

Explanatory Memorandum to the Agricultural Holdings (Units of Production) (Wales) (No. 2) Order 2015

This Explanatory Memorandum has been prepared by the Agriculture, Food and Marine Group, and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Agricultural Holdings (Units of Production) (Wales) (No.2) Order 2015.

Rebecca Evans
Deputy Minister for Farming and Food.

2 September 2015

1. Description

The Agricultural Holdings (Units of Production) (Wales) (No. 2) Order sets out figures for agricultural incomes which are associated with various farming activities and are used in cases relating to succession to an agricultural tenancy and in determining whether or not the land in question is in a 'commercial unit of agricultural land'. The resultant calculations are used to determine whether a close relative is eligible to succeed to a tenancy. If the close relative already has a farm and that farm is judged (using the data in the Order) to be of a commercial size, he/she would not be eligible for automatic succession.

2. Matters of special interest to the Constitutional Affairs Committee and Legislative Affairs Committee

The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2015 (2015 Order). We have recently been informed that there is a discrepancy in the data contained within the Schedule (Article 2) to the 2015 Order. The figures in the 2015 Order are, therefore, incorrect and if the Agricultural Tribunal were to determine current cases before it, using the data in the 2015 Order, the end figures would be incorrect and would be open to challenge.

The new Order will introduce the correct figures for this period. Until the new Order comes into force any cases which progress to the Agricultural Tribunal during this period, will be placed on hold until the Order is made. We understand that five cases are currently on hold, awaiting revised figures.

The amendment would cover the period between 12 September 2014 and 11 September 2015 and the Order will, therefore, apply retrospectively. The Counsel General has given his consent to the retrospective provision in this Order.

Also to note, the Beef fattening cattle (semi-intensive) head figures decreased from £40.00 per head in 2013 to -£34.00 per head in 2014. This decrease reflects the methodology used to calculate Net Annual Incomes and the fact they rely heavily on forecasts. The values are 3 year averages and the 2013 figures were based on outturn data for 2011 and forecasts for 2012 and 2013. At the time of the forecasts (summer 2013) beef prices were quite strong and the prospects for the sector looked good so this was reflected in the projections made. Since then prices have fallen back and costs have increased leading to higher negative net annual incomes which has pulled the average down. Since the 2013 figures were forecast there has been a downward adjustment in expectations which is reflected in the reduced values for 2014.

3. Legislative background

Powers for the Welsh Ministers to make an Agricultural Holdings (Units of Production) (Wales) Order are conferred by Paragraph 4 of Schedule 6 to the Agricultural Holdings Act 1986. Paragraph 4 of Schedule 6 requires the Minister to make an Order, prescribing such units of production relating to agricultural land as considered appropriate and for any period of 12 months specified within the Order. These powers were originally transferred to the National Assembly for Wales by the 1999 Transfer of Functions Order (S.I.1999/672) and are now exercisable by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

The Agricultural Holdings (Units of Production) (Wales) (No.2) Order 2015 revokes The Agricultural Holdings (Units of Production) (Wales) Order 2015. Section 14 of the Interpretation Act 1978 provides that where an Act confers powers to make certain legislation by statutory instrument it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under the power. Here it has been decided to revoke and remake the SI, on the basis that this will produce clear legislation that is most accessible for those using the legislation. The Agricultural Holdings (Units of Production) (Wales) (No. 2) Order 2015 will, therefore, revoke the 2015 Order and remake it, with the correct figures in the Schedule. The Order will relate to the same period as the 2015 Order.

This Order follows the negative resolution procedure.

4. Purpose and intended effect of the legislation

This Order is made on an annual basis and sets out figures on land values prepared by the Welsh Government's Land, Nature and Forestry Division. They are used by the Agricultural Land Tribunal (ALT) in Wales when calculating the amount which is to be regarded as the net annual income from land relating to tenancy succession.

This Order will come into force in September 2015. Without the introduction of this Order, the ALT will not have the figures which it is required to use in order to determine such cases in Wales.

5. Consultation

It was not deemed necessary to put this Order out to consultation as the instrument is made annually, is technical in nature and is not contentious. The introduction of this Order in Wales purely enables Welsh Government officials who undertake the necessary calculation to advise the Tribunal on cases deemed as a "commercial unit".

6. Regulatory Impact Assessment (RIA)

A Regulatory Impact Assessment has not been prepared as the instrument is made annually, is purely technical and is not contentious. There has been no impact on the statutory provisions outlined in the Government of Wales Act 2006 (c32) sections 77-79 or the statutory partners, sections 72-75 of the 2006 Act.