

## TRIG Council Farm Working Group

### NOTES OF WORKING GROUP MEETING & AGREED RECOMMENDATIONS

#### 1. Attendance

Mike Holland	Agricultural Law Association (Chair)
George Dunn	Tenant Farmers Association
Philip Meade	on behalf of Farmers' Union of Wales
Chris Cardell	on behalf of NFU
Eleanor Griggs	NFU
Robin Edwards	CLA
Sarah Chorlton	CAAV
Jonny Alford	Cornwall Council & The Association of Chief Estates Surveyors

#### 2. Working Group Terms of Reference ('Productivity') (27 June TRIG Meeting Discussion Paper attached, ref. item 4)

- a) *What actions would have most impact in refreshing and supporting the council farms system to encourage councils to retain and invest in their farm estates going forward?*
- b) *Is there potential in exploring whether any changes or incentives might encourage more private landowners and larger estates to ring-fence some land opportunities to let specifically to new entrants in future (to play a similar role to the county farm estates system and provide a route into farming for new entrants)?*

Under Section 40 of the Agriculture Act 1970, Smallholding Authorities were required to submit proposals for the management of their estates within eighteen months of the enactment of the 1970 Act.

The principle recommendations under 4(i) to (iii) below, seek to provide the Minister with renewed powers, to improve the scrutiny of current Local Authority rural estate plans which in turn will provide for a sound, reasoned and tested approach to the strategic approach of LA's in their proposals management and investment; whilst ensuring that their strategic proposals offer best value. In turn, the Working Group consider that the Recommendations in 4 below will improve the Productivity of the LA rural estate by addressing the issues set out in 3 below which currently serve to frustrate long term investment in and retention of the rural estate assets in the ownership of LAs, notwithstanding that the Working Group recognise that strategic disposal will be part of a rural estate strategy in the same way as exists in the private sector.

The Recommendations of this Working Group should be read as a package of measures which the Group consider will achieve a balanced and sustainable approach to the management of the Council Farm sector to promote investment and productivity of the estate.

The Group did not consider that there were any specific measures that could be introduced to address the second term of reference of the original TRIG Discussion Paper (as set out above) where this should be left to the market together with the recommendations of of New Entrant Working Group.

### 3. Identified Issues

- (i) Short-term'ism in some Local Authority ('LA') rural estate strategies and lack of investment.
- (ii) Best value assessments of LA rural estate within wider LA portfolios and objectives and the estate management function within LA
- (iii) LAs who historically have not invested in their rural estates are less likely to have a clear view on value of rural estate retention as opposed to those LAs who have invested and are receiving the benefits of their rural estate to contribute to the wider rural economy and community
- (iv) Impact of council election cycle on long term planning and strategy
- (v) Limited measurement of uptake and adoption by LA estate management departments of the ACES Local Authority Rural Asset Management Planning – Good Practice Guidance (November 2015)
- (vi) Capital windfall v. Income generation & targeted capital disposals – measurement of TOTAL return from rural estate rather than simply P&L account
- (vii) Management of lifetime/near-retirement tenants and their long term needs to allow for new entrants and to include a provision to ensure tenants under the Notice to Quit provisions of the 1986 Act retire at a date when they are able to draw on their State Pension
- (viii) Limited availability of rural housing and prohibitive planning policy allowing for re-housing retiring tenants
- (ix) Restriction on use of Assured Shorthold Tenancies by LA which if permitted would allow greater flexibility for LA in re-housing (DCLG & DEFRA)
- (x) Limited liaison of LA estate management departments with private landowners
- (xi) Lack of LA incentives to assist improvement of Tenant business skills to compliment farming knowledge/experience

#### 4. Recommendations to DEFRA to address identified issues

- (i) Introduce formal Examination in Public or similar independent panel assessment and approval for LA proposals for their rural estate strategy (including strategic capital disposals where these are proposed as part of the strategic plan), which must be based on a minimum 15year Rural Estate Plan with a referral route to Secretary of State. Independent inspectors should be appointed by the Secretary of State and should be suitably experienced in a rural and business context.

Inspectors/Expert Panel composition to account for differences of rural and farming practices in different regions of England and Wales and be comprised of non-Governmental members to ensure independence. The Rural Estate Plan must demonstrate best value and must adhere to the principles of the smallholding estate as set out in s.39 Agriculture Act 1970 (subject to s.39 amendments proposed in 5 (vi) below)

The Rural Estate Plan should include proposals for preparation of joint Landlord (LA) and Tenant investment plans for the period of the Plan including annual/bi-annual reviews of investment plan implementation and be judged against a list of criteria before being deemed to be acceptable.

In the event that the Rural Estate Plan includes proposals for disposals (part or whole), the panel should have the necessary expertise to scrutinise the proposals.

The working group recommends that LA's should be directed to prepare a Rural Estate Plan by the Secretary of State subject to amendment to Section 40 of the 1970 Act as required to provide for these renewed provisions.

Where in-house expertise is not available, LAs should be supported by obtaining the most appropriate external assistance and advice throughout the process of preparing their Rural Estate Plan.

*(Issues 5 (i), (ii), (iii), (iv), (iv))*

- (ii) Include provision in the Rural Estate Plan for ring fencing estate income for reinvestment in the estate.

*(Issue 5 (i))*

- (iii) Introduce measures as part of 6(i) above to ensure that the Rural Estate Plan includes requirements for LA estate management functions to follow ACES Good Practice Guidance in preparing and implementing the Rural Estate Plan strategy.

*(Issues 5 (i), (ii), (v), (vi), (x))*

- (iv) Introduce Infrastructure Grant (through new UK Agriculture Policy) and other grants as offered to private landowners so these are available to LAs to assist in capital improvements

on their smallholdings but only on approval of their Rural Estate Plan by Secretary of State and subsequent formal adoption by the LA

*(Issue 5 (iii))*

- (v) Review of procurement protocols and procedures to enable LAs as Landlord to obtain best value for improvement and repair work carried out on smallholdings

*(Issue 5 (iii))*

- (vi) Incorporate ACES Good Practice Guidance into DCLG Local Authority Assets Disposal Guidance (March 2016)

*(Issue 5 (i), (ii), (v), (vi))*

- (vii) Adoption of TRIG recommendations for amendments to Smallholdings Regulations (6 December 2013) (Appendix 1) with further amendments (**in bold below**) to s.39 of the Agriculture Act 1970 as follows:

*s.39 General aim of statutory smallholdings*

*(1) In the performance of their functions under this Part of this Act smallholdings authorities, having regard to the general interests of agriculture and of good estate management **and for the general development and support of the rural economy**, shall make it their general aim to provide opportunities for persons to be farmers on their own account by letting holdings to them, [being persons who satisfy the requirements of subsection (2)]*

*\*reference to subsection 2 in brackets subject to recommendation of TRIG (6 December 2013) for removal of subsection 2 from s.39*

*(Issues 5 (i), (ii), (iv))*

together with introduction of Ministerial role and adoption of LA Rural Estate Plans (as recommended in 6 (i) above under a new s.44

- (viii) Amendment to Schedule 3, Case A of the Agricultural Holdings Act 1986 to read:

*The holding is let as a smallholding by a smallholdings authority or the Minister in pursuance of Part III of the Agriculture Act 1970 and was so let on or after 12th September 1984, and*

- (a) *the tenant has attained ~~the age of sixty five~~ **the earliest age to be in receipt of the State Pension**, and*

- (b) *if the result of the notice to quit taking effect would be to deprive the tenant of living accommodation occupied by him under the tenancy, suitable alternative accommodation is available for him, or will be available for him when the notice takes effect, and*
- (c) *the instrument under which the tenancy was granted contains an acknowledgment signed by the tenant that the tenancy is subject to the provisions of this Case (or to those of Case I in section 2(3) of the M2Agricultural Holdings (Notices to Quit) Act 1977),*

*and it is stated in the notice to quit that it is given by reason of the said matter.*

*Issue 5 (vii)*

- (ix) Adoption of single rural dwelling exceptions policy under planning legislation to allow local authority planning departments to grant consent for rural dwellings in appropriate locations and at an appropriate scale and with suitable agricultural tie conditions.

Planning Policy and associated legislation should allow LAs to build dwellings on their farms or on land that they own or manage to either act as a retirement house for an outgoing tenant or to allow a larger farmhouse to be rented on the open market (on an Assured Shorthold Tenancy basis) but at the same time retaining a dwelling for the existing farm tenant.

*Issues 5 (vii), (viii) & (ix)*

- (x) Update ACES Good Practice Guidance (Appendix 2) to provide direction on LA assistance to promote improvement of Tenant business skills and include as part of Landlord and Tenant joint investment plans (see 5 (i) above)

*Issue 5 (xi)*

**Approved and endorsed unanimously by the members of the Council Farm Working Group**

**ALA  
TFA  
CLA  
NFU  
CAAV  
RICS  
ACES  
FUW**

## TRIG – 6<sup>TH</sup> DECEMBER 2013

### Agenda Item 6(i) – Review of Smallholdings Regulations - V.2

#### Jeremy Moody

The Statutory Instruments reviewed in this paper were brought to TRIG's September meeting as identified by the Red Tape Challenge, considered, were the subject of work and discussion outside the meeting and reviewed again at TRIG's October meeting. This note consolidates that discussion for TRIG's December meeting.

In general, it appears that these SIs can be repealed, subject to:

- Amendment of s.39 of the Agriculture Act 1970 to remove the obligation on the Minister to have opinions as to the upper limits for smallholdings and so the necessity for the Full Time regulations
- Review of the financial regulations by the LGA lest there be any residual issues that matter.

This review suggests there could be further parts of Part III of the 1970 Act that are no longer useful.

#### **1. Smallholdings (Selection of Tenants) Regulations 1970 - 1970/1049 and the amending regulations 1976/2001**

**1976/2001** - TRIG agreed that this regulation could be repealed for reasons including poor policy and its being meaningless in effect.

**1970/1049** – The substantive provisions of this regulation were seen as out-dated or over-prescriptive. In particular, it was unduly restrictive to require applicants five years farm work (which can include three in farming education), especially given the present structure of the farm labour market.

The issues covered by these regulations are all ones more properly left to the judgment of the landlord authority.

ACES has made the point that it will need to include in the Good Practice Guidance that the offer of a tenancy for letting should be advertised in a regional newspaper.

#### **Recommendation – Repeal both regulations.**

#### **2. Smallholdings (Full-Time Employment) Regulations 1970 - 1970/1050 and the amending 1992/2816**

The first of these regulations defines the amount of work assumed for each unit of a wide range of farming enterprises, as so many days per acre or per animal, as part of assessing whether the holding falls within the definition of a two man unit. The 1992 amending regulations metricated it.

The regulations themselves are agreed to be needless in principle and long outdated in substance but their repeal also needs amendment of s.39 of the Agriculture Act 1970 which places a burden on the Minister (which he may not want) to define the upper limit of a smallholding. Simple repeal of the SI does not absolve the Minister of this duty but puts him in breach.

It is proposed that s.39 be amended as follows:

39 General aim of statutory smallholdings.

(1) In the performance of their functions under this Part of this Act smallholdings authorities, having regard to the general interests of agriculture and of good estate management, shall make it their general aim to provide opportunities for persons to be farmers on their own account by letting holdings to them being persons who satisfy the requirements of subsection (2) ~~and of any regulations made under subsection (6) of section 44 of this Act and holdings which, unless let in accordance with proposals approved by virtue of section 41(4) of this Act, fall within the upper limit for a smallholding.~~

~~(2) For the purposes of the foregoing subsection and section 41(3) and (4) of this Act, a holding shall be treated as falling within the upper limit for a smallholding if in the opinion of the Minister it is capable, when farmed under reasonably skilled management, of providing full-time employment for not more than two men (including the person to whom it is let) with or without additional part-time employment for another man, and in any other case shall be treated as exceeding that upper limit, the number of men for whom it is capable of providing full-time employment being estimated in such manner as the Ministers may by regulations prescribe.~~

It seems prudent not to alter the broad principle of the first half of s.39(1) setting out the purpose of county farms. However, the remainder of the section can largely go in the manner proposed. As to specific references:

- S.44(2) limits the authority to let holdings as smallholdings to those who will farm them and are qualified to do so or will shortly be so. This draft retains that reference in s.39 but if this were deleted (as perhaps if it were seen to be otiose), s.39(1) could end in its fourth line above after “them”.
- S.44(6) is a permissive provision for the Minister to make regulations as to the requirements of tenants (as in the Selection of Tenants SIs recommended for repeal). That power to regulate seems in breach of general policy and the localism agenda – why should a Minister do this?
- S.44(4) allows the Minister to approve holdings within a reorganisation plan that exceed the upper limit. If the provisions for the upper limit and setting it are removed then the reference to s.44(4) appears to fall.

That review may call the value of the whole of the provisions of s.44 (Letting of Smallholdings) into question as no longer appropriate.

S.39(2) defines that upper limit as a matter of ministerial opinion – hence the regulations in question. It is proposed that s.39(2) be repealed in its entirety. If this is not removed the minister’s opinion could still be called upon.

This means that, in general, all holdings let for smallholdings purposes by small holdings authorities are deemed to be smallholdings (regardless of their size).

**Recommendations:**

- **Repeal both the Full Time Regulations**
- **Delete parts of s.39(1) as proposed above**
- **Repeal s.39(2)**
- **Consider if s.44 now has a function.**

**3. Contributions to Losses Regulations – 1970/1051**

This was a transitional financial provision in 1970 with no current issues within TRIG's knowledge.

However, as it is presumably a matter of fact whether this is spent or not, and if not spent whether there are any sums under it that are worth the effort, the Local Government Association should be asked for its opinion. As this is a local government finance matter, DCLG may also be relevant.

**Recommendation – Refer issue to the LGA and DCLG.**

**NB – This is associated with Order 7 of 1974/396 reviewed next.**

**4. Local Authorities Order - 1974/396 – Local Authorities Order**

On review, the substantive Orders are 4, 5, 6 and 7.

Order 4 – This seems to be purely transitional with the then local government reorganisation and looks long dead.

Order 5 – This again seems transitional and must now be spent forty years later.

Order 6 – This makes three amendments to the 1970 Act:

- Order 6(1) – If the amendment to s.52(2)(a) of the 1970 Act matters (I suspect it may not – s.52b is headed “Contributions under previous enactments”) it could be re-enacted with any necessary subsequent revisions to allow for the subsequent abolition of the GLC
- Order 6(2) – Might not all of s.60 go? If it is necessary, 6(2) could be re-enacted as part of the legislative package.
- Order 6(3) – As per 6(1)

The simple answer may be that these amendments, if they still matter, as appropriately worded for today can be made directly the 1970 Act removing the need for this section.

That consideration raises the question as to whether either s.52 (Contributions under Previous Enactments) or s.60 (Cottage Holdings) remain necessary.

Order 7 – Amending 1970/1051 (Contribution to Losses) and if, after consultation with the LGA, that is needless, this can be repealed also.

**Recommendations:**

- **Repeal Orders 4 and 5 can be repealed as spent**
- **Review, perhaps with LGA, whether any parts of Order 6 (with any appropriate re-wording) remain necessary for re-enactment in the 1970 Act and the allowing the subsequent repeal of Order 6.**
- **Review the need for ss.52 and 60 of the 1970 Act.**
- **If the LGA are content with the repeal of 1970/1051, Order 7 can be repealed.**