

## **CAP Reform: Are You Ready for the Basic Payment Scheme?**

This note provides a brief guide and checklist for our farming clients ahead of the introduction of the new Basic Payment Scheme, currently set – somewhat optimistically – for 1 January 2014.

The Basic Payment is just one of seven direct payments listed in the draft regulation. For farmers in England qualifying for the Basic Payment Scheme is a first step to being able to claim most other payments.

### **Key features of the Basic Payment Scheme**

- Existing SPS entitlements will expire and new Basic Payment Scheme entitlements will be allocated based on the number of eligible hectares at a farmer's disposal in the first year of the new scheme.
- In order to qualify for an allocation of new entitlements, claimants will need to have activated at least one SPS entitlement in 2011.
- A national reserve will be set up. There will be a mechanism that allows for the allocation of entitlements to qualifying farmers who did not apply for support in 2011.
- Provisions will be put in place to cater for changes to businesses, sales and leases, deaths etc. ahead of the new scheme starting. These are not yet available.
- Young farmers (rather than the broader category of 'new entrants') appear to be a priority for the national reserve. It is likely that new entrants of 40 or under will qualify as young.
- Claimants whose business purpose is not or is only 'marginally targeted at' agricultural activity should not be given payments e.g. airports, property companies, sports grounds.
- Land will have to be kept in a state 'suitable for grazing or cultivation' and claimants will have to carry out a 'minimum activity' on the land (this is yet to be defined).
- Rules on transfers of entitlements will be similar but simpler (that is what the regulation says!).

In other words, we can expect a re-run of the introduction of the SPS in 2005. But, we trust, with the benefit of lessons learned.

Whether the European Commission and national authorities will be ready for the change by 2014 is open to debate. For their part, farmers can help ensure they are ready by following the guidance in the checklist below.

### **Checklist**

In the light of the above, and based on our experience of the run-up to the Single Payment Scheme in 2002-2005, farmers should bear the following points in mind:-

- Without letting the CAP tail wag the dog, keep (a) the farming business; (b) the registered (and prospective) entitlement holder; and (c) the occupier of the land at disposal as near to being one and the same as possible. This will help avoid additional paperwork, delays and – worst case scenario – a rejected claim.
- Make sure that any sales, lettings or other deals cater for the switch from old to new scheme.
- Allow for a delay to the start of the new scheme in agreements; it seems increasingly unlikely that full agreement and preparation of the legal texts and payment systems can be achieved by 2014. Other dates, such as the 2011 qualifying year, may or may not change.
- Any tenancy, licence or contracting agreement that is likely to last beyond 2013 should be Basic Payment Scheme 'proofed' – ensuring that new definitions and rules are taken into account (e.g. relating to active farmer, minimum levels of agricultural activity and the 'greening' element of the new regime).

- Check wills to ensure that entitlements (existing and new) are dealt with. Unless they are part of a business asset, they will be a separate asset and need to be considered separately.
- Make sure that any partnership agreements deal with entitlements (old and new) – whether they are an asset of the partnership, how they should be treated on dissolution etc.
- Trace entitlements. If businesses are being wound up, merged, partnerships split etc., keep records of what the parties agree regarding entitlements and scheme payments (old and new). A bit of discussion and paperwork now will save a lot of paperwork (and more) later.
- If a business is likely to see its claim cut back under the ‘capping’ provisions, review any joint ventures or similar agreements to ensure, subject to other considerations, that farm labour is held and accounted for within the business that will be claiming the Basic Payment.
- If the farming business is a small part of a larger non-agricultural enterprise, it may be worth reviewing the position to ensure that future claims are not jeopardised by ‘active farmer’ rules.
- Young farmers who are setting up in farming and who have no SPS entitlements should consider whether they fulfil the conditions for an allocation of Basic Payment Scheme entitlements from the national reserve.

It is not always advisable to change the way businesses are structured, or agreements framed, solely in order to avoid difficulties under the Basic Payment Scheme. There may be very good reasons for leaving things as they are. The important thing is to assess the risks and opportunities.

**As always, everything is subject to change as negotiations progress.** Roythornes will be putting out updates as and when the details of the reforms become clearer. In some cases – particularly where the draft regulation is silent or unclear at the moment – it will be necessary to take a view on the best way forward e.g. where businesses are being restructured or land is being bought by someone who did not make an SPS claim in 2011.

## Get in touch

Roythornes is well known for its CAP expertise. Please do get in touch if you would like us to review wills, partnership agreements or business arrangements, or 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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