

Explanatory Memorandum to the Agricultural Holdings (Units of Production) (Wales) Order 2017

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources 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.

Cabinet Secretary'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 2017.

Lesley Griffiths
Cabinet Secretary for Energy, Planning and Rural Affairs
8 December 2017

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 2017 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

There is a requirement under the Agricultural Holdings Act 1986 for the Welsh Ministers by Order to prescribe such units of production relating to agricultural land as is considered appropriate, for a twelve month period as specified in the Order. The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2016, covering the period from 12 September 2016 to 11 September 2017. The Agricultural Holdings (Units of Production) (Wales) Order 2017 will cover the period 12 September 2017 to 11 September 2018.

It is advised that the Agricultural Holdings (Units of Production) (Wales) Order 2016 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.

As the base statistics, which are prepared by Defra and used in the calculation of land values in Wales, are not available to the Welsh Government until September each year, a retrospective Order is required. 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 2017 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 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.

This Order follows 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.

This Order will come into force on 5 January 2018. Without the introduction of this Order, the ALT will not have the figures which it requires 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 making of this Order in Wales purely enables the undertaking of net annual income assessments for the purpose of disputed tenancy succession cases. At present, net annual income assessments are prepared by ADAS under a call-off procurement contract with the Welsh Government, on the request of the ALT.

In the 2016/17 financial year, the ALT considered 12 tenancy succession cases under the Agricultural Holdings Act 1986. A net annual income assessment was requested in seven of these cases.

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.