

Agriculture e-brief

Spring 2019

Welcome to this Spring edition of our agri e-brief. With lots going on (except as far as the Agriculture Bill is concerned!), we're blogging regularly with news – do check out our [blogs](#) from time to time. Other issues on our desks at the moment include:-



- HLS/ELS difficulties following changes in occupation which affect only part of the area within the agreement;
- challenges to the 'licence' status of on-farm workshop lettings;
- unfair contract terms in agricultural supply contracts;
- principle source of livelihood test on AHA successions;
- wills and partnership shares (and AHA succession);
- TUPE and farm restructures.

We're out and about in May and June, running some of our own [events](#) and attending/ speaking at others. As always we'll be at Cereals on 12/13 June (Stand 304) – please do call in, say hello and sample our exceedingly good cakes!

Julie Robinson
Head of Agriculture team



DO FARMERS STILL DO JOINT VENTURES?

We were asked this question by a client. The short answer is yes, farm businesses are engaging in a whole raft of collaborative ventures. So much so that we are running a seminar for enthusiasts, sceptics and the curious. [Details here](#) and on [page 4](#).

Why are farmers opting for joint ventures?

- **Rationalising fixed costs**

This is a consideration in most of the JVs we are advising on. Careful pooling of machinery and labour can lead to significant savings in fixed costs per hectare and a more rigorous focus on budgets.

- **Sourcing investment**

A JV partner may bring investment with him (reflected in agreed profit shares).

- **Getting the right people in place**

A larger operational area may provide an opportunity for the next generation to step up and allow the older generation to step back. Collaborations can mean a wider range of skills are available.

- **Finding a secure supply of land to fulfil contracts**

A JV may be an alternative to a traditional farm business tenancy, particularly where there are synergies with other parts of a farming business. Share farming can be a way for those with longstanding contracts and contacts to continue supplying product.

- **Stepping back while maintaining trading status**

For those wanting to retire but needing to maintain their trading status for tax purposes, a joint venture may be a way forward, bringing in others to look after day-to-day operations while continuing to have management control.

What form do JVs take?

Machinery-sharing agreements, contract farming,

share farming through to the setting up of a separate entity (limited liability partnership, company or co-operative). The right model will depend on the scope of the JV, what the parties want to achieve and tax considerations.

Where can I get advice?

Roythornes is holding an [evening seminar](#) on 22 May for those wondering whether a joint venture might be for them. With the help of our own and outside experts, we will be taking the lid off farming JVs and, in particular:-

- The financial benefits. Do the sums add up?
- The legal structures. Pros and cons.
- Share farming. A flexible model?
- People issues. How to manage change and minimise tensions.
- Tax considerations. What to watch for.

We look forward to seeing you there!

For bespoke advice in relation to farming joint

If you would like to discuss any of the issues raised in this article, please do get in touch with your usual Roythornes contact in the first instance; alternatively, give [Julie Robinson](#) a call on 01480 587460.



WILD BIRDS & LICENCES PREVENTING SERIOUS DAMAGE

This article focuses on action you need to take to stay within the law if you are controlling wild birds to prevent serious damage to livestock, feedstuffs, crops, fruit etc, previously covered by General Licence 04.

The legal position

The basic position is that the planned shooting or taking of wild birds to prevent serious damage will be unlawful unless one of the following three conditions is met:-

(1) the activity falls under any new general licence that has been issued – as of 2 May the only general licence available is for carrion crow control, and for the protection of a restricted range of livestock/reared game; or

(2) you have an individual licence to kill or take birds not covered by the new general licences; or

(3) you have applied for an individual licence and fall within the exception contained in s4 of the Wildlife & Countryside Act 1981. This exception provides a defence to criminal liability.

The scope of the s4 exception is limited.

- Any action to control wild birds must be limited to the species named in your licence application, and not include any “Schedule 1” species (buzzards, harriers, white-tailed eagles, red kites etc) – these enjoy additional protection.
- The action must be for the purpose set out in your licence application.

You must notify Defra (at birds2019@naturalengland.org.uk) as soon as reasonably practical that you have taken action.

- You must be able to show that killing/taking the birds was the only satisfactory solution to prevent serious damage.

There is also a narrow exception for action taken in an emergency, but this is unlikely to come into play in the case of planned pest control activity.

Implications for Shooting Agreements

The majority of written shooting agreements include the right to kill some or all of the species previously covered by the general licences (GL04-05-06), revoked by Natural England on 25 April. But in most agreements that right is explicitly subject to the killing of such birds being “for the time being” lawful. As from 25 April, in the absence of one of the three conditions set out above the planned killing of non-quarry species will generally be unlawful. There are some narrow exceptions e.g. in some circumstances where an official order requires action to be taken.

Technically, then, not only could those killing or trapping pest birds under a shooting agreement be breaking the law, they could also be in breach of the express provisions of their shooting agreement.

There could also be implications for insurance, where policies generally exclude illegal activities from cover.

Before allowing others on your land to shoot wild birds you should:-

- check that they are up to date with the new restrictions and have individual licences if necessary (i.e. if you do not have one and there is no general licence in force);
- make sure you give them written authorisation to act. We would recommend that any authorisation gives details of the person/people authorised, sets out the purpose of the control and why it is necessary;
- make clear on the written authorisation that your permission is subject to them acting within the law at all times.

Licensees

If you have livestock or crops on someone else’s land as a licensee, rather than under a formal tenancy, you should ensure that you have the owner’s consent in writing before shooting wild birds under licence. If the SSSI/Ramsar status of the land means that additional consent is needed from Natural England you will also need to ask the owner to apply for that consent.

Conclusion

The Natural England changes cut across longstanding wild bird control practices on farms and shooting estates and have made many previously permitted activities illegal without, as a minimum, an individual licence being applied for. We trust that new, and clearly defined, general licences are put in place quickly to minimise the disruption, cut through the confusion and make sure that agreements entered into on the basis of previous general licences are not brought into question.

If you have any questions arising from this article, please do get in touch with us here at Roythornes. We have a wealth of experience in drawing up Shooting Agreements and in defending wildlife crime cases.

SAVE THE DATE



BEYOND THE FARM: JOINT VENTURES?

A SEMINAR FOR FARMERS AND GROWERS
LOOKING TO EXPAND THROUGH JOINT VENTURES

Despite (or maybe because of) uncertainty around the impacts of Brexit, many farmers and growers are looking for opportunities to expand their operations. At the same time some businesses are looking to consolidate while protecting 'home farm' assets.

Collaborative ventures are what this Roythornes seminar is about. In a series of short, sharp presentations from members of the Roythornes team and professional experts, we will look at collaborative ventures aimed at improving the bottom line.

The seminar will cover:-

The financial benefits of collaborating with other farmers

What a joint venture could look like

The tax implications you should know about

Implications for employees, relationships and roles

WHO, WHEN, WHERE?

For farmers and growers

Date & Time: 22 May 2019
17:30-20:00

Location: KingsGate Conference Centre,
Peterborough

To register your interest in attending, please register [by clicking here](#)

LEAVING THE EU WITH NO DEAL- WILL I STILL GET MY 2019 BPS PAYMENT?

In this short article we take a look at what happens to UK farmers' right to direct payments under the CAP if we leave the EU without a deal.



If the UK leaves the EU without a deal on 31 October, the EU's Common Agricultural Policy will cease to apply in the UK.

That may well bring shouts of hooray from farmers exasperated with tedious form filling, declaring field areas to four decimal places and the three-crop rule. But what of 2019 BPS claims?

Direct payments under the CAP were protected under the EU/UK Withdrawal Agreement, at least for 2019^[i]; farmers would submit their claims by 15 May in the usual way and payments would be made from EU funds^[ii]. Claims would be covered by Regulation (EU) 1307/2013 and related legislation.

Leaving without a deal will change that. There will be a 'settling' of accounts between the UK and the EU, with the UK seeking re-imburement of relevant direct payments made to claimants up to 31 October 2019. After that date, direct payments will be paid directly by HM Treasury.

As we know, the Government has committed to maintain the same cash total in funds for farm support until the end of the current Parliament. That was expected to be 2022; some fear we may now see a general election well before then.

At a technical level, by virtue of the European Union (Withdrawal) Act 2018, CAP direct payment regulations are retained in UK law as from exit day, whenever that is. A raft of statutory instruments has recently been introduced making the necessary technical changes to the EU 'retained' regulations to ensure that direct payments can be delivered by UK authorities. Farmers will complete the same form and be under the same cross-compliance and greening rules as they would have been had we stayed in the EU. The difference is that those rules are now derived from UK rather than EU law.

That is the position for 2019; everything is in place to cover a no-deal exit. From 2020 we may see some minor technical changes to BPS rules, although nothing drastic is on the cards. If a new government is in place by 2020 funding levels may not be maintained; that will be in the gift of the new Government.

If you have any queries about how Brexit may impact on your farm business, please do get in touch with Julie Robinson on 01480 587460 or with your usual Roythornes contact.

[i] Article 137 (1)

[ii] Direct payments are made from the European Agricultural Guarantee Fund (Pillar 1)

Our agricultural work is undertaken by a team with a national reputation. We are highlighted in leading legal guides such as the Legal 500, where we regularly appear as a Tier 1 firm for agricultural work.

It is the combination of technical expertise, personal attention and commercial acumen that sets us apart

Recent work...

- Freehold farmland purchase involving 34 different titles
- Review of horse lettings across more than 200 acres of agricultural land to ensure compliance and consistency and to advise on the taxation implications of equine use of farmland
- Purchase of a block of farmland including a 3 ½ hectare aeroplane crash site; dealing with related indemnities and the respective liabilities of seller and buyer
- A comprehensive share farming agreement between two top fruit businesses, covering fruit production from 15 different sites
- Advice in relation to EU funding for the first heightening of flood defences in the Lincolnshire Wash area since 1982
- Reorganisation of farm business tenancies relating to four different pig production sites managed by a large commercial producer

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