

Welcome to the Cereals 2014 edition of our agriculture e-brief.

The new CAP regime features pretty highly in this edition, as the shape of the Basic Payment Scheme and the implications of greening become clearer. We are delighted to be joining up with NFU East Anglia at Newmarket racecourse next week for what promises to be a detailed and comprehensive *Drilling Down on CAP Reform* event. Details are [here](#).



Or come along to see us with your questions at Cereals, not that you need an excuse. We're on Professionals Row, in the usual place (Stand F-705-7) and with the usual exceedingly good cakes.

I cannot talk about Cereals without mentioning that it is Graham Smith's final Cereals as partner at Roythornes after more than 40 years with the firm. It is difficult to overestimate Graham's contribution to the firm and the farming community in the East of England in those 40 years. We are delighted that he has agreed to stay on as consultant from 1st July and we wish him well in his new role.

**Julie Robinson,
Head of Agriculture**

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CAP Reform: what are we waiting for?

Aside from the greening detail, expected to be released this week, what else are we waiting for? Below is a non-exhaustive list:-

1. Interpretative Notes from the European Commission. These were promised at the beginning of April, but have not appeared yet.

The notes are not legally binding, but are, to quote the Commission, "*aimed at providing legal clarity for the way in which Member States interpret particular aspects of the reform*". They matter because they will include guidance on greening (particularly Ecological Focus Areas), the 'active farmer' definition and how the 'young farmer' test will be applied when young farmers are in partnership with non-young farmers.

2. Aside from the delegated acts, which we have seen, a number of implementing regulations are in the pipeline. They also matter. An implementing regulation can re-state a provision in the main umbrella regulation, changing its effect. (The main regulation might, for example, talk about restrictions on the 'sale' of entitlements; the implementing regulation will define 'sale' so that it includes any kind of transfer and not just a sale.)

Decisions and guidance from Defra/the RPA

3. What minimum activity is needed by claimants for them to be classed as carrying out an agricultural activity by virtue of their keeping land "*in a state that is suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries*"? (This may impact on seasonal cropping arrangements.)
4. **Active farmer** rules and guidance. Some of this depends on the Commission's Interpretative Notes, but some is down to Defra (e.g. what minimum activity must be carried out by those claimants who have more than half their land naturally kept in a state suitable for cultivation or grazing). Re: the negative list, we would urgently like to understand how Defra will interpret 'real estate services' and 'permanent sport and recreational grounds'. We trust it will take a practical stance that reflects the reality of farms as diversified rural businesses.
5. **Young farmer** scheme rules. Again, further input from the Commission is needed before Defra can finalise its guidance e.g. for scenarios in which there are both young and non-young farmers involved in a new business.
6. **Non-agricultural use**. As under the present scheme, land will have to be eligible for the full scheme year, but with an allowance for a element of non-agricultural use as long as the area is *predominantly used* for agricultural activities. Defra has indicated that the rules will be similar to those already in place under the Single Payment Scheme. Defra could also choose to draw up a list of areas they consider are predominantly used for non-agricultural activities.
7. When and how can **national reserve** applications be made, and who can make an application? Young farmers and other new entrants are a mandatory priority category.
8. Confirmation whether **dual use** will continue to be permitted from next year. Dual use arises where one party claims the direct payment (SPS/BPS or greening payment) while another party claims an environmental stewardship scheme payment (or similar).
9. Given how central the definition of arable land is to greening, additional published guidance about which crops are accepted as falling within the definition of **permanent crops** would be helpful.
10. How next year's application form will frame the greening and active farmer questions.

If you have any questions about the implications of the new regime, speak to your usual Roythornes contact, or [Julie Robinson](#) (Tel: 01775 842618).

CAP Reform: a share-farming renaissance?

Share-farming has been the talk of the conference circuit this year, with experts promoting it as an alternative mechanism for easing the next generation into farming. The introduction of the new CAP regime, and particularly its new greening component, might also prove to be a catalyst for renewed interest.

We expect to see some new share farming arrangements put into place, with the business that bears the greater part of the responsibility for establishing and managing greening features being the BPS and greening payment claimant. However, if there is a clampdown on dual claims from next year, parties will need to take care not to fall foul of the new rules.

Contact **Julie Robinson (01775 842618)** for further information.

Drilling Down on CAP Reform

Is your business ready for life after SPS? Come along to this special meeting to get up to date with the latest announcements on CAP, including the new Basic Payment Scheme, greening measures, and plans for the new agri-environment schemes.

Millennium Suite, Newmarket Racecourse, CB8 0TF

7pm for 7.30pm - Monday 16 June

CAP reform and you - Phil Bicknell, NFU Chief Economist

The new Basic Payment Scheme explained, including entitlements, eligibility and greening.

Getting to grips with greening - Elizabeth Ranelagh, Campaign for the Farmed Environment (CFE)

How the new CAP and greening measures fit with agri-environment schemes.

Ducks in a row - Julie Robinson, Partner, Roythornes

Getting your business ready for the new regime.

We are expecting strong interest in this meeting, so please call the NFU's regional office to book your place, on 01638 672100, or email meetingsea@nfu.org.uk. A pay bar will be available from 7pm.

Permanent Pasture: is the definition about to change?

The Single Payment Scheme definition of permanent pasture has come under challenge in the EU Court of Justice. The SPS defines permanent pasture as "*land used to grow grasses or other herbaceous forage naturally (self-seeded) or through cultivation (sown) and that is not included in the crop rotation of the holding for five years or longer*".

A German farmer who had reseeded his grassland with a different mix brought a case in which he argued that the reseeded operation broke the continuous five-year period and that his land should not be considered as permanent pasture. He wanted to let the land, and arable land attracted a higher rent.

Ahead of the Court making its final decision the **advisory opinion** of Eleanor Sharpston, the Advocate-General to the Court, has been published. Her opinion is that where land is used for growing grass or herbaceous forage, the five-year permanent pasture qualifying period is broken if the land has been ploughed and reseeded with a different grass or herbaceous forage crop. Operations that fall short of removal of the previous crop (e.g. harrowing and over-seeding) will not break the qualifying period.

Basic Payment Scheme and Greening

The distinction between arable land and permanent grassland is crucial. Under the new 'greening' rules Member States have an obligation to maintain levels of permanent pasture, and the extent of a claimant's ecological focus area is triggered by how much 'arable' land he has (with some exemptions in place for predominantly grassland farms).

We've all adopted the "*if the field has been in grass for five years or longer it is permanent grass, whether or not it has been reseeded*" line. Until now that has been fine and, from an administrative point of view, is reasonably straight forward. If the European Court does adopt the Advocate-General's opinion, things could change.

CAP regulations have always involved a certain amount of legal fiction. Definitions might not stand up to logical analysis but provide workable ways of implementing a support schemes without complete bureaucratic meltdown. A change to the permanent pasture definition that reflects the reality of ploughing and re-seeding may make sense to many, but will add to the uncertainty the new scheme already brings with it.

The Advocate-General's opinion **isn't the last word** – the Court of Justice has to make its own ruling in due course, but in the vast majority of cases it adopts the Advocate-General's advice. This isn't great timing for a court decision that upsets the current thinking on permanent pasture even if it does not change things on the ground for many UK farmers.

Permanent grassland definitions

Current Defra/RPA guidance

"If you enter land as grass or herbaceous forage on six consecutive SPS applications the land is classified as permanent pasture at the sixth application...if you have re-sown land with grass or other herbaceous forage during the five years, it is still permanent pasture."

Basic Payment Scheme definition

"Land used to grow grasses or other herbaceous forage naturally (self seed) or through cultivation (sown) and that has not been included in the crop rotation for five years or more..."

Advocate-General's opinion

"Where the [grassland] area has been ploughed up, removing the previous crop, and reseeded with a different type of herbaceous forage, then there is crop rotation precluding classification as permanent pasture. Where, however, the previous crop is not removed by ploughing up the land but is partly modified by overseeding, then there is no crop rotation and the area is to be classified as permanent pasture."

ATED and farmhouse relief

One of the less welcome changes announced in this year's budget was the extension of the Annual Tax on Enveloped Dwellings ('ATED'). This annual charge will now apply to properties worth more than £1,000,000 from 1 April 2015 and more than £500,000 from 1 April 2016, provided that they satisfy the other conditions of the charge.

The ATED is aimed at discouraging the 'enveloping' of residential properties within corporate ownership vehicles. It currently applies to any dwelling house owned within a limited company and worth more than £2,000,000. Crucially for many diversified farming businesses, it also applies to properties held on the balance sheet of so-called 'mixed partnerships': these are partnerships in which one of the participants is a limited company.

If your company or mixed partnership owns a dwelling house that is valued at more than the ATED threshold, you are required to make a return by the 30 April each year. The tax is a fixed amount per band: £3,500 for the new £500,000 to £1,000,000 band and £7,000 for the new £1,000,000 to £2,000,000 band.

There are, fortunately, some reliefs available from this tax, the most relevant of which for our readers will be the relief for **farmhouses**.

In order to qualify as a farmhouse, the dwelling in question must form part of land occupied for the purposes of the trade of farming, as defined in the Corporation Tax Act 2010, which considers farming to be "the occupation of land wholly or mainly for the purposes of husbandry". It must also be occupied by a farm worker or former farm worker.

A farm worker, according to HMRC's technical guidance, is someone spending more than twenty hours a week on activities such as 'ploughing, spraying, harvesting, milking or birthing'. In a small concession to the actual reality of farming, they will also allow that farm management 'counts' as farming for these purposes.

A former farm worker is anyone who has qualified as a farm worker for at least three years in the past when occupying the property in question.

So, if you are a farmer and your dwelling is worth more than £500,000 and is owned by a company, it may be the time to start filling in a time sheet!

If you have any questions at all about the issues raised in this article, get in touch with your usual contact, or call [Alex Keenan](#) on 01775 842621.

Safety on farm: should you have a social media policy?

Farms are one of the most dangerous places to work. According to the Health & Safety Executive, while just over 1 in 100 GB workers work in agriculture, the sector accounts for about 1 in 5 fatal injuries to workers.

Does the rise in social media use add to the risk? For office-based businesses, social media 'issues' tend to be about using work time for keeping up with news from your friends and family. For farm businesses the safety issue is paramount. Machinery and messaging your mates don't mix; handling livestock and your handset at the same time is a recipe for disaster.

For those of you taking on extra workers over the summer months, how can you lay down some guidelines to make sure safety isn't compromised? One answer is to have a social media policy that sets out clearly where the lines are drawn, and to refer to it when necessary. Introducing it as part of a new starter's induction would make people aware of it from the outset.

Members of our employment and agriculture teams have put their heads together and drawn up a template social media policy for farm businesses, where 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 smartphones etc. being used around farm machinery and livestock. You can download the template [here](#).

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 or by email at mazdannourah@roythornes.co.uk.

Forward planning – Roythornes succession seminar

Event: Down on the farm: handing over the reins

Date: 18/11/2014

Time: 18:30 - 20:30

Venue: The Orchards Events Venue, New Road, East Malling, Kent ME19 6BJ

Roythornes will be holding a seminar for farmers and trustees which will explore the challenges of transferring farm businesses from one generation to the next. With a practical focus, the seminar will draw on a real-life case study and expertise from a range of experienced professionals. Further details will follow in due course.

Registration and refreshments will start at 6:00pm and the seminar proper will begin at 6:30pm. Presentations will finish around 8:30pm and a light buffet will follow afterwards, giving plenty of opportunity to discuss and debate the issues raised during the evening.

If you would like to pre-register for this event please click [here](#). Or email carolynlake@roythornes.co.uk to reserve your place.

Get in Touch

This Roythornes Agriculture e-brief has been prepared by Vember Mortlock and Julie Robinson.

If you would like to comment on any of the items or to ask us to cover anything in particular in a future edition, please let Julie know by emailing her at julierobinson@roythornes.co.uk or call her on 01775 842 618.

We have a Roythornes Agriblog too. Check in to see the latest news and comment from our agriculture team. <http://roythornesagriblog.roythorne.co.uk/>

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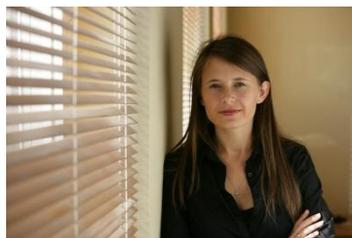


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