EXPLANATORY MEMORANDUM TO

THE AGRICULTURAL HOLDINGS (UNITS OF PRODUCTION) (ENGLAND) (NO. 2) ORDER 2021

2021 No. 1440

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

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). The net annual income values provided in the UPO 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). This instrument also makes a minor amendment to correct an error in the Agricultural Holdings (Units of Production) (England) Order 2021 (S.I. 2021/102).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 While this instrument provides an annual update to the UPO it also corrects an error in the Schedule to the current UPO (The Agricultural Holdings (Units of Production) (England) Order 2021 (S.I. 2021/102)). The correction changes the entry relating to dried peas in column 3 (net annual income from unit of production) of the table in the Schedule from "£550.00" to "£18.00". This instrument is being published under the free issue procedure. Defra confirms that it has complied with the requirement in paragraph 4.7.6 of Statutory Instrument Practice to consult with the SI Registrar on the use of the free issue procedure in relation to this instrument. Defra decided not to revoke or remake the existing instrument due to the timing of this instrument being the quickest and most efficient way correct the error.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 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.

6.2 One criterion 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'.

6.3 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. hectare, cow or bird) 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.

6.4 This instrument revokes and replaces the current UPO (The Agricultural Holdings (Units of Production) (England) Order 2021 (S.I. 2021/102)), providing updated figures for net annual income in the Schedule.

7. Policy background

What is being done and why?

7.1 The Act provides for up to two generations of succession to the tenancy agreement (on death or retirement of the tenant) by eligible close relatives of the tenant. However, the Act also provides that succession can be contested by the landlord on the grounds that the applicant tenant is already in occupation of a commercial unit of land (known as the commercial unit test). The policy objective of the commercial unit test 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 2021 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.

Explanations

What did any law do before the changes to be made by this instrument?

7.2 This is an annual updating exercise to update the values in the schedule to the UPO which are used to assess the productive capacity of any agricultural land occupied by an applicant tenant. The policy objective is not being changed and remains the same, which is to provide a means of assessing whether a tenant applying to succeed to a tenancy governed by the Act is already in possession of a viable farming business.

Why is it being changed?

7.3 The values in column 3 for the net annual income from the listed units of agricultural production are being updated. The updated values 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 for the year from 23rd February 2022 to 22nd February 2023. Negative values are recorded for beef, ewes (on land in a less favoured area), and dried peas due to poor market performance for these particular units of agricultural production. The values in column 3 for the income that farmers receive from direct payments for eligible hectares under the Common Agricultural Policy Basic Payment Scheme (BPS) are also being updated. As the UPO is required to provide net income figures, the values for BPS have been adjusted to take off the costs of average rents and 2% for the cost of cross compliance[1]. This results in negative values for BPS income in the category of 'all other land'. It should be noted that the entitlement values for direct payments under the 2020 BPS have been used as these relate to the same year as the most recent data available on rental values and therefore provide the best estimate of net income at this time. The entitlement values for direct payments under the 2020 BPS are calculated by reference to land which was an eligible hectare within the meaning of Regulation 1307/2013 as it had effect on 31 December 2020.

7.4 In addition, as noted above in paragraph 3.1, a correction is being made to the value recorded for dried peas in column 3 of the table in the Schedule of the current UPO (The Agricultural Holdings (Units of Production) (England) Order 2021 (S.I. 2021/102)), changing it from "£550.00" to "£18.00".

What will it now do?

7.5 The UPO will provide an updated Schedule of values that can be used to assess if an applicant tenant is already in occupation of a commercial unit of land in contested agricultural tenancy cases.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Consolidation is not appropriate as this Order revokes and replaces the previous Order.

10. Consultation outcome

10.1 This is a regular exercise which provides updates to the figures in the UPO for net annual income, therefore the underlying policy and legislation has not been changed and no consultation is required. The Department has however engaged with practitioners from industry to discuss the updates to make sure they are applied in the most sensible and useful way for those using the UPO.

11. Guidance

11.1 In line with previous UPOs, as the main users of this instrument are professional experts such as agricultural surveyors and valuers, no Government guidance is needed. The Department will proactively spread awareness of the updated UPO across

[1] Cross compliance is the 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.

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 and to ask them to spread awareness of it through their own membership base.

12. Impact

12.1 There is no, or no significant, impact on business, charities, or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because this instrument is an annual updating exercise to existing regulations with no changes to policy or legislation.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 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 legislation is being brought in affecting small farming businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is via feedback from officers of the Tribunal, industry representatives and professionals using the UPO which will help inform any updates to the next UPO.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Victoria Prentis MP, Minister of State for Environment, Food and Rural Affairs has made the following statement:

"A statutory review clause is not included in this instrument because it has to be made annually and is therefore already subject to an annual review and update."

15. Contact

15.1 Jenny Barker at the Department for Environment, Food and Rural Affairs Telephone: 02080268773 or email: Jenny.Barker@defra.gov.uk can be contacted with any queries regarding the instrument.

15.2 Tim Mordan, Deputy Director for Agri-Food Chain Innovation, Productivity & Science, at the Department for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Prentis MP, Minister of State for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.