

Explanatory Memorandum to the Agricultural Holdings (Units of Production) (Wales) Order 2024

This Explanatory Memorandum has been prepared by the Climate Change and Rural Affairs Group 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) Order 2024.

Lesley Griffiths MS

Minister for Rural Affairs and North Wales, and Trefnydd

10 January 2024

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 that 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) Order 2024 ("the 2024 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" during the relevant period.

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 2023 which covers the period from 12 September 2022 to 11 September 2023. Given the ALT cannot decide relevant succession cases without the relevant figures, there must be a UPO to cover the 12 month period from 12 September 2023 to 11 September 2024.
4. Units of Production Orders historically always contain an element of retrospectivity due to the availability of the base statistics from DEFRA which then have to be manipulated by Welsh Government to produce the relevant Welsh figures. These figures did not become available until 13 September 2023.
5. Cases which have progressed to the ALT from 12 September 2023 have been put on hold until such a time as the Order is made. There are currently six applications which would be affected by a new Order.
6. The legislation will need to apply retrospectively from 12 September 2023 to the coming into force date of the Order. This is expressly permitted by Schedule 6, Paragraph 4b of the Agricultural Holdings Act 1986 which provides the Minister shall by order for any period of 12 months specified in the order determine in relation to any prescribed units of production the amount which is to be regarded as the net annual income from that unit in that period.

Legislative background

7. Powers for the Welsh Ministers to make the 2024 Order are conferred by paragraph 4 of Schedule 6 to the 1986 Act.
8. 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.
9. The Order is subject to the negative procedure.

Purpose and intended effect of the legislation

10. Orders made under paragraph 4 of Schedule 6 to the 1986 Act are usually 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.
11. 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.
12. The 2024 Order will come into force on 7 February 2024. Without the 2024 Order, the ALT will not have the figures to determine such cases in Wales.
13. 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)

14. As this Order makes routine amendments to an existing system (an annual process updating the previous years' NAI figures) and the amendments do not alter the policy or its impact in any significant way, an RIA is not required. This is in line with the policy set out in the Welsh Ministers' code of

practice for carrying out regulatory impact assessments for subordinate legislation.

15. In addition, the legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) nor on the statutory partners (sections 72-75 of the Government of Wales Act 2006).