

EXPLANATORY MEMORANDUM TO
THE AGRICULTURAL HOLDINGS (UNITS OF PRODUCTION) (ENGLAND)
ORDER 2017

2017 No. 977

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Secretary of State is required under the Agricultural Holdings Act 1986 (“the Act”) to make orders annually, known as unit of production orders (“UPOs”), that can be used to assess the productive capacity of agricultural land for the purpose of agricultural tenancy succession cases heard by the First Tier Tribunal (“the Tribunal”). Under the Act succession to an agricultural tenancy can be contested on the grounds that the applicant tenant is already in possession of a “commercial unit of agricultural land” (the “commercial unit test”). In order to determine whether the commercial unit test is met, the Tribunal can ask the Secretary of State to provide a statement of net annual income for the agricultural land in question. The Agricultural Holdings (Units of Production) (England) Order 2017 (“the UPO 2017”) sets out values for the net annual income that can be expected from prescribed units of production for the purpose of providing these statements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Sections 36 and 50 of Part IV of the Act set out criteria for “eligible persons” to apply to succeed to an agricultural tenancy where the tenant has either died or wishes to retire.
- 4.2 One criteria is the commercial unit test where the applicant tenant cannot succeed to the tenancy if they are already in occupation of a commercial unit of land, defined in paragraph 3(1) of Schedule 6 to the Act as “a unit of agricultural land which is capable, when farmed under competent management, of producing a net annual income of an amount not less than the aggregate of the average annual earnings of two full-time, male agricultural workers aged twenty or over”.

- 4.3 For the purpose of assessing the commercial unit test, the Secretary of State is required under paragraph 4 of Schedule 6 to the Act to make UPOs that:
- a) prescribe appropriate units of production (e.g. hectares or even by reference to specific animals or crops) that can be used for the assessment of the productive capacity of agricultural land; and
 - b) for any period of 12 months, determine the net annual income from that unit of production.
- 4.4 UPOs are drafted on an annual basis and the UPO 2017 revokes the Agricultural Holdings (Units of Production) (England) Order 2016 (S.I. 2016/1002), setting out updated figures for net annual income in its Schedule.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The Act provides for up to two generations of succession by eligible close relatives to the tenant, but succession can be contested on the grounds that the applicant tenant is already in occupation of a commercial unit of land. The policy objective is to ensure that an agricultural tenancy governed by the Act is not succeeded to by an applicant who already has a viable farming business. The UPO 2017 supports this policy by providing a means to assess the productive capacity of any agricultural land occupied by the applicant to help determine whether or not the commercial unit test is met.
- 7.2 In practice the use of a UPO as a formal basis for net annual income assessments in contested succession cases at Tribunal is very limited. In the last year there have been no cases and in the previous five years there has been an average of 3 cases a year where a net annual income statement has been provided to the Tribunal using the relevant UPO. However, it should be noted that parties to agricultural tenancies governed by the Act may be referencing the UPO informally to estimate whether or not the commercial unit test might be relevant to any considerations they may have in relation to succession. It is difficult to estimate the extent of this informal use of the UPO. A best estimate of the numbers of agricultural tenancies governed by the Act that are likely to be coming to an end each year and therefore may have succession considerations is approximately 465 a year but the commercial unit test may only be relevant to very few of these tenancies.
- 7.3 The values within the UPO 2017 are produced by the Department from data provided by various sources and represent the net annual income which, on average, might be expected from the main types of crop and livestock on a holding. The UPO 2017 also includes values for direct payments farmers can receive for eligible hectares under the Common Agricultural Policy Basic Payment Scheme (“BPS”) including an additional payment for agricultural practices that are beneficial to the environment (“Greening”). However, as the UPO 2017 is required to provide **net** income figures, the values for BPS (including Greening) have been adjusted to take off the costs of average rents

and 2% for the cost of cross compliance¹. This results in negative values for BPS income in the categories of “moorland” and “all other land”. The UPO 2017 also shows negative values for beef, ewes, barley and beans due to poor market performance for these particular units of agricultural production.

- 7.4 It should be noted that as the entitlement values for direct payments under the 2017 BPS will not be confirmed at the time of laying this instrument, therefore the most recent available values under the 2016 BPS Scheme have been used in the UPO 2017 as the best estimate of net income. This replaces and updates the values for direct payments from last year’s order.

8. Consultation outcome

- 8.1 As this is an annual exercise simply updating the figures in the UPO 2017 for net annual income, which has not involved any changes to underlying policy or legislation, and as the subject matter is of limited interest to the public, the UPO 2017 has not been subject to formal public consultation. However the Department has engaged with practitioners from industry to discuss the updates to help ensure they are applied in the most sensible and useful way for those using the UPO 2017.

9. Guidance

- 9.1 In line with previous UPOs, as the main users of the UPO 2017 are professional experts such as agricultural surveyors and valuers, no Government guidance is needed. The Department will proactively spread awareness of the UPO 2017 across the sector by emailing members of the Tenancy Reform Industry Group (which includes representatives of tenant farmers, agricultural landlords and professions such as chartered surveyors, agricultural valuers and agricultural lawyers) to ensure they are aware of the new UPO 2017 and to ask them to spread awareness of it through their own membership base.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible because this is an annual updating exercise involving no underlying changes to policy or legislation.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people) the approach taken is that this is an annual updating exercise so the UPO 2017 does not bring in any new or different regulations for small farming businesses.
- 11.3 The basis for the final decision on what action to take to assist small businesses is that no assistance is needed as this is an annual updating exercise and no new policy or regulation is being brought in.

¹ Cross compliance are rules that farmers and landowners must follow if they claim payments under BPS. Meeting cross compliance rules can add to the farmers’ costs but the exact amount will vary from holding to holding depending on what type of farming business it is. To take account of this cost in the UPO an average figure of 2% is deducted from the BPS values for the cost of cross compliance.

12. Monitoring & review

- 12.1 This instrument is out of scope of the statutory review provisions enacted in the Small Business, Enterprise and Employment Act 2015 because UPOs have to be made annually and are therefore subject to regular review.
- 12.2 The success measure for this instrument is that it provides an independent practical tool for industry and professionals to reference in succession cases that are contested on the grounds of the commercial unit test. The Department will seek feedback on this from officers of the Tribunal, industry representatives and professionals using the UPO 2017 which will help inform any updates to the next UPO in 2018.

13. Contact

- 13.1 Jenny Barker at the Department for Environment, Food and Rural Affairs. Tel: 02080267456 or email: Jenny.Barker@defra.gsi.gov.uk who can answer any queries regarding the instrument.