

Explanatory Memorandum to the Agricultural Holdings (Units of Production) (Wales) Order 2012

This Explanatory Memorandum has been prepared by the Rural Payments Wales Division of the Department for Business Enterprise and Technology 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 2012.

Alun Davies

Deputy Minister for Deputy Minister for Agriculture, Food, Fisheries and European Programmes

4 December 2012

1. Description

The Agricultural Holdings (Units of Production) (Wales) Order lays down figures for agricultural incomes associated with various farming activities and are used in cases relating to succession to an agricultural tenancy and in determining the “commercial” size of the farming enterprise. The resultant calculations are then applied to decide whether a close relative is eligible to succeed to a tenancy. If the close relative already has a farm – and if 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

There is no Order currently in place to govern the period 12 September 2012 to 11 September 2013 consequently a retrospective Order is required. This is due to the base statistics prepared by Defra not being available until now and consequential delays in obtaining figures for land values in Wales. The new Order will introduce relevant figures for this period. Once the new Order is in force, there will be no enforcement gap and there will be continuous and seamless provision for assessing whether agricultural land is being used commercially. However, until the new Order is in force, any cases which progress to the Agricultural Tribunal during this time period would need to be put on hold until the Order is made.

3. Legislative background

Powers for the Welsh Ministers to make an Agricultural Holdings (Units of Production) (Wales) Order are conferred by sections 36, 50 and 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) Order 2012 revokes The Agricultural Holdings (Units of Production) (Wales) Order 2011.

This order follows the negative resolution procedure.

4. Purpose & intended effect of the legislation

This Order is made on an annual basis and confirms figures on land values prepared by the Welsh Government’s Land, Nature, Forestry and Marine Division (LNFM) and makes them legally binding when used to inform the

Agricultural Land Tribunal (ALT) in Wales on their cases relating to tenancy succession.

This Order will come into force on 26 December 2012. Without the introduction of this Order, the Welsh Government would be unable to advise ALT on cases of tenancy succession that may relate to "commercial units." This would lead to the ALT being unable to hear 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, purely technical and is not contentious.