

CAP Reform: Summer Update – July 2012

This note follows the guide and checklist we published in May this year.

A new 'consolidated' legal text has been published. Although the Presidency is keen to stress that nothing is agreed until everything is agreed, the changes show the direction of travel that is emerging. The Cypriot Presidency, in charge until the end of this year, aims to get a "*partial general approach*" on key elements of the package adopted this November. That bit of eurospeak is likely to be the next big indicator of the way the future CAP will look. In the meantime, the European Parliament has seen over 6,500 amendments to the legal texts lodged by MEPS ahead of the summer recess. In other words, there is still a fair bit of road to travel.

Main features of the consolidated legal text

- Rather than new Basic Payment Scheme entitlements being allocated *in place of* existing entitlements, the new draft allows for countries like England – where there is a flat-rate scheme in place – to carry existing SPS payment entitlements through to the new scheme.

If that provision makes it into the final rulebook, it will make life a lot easier for farm businesses and the RPA. The hot money is on that happening, but tenancy agreements, sales, business splits etc. still need to make provision in the small print for the 'golden ticket' mechanism envisaged in the original draft regulation.

- The golden ticket mechanism has itself been simplified. The reference year becomes 2010 *or* 2011 (rather than just 2011). And where there is a sale or lease of land before 15 May 2014*, the payment entitlements can be transferred to one *or more* farmers, rather than to just one. This, again, is a helpful bit of flexibility. In effect, the ticket is no longer golden.
- On the '**active farmer**' question, things have been simplified, at least as far as administration goes. There is now a **non-mandatory** top line 'negative list' which basically says that claimants who operate airports, railways, property companies, sports grounds, hunting estates, camping sites and such like are not eligible for direct payments *unless* they can show that the direct payments they receive amount to at least 5% of their total receipts. There is also a discretionary block on claimants whose farming activities are an insignificant part of their overall business or whose company objects do not include farming.

Defra's approach to the current active farmer test - available under the current regime for the last few years - leads us to think that any such restrictions will be applied with as light a touch as possible.

- However, the text still envisages a **mandatory** block on payments to claimants whose land is mainly kept ticking over in a state suitable for grazing or cultivation but who "*do not carry out on those areas the minimum activity*" required under rules yet to be drawn up.

This could affect some claims, particularly where land is licensed to other parties to do the farming activity. It is important that licences which bridge the changeover from the current scheme to the next cater for this.

- *The revised regulation still envisages a **2014 start** for the new regime. We would not expect anything else at this stage. There are strong indications that the new regime may be delayed. Again, the small print of land transactions etc. should allow for a later start.

In practice – points to watch for

This is the time of year when we advise clients on contracting agreements and lettings ahead of Michaelmas starts. Aside from pure entitlement issues, below are some examples of points to think about when agreeing medium to long-term arrangements that will span the old and new regimes.

Contracting Agreements

- In contracting agreements, how will the potential ‘greening’ component of the new CAP regime be managed?
 - Will the contractor do it as part of his general management of farming operations?
 - Will ‘ecological focus areas’ be taken out of the agreement and managed separately by the farmer? This could be covered by including a right for the farmer to withdraw up to a certain percentage of land from the agreement per year.
 - On the same note, the distinction between cropped and croppable acres may matter.
 - If crop rotations have to change to accommodate the new rules, how does that impact on the usual clause under which the farmer agrees to draw up a farming policy aimed at maintaining or increasing the profitability of the Farm and the size of the divisible surplus?
- If the farmer’s Basic Payment is capped, how will that affect the divisible surplus - will it be cut back pro-rata over the farmer’s whole holding (including land outside the contracting agreement)?

Farm Business Tenancies

- Consider the likelihood that some land may have to be taken out of production and managed in a way that fulfils new environmental rules. What protection for the landlord needs to be included?
- Watch out for seemingly harmless clauses – e.g. a clause in which the tenant agrees not to leave any part of the holding fallow or set aside in consecutive years without the landlord’s approval.
- Be careful with requirements that the tenant enters into environmental stewardship schemes. Depending on what happens on the greening front (and with the rural development regulation), the next version of stewardship schemes may not be as attractive a proposition as they are now.

As always, it is important not to let the CAP tail wag the dog. Farmers have a tremendous capacity for adapting to changing policy landscapes and are generally resistant to spending too much time on legalistic approaches to their working relationships. Here at Roythornes we understand that.

Please do get in touch if you have any questions at all about the way the current round of CAP Reform might affect your business. In the first instance, speak to your usual contact or any of the following members of the Roythornes Agriculture Team:-



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