**Welcome to the first e-brief from the Roythornes Agriculture Team.**

With so much happening that impacts on landowners and farm businesses, we thought it would be helpful to highlight some key developments.

We hope you find it useful. If you have any questions or comments please do get in touch with us. Our contact details are at the end of the e-brief.

Alternatively, if you're coming to Cereals, pop in and say hello at Stand No. H902, on 'Professionals Row'. We look forward to seeing you there.

For those of you on Twitter you can follow us @roythornes, where we'll be posting updates and links to our topical briefings (we promise not to bombard you!). Or connect with us on LinkedIn, at http://www.linkedin.com/company/roythornes..

If you would like to receive a copy of our e-briefing via e-mail, please send an e-mail to markdodds@roythornes.co.uk and we will add you to the distribution list.

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## In this edition



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## Countdown to CAP Reform

It is that time again. Members of the Roythornes Agriculture team are watching the negotiations closely as they unfold, assessing the impacts on landowners and farming businesses of the various options and draft proposals.

Under the draft regulations - despite the planned payment scheme model looking very similar to what is already in place in England - a further round of entitlement allocations is planned, with all the complications that involves (tracing businesses through from the base year, entitlement transfer clauses in leases and sales contracts, making sure the dots all join up etc.). However, we hear from the NFU that the latest EU Presidency text doing the

rounds suggests that current entitlements may not expire and may be allowed to run through to the new scheme.

There will also be new rules aimed at restricting (a) the availability of subsidy payments to genuine farming businesses, and (b) the extent of payments to large claimants. Although, as far as we know, Defra does not appear to have much appetite for using a hammer to crack a nut on the first of these, there will inevitably be some kind of declaration to make; as regards the second, the rules are more likely to be fixed at EU level and - depending on how businesses are structured - may well have an impact.

Based on what we currently know, we have prepared a Basic Payment Scheme checklist to help landowners and farm businesses prepare for the new scheme. But watch this space, as the details will undoubtedly change as negotiations progress.

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## Cropping and Grazing Licences

Ahead of any new regime, with its revised definitions of 'active farmer', 'agricultural activity' etc., farmers need to make sure their cropping and grazing agreements are fully compliant with the current Single Payment Scheme rules. At the same time they should be understandable and robust as a workable agreement between the parties.

Licences for cropping and grazing have proved a headache for farmers. There is a danger that if the landowner gives too much control to the licensee, it will be difficult for the landowner to establish that he has management control of the land sufficient to found an SPS claim.

There is no doubt that the danger is real, but we take the view that a properly drafted licence will not affect the landowner's ability to claim the Single Payment provided that the parties respect the provisions which deal with the landowner having management control of the land and responsibility for complying with relevant SPS requirements.

We have prepared licences for a wide range of clients ahead of the May SPS deadline and are now turning our attention to arrangements that will start this autumn. If you would like us to review your agreements, please get in touch with Jarred Wright, Paul Hogarth-Blood or Julie Robinson.

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## The end of the Agricultural Wages Board

Most of our clients are in the camp which welcomes the planned abolition of the Agricultural Wages Board and the opportunity it will give to look at employment packages in a flexible way. Some are concerned that not having an annual Agricultural Wages Order (AWO) might mean a difficult conversation with employees about wage levels and other terms.

From a practical - and legal - point of view, employers will need to consider the effect of abolition. At its most basic it will mean that the statutory terms and conditions of agricultural workers will be governed by National Minimum Wage and other employment

legislation. That leaves the question of employees' contractual rights and, in particular, what the position is with regards to areas that are not covered in the same way by general employment legislation (e.g. overtime, sickness, bereavement leave).

It is helpful to consider four distinct groups of employees:-

- existing (perhaps long-standing) employees whose contracts cross-refer to the AWO;
- existing (perhaps more recent) employees whose contracts do not cross-refer the AWO;
- employees taken on between now and the abolition of the AWB (and expiry of the AWO); and
- employees taken on after the abolition of the AWB and expiry of the final AWO.

The position in relation to the first and last of these should - subject to the small print of the legislation that abolishes the Board - be relatively clear-cut, the two groups in the middle less so.

What employers will be keen to know is whether, and if so how, they can move out of AWO terms once there is no longer an AWO in force (no date has been announced yet; there will almost certainly be a 2012 AWO). We are, for the moment, keeping a watching brief on this - as mentioned above there may be some provisions in the legislation which affect what can and cannot be done following abolition. Future terms and conditions may well turn on the wording used in current employment contracts.

Having said that, and for **immediate action**, employers who are taking on workers between now and the abolition of the Board should contact us for advice about whether, and how, they should be amending their standard contracts in view of the upcoming move into an AWO-free landscape.

Contact Phil Cookson or  Peter Bennett for further information.

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## Gangmasters Licensing Authority Refocuses

Last month saw a welcome announcement about the GLA from Food and Farming Minister Jim Paice. Announcing the proposed reforms of the Authority following a review, the Minister said that the focus in the future will shift to the high-risk, unscrupulous labour providers and users where action is most needed. Responsible employers who respect the rules should see a fall in bureaucracy and costs.

Particularly welcome are the plans to reduce licence fees and extend the licensing period from one year to two years or more for 'highly compliant' businesses. In addition low-risk activities such as apprenticeships, forestry and voluntary workers will be de-regulated. Also encouraging is the move towards using administrative fines and penalties for minor offences and the decision to explore alternatives to prosecution in the case of labour users - such as farmers - who use an unlicensed gangmaster.

It is no secret that many in the industry feel that the GLA has taken a somewhat heavy-handed approach in some of its investigations in the past. These reforms involve no watering

down of either the legislation or the powers of the GLA, but will, we hope, mark a shift in approach when it comes to how it deals with low-risk businesses.

Our experienced employment and litigation teams are well placed to advise and act for businesses wanting to ensure their working practices are compliant, or who are facing investigation and prosecution under the Gangmasters Licensing Act.

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## Partnerships - Traps for the Unwary

Running the farm business as a partnership is still the preferred option for most of our farming clients. Much of the time the partnership agreement - if there is one- gathers dust after it has been signed and only comes out when there is a falling out or, worse, one of the partners dies. At that point it may be too late to clear up any ambiguities or fill in any gaps.

The recent case of Drake v Harvey has highlighted the importance of a partnership agreement covering exactly what should happen on the retirement or death of a partner. In Drake, the partnership deed said that on the death of a partner, the deceased partner's personal representatives were to receive the amount standing to his credit in the last accounts of the partnership. In itself this is a familiar provision, but on what basis were capital assets to be included in the accounts? At book value or at fair (current) value? The partnership deed was silent and the difference between the book and current market value of the farmland in question amounted to well over £2.5 million. It is hardly surprising that a dispute arose and the case ended up in the Court of Appeal.

The outcome of the case turned on the fact that book values were used in the last accounts of the partnership and there was no express provision for any alternative basis to be used when calculating post-death values. The Court held that there was no presumption that an outgoing partner's share of partnership assets is to be determined on a fair value basis. So, in this case, the assets were to be valued as they appeared in the accounts, at book value, even though this resulted in a windfall for the surviving partner.

The moral of this sorry tale is that partners need to dust down their agreements and make sure that they are properly drafted, complete and up to date. As long as all partners agree, changes can be made without great fanfare.

Roythornes has a wealth of experience in drafting and advising on farming partnerships, so do contact us if you would like your agreements reviewed or updated to take into account changes in your circumstances (e.g. children coming home to farm, diversification, the granting of planning consent) or in the legal landscape (the impact of CAP reform, for example).

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## Farmhouses and IHT...again!

Agricultural property relief from Inheritance Tax allows for a 100% saving if the circumstances are right.

The recent First Tier Tribunal decision in Hanson v CRC has clarified that a person's common occupation of farmhouse and farmland can suffice for the relief to apply, rather than the narrower test of common ownership having to be met.

The Tribunal spent some time considering the wording of the Inheritance Tax Act 1984. It decided that: '...the meaning...is that cottages, farm buildings and farmhouses...must be of a character appropriate to agricultural land or pasture...in the same *occupation*, but that it is not required that the cottages, farm buildings and farmhouses should be in the same *ownership* as the agricultural land or pasture.'

Although this is an encouraging decision, whether a farmhouse is of a *character appropriate* for agricultural property relief will depend on the facts of each case, so it is essential that specialist advice is obtained. The Hanson case reminds all of us that HMRC will challenge claims where they have doubts.

Roythornes comes highly recommended nationally for its IHT planning expertise and receives a steady stream of referrals from accountants and land agents. We are also experienced in dealing with HMRC challenges. Please contact our private client team.

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## Abstraction Rights at Risk?

This year's spate of drought declarations in England has brought water abstraction to the top of the political agenda again. While we understand that important reforms to the abstraction regime will not be consulted on until 2013 and not implemented in full until the mid to late 2020s, the Government has made it clear that it will ramp up its efforts to reduce damaging abstraction in the interim by using existing tools better.

The Environment Agency has, for example, introduced a presumption that an abstraction licence trade should be permitted where there is no risk of increasing environmental damage. This is part of a package of initiatives aimed at boosting the flagging abstraction licence market.

One particular announcement will be of concern to abstractors in stressed areas. Defra has said that it is to begin removing or varying licences which are causing serious environmental damage, without compensation. That power is contained in s27 of the Water Act 2003, and can be used after 15 July 2012. The Secretary of State must be satisfied that the ground for revoking or varying the licence is to protect the environment from serious damage. The environment is defined as (i) inland waters (rivers, lakes etc.), (ii) water contained in underground strata, (iii) underground strata themselves and, significantly, (iv) any flora or fauna dependent on any of the first three.

It seems to us that much will hang on how 'seriousness' is assessed. Defra is currently consulting on what criteria should be used and has developed three key principles against which to assess whether the damage is serious. This will involve establishing:

- the extent and magnitude of the damage;
- the qualitative nature of the damage;
- whether the damage is reversible and how long recovery may take.

Looking at the consultation, there will be plenty to argue about if and when Defra exercises this power, although Defra is stressing that throughout any investigation it will seek to work with abstraction holders to find other ways of addressing the problem.

As with other areas-in-progress, our Agriculture Team are watching closely to see how the provisions will be applied. In the meantime, if you have queries about your water rights, or your dealings with the Environment Agency, get in touch with Julie Robinson or Alan Plummer in the first instance.

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## Missing Manorial Rights?

Manorial rights are one of the more arcane aspects of land law, but that does not mean they can be ignored, particularly with a Land Registry deadline for their registration looming.

**What are they?** Before 1926, in addition to freehold land and tenanted land, there was something called copyhold land. A copyholder held his rights in land from the lord of the manor and the lord of the manor had certain manorial rights which he could exercise over the land. Some copyhold land was enfranchised into freehold land in the nineteenth century and all remaining copyhold land was automatically enfranchised on 1 January 1926. When the land became freehold, certain manorial rights may have been reserved by the lords of the manor, mainly in connection with mines, minerals and sporting activities.

**Why does it matter now?** At the moment these manorial rights 'bind' the interests of the landowner, whether or not the landowner is aware of their existence. The Land Registry has made it its mission to close down this kind of gap in the official register by setting a deadline - 13 October 2013 - before which overriding interests such as manorial rights must be registered. If they are not protected at the Land Registry before that date, the rights will lose their overriding status. That means that they may lose their automatic protection and will, for example, no longer trump the rights of someone who buys registered land after 12 October 2013.

**Do I have to do anything?** There are two sets of circumstances which need action.

The first is if you believe that your land benefits from a reservation of manorial rights over other land. This is not an exercise for the fainthearted and is likely to require persistence. It is not simply a question of writing to the Land Registry with your claim; the Registry will need to see convincing evidence of, for example, your title to the manorial rights claimed and the previous copyhold status of the other land.

The second is if you receive a notification from someone else claiming they have, for example, rights to the minerals under your land and the evidence to back an application to the Land Registry.

If either of these apply, speak to a member of our Agricultural Property team.

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## Horse Injuries and Grotesque Drafting

Two Animals Act claims for damages have been ruled on by the Court of Appeal this year. Both involved injuries to riders from horses which were kept by someone else. Aside from the question of whether the keepers were strictly liable under s2(2) of the Act, both addressed the question of whether the keepers had a voluntary acceptance of risk defence under s 5(2).

In Goldsmith v Patchcott, Mrs Goldsmith was injured when a horse she was test-riding before buying threw her to the ground after it was spooked and started to buck violently. Goldsmith knew that the horse was on its toes and would need an experienced rider. She also agreed that she had accepted the risk that the horse could buck when startled, but not that it would buck as violently as it did.

In Turnbull v Warrener, Ms Turnbull ended up falling off Mrs Warrener's horse following the fitting of a bitless bridle (the horse had a sore mouth). After having tried the horse out with the bridle in an enclosed area, Ms Turnbull had gone out with him. At the end of the ride, she tried a canter, but the horse set off more quickly than expected and, unresponsive to the rider's instructions, ended up veering through a hedge and onto a road where the Turnbull fell and was injured.

In both cases, the Court of Appeal dismissed the claims of the riders that the keepers were strictly liable for their injuries. And in both cases, the riders claiming damages were found to have voluntarily assumed the risk that the animals might behave in the way they did.

It does seem as though the courts are becoming more robust on the question of voluntary acceptance of risk in these rider accidents. Of course, the outcome of any case will turn on the exact circumstances involved.

We were not surprised by what one of the appeal judges said in the Turnbull case. He described the drafting of the crucial strict liability section 2(2) in the Animals Act as grotesque. That is a pretty strong indictment and explains in part why Animals Act claims are so difficult to call.

If you find yourself on either side of an incident involving animals and personal injury, make a note as soon as you can of what happened and get in touch with Vicky Stevenson, head of our Personal Injury team, as soon as possible.

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## Get in Touch

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

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 Paul know PaulHogarth-Blood@roythornes.co.uk, or call him on 01775 842 515.

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