



Hewitsons Agriculture, Food & Rural Business

LEGAL UPDATE

Absolute Client Focus

September 2018

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Hewitsons reappointed to NFU Legal Panel



Denise Wilkinson
Partner

We are delighted to announce that the firm has been reappointed as a Legal Panel Firm for the NFU after an intensive six-month review. The firm is appointed to the panel for the next three years and will offer advice to NFU members across the full spectrum of legal services supporting the rural business sector in the Cambridgeshire, Huntingdonshire, Bedfordshire and Norfolk regions.

Firms appointed to the panel are chosen for their specialist expertise in agricultural matters, and need to be able to demonstrate a strong commitment to the rural sector. Also relevant to the assessment were fee structures, commitment to the NFU and its members, as well as feedback on the quality of our service received from NFU members and staff. Hewitsons has now been a panel member for 10 years which is testament to the strength of our offering to the rural sector. We look forward to working with the NFU and its members in the coming years.

The Agriculture Bill 2018



Gareth Williams
Partner



Stephanie Dennis
Senior Solicitor

12 September saw the publication of the Agriculture Bill. This Bill has met a mixed response from the agricultural industry and various other interested groups.

Fundamentally the Agriculture Act, if passed, would be an enabling Act. This means it gives powers to Defra, for England and some devolved administrations power to make regulations. Until the Act is passed and the regulations are made a lot of detail is still unknown.

What we do know is that direct payments are scheduled to continue until 2021 and then be phased out over a 7 year transition period. During that transition period payments may be de-linked which we assume means that they can be received without the need to hold agricultural land. The de-linking of payments will no doubt give rise to some interesting questions in the short term. For example how will a de-linked payment impact on agricultural rents? If the payment belongs to the tenant and he does not need the land to claim the payment will it fall out of consideration in the rent review? How will it affect sales? If payment is de-linked from the land can the right to payment be sold? If not how will it land affect values?

The de-linking of payments may be seen as an encouragement for those who wish to leave farming as it enables them to give up their land but retain their payments. If this results in many retirements with a lot of land being sold without entitlements going on the market, it may affect values.

Looking at the longer term the Bill enables the relevant authority to provide financial assistance. In keeping with much of the rhetoric prior to the publishing of the Bill the assistance is for a number of purposes including environmental protection, managing climate change, public access to land, animal welfare and the health of animals and crops.

There is no power to provide assistance purely to support food production, an aspect which has attracted much criticism.

Assistance can be given to help improve farm productivity. Also there a various powers that may be to try and strengthen farmers position in the market. Power is given to regulate the contracts for the sale and purchase of agricultural commodities, to regulate the marketing of commodities and to allow the formation of producer groups. So whilst food production may not be supported, assistance may be given to prepare for change by improving productivity and to try to level the playing field between farmers and the big food retailers.

However the Bill does not, and really could not deal with, the most crucial question facing farming businesses. What will our trading relationship be with the rest of the world? What tariffs will farmers face when selling abroad and what tariffs will be imposed on goods coming in. Until this is known sale prices and input costs cannot be predicted with any real certainty.

For more detailed comments on the Agriculture Bill please click here to email [Gareth Williams](#) or [Stephanie Dennis](#) or please speak to your usual contact in our Agriculture and Rural Property Team.

Do you know what do to do if one of your tenants is in financial difficulty?



Lauren Coote
Solicitor

Lauren Coote, a solicitor in our real estate litigation has written a helpful article on the considerations for landlords who find themselves with tenants facing financial difficulty. Read her article [here](#).

It's in the Partnership Accounts but is it Partnership Property?



Lucinda Brown
Partner

The recent High Court judgment in *Wild v Wild* [2018] EWHC 2197 (Ch) confirms that one partner cannot unilaterally cause property to become a partnership asset without the prior agreement or subsequent acceptance of the other partners.

The claimant, Gregory, claimed that a farmhouse and bungalow belonging to his late father were assets of an unwritten partnership agreement and therefore subject to the partnership's dissolution proceedings following the breakdown of the relationship between the two remaining partners; himself, and his brother Malcolm. The three defendants, Malcolm, his wife and his mother (the Deceased's widow), submitted that these buildings did not constitute partnership property and should pass in accordance with the Deceased's Will to Malcolm's mother.

Malcolm's mother had resided in the farmhouse with the Deceased throughout his lifetime, and continued to live there following his death. Malcolm and his wife occupied the bungalow. In the alternative, they argued that, even if the bungalow was deemed to be partnership property, then they still held the beneficial interest in the bungalow arising through proprietary estoppel because of the substantial amounts they had spent on renovations to the bungalow, based on representations made by the deceased during his lifetime that it would eventually pass to them.

A key difficulty in this case was the lack of formal documentation. The Judge held that a vague reference on the balance sheet of the partnership accounts to 'property' was indeed a reference to the farmhouse and bungalow. However, as Malcolm was just 16 years of age at the time that the partnership agreement was formed, the Judge held that his likely lack of knowledge of the farm's accounts rendered him unable to consent to the inclusion of the property on the balance sheet, meaning that the farmhouse and bungalow passed to the Deceased's wife in accordance with his wishes under his Will.

As the Defendants successfully defended the partnership property claim, they did not pursue the proprietary estoppel claim. The judge commented that had it been necessary to decide the matter, he would have found in favour of the Defendants based on them having incurred substantial expenditure on the renovation of the bungalow.

Whilst this case may provide some comfort to those concerned about the suggested inclusion of certain assets as partnership property without formal mutual agreement, it highlights the importance of businesses maintaining up-to-date documentation, as well as accounting for assets with clarity through a will or a formal partnership agreement so as to avoid lengthy and costly disputes.

If you would like to discuss putting in place a partnership agreement, please call your usual contact in our [Agricultural and Rural Property team](#).

This Bulletin is produced by Hewitsons for clients and contacts of the firm to provide them with a useful summary of recent cases, journal reports, developments in the law and dates to be aware of. It is not a definitive statement of the law in any area.

Advice should be sought from a solicitor in the Agriculture, Food & Rural Team at Hewitsons in respect of any information contained in this Bulletin that affects any matter with which you may be concerned. Hewitsons offers a full agricultural, food and rural service. This Bulletin will help to keep those involved up to date with the latest developments.

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