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Agricultural

Law Update

Summer 2021
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Welcome

As with so many industries, the past 15 months have presented those in the farming sector with a significant amount of change, challenge and opportunity.



Sometimes interlinked, the effects of the Agriculture Act 2020 (which was finally passed in November 2020), Brexit and Covid have signalled the start of one of the greatest periods of change that the sector has known.

The Agriculture Act not only provides for rewarding environmental improvements, improved welfare standards, improved access to the countryside and measures to reduce flooding but also provides for the phasing out of BPS payments (finally ending in 2027) together with the replacements, initially by new Countryside Stewardship schemes but primarily by the Environmental Land Management (ELM) Scheme. It also provides for a report to be presented in to the impact on UK agriculture of trade deals.

Brexit and Covid have presented other challenges and issues. Markets have changed in the short term with the closure of leisure outlets such as hotels, restaurants, pubs and other leisure venues whereas the nation bought more

food from the supermarkets. Transport issues arose as drivers isolated and the price of fuel fluctuated significantly. Whilst rural areas may not have seen such high rates of virus infection as the towns and cities, some of those employing workers (often residential) have had significant disruption from outbreaks. Brexit and Covid has led to a shortage of seasonal workers and that may be an ongoing issue (and one which may help to speed up even further the implementation of state of the art farming mechanisation).

The Government's desire for cheap food for the population is understandable but could lead to food security issues arising and there is a fear that agriculture may be treated as a "throw-away" in trade deals. Hopefully the late changes to the Agriculture Act providing for a paper to be presented on the impact on trade deals will mean that this is properly thought out and addressed.

Neil Franklin

Partnership agreements

Why they are important?

Unless you are operating as a sole trader or as part of a limited company then the chances are your farm business is being operated as a partnership under the Partnership Act 1890 ("Act"). The reason you will be deemed to be operating a partnership is that under this Act where any two people operate a business together with a view to profit then it is immediately a partnership subject to any other contractual arrangement. One of the knock-on effects of this is that if you do not have any other arrangement in place between the partners then the provisions of the Act will prevail in relation to your partnership which can have unwanted consequences – for example, if one of the partners dies then under the Act the partnership will be dissolved, which can cause financial, tax and commercial issues.



It is therefore important to consider whether the arrangements relating to the business partners in the farming environment ought to be properly documented, as this has the benefit of avoiding any unintended consequences of the 1890 Act but also formally documents arrangements, agreements and expectations as between each of the partners.

Examples of issues which a partnership agreement can cover are as follows:

- What happens to a partner's interests if a partner dies or wishes to leave the partnership? Will the remaining partners be able to purchase that partner's share in the partnership, and if so, how is that share valued?
- What do each of the partners expect of each other? Where one partner is more involved in the day to day running or has a particular skill set which lends itself to overseeing one part of the business more than another then this should be documented in order that the partners know what to expect of each other – and where such expectations are not met then these can be addressed.
- How are decisions affecting the partnership agreed? For example, is a simple majority of the partners in favour of a course of action sufficient, even if one partner has strong objections? Or should, in some instances, the unanimous agreement of all of the partners be required?
- What authority does each partner have to bind the rest of the partners? For example should there be financial limits on each partner (for example in being able to enter into contracts on behalf of the partnership, or authorising expenditure)? Should they be different as between the partners?
- How repayments of capital and further contributions to capital should be made; how profits and losses of the partnership will be borne by the partners and how income profits can be drawn by the partners.

- A partnership agreement will give a clear delineation of partnership and non-partnership assets which can be important for tax reasons.

The question of partnership assets is important, as a partnership agreement will override a partner's will in the sense that they cannot pass by will assets that belong to the partnership.

In an ideal world the partnership agreement will be agreed and entered into and then would not need to be referred to in the future if things go well for the partnership, there are no disagreements between the partners and nothing changes in the partnership. Inevitably however, this is not always the case and disagreements can occur, in which case if there is an agreed partnership deed then the parties can refer back to this as a way to overcome any disagreements with reference to principles agreed previously. This may not always be the perfect outcome for everybody, however it is often preferable to long running fallouts and the associated upset and costs that often flow from them.

If you do have an existing partnership agreement then it is also worth checking whether it is up to date and whether it needs to be amended; for example if new partners have been admitted to the partnership and/or if any partners have left.

At Rollits we have extensive experience of drafting partnership agreements, particularly farming partnerships and would be pleased to speak with you further if you have any queries in relation to them.

John Flanagan

Farming families and will disputes

Farmer, Evan Hughes, died in March 2017. In his 2016 will, Evan left 56 acres of farmland to his surviving son Gareth. However, this was later challenged by other surviving members of the family who sought to challenge the validity of the will on two grounds; that Evan lacked capacity to make the will as he was suffering from dementia and was also grieving for his son, and secondly, they also believed they had a proprietary estoppel claim. This is where a party claims a right to land belonging to another party in which they were led to believe, by a promise that they have or can expect to be given an interest in that land.

Mental capacity claim

The law firm which prepared the will, had to prove to the Court that when taking instructions for the will they had followed the 'golden rule' i.e. they had instructed a health care professional to assess the capacity of Evan. The health care professional who was instructed in this case, had confirmed that Evan did have the requisite capacity to make the will.

However, at the trial, the health care professional in question stated that both he and the testator had been misled in thinking that the 2016 will made only minor changes to Evan's previous will. The new clause in the 2016 will had in fact redirected an asset worth nearly £490,000, from one family member to Gareth.

On that basis, the trial judge concluded that Evan did lack testamentary capacity as he did not fully understand the contents and the changes being made to his will.

Proprietary estoppel

Proprietary estoppel is an 'equitable remedy; and a person may make a claim for proprietary estoppel if a Will does not honour promises made by the deceased, particularly if a claimant believes their reliance on that promise has caused detriment.

Proprietary estoppel claims are often associated with the agricultural sector such as in this case. To bring a proprietary estoppel claim it is necessary to show that:

- A promise has been made;
- That the promise was believed and relied on; and
- Reliance on that promise caused the Claimant to suffer detriment.



In this case Evan had promised the land to his son Elfed on a number of occasions and two previous wills made by Evan had in fact expressly bequeathed the land to Elfed. The trial judge therefore, upheld the claim of proprietary estoppel. He agreed that Elfed had relied on his father's promises to leave him the land. This has therefore, caused significant detriment when those promises were broken by the terms of the 2016 will.

Advice to take away from this case is to plan early, don't leave things too late, and where possible, communicate with family members. Taking these steps will hopefully avoid any unwanted disputes between family members, in the future and after death.

Rollits' team of Private Capital experts based in both Hull and York are highly experienced in acting for the widest possible variety of clients including land owners and farming businesses. We work closely alongside other lawyers within our Family, Commercial, Property and Litigation teams in order to provide a holistic service to our clients. We have STEP Trust and Estate Practitioners within our Private Capital Team who hold qualifications within this area of law. STEP is a global professional association for practitioners specialising in family inheritance and succession planning.

Zaneta Andraszczky



The Driffield Show is back!

After a year off due to Covid we are delighted to be returning to Driffield Showground for the Driffield Show on Wednesday, 21 and Thursday, 22 July.

Come and see us
Stand G134
We would love to
say hello!



Permitted development rights on agricultural land

Using permitted development rights owners of agricultural land are entitled to carry out types of development and use land for alternative purposes without the express need for planning permission. Permitted development rights can be of benefit to owners of farms in allowing them to carry out certain works without the need to obtain planning permission and the associated time and expense involved with such applications.

If the farm is 5 hectares or more, agricultural owners have the right to erect, extend or alter a building or carry out excavations and engineering operations needed for agricultural purposes – though approval may be required for certain details of the development. In respect of farms between 0.4 and 5 hectares, permitted development rights include (amongst other matters) the extension or alteration of an agricultural building, installation of replacement plant and machinery and the provision of a hard surface.

Permitted development rights also allow the change of use of agricultural buildings on farms to dwellinghouses and building operations that are reasonably necessary for the conversion (subject to appropriate conditions and limitations). However, in order to benefit from this right the owner would first need to apply to the local planning authority for its prior approval in respect of matters relating to transport and highways impact, noise impacts, contamination risks, flooding risks, whether location makes

the change of use unsuitable and the design or external appearance of the building. If the local planning authority determine prior approval isn't needed, then the change of use will not need planning permission

Last year permitted development rights were updated to allow the alternative temporary use of land for up to 56 days in a calendar year, though this period is due to revert back to 28 days from 1 January 2022. Agricultural land can be used up to the permitted number of days for uses such as camping, recreational games, clay pigeon shooting etc. Under the said rights land can only be presently used for the holding of a market or motor racing for up to 28 days in a calendar year under the permitted rights, though this will return to 14 days from 1 January 2022.

Agricultural land can also be used as a caravan site in some limited circumstances without the need for planning permission. By way of example land can be used as a caravan site for agricultural and forestry workers for agricultural purposes incidental to the enjoyment of the land, for the accommodation of workers employed in carrying out building or engineering operations and as a caravan site for a single caravan for up to two nights (subject to the time limits relating to temporary uses per calendar year mentioned in the above paragraph). Use of land by members of certified recreational organisations for recreation or instruction, and the placing of tents on the land is also permitted. Organisations entitled to use land for this purpose include Boys' Brigade, Scout Association, Girls Guides and Salvation Army.

Stuart Lumb



Get to grips with bad debts

Are you struggling to recover overdue invoices? Bad debts can slow down and eventually cause a business to fail. Let our experienced debt recovery team help you – we provide fast, cost-effective collection with our personal debt recovery service that is vital to your continuing success.

For more information call
June Watson on 01482 337359

Hull Office
Tel 01482 323239

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Tel 01904 625790

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Wedding planning

Have you remembered the Pre Nuptial Agreement?

Wimbledon and weddings epitomise the British summer and from 1 July couples will have the choice of getting married outside at an approved venue for the first time.

Indoors or outdoor weddings are joyful occasions and often no expense is spared. The wedding is one day – the marriage will hopefully last a lifetime and yet we can find it difficult to talk about what might happen if it doesn't work out or what insurance could be put in place for this eventuality. This less "exciting" part of the planning is equally, if not more important.

What is a Pre Nuptial Agreement?

A Pre-Nuptial Agreement is an agreement a couple enter into prior to marriage to regulate what will happen to their finances if they subsequently divorce.

They are about two people acknowledging their particular circumstances, being open and honest about how they feel about their financial position, taking control of their futures and making their own decisions about what they consider is fair. Whilst couples do not go into marriage expecting it to end, having a Pre Nuptial Agreement can provide a level of certainty by clearly defining the financial arrangements if you separate and thus simplifying the process and making it less costly and less stressful.

Our legal system is discretionary which means it is possible for one person to argue that they should have more, or less, than the other. The starting point when deciding which assets should be included for division will be to include all of them

and then have the discussion/argument that some should be excluded due to being acquired outside marriage.

Whilst a Pre Nuptial Agreement is not legally binding, for a number of years they have become harder to challenge. Provided they are drafted correctly, are fair and meet both peoples' needs then it is now established that it is difficult to argue that you should not be held to the terms that you previously agreed thus helping to negate the risk of your assets being determined by the discretionary system.

Who are they for?

A Pre Nuptial Agreement can be for anyone but are particularly suited for farming families.

Very often members of different generations and different strands of the family are working together and the younger generation now getting married will not have created their wealth. It may have taken generations to accumulate family wealth and for planning reasons assets may have been gifted to younger members of the family. Very often it will have been inherited. They may receive income or assets from a family trust fund. Then a stranger is introduced to the family and it will take time for that new person to establish themselves within the family structure. It is prudent "housekeeping" to protect the extended family wealth until the new relationship and therefore trust has developed over time.

Farming enterprises can be complex business structures. There may or may not be a partnership agreement or part of the farm may be held as a Limited Company. The intended matrimonial home may not be owned by the couple



themselves and there may be concerns about rights to occupy the property by the non family spouse should the relationship break down. Considering the individual circumstances of your family at this life changing moment will provide comfort and clarity.

There are other circumstances where a Pre Nuptial Agreement will be more relevant:

- If this is your second or subsequent marriage you may wish to protect assets you have acquired during your previous marriage. Second, third or subsequent marriages often prompt the question of whether a Pre-Nuptial Agreement is necessary. Often entered into by older couples, as wealth has already been accumulated by one person's efforts, children are born and have grown up – the sense of fairness in this situation upon a divorce is very different to a young couple starting life together free of any competing obligations.
- If you have children from a previous relationship you may wish to protect certain assets for their benefit.
- You may want to protect future inheritances or a specific heirloom.
- You may have or be part of a business enterprise and want to consider protecting these assets if you subsequently divorce.
- If you are already married you can still protect assets acquired in similar circumstances by entering into a Post

Nuptial Agreement. For example, one person may inherit or for planning reasons the family may want to gift something to them – there may be worries that this would be absorbed as a matrimonial asset upon separation and this may not feel fair depending on the stage of the marriage.

Getting it right

It is important to have the discussion about the need for a Pre Nuptial Agreement sooner rather than later. This is often prompted by grandparents or parents. Producing an agreement the night before the wedding and saying that we are not getting married unless you sign it will not stand up in Court – so make the decision as soon as you make the decision to marry – a Pre-Nuptial Agreement needs to be signed at least one month prior to the wedding.

Be prepared to provide full and frank disclosure of your personal and financial circumstances, including documentation. To not do so is likely to jeopardise any agreement.

Both people should take separate, independent legal advice – allow time for this.

Be fair – have terms that will meet needs and account for any children.

Ensure that you have the opportunity to review as the marriage progresses so any changes in personal and financial circumstances can be accommodated.

Making discussions about Pre Nuptial Agreements part of wedding planning should be the norm as such discussions usually provide certainty, security and comfort for the families involved. It also avoids misunderstanding and assumptions.

For further advice from our specialist family lawyers please contact Alison Benson on 01482 337363 or email alison.benson@rollits.com.

Farming in protected landscapes

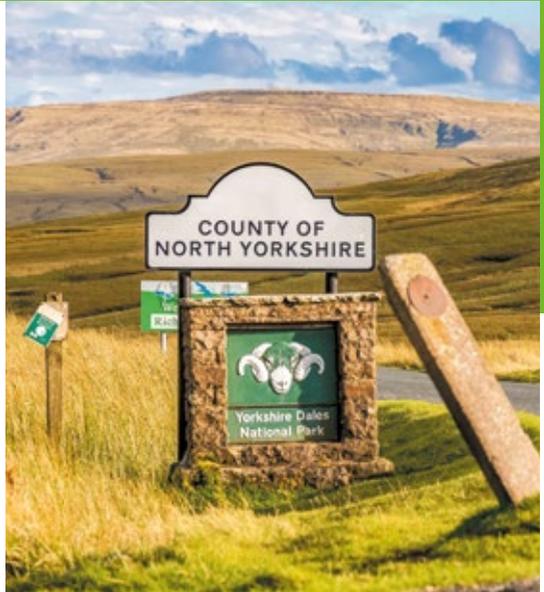
The government has recently launched a new Farming in Protected Landscapes programme running until March 2024.

The programme will provide funding to help farmers and land managers in England based in National Parks or Areas of Outstanding Natural Beauty, to enhance and improve public access on their land.

It is intended that funding will support nature recovery, public access, alleviate the effects of climate change, offer opportunities to enjoy and appreciate land, and back nature-friendly and sustainable farm businesses.

The announcement forms part of the government's wider commitment on protecting land.

Gareth Orriss



Information

If you have any queries on any issues raised in this newsletter, or any agricultural matters in general please contact:

Neil Franklin on 01482 337250 or email neil.franklin@rollits.com

This newsletter is for general guidance only and provides information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this newsletter useful, but if you do not wish to receive further mailings from us please write to Pat Coyle, Rollits, Citadel House, 58 High Street, Hull HU1 1QE or email pat.coyle@rollits.com. For details of how we use your personal information please refer to our Privacy Policy by writing to the same address or accessing our website at rollits.com

The law is stated as at 1 July 2021.

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A list of members' names is available for inspection at our offices. We use the term 'partner' to denote members of Rollits LLP.