit on the Land Drainage, Farmer or Landowner Panels.
Secretary	The day-to-day administration is largely delegated to the Secretary who deals with all the preliminary paperwork and the processing of applications to the Tribunal. The Secretary consults the Chairman on any legal points arising during the preliminary pre-hearing stages of the proceedings and passes on the Chairman's rulings and Directions in writing to the parties. The Secretary acts as a point of contact for the Chairman, Members and parties and attends most Hearings in order to ensure that proceedings run smoothly.

## **Receiving an Application: General**

### **What happens if I receive a copy of an application from the Tribunal?**

You will have the opportunity to reply to the application. The Tribunal will provide you with a form for making the reply and advise you of the time-limits for responding.

### **What happens with the response I send to the Tribunal?**

The Tribunal will acknowledge receipt of your reply and send a copy of your response to all other parties within 10 working days.

Once a reply has been received by the Tribunal and sent to the relevant parties, steps will be taken to resolve the application either by agreement or by bringing the matter to a Hearing.

### **Are there time-limits for responding to the Tribunal?**

The Tribunal will advise you of any time-limits that are applicable.

Some time-limits may be extended but only if the Tribunal Chairman considers there are good reasons for doing so. The Agricultural Land Tribunals (Rules) Order 2007 explains the consequences of failure to apply to an application within the time allowed by the Rules.

### **Can the Tribunal provide advice?**

The Tribunal is an independent Judicial Body and must therefore remain impartial when dealing with disputes. The Tribunal's Secretariat can provide advice about Tribunal procedures, but cannot provide legal advice or guidance about how to present a case.

## **Language Preference**

The ALT welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents and make written representations to the ALT in Welsh or English.

### **Can my representative send and receive documents on my behalf?**

Your representative can send any information on your behalf. A copy of the written authority should be included.

### **Can the Tribunal recommend any representatives to assist me?**

As a Judicial Body the Tribunal cannot make recommendations about representatives or provide advice about applications.

### **How will documents be sent to me?**

All procedural documents will be sent by Royal Mail Recorded or Special Delivery.

### **Is my response kept confidential?**

Information provided to the Tribunal in connection with an application will only be disclosed to those involved in the case.

However, Hearings take place in public. When a case goes to formal Hearing, all information provided by any party becomes public information unless there are exceptional reasons that make it desirable for any of the proceedings to take place in private

**How do I send my response to the Tribunal?**

You must send any information to the Agricultural Land Tribunal for Wales. Information can be sent to the Tribunal by post, fax or email.

**What happens if I decide to withdraw my response to an application?**

You must inform the Tribunal in writing.

**If an application is not withdrawn, what will happen then?**

If the applicant wishes to continue with their application to the Tribunal, arrangements will be made for a Hearing. You will be contacted if a Hearing needs to take place.

## **The Tribunal Hearing**

### **Will there be a Hearing?**

An application to the Agricultural Land Tribunal for Wales does not necessarily result in a Hearing. Many cases are settled between the parties and do not require a Hearing.

### **When will you tell me about the date of the Hearing?**

The Tribunal will advise parties of the date, time and location of the Hearing. The Tribunal will notify parties at least 14 days before the Hearing.

### **Where will the Hearing be held?**

Hearings are arranged to take place in a suitable venue close to the land in question.

### **When will the Hearing be held?**

The Hearing will be held on a date that is convenient for all parties and the Tribunal.

### **What time does a Hearing start and how long will it last?**

Hearings usually start at 10:00 am. They usually take all day but do not normally continue after 5:00 pm. You will be advised by the Tribunal how many days your Hearing has been listed for.

### **Who will be at the Hearing?**

Hearings are open to the Public but normally only the Parties, the Tribunal and its Clerk are present. The Tribunal may direct the personal attendance of any maker of a witness statement, affidavit or expert report.

### **What happens at the Hearing?**

The Tribunal will explain the procedure on the day but both parties will be given adequate opportunity to put their case to the Tribunal and to ask questions. The Tribunal Members will also ask questions so they can reach a Decision.

### **Do I have to come to the Hearing?**

It is in your interests to attend the Hearing so that the Tribunal hears what you have to say about the application. The Tribunal may have some questions they want to ask you. You may also want to ask questions.

### **Do I need to have legal representation?**

You do not need to have legal representation.

Where parties are not represented, the Chairman will explain the issues in the case and the Tribunal procedures. The Tribunal can not however, advise parties as to the merits of their case, or how to proceed.

### **Can I bring someone with me to the Hearing?**

Tribunal hearings are open to the public therefore anyone can attend. Witnesses are not allowed to give evidence in a case unless the Tribunal has been formally notified and a witness statement has been provided.

**Can I bring someone to speak on my behalf?**

You need to write to the Tribunal informing them of your intention and providing the name and address of the person who will be attending to speak on your behalf. The Tribunal will inform the other parties of your intention.

**What if I need more time before the Hearing to submit evidence?**

The Tribunal may in certain circumstances agree a postponement. However the Tribunal will need to be convinced that it is justified. You will need to make a written application to the Tribunal setting out your request for a postponement and the reasons why.

**Why do I have to complete an attendance form?**

All parties must inform the Tribunal whether or not they intend to be present or represented at the Hearing. Parties must also advise whether they intend to bring any witnesses.

If you make any changes to the people listed on your attendance form you should let the Tribunal know immediately.

**Can I claim expenses?**

The Tribunal is unable to pay expenses.

**Can I/my representative/witnesses give evidence in Welsh?**

Equality is given to both the Welsh and English languages and evidence can be given in either language.

If you/your representative/witnesses wish to give evidence in Welsh, please advise the Tribunal before the Hearing so arrangements can be made for translation.

**Will the Hearing be held in private?**

All Hearings are held in public unless there are exceptional reasons for the Hearing to be held in private. If you wish for the Hearing to be held in private, you must write to the Tribunal with full reasons for your request.

**How is evidence given at a hearing?**

Evidence is normally given on oath or affirmation. Parties may; give evidence, call witnesses, question witnesses and address the Tribunal.

**What is a site visit?**

A site visit is an inspection of the land to which the application relates. The Tribunal may inspect the buildings, land and any livestock, equipment and produce.

**Can I say anything to the Tribunal panel at the site visit?**

Both parties can draw attention to any physical aspect of the property that they wish the Tribunal to see. However parties may not make any representation during the inspection. Representations can only be made at the hearing orally or in writing.

**What are the types of cases that require the Tribunal to complete an inspection of the site?**

Almost all cases will require the Tribunal to carry out an inspection.

**How much notice will the Tribunal give before carrying out an inspection?**

The Tribunal will give at least 24 hours (or 7 days in drainage cases) notice of any site visit.



**When will the site visit be carried out?**

The Tribunal will advise parties at the Hearing when the site visit will be carried out. Site visits usually take place before evidence is given.

**What bio-security will be followed at the site visit?**

The Tribunal follows bio-security as advised by the Welsh Government.

## **The Tribunal Decision**

### **How does the Tribunal make its decision?**

The Tribunal will make its decision by considering all of the evidence. This includes the documents all parties send before the Hearing and also what is said at the Hearing.

### **How long does it usually take the Tribunal to issue its decision?**

The Tribunal will issue its decision normally within 30 working days of the Hearing.

### **Can I request a review of the Tribunal's decision?**

If you think there is a technical problem with the decision and how it was made, you can ask the Tribunal to review the decision. The Tribunal will not review its decision simply because you are not happy.

### **What if there are administrative errors in my decision?**

The Tribunal has the power to issue correction certificates to rectify any clerical or accidental error or omission in a decision. You will need to make a written application to the Tribunal setting your request.

### **What if I disagree with the Tribunal's decision?**

You can appeal to the Upper Tribunal on a point of law. Permission for leave to appeal must first be sought from the Agricultural Land Tribunal for Wales. The Tribunal Decision letter will advise you about any deadlines.

### **Can I view past decisions?**

Yes. Decisions made by the Tribunal will be made available at the Tribunal's office or on the website.

### **How long does the Respondent have to carry out a Tribunal Order?**

The Tribunal Order will state when the Order must be carried out by.

Please see below, additional information regarding applications under the Agricultural Holdings Act 1986.

### **Bad Husbandry**

The application is made by the landlord against the tenant. The Tribunal may issue a certificate that the Tenant of the holding is 'not fulfilling his responsibilities to farm in accordance with the rules of good husbandry'. Schedule 3 Part 1 Case C states that the landlord can then serve an incontestable Notice to Quit on the tenant within 6 months of the granting of the certificate.

"Good Husbandry" is defined in Section 2 of the Agriculture Act 1947 as 'having regard to the character and situation of the unit, the standard of management thereof by the owner and other relevant circumstances, the occupier is maintaining a reasonable standard of efficient production, as respects both the kind of produce and the quality and quantity thereof, while keeping the unit in a condition to enable such a standard to be maintained in the future'.

The minimum period of notice for termination of tenancy must not be less than two months

### **Burning**

A tenant may ask the Tribunal that the covenants/conditions/agreements in the lease are:

- avoided completely;
- relaxed permanently;
- relaxed for a set period.

The tenant must outline how the covenants/conditions/agreements are impeding or preventing the proper use of land for agricultural purposes.

Your attention is drawn to the existence of the Heather and Grass Burning Code and the Heather and Grass etc Burning Regulations (or any amendments or replacements thereof). Parties may obtain further information on these on the Welsh Government website and other government and law sources.

## Fixed Equipment

The tenant of an agricultural holding is entitled to apply to the Tribunal for an Order directing landlord to carry out, within a specified period, such work for the provision or alteration/repair of fixed equipment, as is necessary to enable the tenant to comply with statutory requirements.

The Tribunal jurisdiction can be invoked in either of two situations:

- Where the tenant, in carrying on the agricultural activity specified in his application, would contravene requirements imposed by statute unless fixed equipment were provided; or
- Where fixed equipment is already provided at the holding, and it is reasonable that the tenant should use it for purposes connected with the proposed agricultural activity, it may be necessary for the equipment to be repaired or replaced if breach of statutory requirements is to be avoided.

Before making a direction, the Tribunal must satisfy itself that the carrying on of the agricultural activity proposed by the tenant is reasonable; having regard to the latter's duty to farm the holding in accordance with the rules of good husbandry.

The Tribunal cannot direct the landlord to provide fixed equipment for a proposed agricultural activity unless satisfied that the starting of the activity did not (or will not) constitute 'a substantial alteration of the type of farming carried out on the holding'. If the farming activity specified in the tenant's application has been carried on continuously for a period of at least three years preceding the date of application, the Tribunal can make a direction – even if the change in use it represented was a substantial one. In this case the landlord's consent to the change of use is presumed.

The Tribunal cannot direct the landlord to carry out work unless satisfied that it is reasonable to do so 'having regard to the landlord's responsibilities to manage the land comprised in the holding in accordance with the rules of good estate management'.

The Tribunal jurisdiction cannot be invoked to compel the landlord to carry out work if he is already under a duty to carry out the work in order to comply with a requirement imposed by statute, or if provision is made in the tenancy agreement.

The landlord must be served with a written request to do the work concerned by the tenant. A Tribunal application can only be made if he has failed to carry out the work within a reasonable time or has refused to do so. No strict time limits for service of request and the landlord's response are imposed by the Act.

If the landlord fails to comply with a Tribunal Direction the tenant has the same remedies as if the contract of tenancy had itself contained an undertaking to carry out the work within the period specified by the Tribunal. The tenant can therefore claim damages and/or an injunction in the normal way. The Tribunal does not have enforcement powers.

Under section 11(2) of the Agricultural Holdings Act 1986 the Tribunal cannot direct a landlord to carry out work in connection with an agricultural activity specified in the tenant's application

where the activity has not been carried out on the holding continuously for a period of at least three years immediately preceding the making of the application unless they are satisfied that the starting of the activity did not, or where it has not yet been started, will not constitute or form part of a substantial alteration of the type of farming carried out on the holding.

## **Long Term Improvements**

An application can be made to the Tribunal for the approval of the carrying out of certain long term improvements.

If the landlord refuses his consent or seeks to impose conditions which the tenant finds unacceptable, the tenant may apply to the Tribunal for approval to the carrying out of the improvement. The Tribunal may give its approval unconditionally or conditionally or may withhold it.

The tenant must first seek the landlord's consent to the improvements, before applying to the Tribunal.

If the Tribunal grants approval, the landlord may, within the prescribed period, give notice in writing to the Tribunal and the tenant that he proposes to carry out the improvement himself.

## **Market Garden**

A tenant may request their landlord to agree in writing to their holding being treated as a market garden. If the landlord refuses, or fails within a reasonable time to agree in writing that the holding be treated as a market garden, then the tenant can apply to the ALT.

An application can be made under Section 80 of the Agricultural Holdings Act 1989, to direct that the holding/part of the holding shall be treated as a market garden.

If the Tribunal are satisfied that the holding (or part) is suitable for market gardening, they can direct that the enhanced rights to compensation etc. shall apply to all or some of the proposed improvements. The direction can be given subject to such conditions as the Tribunal think fit for the protection of the landlord.

Section 80 (7) gives the Tribunal power to direct that the direction will only become operative if the tenant agrees to the division of the holding into two parts, only one of which is to be treated as a market garden.

A new tenancy accepted by the tenant in accordance with a Tribunal direction, is not treated as a new tenancy for rent review purposes.

## Notice to Quit

The Tribunal can consent to the operation of a Notice to Quit. The application is made by the landlord against the tenant.

A landlord has the right to apply to the Tribunal for its Consent to the operation of a Notice to Quit under Section 26 (1) of the Agricultural Holdings Act 1986, as follows:

- (a) A landlord wanting to obtain vacant possession of a holding may serve a Notice to Quit on the Tenant.
- (b) Under Section 26(1), the tenant can then serve a counter-notice on the landlord no later than one month from the serving of the Notice to Quit.
- (c) The Notice to Quit can then only have effect if the landlord applies to the Tribunal, and the Tribunal consents to its operation.

### Specific Key Deadlines:

Section 26(1):           The tenant must serve the counter-notice on the landlord no later than 1 month from the service of the Notice to Quit.

Rule 39:                 The landlord must submit an application for Consent to the Notice to Quit no later than one month of the service of the counter-notice.

The criteria for how the Tribunal considers an Application for Consent to Notice to Quit are set out in Section 27 (1). The Tribunal will give its consent to the Notice To Quit if:

- (1) if it does not appear to the Tribunal that a fair and reasonable landlord would not insist on possession
- (2) if it is satisfied as to one or more of the criteria below:
  - (a) the Landlord's purpose for the notice to quit is in the interests of good husbandry, treated as a separate unit.
  - (b) the Landlord's purpose for the notice to quit is in the interests of sound estate management, treated as part of the whole estate.
  - (c) the Landlord's purpose is desirable for agri research, education, experiment or demonstration, enactments relating to smallholdings.
  - (d) enactments relating to allotments
  - (e) greater hardship would be caused by withholding than by giving consent.
  - (f) non-agricultural use and not Case B (Schedule 3 Part 1)

Where the tenant is a serviceman within the meaning of Paragraph 1 of Schedule 5 of the Agricultural Holdings Act 1986, and the Notice to Quit is given for one or more of the reasons specified in Case B, D or E, the reasons for the giving of the Notice must be stated and, if any

question arising out of them has been determined by arbitration, the determination should also be stated.

### **Notice to Quit**

Article 13(2) of the Agricultural Holdings (Arbitration on Notices) Order 1987 requires the tenant(s) at the same time to give written notice of the application to the landlord(s), except where the application is made at the hearing before the tribunal.



## Succession on Death

Applications may be made to the Tribunal for a direction to succeed a deceased person's tenancy.

Section 34 of the Act limits this provision to tenancies granted **before 12<sup>th</sup> July 1984** and second succession cases granted under Section 39 or 53, e.g. on death or retirement of the existing tenant.

Legislation	Action	Deadline
Act, Section 39(1)	Application to the Tribunal by a close relative	3 months from the day after the date of death
Act, Section 41(2)	Application by a close relative to be treated as eligible for the purposes of Section 36-48	3 months from the date after the date of death
Rule 4	Reply to an application by another applicant (Form TA13)	1 month from the date of delivery of the application
Rule 4	Reply to an application by the Landlord (Form TA11)	1 month from the date of delivery of the application
Act, Schedule 3 Pt 1	Service of a Case G Notice to Quit	3 months from the date of receiving notice of the tenant's death
Rule 41 (1)	Application for Consent to Case G Notice to Quit, where there is only one applicant for succession	1 month from the expiry of the 3 month period for submitting applications for succession <b>or if later</b> 1 month from delivery of the application
Rule 41 (2)	Application for Consent to Case G Notice to Quit, where there is more than one applicant for succession	1 month from delivery of a notice that the number of applications for succession are reduce to one <b>or</b> any earlier date directed by the Chairman

Key: Agricultural Holdings Act 1986 – “Act”  
Agricultural Land Tribunals (Rules) Order 2007 – “Rule”



## Succession on Retirement

A tenant (or tenants) wishing to retire may nominate a successor in a notice served on the landlord. It is then open to the nominated successor to apply to the Tribunal for a direction. If the successor does not obtain a Tribunal direction he cannot make another application for succession when the tenant dies.

Section 49 (1) A tenant may serve a notice on the landlord, stating his intention to retire from the tenancy and nominate a person to succeed the tenancy from him. The tenant must give a date for retiring of 12 months from the end of the current year's tenancy, but not more than 2 years from the date of the notice.

Section 34 of the Act limits this provision to tenancies granted **before 12<sup>th</sup> July 1984** and second succession cases granted under Section 39 or 53, e.g. on death or retirement of the existing tenant.

Applications may be made to the Tribunal for a direction to succeed a person's tenancy when they retire.