

The County Farms Estate
Agriculture Act 2020

Report of the Head of Digital Transformation and Business Support

Please note that the following recommendations are subject to consideration and determination by the Committee before taking effect.

Recommendation(s):

That the Committee notes the report and:

- (a) Welcomes further reports at future meetings to review the detailed proposals set out in the pending DEFRA Agricultural Transition Plan.
- (b) Asks the Senior Land Agent to write to all '86 Act 'retirement' tenants bringing to their attention the change to the Case A retirement age.
- (c) Welcomes the proposed new entrant support scheme and asks the Chairman of this Committee to write to DEFRA strongly encouraging them to focus support on Local Authority County Farms Estates Services whose raison d'être is to provide new entrant opportunities and have a long and successful track record of doing so.

1.0 Background

- 1.1 It has been almost a year in the making but the Agriculture Act 2020 passed into law on 11 November. The Act heralds a new future for the agricultural sector and landlord/tenant relationships.
- 1.2 The UK transition period with the EU ends on 31 December 2020 and with it our membership of the EU customs union and single market. From 1 January 2021, the UK will need to put in place its own rules and regulations to fill the void left by EU law. Key to the future of farming in the UK is the Agriculture Act 2020.
- 1.3 The Act sets out the UK's approach to farming, replacing the Common Agricultural Policy (CAP) that the UK has been part of since 1973, and provides the legal framework for the establishment of a new system of agricultural assistance for farmers and land managers.
- 1.4 The underlying objectives of the legislation are to drive competitiveness, increase productivity and the use of technology, and generate fairer returns. The Act does, however, provide mainly "enabling" legislation rather than

specific details, stating that the government “may” do certain things, rather than “will” do certain things, although the accompanying briefing notes confirm the government’s intentions, which are broadly:

- To become more collaborative in developing a new support system
- To become less bureaucratic
- To promote the important contribution of farmers to the environment and food

1.5 Later this month Defra is publishing an **Agricultural Transition Plan** document which will set out more detailed plans for the first few years of the transition period including the phasing out of the Basic Payment Scheme (BPS) and phasing in of new funding schemes.

1.6 Defra secretary George Eustice said: “Our landmark Agriculture Act will transform the way we support farmers.

“The funds released as a result of the phasing out of the legacy BPS will be reinvested into a rollout of our future farming policy, which will be centred around support aimed at incentivising sustainable farming practices, creating habitats for nature recovery and supporting the establishment of new woodland and other ecosystem services to help tackle challenges like climate change.

“We will support farmers in reducing their costs and improving their profitability, to help those who want to retire or leave the industry to do so with dignity, and to create new opportunities and support for new entrants coming into the industry.”

2.0 Replacement of the Basic Payment Scheme (BPS)

2.1. At present, UK agriculture receives around £3 billion in support from the EU every year via the Common Agricultural Policy (CAP).

2.2 This consists of two pillars. Pillar 1 provides Direct Payments to farmers via the Basic Payment Scheme (BPS) and ‘greening’ based on the amount of land they manage. Pillar 2 schemes deliver rural development, environmental outcomes, farming productivity and socio-economic outcomes. The majority of the budget (88%) is spent on Pillar 1 payments and, of this, the BPS accounts for 70%.

2.3 The Agriculture Act establishes a new agricultural system based on the principle of ‘public money for public goods’. It will provide powers to give financial assistance under a new system where payments may encompass environmental protection for soils, water and air, public access to the countryside, measures to safeguard livestock and plants, and other environmental objectives needed in order to deliver the 25 year Environment Plan and net zero emissions by 2050. It will also have the ability to establish

an enforcement and inspection regime including powers to set out terms and conditions of future financial assistance.

- 2.4 The Pillar 1 payments will be phased out over a period of seven years, known as the **Agricultural Transition Period**. This period runs from 2021 to 2027 and will operate on a banding system with the largest reductions being applied to the highest payment band. The reduction percentages for 2021 are shown in the table below:

Direct Payment band	Maximum reduction
Up to £30,000	5%
£30,000-£50,000	10%
£50,000-£150,000	20%
£150,000 or more	25%

For example, a claim worth £40,000 would have a reduction of up to 5% on the first £30,000 and up to a 10% reduction to the next £10,000.

- 2.5 Reduction percentages for later years are yet to be set by Defra and will take into account the plans for future schemes and wider decisions on government spending and once the transition period has ended, no further direct payments will be made in England unless they are made in relation to the final year of the agricultural transition or earlier.
- 2.6 At the start of the legislative process, the objective was to improve productivity and allow farmers to retire and leave the industry. There is no detail yet on how lump sum payments might work.
- 2.7 Farmers and land managers will also be able to apply for alternative support during this transition period, with productivity grants on offer next year and with Countryside Stewardship schemes remaining open to new applications in the first few years, which will help farmers to springboard into the upcoming Environmental Land Management scheme.
- 2.8 The national pilot for the new **Environmental Land Management Scheme (ELMS)** is expected to be open for participants by the end of 2021, with the scheme fully operational in 2024.

3.0 Supply chain

- 3.1 The Act grants powers to improve transparency and fairness in the supply chain. These powers will be fleshed out in statutory instruments. There are powers to require a person in, or connected with, an agri supply chain to provide information connected with their activities in that chain. There are also

fair dealing obligations for business purchasers in order to promote fair contractual dealing.

4.0 Food security

4.1 This was not in the draft bill at the start of its legislative journey but successful lobbying now means the Government have a duty to report to Parliament on UK food security. The first report will be due at the end of 2021 and then every three years.

5.0 Trade

5.1 The Government's announcement that it would bring forward an amendment to the Trade Bill to place the newly established Trade and Agriculture Commission ("TAC") on a statutory footing, and widen its remit, satisfied the Lords and finally pushed the Bill over the line to receive Royal Assent. The Government did not go as far as committing to ensure that future trade agreements include an obligation for imports to meet health, welfare and environmental standards. It did however set out reporting requirements of the Secretary of State to Parliament on all new negotiated trade agreements, including agricultural products. This will allow Parliament to consider the trade agreement before it is signed off, with knowledge of the extent to which the measures affecting agricultural products are consistent with UK statutory protection of health welfare and environmental standards.

6.0 Intervention, marketing standards and traceability

6.1 Less well known are the powers set out in the Act for the Government to intervene in agricultural markets, and to bring in measures for marketing standards, carcass classification and traceability.

7.0 'Public money for public goods'

7.1 Rather than paying farmers and land managers for the total amount of land they farm, the new financial assistance system will reward those who are able to demonstrate the delivery of certain outcomes through the Environmental Land Management Scheme (ELMS) – principally their work to enhance and protect the environment.

7.2 These are divided into the following areas:

- (i) **Delivery of environmental outcomes** – cleaner air, clean and plentiful water and thriving plants and wildlife through environmentally beneficial land and water management activities
- (ii) **Public access** – supporting the understanding of the environmental and health benefits that farmland and woodland can provide
- (iii) **Cultural or natural heritage** – managing land or water in a way that maintains, restores or enhances areas or archaeological, architectural, artistic, historic or traditional interests

- (iv) **Climate change** – managing land, water or livestock in such a way to help mitigate or adapt to the effects of climate change
- (v) **Hazards to or caused by the environment** – managing land in such a way as to prevent, reduce, or protect from hazards to, or caused by, the environment
- (vi) **Animal Health and Welfare** – actions by farmers, vets and other organisations to reduce endemic disease and keep livestock well maintained and healthy
- (vii) **Genetic Resources** – measures to support the conservation, maintenance and safeguarding of UK native and rare breed genetics relating to livestock or equines
- (viii) **Plant health** – measures which protect or improve the health of plants, crops, trees and bushes and conserving plants grown or used in agricultural, horticultural or forestry activity
- (ix) **Soil Health** – actions that promote the quality of soil and the protection and enhancement of soil health
- (x) **Productivity** – improving the productivity of agricultural, forestry or horticultural activities (including the growing of flowers and non-food crops) and supporting the sale, marketing, preparing, packaging, processing or distribution of products from these activities

8.0 New Entrant Support Scheme

- 8.1 The Act provides powers to give financial assistance (Clause 1). It is these powers that DEFRA will use to deliver a new entrant support scheme in future. DEFRA are actively consulting the Association of Chief Estates Surveyors (ACES) Rural Branch, as well as the Country Land and Business Association (CLA), Tenant Farmers Association (TFA), National Federation of Young Farmers Clubs (YFC), and others.
- 8.2 An important consideration for this initiative will be to define exactly what is meant by the term 'new entrant'? Would it for example, include a close relative succeeding to an '86 Act tenancy, or would it perhaps include a close relative 'taking a major share or control' of an owner occupied family farm? If the definition is left too open any potential financial assistance could be diluted and channelled away from Local Authority County Farms Estates who are arguably unique in having a raison d'être to provide new entrant opportunities.
- 8.3 DEFRA has suggested a key aspect of the scheme will be innovation, with the scheme being aimed at new entrants and landowners who bring new ideas, activities and different business models from those currently seen in the industry.

9.0 Agricultural Tenancy Reforms

- 9.1 The Government held a consultation on reforming agricultural tenancies in England in 2019, with the intention for farmers to be more productive and have greater freedom in their business planning. As a result, the Agriculture Act will amend the Agricultural Holdings Act 1986 (AHA) to make it more 'fit for the 21st Century'. Some of the key changes are laid out below.
- 9.2 **Restrictive clauses** - AHA tenancies contain various restrictive covenants preventing tenants from undertaking activities that will change the use of the land and fixed equipment of the holding without gaining prior consent from the landlord. Examples of these are controls on erecting or altering buildings, sub-letting, changing agricultural production or diversifying into non-agricultural activities.
- 9.3 These clauses could therefore create problems for tenants in accessing funds in the government's new scheme of public money for public goods, as well as preventing tenants undertaking activities necessary to meet new regulatory requirements, such as updating or putting in new slurry stores to meet water pollution prevention regulations.
- 9.4 The Act, therefore, introduces provisions for tenants to object if their landlord refuses consent for such changes, providing a right for tenants to apply through arbitration or third-party determination to resolve such a dispute. It is also felt it will provide tenant farmers with more confidence to participate in whatever new schemes the government bring forward.
- 9.5 **Retirement age** - The minimum age at which an application can be made for succession on retirement of an AHA tenancy is 65. The Agricultural Act amends this minimum age so that applications can be made at any age in the future, allowing AHA tenants more freedom to decide when to retire and hand over the holding to their successor.
- 9.6 **Case A** – Arguably at odds with many of the previously referred to amendments and the wider policy of encouraging earlier retirement and younger generations bringing innovation and efficiencies, the Act amends the age on which a Local Authority Landlord can serve a 'retirement' notice on a smallholdings tenant from 65 to when the tenant has reached the earliest age that they can be in receipt of the state pension, currently 67.
- 9.7 It is arguably the case that the extension of Local Authority smallholding retirement tenancies will limit the progression of new entrants to farming as established tenants are not encouraged to make way before they reach state pension age.

- 9.8 **Succession** - There are various conditions that someone wishing to succeed to an AHA tenancy must satisfy. The Agriculture Act alters two of these conditions to ensure that commercially successful and skilled farmers can succeed.
- 9.9 Currently, the occupier of another commercial unit of land is not eligible to succeed to an AHA tenancy. The Agriculture Act removes this commercial unit test completely on the basis it is not compliant with wider policy aim of improving productivity as it hinders growth and progression for succession tenants.
- 9.10 This permits a close family relative of the tenant who already occupies a commercial holding to be eligible to succeed to an AHA holding in future (providing they also meet the other eligibility criteria).
- 9.11 Furthermore, succession applicants are required to demonstrate their suitability to occupy the holding, taking into account their experience and knowledge of farming practices, physical health and financial standing.
- 9.12 The Agriculture Act contains provisions to modernise this process and create a new Business Competency Test so that a Tribunal must consider certain matters when deciding if the applicant has the capacity to farm the holding commercially to high standards of efficient production and care for the environment.
- 9.13 **Rent reviews** - The Agriculture Act contains provisions to replace a demand for arbitration in the rent review process with a notice of determination, which may be followed by either arbitration or third-party determination. This will have the effect of reducing the timescale for appointing a third-party expert from 12 months prior to the rent review to any time prior to the rent review.
- 9.14 Furthermore, the act removes barriers to landlord investment in AHA holdings by introducing amendments to the rent review process that would see the arbitrator or third-party expert directed to explicitly disregard landlord investments (under written agreement with the tenant) from the rent review determination process. Additionally, any benefit to the tenant from the improvement should also be disregarded from rent considerations while the tenant is making payment for such improvement.
- 9.15 These amendments will give landlords more certainty that they will not lose their economic return on investment at rent review, which would help to encourage increased investment in their tenanted holdings.

10. Conclusion

10.1 The Agriculture Act is undoubtedly a hugely important piece of legislation for UK farming and makes positive proposals to the sector as it evolves to meet the post-Brexit world. As always though, the devil will be in the detail.

11.0 Options/Alternatives

11.1 Alternative options have been considered and discounted as they are believed to either be contrary to current Estate policy and/or not in the best financial interests of the Estate.

12.0 Consultations/Representations/Technical Data

12.1 The views and opinions of the Devon Federation of Young Farmers Clubs and the Estate Tenants Association will be presented by the two co-opted members to the committee.

12.2 No other parties have been consulted and no other representations for or against the proposal have been received

12.3 The technical data is believed to be true and accurate.

13.0 Financial Considerations

13.1 The Author is not aware of any financial issues arising from this report.

14.0 Environmental Impact Considerations (including Climate Change)

14.1 The Author is not aware of any environmental impact (including climate change) issues arising from this report.

15.0 Equality Considerations

15.1 The Author is not aware of any equality issues arising from this report.

16.0 Legal Considerations

16.1 The Author is not aware of any legal issues arising from this report.

17.0 Risk Management Considerations

17.1 The Author is not aware of any obvious risks to manage.

18.0 Public Health Impact

18.1 The Author is not aware of any public health impact.

19.0 Summary/Conclusions/Reasons for Recommendations

19.1 The Author has prepared this report in accordance with the findings of the County Farms Estate Strategic Review (April 2010)

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Electoral Divisions: All

Local Government Act 1972: List of Background Papers:

None

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