

Welcome to this Michaelmas edition of our Agriculture e-brief.

It's probably fair to say that employment and property issues dominate this time round, especially with the abolition of the AWB and the asset-protection opportunity that the advent of Landowner Statements presents. On other matters – the detail of this round of CAP Reform and the outcome of the taxation of partnerships consultation – we are in 'watching brief' mode.

With the events season upon us it is sometimes difficult to know what to prioritise (just for information, breakfast invitations go down pretty well here!). I'd strongly recommend our upcoming "*Down on the Farm: stepping back, starting up, and maximising returns*" event. Full details are [here](#) but we can guarantee a mix of drama, analysis, networking and supper for all, with a fairly strong emphasis on the next generation. We hope to see you there, or at our third [Renewables: Overcoming hurdles, avoiding pitfalls](#) seminar on 4 November.

Here's to a fruitful autumn for all our clients and contacts.

Julie Robinson
Head of Agriculture

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Town and Village Green registration: Act now to protect your assets

We have all come across instances where land earmarked for development has been the subject of blocking tactics by opponents of the development. This can mean delays of years, escalating costs and stress. If anyone wants a recent example, have a look at this [inspector's report](#).

Protecting your land against registration as a town or village green by those opposed to its development is – as from 1st October – a little bit easier in England. It does, however, need action from you as landowner (or landowner's professional adviser).



Down on the farm (2): Stepping back, starting up, and maximising returns

2:30pm – 7:30pm, Tuesday 22nd October 2013
Newark Showground, Cedric Ford Pavilion Suite, Lincoln Road,
Winthorpe, Newark, NG24 2NY

A Roythornes seminar for would-be farmers, farmers and interested professionals.

This seminar follows on from our well-received *Down on the farm: partnerships and trusts and getting it right...* event in which we looked at the story of Jack and Jill and George Thomas's Will. A farm had become vacant; the trustees had to decide what to do with it and Jack was quick to make a bid for farming glory. Alas, the trustees felt unable to hand the farm over to him lock, stock and barrel.

This time, the theme is *Jack and the farming ladder*. Once again we will see Jack in search of the golden-egg-laying goose. With the help of expert consultants and agents, you will be considering the options for Jack – and all others – would be now present on



You will need to deposit a 'landowner statement' and map with the appropriate registration authority.

Done properly, this (together with payment of the appropriate fee) will bring to an end any 'as of right' period of recreational use. An area of land may be registered as a town or village green if it is shown that the inhabitants of a locality, or a neighbourhood within a locality, have used the area 'as of right' for a period of at least 20 years for the exercise of lawful sports and pastimes.

The application will then have to be renewed within 20 years of the initial deposit.

At the same time, the procedure for making **s31 highway deposits** has changed. Firstly, the renewal period has been extended to 20 years from 10, bringing it into line with the new town/village green regime. Secondly, there is no longer a requirement to make a statutory declaration in front of a commissioner for oaths, JP or solicitor; instead a 'statement of truth' must be completed.

Landowner statements and highways statements can be made using the same application form. Again, this makes life a bit easier.

[Here](#), for information, is a copy of the application form from one authority which has updated its information pages, Hertfordshire County Council. HCC has set a fee of £250 per application (with an additional £20 payable for any additional notices that need to be put up).

We have already been discussing these changes with some of our clients and will be assisting in depositing both landowner and highways statements. Let us know if we can help you; in the first instance contact [Sarah Whitehurst](#) on 01775 842508.

AWB abolition: doing nothing is not an option

As from 1st October the comprehensive employment framework that has laid down minimum wages and other terms of employment in agriculture for almost 100 years has fallen away, leaving farming employers in a vacuum.

Only there is not really a vacuum. There is general contract law, there is general employment law (including the minimum wage) and there is a farmer's longstanding relationship with his or her workers.

Given that, it would be a mistake to do nothing at all. In some cases it might land an employer in trouble under minimum wage legislation (the national minimum wage increased from 1st October to a level which is higher than the current Grade 1 pay for agricultural workers over 21 years old and for some apprentices – a wages standstill is not possible).

In all cases, employers could lose the opportunity to reach agreement with their workers on wages and other terms (overtime, holidays etc.) and how they will be dealt with post AWB abolition – that is also a chance to minimise the differences in how old and new workers are treated.

At the very least, being a good employer means acknowledging the change and letting staff know how it will affect them.

To help get the ball rolling, we have produced a short [template letter](#) for employers to send to their workers.

We also have a tiered advice package, offering different levels of involvement and price depending on your circumstances. Details are [here](#), in our AWB briefing note.

If you have any questions about how AWB abolition will affect your business or you would just like us to email the template letter to you, please contact either [Maz Dannourah](#) on 01775 842597 or [Phil Cookson](#) on 01733 898970.

Farm workers and Social Media – a template policy

Farms are dangerous places. We have prepared a [template social media policy](#) to address concerns that farmers have expressed about the safety risks of workers accessing social media on their own devices when they are on farm. This is a template that farm businesses can download and use where their workers have their own devices but do not have access to the farm's own computer systems. Its main focus is on the health and safety aspects of smartphone use around farm machinery and livestock.

Clearly, one size does not fit all situations and we strongly recommend that you review the draft against the specific needs of your own business to make sure it works for you.

If you would like further advice about this policy – how it can be adapted to your specific circumstances, when and how it can be introduced, or what to do in the case of serious or repeated breaches, please get in touch with [Maz Dannourah](#) on 01775 842597.

Manorial rights and the 12 October 'deadline'

After midnight on 12 October, manorial rights will cease to be overriding interests. An overriding interest is an interest in land which binds buyers or owners of land even if it does not appear on the register.

In short, midnight on 12 October is not a *get out of jail free* card. Landowners will take free from un-noted manorial rights (and similar interests) only after they have bought land for value or, if the land is unregistered, after they have registered it. 12 October also marks the end of the Land Registry's 'no charge' policy for applications to protect these interests by notice or caution.

Equally, there is no automatic deadline of midnight on 12 October by which landowners who receive unilateral notices about manorial rights must challenge the notice. An application to remove a unilateral notice can be made at any time.

For further information, see our [Manorial rights – should you be worried about them?](#) Agriblog post. Alternatively, contact [Julie Robinson](#) on 01775 842618.

Chancel repair: what options?

One for the few rather than the many. We have had several enquiries from farmers and other landowners about chancel repair liability. We published a [Q&A](#) earlier this year.

As with manorial rights, the 12 October deadline is in play but does not necessarily mark the point at which a landowner takes free from the liability. It is only after affected land has been transferred for value, or registered, without the liability having been noted (e.g. by way of notice, caution or on the face of the pre-registration property deeds) that the buyer or registered owner takes free from the liability. (Even then, there are some outstanding questions; it is not absolutely clear, for example, whether a lay rector whose liability has been 'noted' can seek a contribution from other lay rectors whose title does not have any mention of the liability. The weight of legal opinion seems to be that he cannot, but it will no doubt be a question for the courts to answer in due course.)

We know that some PCCs are still researching liability in their parishes; notices and cautions against first registration may follow in due course.

In other words, the issue is still live and landowners in affected parishes should still be considering insurance.

Compounding chancel repair liability

Having chancel repair liability noted on your title is a worry for many. The extent of the liability can, potentially, be unlimited and there are concerns about its effect on land values and future dealings. It is small comfort that your local PCC says that it is not asking for money right now, it is simply protecting its interest.

It is possible for landowners who are potentially liable for the whole repair of the chancel to compound their liability by agreeing a lump sum payment in return for a release from the obligation. The payment is based, in broad terms, on the amount that would be reasonably sufficient to provide for the cost of future repairs and to insure the chancel against destruction by fire. Such compounding is uncommon, but we know of instances where it has happened quite recently. There is a statutory procedure, set out in the *Ecclesiastical Dilapidations Measure 1923*.

Here at Roythornes, we are advising landowners about the existence and extent of their liability, on insurance options and on potential settlement. If you would like further information, please contact [Julie Robinson](#) on 01775 842618 in the first instance.

Outmarsh update: Land up for grabs?

Many of our local readers will have read or heard about our work in establishing ownership of the outmarsh around the Wash (details are available [here](#)).

We are now in the process of making applications for ownership. One current application involves a claim for 335 acres, another for 90, and another for 60.

If you farm land adjacent to The Wash, or any other part of the English coast and you are interested in establishing your ownership of land which has been newly created because of accretion, please contact [Simeon Disley](#) on 01775 842 526.

Partnerships, wills and Inheritance Tax

In order for a deceased partner's Personal Representatives to claim Business Property Relief, a Partnership Agreement must not contain a clause which expressly provides, or risks being interpreted by HMRC as providing, that surviving partners are

obliged to buy a deceased partner's partnership interests. Sometimes old documents contain such a clause – others provide for a deceased partner's partnership interest to accrue to surviving partners with capital repayment, which appears to be acceptable to HMRC. However much the safest process is to include an option.

Every £1,000,000 worth of business assets could attract Inheritance Tax of £400,000 if this one simple clause is poorly worded.

The clauses of the Partnership Agreement trump each partner's Will so it is not possible for Executors to re-write the Partnership Agreement after a partner has died and a post death variation to the Will may not avoid the Inheritance Tax.

Roythornes understands that business and personal interests are often not far apart for farming families and can help you review your Partnership Agreement, Will and Taxation all at the same time. Do contact any of [the team](#) if you would like to review your affairs.

Goodbye ALT, hello First-tier Tribunal (Property Chamber)

Agricultural land tribunals have been a one-stop shop for a various landlord/tenant and land drainage disputes for over 50 years. In July this year, these specialist bodies – known to few outside the farming community – ceased to exist. But in contrast with what has happened with the Agricultural Wages Board, the functions of the ALTs have not been abolished. They have simply been transferred to a new umbrella tribunal, the snappily-named *First-tier Tribunal (Property Chamber)*.

Below is a short Q&A about the changes and what they mean for applicants.

Why the changes?

The plan to rationalise the tribunal system dates back to the last government. Rather than have lots of different, specialist tribunals operating under different rules and with different administrative systems across different regions, it was decided that bringing them together into a single umbrella tribunal would make for a more unified approach to dealing with applications. There should be scope for efficiencies too.

As part of the grand plan, and quite late to the party, a number of property tribunals (including leasehold valuation tribunals, rent assessment committees, agricultural land tribunals and the adjudicator to the Land Registry) have torn up their name badges and re-emerged as the Property Chamber of the First-tier Tribunal. Other 'chambers' (e.g. the tax chamber) are already up and running.

Does the First-tier Tribunal (Property Chamber) hear everything the ALT used to hear?

Yes, the same matters can be brought to the new tribunal.

The main ones are applications under the Agricultural Holdings Act 1986 by:-

- close relatives of a deceased or retiring tenant to succeed to the tenancy;
- landlords for consent to a notice to quit served on the tenant;

- landlords for a certificate of bad husbandry;
- tenants for approval to carry out long-term improvements on the holding;
- tenants for a direction to the landlord to provide fixed equipment.

It is also possible to apply under the Land Drainage Act 1990 for a direction to carry out drainage work.

What about pending applications?

The aim is to have as seamless as possible a transition from the old regime to the new. So, all pending proceedings will continue as proceedings before the First-tier Tribunal. Any case which was in the process of being referred to the an old ALT on 1 July will be referred to the new body.

Who will hear my application?

As before, the tribunal will include a chairman and two lay members appointed by the chairman. The other members will have experience in land drainage, farming and the ownership or management of agricultural land.

Are fees payable when I apply to the tribunal?

The basic position is that if fees were payable before the change, they are payable following it. For agricultural and land drainage matters, there are no fees for applications.

What is the costs position if I win or lose?

The general rule in agricultural and drainage cases is that parties pay their own costs. But the tribunal does have the discretion to order parties to pay costs if they have acted unreasonably in bringing, defending or conducting proceedings or have failed to comply with tribunal directions.

Where will hearings be held?

They will be held as close as possible to the land concerned, using local courts or meeting venues such as hotels.

If I want to appeal the decision of the new tribunal, where do I appeal to?

Appeals can be made to the Upper Tribunal (Lands Chamber) with permission from the First-tier Tribunal. Previously appeals from the ALT were to the High Court (on a point of law only).

Are the forms the same?

The forms have been updated to take into account the changes and can be found [here](#), on the Ministry of Justice website.

If you are involved in making or defending an application and would like advice about how to proceed, please contact [Alan Plummer](#) or [Caroline Gumbrell](#) in the first instance.

Lincolnshire Food and Farming

Farming and food production are core to the Lincolnshire economy. It is perfectly fitting that Lincolnshire's Cathedral should celebrate its astonishing diversity.

On 26 October from 10.00 until 4.00, in partnership with the ever popular Sausage Festival, Lincoln Cathedral will be opening its nave to displays by the county's food producers. There will be opportunities to taste, but above all to explore just how our food gets from field to fork. Exhibitors will be tracing the history of farming; they will be demonstrating different seeds. You will be able to see what goes into Tom Woods' beer, as well as finding out what is distinctive about organic farming with the help of Woodlands Farm.

It is not just the harvest of the land; the sea also will be represented with the help of Grimsby Smoked Fish. There will be vintage tractors as well as state of the art farm machinery.

On 27 October at 3.00 as part of the celebration there will be the annual county harvest festival. This is open to everyone; the Cathedral just ask that you let them know if you are coming (visitors@lincolncathedral.com or 01522 561600).

Meet the Team

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