

CAP REFORM – THE SINGLE PAYMENT SCHEME

The introduction of the Single Payment Scheme has been a long and drawn out affair. As the deadline for applications looms, DEFRA and the RPA have started issuing better guidance notes on how the new system is to work. Many farmers will by now have some grasp of the changes in subsidy and how the Single Payment Scheme will affect them and their farming practices. There are too many changes happening for us to address them all here, so we will address some of the less publicised points to note.

TENANCIES AND THE SINGLE PAYMENT SCHEME

Landlords will need to be careful to ensure that the full benefit of any entitlement is restored to them on the termination of any farm tenancy. It will be important to ensure that tenants fully comply with all of the cross-compliance requirements or some of the payments could be lost. Landlords will also need leases to contain provisions preventing tenants from transferring the benefit of the entitlements away from their land and requiring that it be transferred back to them at the end of the term. Leases may need to be varied (if possible) to incorporate these provisions.

Care should also be taken with rent reviews. The amount of entitlement could affect the market value of a lease. Consideration should be given to the timing of any review, as the benefit of a delay in the review will depend on whether the relevant entitlement is going to increase or decrease as the Single Payment shifts away from the historic based entitlement to the flat rate area entitlement.



SINGLE PAYMENT ENTITLEMENT IS AN ASSET

Whilst the subsidy payments will continue to be treated as part of a landowner or farmer's income, the benefit of the entitlement will be a capital asset. Not only will this require different treatment in the accounts of the business, but in relation to other matters too.

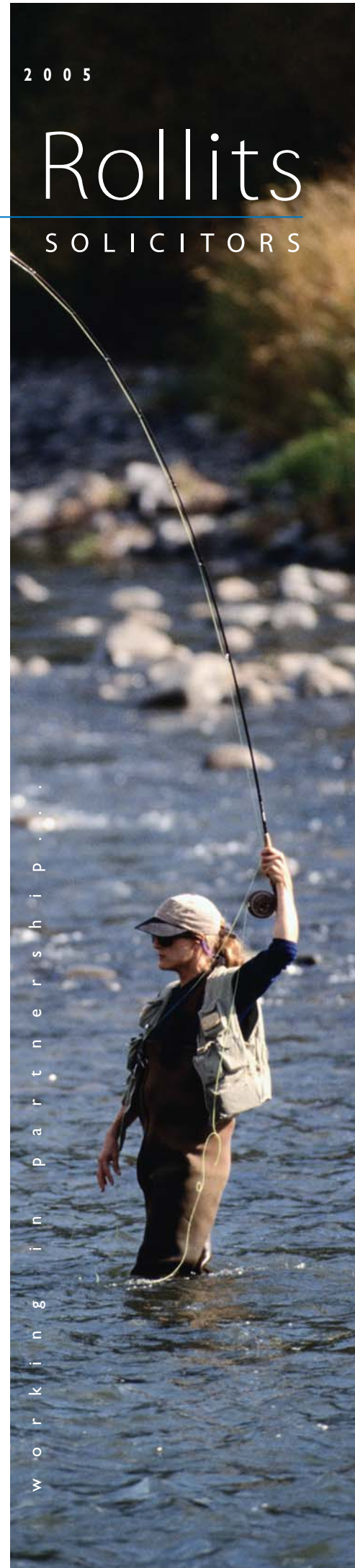
When purchasing or leasing land and on the dissolution of a farming partnership, one must ensure that not only the land but also the entitlement to the Single Payment is transferred to the buyer.

Consideration should also be given to whether one's Will needs redrafting to include reference to your Single Payment entitlements. If they are not correctly dealt with, one could find that whomever inherits the land does not automatically inherit an entitlement to the Single Payment to go with it – and the entitlement could be lost altogether.

Landowners and farmers should be vigilant and seek advice on how the Single Payment Scheme could affect them - not just in relation to how to claim the entitlement – but on how to retain it.

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THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000: IMPLICATIONS FOR LAND OWNERS

The Countryside and Rights of Way Act (CRoW) has introduced a new right of access enabling members of the public to walk across large areas of land for the first time. Unlike any previous right of access, the public will not be required to stay on specified paths or tracks, but will be able to go anywhere on the access land. This is a right for which ramblers have campaigned for well over 100 years.

The legislation only provides for access over specified "Access Land". The Countryside Agency is currently producing maps of all Access Land and has already done so in relation to the South East, lower North West and central Southern England.

Disputes may well arise; especially as not all land mapped out as such will actually be Access Land. There will be many exceptions, including cultivated land, buildings and their curtilage and parks and gardens. Furthermore, if land is already subject to existing statutory rights of access, this will continue and the new CRoW right will not come into effect. Land owners need to be aware of any rights affecting their land.



CRoW imposes 'general restrictions' on all Access Land. For example, cycling, horse riding, camping and lighting fires are not permitted under the new rights. Dog walkers will also be required to keep their dogs on a lead near livestock and at certain times of the year. In addition, landowners will have limited powers to exclude access for up to 28 days each year. They can also apply for directions restricting access on grounds of land management, public safety or fire prevention.

The provisions regarding the various restrictions are complex and landowners should seek advice before attempting to restrict access to their land.



OCCUPIER'S LIABILITY UNDER THE COUNTRYSIDE AND RIGHTS OF WAY ACT 2000

Where the public has a right of access over open country it will be essential for landowners to know their legal duties and responsibilities towards the public's safety, and they should take advice if their land is subject to a right of way.

Landowners and occupiers do owe a duty of care to people on their land, and this includes people exercising a right of access under CRoW.

Generally, when an occupier knows there is a danger and that people may come within the vicinity of it then the occupier must take reasonable care that people do not suffer injury as a result.

CRoW reduces the duty of care in relation to Access Land so that, unless the occupier intentionally or recklessly allows a risk to be created, they owe no duty for any damage or injury caused by any feature of the landscape, or to people passing over, under or through any wall, fence or gate when being used properly. These provisions do not apply if access has been excluded or restricted.



The legislation is complex and the implications for land owners and farm tenants are far wider than can be discussed here. Other legal issues to be considered include liability for injury caused by animals, the effect on shooting rights, damage to land and breaches of restrictions.

SDLT AND PARTNERSHIP TRANSACTIONS

The Finance Act 2004 brought in more changes in relation to Stamp Duty Land Tax – and many farming partnerships could be affected. The Act is very complicated and the Inland Revenue have only recently started issuing guidance notes on how it is to be applied.

Some of the transactions targeted by the new legislation include:

- The transfer of property to a partnership from a partner or a person or company connected to them.
- Changes in partnership shares.
- The transfer of property from a partnership to a partner or person or company connected to them. This includes the distribution of assets on the dissolution of a partnership.

To try and avoid any difficulties, partnerships are advised to seek advice on SDLT liability as soon as possible when considering any land transactions. The potential amount of SDLT payable is often a cause for reconsidering a transaction. Advice on SDLT at an early stage can therefore be invaluable in the decision making process.

INFORMATION

If you have any queries on any aspect of Agricultural Law please contact:

Neil Franklin on (01482) 337250

This bulletin is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this bulletin useful.

If, however, you do not wish to receive further mailings from us, please write to

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The law is stated as at 24 January 2005

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