

# **SL(6)440 – The Agricultural Holdings (Units of Production) (Wales) Order 2024**

## **Background and Purpose**

Certain agricultural tenancies carry succession rights. In these cases, under the Agricultural Holdings Act 1986, a close relative of the deceased or retiring tenant can apply to the Agricultural Land Tribunal ('ALT') for a direction as to whether the relative is entitled to succeed to a tenancy. One of the tests in establishing a right of succession involves satisfying the ALT that the applicant does not already occupy a "commercial unit of agricultural land" elsewhere. If this were the case, the close relative would not be eligible for automatic succession.

This Order sets out figures for agricultural incomes which are associated with various farming activities and are used in determining whether or not the land in question is a "commercial unit of agricultural land" during the relevant period.

The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2023, which covers the period from 12 September 2022 to 11 September 2023. This Order covers the period from 12 September 2023 to 11 September 2024.

## **Procedure**

Negative.

The Order was made by the Welsh Ministers before it was laid before the Senedd. The Senedd can annul the Order within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date it was laid before the Senedd.

## **Technical Scrutiny**

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

### **1. Standing Order 21.2(x) that there appears to have been unjustifiable delay in publishing it or laying it before the Senedd.**

Paragraphs 3 to 6 of the Explanatory Memorandum sets out the following matters of special interest to this Committee:

*"3. The Welsh Ministers are required under the 1986 Act, to prescribe by Order, such units of production relating to agricultural land as is considered appropriate, for a twelve-month period specified in the order. The current Order in force is the Agricultural Holdings (Units of Production) (Wales) Order 2023 which covers the period from 12 September 2022 to 11 September 2023. Given the ALT cannot decide relevant succession cases without the relevant*



figures, there must be a UPO to cover the 12 month period from 12 September 2023 to 11 September 2024.

4. *Units of Production Orders historically always contain an element of retrospectivity due to the availability of the base statistics from DEFRA which then have to be manipulated by Welsh Government to produce the relevant Welsh figures. These figures did not become available until 13 September 2023. (Emphasis added).*
5. *Cases which have progressed to the ALT from 12 September 2023 have been put on hold until such a time as the Order is made. There are currently six applications which would be affected by a new Order.*
6. *The legislation will need to apply retrospectively from 12 September 2023 to the coming into force date of the Order. This is expressly permitted by Schedule 6, Paragraph 4b of the Agricultural Holdings Act 1986 which provides the Minister shall by order for any period of 12 months specified in the order determine in relation to any prescribed units of production the amount which is to be regarded as the net annual income from that unit in that period."*

The Committee notes that several succession cases brought forward by individuals across Wales have effectively been put on hold since September 2023 as they have had to wait for the new figures provided by this Order to resolve their claims. The Committee acknowledges that before the Order is drafted, the Welsh Government must wait for the relevant data from DEFRA. However, this data was received on 13 September 2023. It is not clear why, by the time this Order comes into effect, that a further five months have elapsed during which time individuals have been unable to progress their succession cases.

## Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

## Welsh Government response

A Welsh Government response is required.

### Legal Advisers

**Legislation, Justice and Constitution Committee**

**23 January 2024**

