

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

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Rollits **LLP**

Agriculture Bulletin

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The Road Ahead:

Adapting to the Agricultural Landlord and Tenant Code of Practice Guide

An important element of agricultural law relates to the relationship between landlords and tenants. In recognition of the evolving landscape of agricultural practices and tenancy agreements, governments often implement regulatory frameworks to ensure fairness and efficiency.

On 8 April 2024, the Agricultural Landlord and Tenant Code of Practice for England ("the Code"), was published following Department for Environment, Food and Rural Affairs' ("Defra") response to the Rock Review.

The Code is founded on three principles: clarity, communication and collaboration to promote more co-operation between landlords and tenants and it addresses several key areas:

- 1. Rent Reviews:** One notable aspect of the Code is the provision for more transparent and fair rent review processes. Both parties should familiarise themselves with the procedure and terms on which rents can be reviewed. Beyond discussing rent, it's beneficial to explore common interests such as future investment needs, economic conditions, and expectations regarding property maintenance and upgrades. These discussions can shape the terms of the new rent agreement, especially if there hasn't been regular communication between reviews.
- 2. Notice Periods:** Another crucial element pertains to notice periods for terminating tenancies. The Code outlines clear guidelines regarding the length of notice required by both landlords and tenants, providing greater clarity and stability in tenancy arrangements.
- 3. Succession Rights:** In many agricultural communities, the issue of succession rights has been a point of contention. The Code seeks to address this by providing clearer guidelines and protections for tenants, ensuring that succession arrangements are fair and transparent.



- 4. Improvements and Repairs:** Maintenance and repair responsibilities are clarified under the Code, ensuring that both parties understand their obligations regarding property upkeep. This helps prevent disputes and ensures that agricultural properties are maintained to a suitable standard. It is also suggested that agreements about improvements should be documented carefully.
- 5. Dispute Resolution:** Effective dispute resolution mechanisms are crucial for maintaining healthy landlord-tenant relationships. The Code emphasizes the importance of mediation and arbitration in resolving disputes promptly and amicably, reducing the need for costly and time-consuming legal proceedings.
- 6. New opportunities, schemes and agreements:** The Code encourages open and constructive dialogue between tenants and landlords regarding environmental, economic, and development opportunities. Landlords shouldn't unreasonably withhold consent for new schemes, but may do so for valid reasons such as tax implications or mortgage terms. Blanket bans on participation in opportunities are discouraged in new tenancy agreements unless justified. Tenants should consider the landlord's interest, even if formal consent isn't needed, and inform them in advance of any applications that could affect the property's future. Similarly, landlords should respect tenants' interests when reviewing proposals.

It's worth noting that this Code is voluntary. Both landlords and tenants still have to follow the terms of their rental agreements and operate within existing laws and regulations. This Code doesn't override or duplicate these basic legal requirements, nor does it introduce new ones. Its aim is to encourage better ways of working within the agricultural rental sector.

Overall, the new Code represents a significant step forward in promoting fairness, transparency, and sustainability in agricultural tenancy arrangements. By addressing key areas such as rent reviews, repairs, schemes, disputes, termination and renewals, the code aims to create a more harmonious and productive relationship between landlords and tenants in the agricultural sector.

If you are considering putting in place a tenancy agreement or entering into a tenancy and you need assistance with navigating the Code, or if you have any queries on any issues raised in this newsletter, please contact **Neil Franklin** (neil.franklin@rollits.com), **Ruth Maltby-Sinkler** (ruth.maltby-sinkler@rollits.com) or **Zaneta Andraszcyk** (Zaneta.andraszcyk@rollits.com).

Sunscreen:

It's Not "Soft" to Be Sun Safe

The Health and Safety at Work etc. Act 1974 provides that **"It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees"**.

Farmers and farmworkers have earned a reputation of being hardy people. This reputation is well earned given farming has one of the highest rate of injuries amongst all other industries, with the actual figures for these injuries is difficult to determine due to those in agriculture being unlikely to seek professional medical advice for all but the most serious of health issues.

As a result of the above, many in the industry consider wearing sunscreen to be unnecessary. Indeed, the "farmer's tan" is well known and worn by some as a mark of pride.

As we are aware, the perpetuation of stereotypes can be damaging, and this is certainly the case where a large proportion of an industry considers wearing sunscreen to be "a bit soft". It will come as no surprise that numerous studies have demonstrated a strong correlation between UV radiation exposure and various types of skin cancers.

The Skin Cancer Foundation states "Even one blistering sunburn in childhood or adolescence more than doubles your chances of developing melanoma later in life. Skin damage builds up over time starting with your very first sunburn. The more you burn, the greater your risk of skin cancer. Subsequent UV damage can occur even when there is no obvious burn".

Although it is possible to suffer from sunburn in other months of the year, the summer months bring with them an increased risk of skin damage as a result of the ultraviolet radiation (UV) emitted by the sun.

Employers have a duty to assess the health and safety risks that its employees are exposed to and, as far as is reasonably practicable, take steps to remove or reduce those risks.

In an industry where outdoor work is the norm rather than the exception, it falls upon farmers to ensure that they take steps to remove or reduce the risk of its farmworkers suffering from ill effects of being exposed to more sun than is healthy for them.



As with any other work activity that presents a risk to health and safety, employers should adequately inform and educate their employees about the risks, and implement systems to reduce those risks, such as the provision of personal protective equipment (PPE).

The Met Office provides daily forecasts of UV levels using a scale of 1 to 11 (or over) with accompanying advice on what action should be taken for each value. Installing a board where farmworkers gather, which shows the current UV level, accompanied by a table with the Met Office's advice, together with a sunscreen dispenser and/or the provision of sunhats, long sleeved shirts and trousers would be one reasonably practicable system that could easily be implemented by any employer to ensure that their employees are aware of the risk they face from UV exposure and provide them with ways to prevent the UV damaging their skin.

There are numerous companies that provide such equipment and can advise on the best sunscreen and work gear to provide workers with. That being said, most recommendations will be to use SPF 50 sunscreen with UV A, B and C protection.

Whilst this article has concentrated on those that work outdoors, other workers may be exposed to sun damage without realising it.

Ordinary glass largely blocks UVB (the primary UV to cause sunburn), however, more than 50 percent of UVA rays can penetrate certain types of glass. UVA is the main cause of premature skin aging and both UVA and UVB contribute to the development of skin cancer.

Whilst the majority of farm equipment now comes with specialist glass to prevent UV penetration, this should always be checked when purchasing machinery or replacing broken windows.

It is also possible to be exposed to UV that does not originate from the sun. One example is the exposure to UV from welding, in particular, UVC rays which are created during arc welding. It is important for employers to consider all of the health and safety risks that its employees face, some of which may not be obvious, and take reasonably practicable steps to remove or reduce those risks.

For further advice and guidance on this or any other health and safety related topic, please contact **John Ashworth** (josh.ashworth@rollits.com) who will be happy to help.

Pig & Poultry

Sector Outlook

The biennial Pig & Poultry Fair, held this year at Birmingham NEC, was a showcase of innovation despite the challenges that continue to face the sectors. The key themes of the show, summarised succinctly by Philip Gready of The Royal Agricultural Society of England, were “innovation, collaboration and sustainability” and the outlook for the future was positive on the whole with the egg industry facing the largest area of growth in recent months.

Food Security

Food security has been a hot topic over the last few years, it being something that the United Kingdom has been traditionally very proud of. However, there are numerous challenges facing our nation's food security such as supermarket's desire to beat each other on price, changing climates affecting the ability for food to be produced consistently as well as diseases such as avian influenza and swine fever.

For the pig and poultry sectors, an emphasis on improved animal health and welfare is being promoted. The idea being that improved health and welfare will also increase a farmer's returns.

In the poultry sector, new Laying Hen Housing for Health and Welfare grants have been recently unveiled by DEFRA. This grant which will open for application at the end of June 2024 is available to commercial producers who have more than 1,000 birds and the grant can be applied towards building a new veranda or updating housing stock (so refurbishing or replacing existing).

There are other conditions, such as the buildings being located in England and the lengthy of tenancy so the conditions need to be carefully considered.



In the pig sector, the mood seemed to suggest that the sector was starting to recover after some difficult years. However, potential changes to adaptive farrowing are being discussed and a report carried out by John Mackinnon (and commissioned by the National Pig Association) into adaptive farrowing systems was unveiled at the Pig & Poultry show. Adaptive farrowing would require more space and more sheds would likely need to be built. There is of course a cost implication for producers and difficulties in obtaining the relevant planning for such changes. Future grants would I am sure be welcomed in this sector also!

These challenges often seem contradictory and the increase in drive for welfare competes with the price driven attitudes of many retailers. Climate change policies also pull in another direction.

Biosecurity

Both the pig and poultry sectors face challenges in relation to preventing diseases such as salmonella, avian influenza and swine fever.

While there have not yet been any swine fever cases in the UK and the last recorded avian influenza case being reported in March 2024, the sectors are not complacent. This time seems to be being used to step up biosecurity to ensure that such cases are kept to a minimum, this was reflected in the number of exhibitors featuring biosecurity measures.

Innovative ways of increasing biosecurity, such as automatic vehicle disinfectant systems at entry and exit points are growing in popularity.

Climate Change

Climate driven policies are ever present and are having a knock-on effect on margins.

The changes towards sustainable soya have been created by EU and UK legislation which will regulate deforestation. The UK Soy Manifesto has also been created by industry and has been signed by numerous retailers with the aim of sourcing more sustainable soya. The timings for the introduction of such legislation (2025) are causing some uncertainty.

This uncertainty has had a knock-on effect for the purchase of soya in 2025 as producers that purchase on futures are having to pay above the odds to secure soya for 2025.

The pig sector has reduced its use of soya significantly, but soya does still remain a crucial source of protein for the industry.

Innovation

This year's pig & poultry fair had an Innovation Theatre to showcase the latest innovations in the sectors which can help with a number of the key concerns of the industry, such as preventing disease and enhancing biosecurity. Real-time monitoring of animals, listening systems to detect disease and emergency response biosecurity systems were showcased.

Looking to the Future

The pig & poultry fair also placed great emphasis this year on reaching future audiences both in terms of consumers and also for recruitment.

There has been an emphasis on educating younger children, delivering farm visits where able and getting the word out in relation to the nutritional benefits and the things that farmers are doing to mitigate sustainability concerns. Social media has in particular played an important role in spreading a positive farming message to younger generations.

How can we help?

We have a full service agricultural team, with specialists in planning, commercial property, banking, commercial law and more. We appreciate the challenges that these sectors face, so whether you need assistance with planning for a new shed, an increased overdraft to cover uncertainty in feed costs or the purchase of additional land to develop your business please do not hesitate to contact us.



Family

Life

Family relationships are integral to most businesses but in particular farming enterprises – they are the backbone to the successful running of a company or partnership. If there is any change to those relationships, whether that is between those working directly in the business or wider family relationships the impact can be significant. One such change is in marital relations – whether good news, such as an engagement or not so good news, a separation. In all circumstances there are steps you can take to protect the business and the individuals from the impact of such changes.

Partnership Agreement/ Partnership Property - a partnership agreement is always a good idea, whether from a business perspective or from a relationship perspective. Often farming partnerships will have been started many years ago and the makeup of the partnership will have changed over the years. If one partner separates, their interest in the partnership will be scrutinised and valued. Having a partnership agreement in these scenarios is essential as it sets out clearly what interest each partner has and what property is partnership property or what may belong to individuals outside the partnership. This is particularly important, if for example property may have been noted in the partnership accounts for years (often for bank borrowing purposes) but actually is owned outside the partnership. All the partners may understand this, but a spouse may never have understood this or has made certain assumptions which can result in difficult and expensive litigation trying to unravel the situation. A partnership agreement or at the very least a note in the accounts will make it clear to everyone exactly what interest each partner holds.

Shareholders Agreement – similar to a partnership agreement, it is always a good idea to have a Shareholders Agreement which can look at what may happen in a shareholder's personal circumstances were to change.

Family or Company Constitution – although not that common and not legally binding, they are often a good idea as they set out certain principles/expectations for family members, where there is a business which has been passed through generations. They then become the backbone for change in families and the starting point for difficult conversations when family life changes.

Cohabitation Agreements – if you are moving into a home together this type of agreement can document how you regulate your finances when living together and what you would like to happen if you separate. It is also important as they make a clear statement as to the ownership of the property you live in and what if anything could change that ownership whilst you live together.

Pre-Nuptial Agreements – this agreement sets out what a couple would want to happen regarding their finances if they were to separate. Whilst it may not be first in everyone's minds when wedding planning, they are important particularly if you have significant wealth which has been built up via sole endeavours prior to the marriage which is often the case for second marriages or if pre acquired wealth has come from inheritance/family gifts through no effort of the persons getting married and protection is needed for future generations. Such agreements can usually protect such assets provided they meet certain criteria, meet parties needs and are fair. It is important to get advice early if you are in this situation.

Separation Agreements – these are useful if you are separating but don't wish to divorce straight away but would like to sort out your finances or you are not married and separate and would like a clear document setting out the terms you have agreed after separation.

Will/ Powers of Attorney – it cannot be emphasised enough; how important it is to have a Will and to take Estate planning advice. Not only does it give you peace of mind, it will also help your family manage life after your death or incapacity more easily.

It is important to address these potential scenarios in advance, as whilst the hope is that these documents will never be needed, they provide clarity to all concerned and will make things easier and more efficient to resolve when the family situation may change. At Rollits our lawyers work together across departments to make sure all aspects family life is covered. In the first instance please contact **Alison Benson**, Partner in the Family Team on 01482 337363 or alison.benson@rollits.com.





Opportunities for Farmers to Provide and Sell

Biodiversity Units

Biodiversity net gain is a recent strategy that has been introduced to develop and contribute to the recovery of nature and its purpose is to ensure that the habitat for wildlife is in a better condition than prior to development. With effect from 12 February 2024 most new developments are required to provide a 10% biodiversity net gain and from 2 April 2024 this requirement came into effect for small development sites.

Every new planning permission in England is now deemed to be granted subject to a condition that development cannot begin until the developer has submitted a biodiversity gain plan to the local planning authority and the local planning authority has approved the plan. Developers must try to avoid loss of habitat to a piece of land that they plan to undertake development work on, but if they are not able to do this a developer must create habitat either on-site or off-site. On-site means the land subject to the planning application that the development work is on and off-site means either the developer's own land away from the relevant development site or biodiversity units bought from a land manager.

The introduction of this strategy has created opportunities for farmers, acting as land managers, to benefit financially by creating and enhancing habitats on their land to generate off-site biodiversity units for sale to developers. The market for off-site units is presently emerging and developers who are unable to provide required biodiversity net gain on their own development sites are likely to seek to purchase units off-site.

Farmers who may be contemplating the creation of biodiversity units should consider what units are presently on their land and what they wish to create having regard to what nature recovery is needed in their area. They would need to calculate how many biodiversity units would be on their site, which would be undertaken by a qualified ecologist applying a prescribed formula to undertake a calculation.

Land managers may seek to create or enhance certain habitats to sell units for specific development, or may create habitats and sell units to a developer at a later time (known as habitat banking). To sell units relevant land managers need to commit to creating and managing habitats for at least 30 years under a legal agreement, which may either be a planning obligation (section 106 agreement) with a local planning authority or a conservation covenant with a responsible body. When land has been secured for biodiversity units, it would then need to be registered on a Biodiversity Net Gain Register.

The market for sale of biodiversity units provides a new opportunity to use land for the provision and sale of bio-diversity units. This may be particularly attractive to farmers who are keen to diversify their income or gain a return on less productive areas of farming land that are not productive. It could also assist in increasing wildlife on parts of the farm-holding to provide aesthetic and general ecological benefits.

Registered or Unregistered Property and What Are the Implications for You?

What are the current systems?

Land and property in the UK can either be registered at the Land Registry or unregistered. When a property is registered, this means that the Land Registry officially records property ownership and they hold a computerised record of the title. Title to unregistered property is proven by title deeds.

It became compulsory to register land situated in different parts of the country at different times and depending on what transaction was being carried out. If there have been no dealings with the property, such as a sale or mortgage for example, which triggered compulsory first registration then it can still be unregistered.

As at September 2019, 87% of land in England and Wales is registered. This left 13% unregistered.

What are the benefits of registering land?

- Unregistered title deeds can be mislaid or destroyed. It can be a costly process to establish title to an unregistered property where the title deeds are missing. It is also likely to result in delays if the loss of the deeds becomes apparent during the course of a sale or a mortgage for example.
- Dealing with a registered title makes conveyancing easier, quicker and cheaper. When selling unregistered land, a buyer's solicitor often insist that the seller registers the title at the Land Registry before they will deal with the purchase which can result in considerable delays sometimes in the region of 2 years.
- You have clear documentary evidence of ownership which is often required when by third parties when dealing with property.
- Registering your land will give you certainty as to the extent of it. It is more difficult for third parties to acquire title to registered land by adverse possession than in respect of unregistered land.
- Fraud - when land is registered there are various steps a landowner can take to prevent against fraud such as the Land Registry property alert system and entering a restriction if you do not live at the property.
- Applications for voluntary first registration attract a 25% reduction on the fee payable to the Land Registry whereas an application for compulsory first registration will incur the full fee.

The law in this area can be complicated and it is therefore advisable to take advice from a specialist solicitor as regards registering your property. If you need any assistance with your property matters whether registered or unregistered please do not hesitate to get in contact.

