EXPLANATORY MEMORANDUM TO

THE AGRICULTURAL HOLDINGS (UNITS OF PRODUCTION) (ENGLAND) ORDER 2015

2015 No. 1745

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 ("the 1986 Act") 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 the Property Chamber of the First Tier 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 assist in determining whether or not the commercial unit test is satisfied for the purposes of proceedings under section 39 and 53 of the 1986 Act. 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 as set out Schedule 6, paragraph 3(2) and paragraph 4 of the 1986 Act.

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 1986 Act contains provisions which enable certain categories of family members to apply to succeed to the agricultural tenancy where the incumbent tenant has either died or wishes to retire. These provisions only apply where a tenancy was entered into before 12 July 1984 and there have not already been two statutory successions. They do not apply to 1986 Act tenancies granted after July 1984, or to any farm business tenancies granted pursuant to the provisions of the Agricultural Tenancies Act 1995. Nevertheless, because the legislation provides for two generations of statutory succession, succession tenancies have the potential to continue for some time to come. Under the current provisions of the 1986 Act 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 on a holding. As the UPO is required to provide net income figures, the values for income from the Single Payment Scheme are adjusted to take account of the cost of cross compliance and rent. As with previous orders this results in some negative values.

7.3 As the Basic Payment Scheme replaced the Single Payment Scheme from 1 January 2015, this year the order has been updated to reference the criteria for eligible hectares under the Basic Payment Scheme (Council Regulation 1307/2013) replacing the criteria for eligible hectares under the Single Payment Scheme (Council Regulation 73/2009). It is noted that, as the figures for payments under the Basic Payment Scheme are not available at the time of laying this instrument, the latest available figures under the Single Payment Scheme have been used as the best estimate of future income. This means the latest available information at the time of laying the 2015 Units of Production Order have been used.

7.4 Previous orders included a net annual income value for forage land as defined in regulation 2 of the Uplands Transitional Payment Regulations 2014(a). However, the Uplands Transitional Payment ceased at the end of 2014 therefore all references to it have been removed from the order.

8. Consultation outcome

8.1 As this is an annual updating exercise the orders are not subject to consultation.

9. Guidance

9.1 None.

10. Impact

10.1 This instrument is an annual updating exercise and has no new 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 order does not bring in any new regulations for small business.

12. Monitoring & review

12.1 As this instrument is made annually no monitoring is required.

13. Contact

13.1 Deborah Peters at the Department for Environment, Food and Rural Affairs. Tel: 0207 238 6351 or email: debbie.peters@defra.gsi.gov.uk who can answer any queries regarding the instrument.