

Explanatory Memorandum to the Agricultural Holdings (Units of Production) (Wales) Order 2019

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department, 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) Order 2019.

Lesley Griffiths

Minister for Environment, Energy and Rural Affairs

17 January 2019

1. Description

Certain agricultural tenancies carry succession rights. In these cases, under the Agricultural Holdings Act 1986, a close relative of the deceased or retiring tenant can apply to the Agricultural Land Tribunal (ALT) for a direction as to whether the relative is eligible to succeed to a tenancy. One of the tests in establishing a right of succession involves satisfying the ALT that the new tenant does not already occupy “a commercial unit of agricultural land” elsewhere. If this were the case, the close relative would not be eligible for automatic succession.

The Agricultural Holdings (Units of Production) (Wales) Order 2019 sets out figures for agricultural incomes which are associated with various farming activities, and are used in determining whether or not the land in question is a ‘commercial unit of agricultural land’.

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

The Welsh Ministers are required under the Agricultural Holdings Act 1986, to prescribe by Order such units of production relating to agricultural land as is considered appropriate, for a twelve month period specified in the Order. The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2017, covering the period from 12 September 2017 to 11 September 2018. The Agricultural Holdings (Units of Production) (Wales) Order 2019 will cover the period 12 September 2018 to 11 September 2019.

The Agricultural Holdings (Units of Production) (Wales) Order 2017 will continue to be in force, as this will allow the ALT to continue to calculate the requisite figures for any cases that may fall within the period covered by the rest of the SI and which are still being processed.

A retrospective Order is required as base statistics, prepared by DEFRA and used in the calculation of land values in Wales, are not available to the Welsh Government until September each year and then require additional analysis to calculate the Welsh figures. Until the new Order comes into force any cases which progress to the ALT during this period would need to be put on hold until the new Order is made.

3. Legislative background

Powers for the Welsh Ministers to make an Agricultural Holdings (Units of Production) (Wales) Order 2019 are conferred by Paragraph 4 of Schedule 6 to the Agricultural Holdings Act 1986.

Paragraph 4 of Schedule 6 requires the Welsh Ministers 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 National Assembly for Wales (Transfer of Functions) Order 1999

(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.

This Order is being made under the negative resolution procedure.

4. Purpose & 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. These figures are used by the ALT to assess the net annual income of qualified land when calculating the amount which is to be regarded as the net annual income from land relating to tenancy succession.

The making of this Order in Wales enables the undertaking of net annual income assessments for the purpose of disputed tenancy succession cases. At present, net annual income assessments are prepared, on the request of the ALT.

In the 2017/18 financial year, the ALT considered 12 tenancy succession cases under the Agricultural Holdings Act 1986. A net annual income assessment, using the figures in the 2017 Order, was requested in 7 of these cases.

This Order will come into force on 8 February 2019. Without the Order, the ALT will not have the figures 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.

6. Regulatory Impact Assessment (RIA)

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations as the Regulations are made annually and the amendments are technical in nature.