

Explanatory Memorandum to the Agricultural Holdings (Units of Production) (Wales) (No. 2) Order 2021

This Explanatory Memorandum has been prepared by the Economy, Skills and Natural Resources Department, and is laid before Senedd Cymru 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 2021.

Lesley Griffiths
Minister for Rural Affairs and North Wales, and Trefnydd

26 October 2021

PART 1

Description

1. Certain agricultural tenancies carry succession rights. In these cases, under the Agricultural Holdings Act 1986 ('the 1986 Act'), 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 entitled to succeed to a tenancy. One of the tests in establishing a right of succession involves satisfying the ALT the applicant 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.
2. The Agricultural Holdings (Units of Production) (Wales) (No. 2) Order 2021('the Order') 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'.

Matters of special interest to the Legislation, Justice and Constitution Committee

3. The Welsh Ministers are required under the 1986 Act, 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 2021 ('the 2021 Order'), covering the period from 12 September 2019 to 11 September 2020. The Order will cover the period from 12 September 2020 to 11 September 2021.
4. Orders are usually retrospective due to the availability of the base statistics, prepared by Defra and used in the calculation of land values in Wales. They have been delayed further this year due to the impacts of the pandemic on resources.
5. Any cases which progress to the ALT from 12 September 2020 have been put on hold until the Order is made. The legislation will need to apply retrospectively - agreement for retrospective provisions from 12 September 2020 was sought and obtained from the Counsel General on this matter.

Legislative background

6. Powers for the Welsh Ministers to make the Order are conferred by paragraph 4 of Schedule 6 to the 1986 Act.
7. 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 for any period of 12 months specified within the order. These powers were originally conferred on the Minister (section 96 of the 1986 Act

states that in relation to Wales this is the Secretary of State). These powers were subsequently transferred to the National Assembly for Wales by virtue of article 2 of, and Schedule 1 to, 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 section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

8. The Order is being made under the negative resolution procedure.

Purpose and intended effect of the legislation

9. Orders made under paragraph 4 of Schedule 6 to the 1986 Act are made on an annual basis and set 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.
10. The making of the Order for Wales enables the undertaking of net annual income assessments for the purpose of Welsh tenancy succession cases. Net annual income assessments are prepared on the request of the ALT.
11. This Order will come into force on 1 December 2021. Without the 2021(2) Order, the ALT will not have the figures to determine such cases in Wales.
12. No consultation has been undertaken on the Order. 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.

Regulatory Impact Assessment (RIA)

13. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to the Order. Changes made by the Order are routine amendments to an existing system (an annual process updating the previous years' NAI figures) which do not alter the policy or its impact in any significant way. Therefore it was not considered necessary to carry out a regulatory impact assessment.
14. In addition, the legislation has no impact on the statutory duties (sections 77-79 Government of Wales Act 2006) nor on the statutory partners (sections 72-75 Government of Wales Act 2006).