EXPLANATORY MEMORANDUM TO

THE AGRICULTURAL HOLDINGS (UNITS OF PRODUCTION) (ENGLAND) ORDER 2009

2009 No. 2762

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 Units of Production Order (UPO) sets out values for agricultural production, which are used in assessing the productive capacity of agricultural land and to determine whether it is a 'commercial unit' of agricultural land. A 'commercial unit' of agricultural land is defined in the Agricultural Holdings Act 1986 and means a unit of agricultural land which, if farmed under competent management, is capable of producing a net annual income which is not less than the sum of the average earnings of two full-time, male agricultural workers aged twenty or over.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Under the Agricultural Holdings Act 1986 one of the criteria for statutory succession to an agricultural tenancy is that the potential successor is not already in occupation of a commercial unit of agricultural land. This is known as the commercial unit test. Where there is a dispute about succession to a tenancy the application can be opposed at an Agricultural Land Tribunal. In all cases the Tribunal must be satisfied that the commercial unit test is met. Parties to a succession case, or the Tribunal itself, can ask the Secretary of State to provide a statement of net annual income (NAI) of land occupied by a succession applicant to determine whether or not the commercial unit test is satisfied. The NAI has to be determined by reference to the provisions of the current UPO, which the Secretary of State is required to make annually.

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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 Agricultural Holdings Act 1986 provides for two generations of statutory successions and hence succession tenancies have the potential to continue for some time to come. Under the current provisions of the Agricultural Holdings Act 1986 the UPO will need to be made annually until all such tenancies have expired.

7.2 The first annual UPO was made in 1984. Since then, subsequent Orders have updated the values shown for the different types of agricultural production. The figures are produced by Defra 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.

7.3 In previous years the values set out in the Order included, for the main types of crops and livestock, the relevant European subsidies for each sector. As a result of CAP reform subsidies have been decoupled from the production under the Single Payment Scheme. A public consultation was carried out by Defra in June 2005 on proposed changes to the UPO to take account of income from the Single Payment Scheme and other developments in agriculture. Following the consultation exercise it was agreed that income from Single Payments should be reflected in future Orders. The UPO for 2009 therefore includes values for income from the Single Payment Scheme as well as the usual values for different farming enterprises. As part of the consultation it was agreed that where the net annual income from a farming enterprise represented a loss this would be reflected in the Orders as a negative value, rather than showing a zero value. Accordingly certain negative values are shown in this year's UPO.

7.4 The 2008 UPO did not include net annual income figures for brassicas, root vegetables, onions, fresh peas and beans due to the fact that we did not have sufficiently reliable data to calculate a net annual income for those crops. A similar situation has obtained this year and therefore figures for those crops are not included in the 2009 Order. For the same reason it has not been possible to include a figure for vining peas and herbage seed in the Order.

7.5 Previous Orders included a net annual income value for set-aside. There is no longer any minimum requirement for set-aside and following discussions with industry, all references to it have been removed from this year's Order.

8. Consultation outcome

8.1 The Order is an annual requirement updating the net annual income figures and is not subject to public consultation.

9. Guidance

9.1 Again, this is an annual updating exercise and no guidance is produced.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

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 does not impose burdens on small business.

12. Monitoring & review

12.1 As this instrument is made annually no monitoring is normally required. However, it has been agreed with industry that during 2010 we should review how the Units of Production Order is made.

13. Contact

13.1 Judith Marsden at the Department of Environment, Food and Rural Affairs. Tel: 020 7238 6523 or email: judith.marsden@defra.gsi.gov.uk who can answer any queries regarding the instrument.