EXPLANATORY MEMORANDUM TO

THE AGRICULTURAL HOLDINGS (UNITS OF PRODUCTION) (ENGLAND) ORDER 2021

2021 No. 102

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). 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). 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 determining 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 2021 (the UPO 2021) 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.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 The UPO 2021 revokes The Agricultural Holdings (Units of Production) (England) (No. 2) Order 2019 (S.I. 2019/1453). The UPO 2021 provides updated figures for net annual income in its Schedule.

7. Policy background

What is being done and why?

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 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.

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 three years there has been an average of only one case 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 by those interested in potential succession. Survey data from industry suggests that it is likely to be quite low. For example, in 2019 only around 15% of an estimated 54 Agricultural Holdings Act tenancies coming to an end saw a succession[1]. This is the second lowest figure reported in the last decade. The commercial unit test may only be relevant to very few of these tenancies.

7.3 The values within the UPO 2021 are produced by the Department from data provided by various sources and represent the net annual income which, on average, might be

[1] Central Association of Agricultural Valuers Annual Land Occupation Survey 2019

expected from the main types of crop and livestock on a holding. The UPO 2021 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 known as greening. However, as the UPO 2021 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 compliance[2]. This results in negative values for BPS income in the categories of 'moorland' and 'all other land'. The UPO 2021 also shows negative values for beef and ewes, due to poor market performance for these particular units of agricultural production.

7.4 The UPO 2021 replaces and updates the values for direct payments from the previous order. It should be noted that the entitlement values for direct payments under the 2019 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.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

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 simply provides updated the figures in the UPO 2021 for net annual income, therefore the underlying policy or legislation has not been changed. The UPO 2021 has not been subject to formal public consultation as the subject matter is of limited interest to the public. 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 2021.

11. Guidance

11.1 In line with previous UPOs, as the main users of the UPO 2021 are professional experts such as agricultural surveyors and valuers, no Government guidance is needed. The Department will proactively spread awareness of the UPO 2021 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 2021 and to ask them to spread awareness of it through their own membership base.

[2] 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.

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 is an annual updating exercise involving no underlying 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 2021 which will help inform any updates to the next UPO expected in early 2022.

14.2 The instrument does not include a statutory review clause in line with the requirements of the Small Business, Enterprise and Employment Act 2015 because UPOs have to be made annually and are therefore subject to regular review.

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, Parliamentary Under Secretary of State for Environment, Food and Rural Affairs can confirm that this Explanatory Memorandum meets the required standard.