

**EXPLANATORY MEMORANDUM TO**  
**THE AGRICULTURAL HOLDINGS (UNITS OF PRODUCTION) (ENGLAND)**  
**ORDER 2016**

**2016 No. 1002**

**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 2016 (“the UPO 2016”) 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. These provisions apply to tenancies entered into before 12 July 1984 (section 34(1)(a) of the Act), or to tenancies granted on or after that date by way of succession or otherwise under section 34(1)(b) of the Act, and only where there have not already been two statutory successions (section 37 of the Act).
- 4.2 Eligible persons must be close relatives of the tenant (sections 35 and 49 of the Act) and must meet certain conditions to succeed to the tenancy (set out in sections 36 and 50 of the Act). One of those conditions is the commercial unit test where the applicant tenant (who must be an eligible person) cannot succeed to the tenancy if they are already in occupation of a commercial unit of land. A “commercial unit of agricultural

land” is defined in paragraph 3(1) of Schedule 6 to the Act as meaning “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 In order to assess whether the applicant tenant is in occupation of a commercial unit of land, the Tribunal may ask the Secretary of State to produce a statement of net annual income for the agricultural land in question. 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 This is done on an annual basis and the UPO 2016 revokes the Agricultural Holdings (Units of Production) (England) Order 2015, setting out updated figures for net annual income in its Schedule. Where there are relevant units of production specified in a UPO, the net annual income ascertained for those units must be used to assess the productive capacity of the agricultural land (paragraph 3(2) of Schedule 6 to the Act).

## **5. Territorial Extent and 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**

### ***What is being done and why***

7.1 As noted in 4.1 above 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 that already has a viable farming business. The UPO 2016 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 provided on behalf of the Secretary of State to the Tribunal in contested succession cases is limited. In the last five years there has been an average of 4 net annual income statements a year provided to the Tribunal using the relevant UPO. Although 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 some of these.

- 7.3 The values within the UPO 2016 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 2016 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 2016 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<sup>1</sup>. This results in negative values for BPS income in the categories of “moorland” and “all other land”. The UPO 2016 also shows negative values for beef, ewes, barley, beans and dried peas 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 2016 BPS will not be confirmed at the time of laying this instrument, the latest available values under the 2015 BPS Scheme have been used in the UPO 2016 as the best estimate of net income. This replaces and updates the values for direct payments from last year’s Order.
- 7.5 The Act requires the Secretary of State to make a UPO annually therefore there are no alternative means to deliver the policy objectives.

### ***Consolidation***

- 7.6 As outlined in paragraph 4.4 above the UPO 2016 revokes the Agricultural Holdings (Units of Production) (England) Order 2015 therefore consolidation is not necessary.

## **8. Consultation outcome**

- 8.1 As this is an annual exercise simply updating the figures in the UPO 2016 for net annual income, which has not involved any substantial changes to underlying policy or legislation, and as the subject matter is of limited interest to the public, the UPO 2016 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 2016.

## **9. Guidance**

- 9.1 In line with previous UPOs, as the main users of the UPO 2016 are professional experts such as agricultural surveyors and valuers no Government guidance is needed. The Department will proactively spread awareness of the UPO 2016 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

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<sup>1</sup> 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.

aware of the new UPO 2016 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 2016 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.

## **12. Monitoring and 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 2016 which will help inform any updates to the next UPO in 2017.

## **13. Contact**

- 13.1 Jenny Barker at the Department for Environment, Food and Rural Affairs. Tel: 0207 238 6351 or email: [Jenny.Barker@defra.gsi.gov.uk](mailto:Jenny.Barker@defra.gsi.gov.uk) who can answer any queries regarding the instrument.