



Agriculture and Estates

NEWS AND ADVICE FROM BIRKETT LONG

As a farmer or land owner, you need a lawyer who knows and understands the agricultural industry inside and out.

Birkett Long has a dedicated specialist team advising on all aspects of law relating to rural, property and agri-business, and we are on hand to help with any legal issues you might face.

Our agriculture and estates team is informed and proactive; we understand the demands and requirements placed on those operating in the agricultural sector. As a client, you can expect us to have a thorough understanding of agricultural issues, and to provide seamless advice on all aspects of your business.

The Residence Nil Rate Band

Much comment has been made about the Government's RNRB, but how will it impact farmers? Katie Gibson-Green investigates.

Seasonal workers we need you!

Emma Coke looks at how Brexit might affect rural industries who rely on immigrant labour.

Land promotion... ...worth considering?

Daniel Sturman explains land promotion agreements and looks at potential benefits for farmers and landowners.

The residence nil rate band

and its impact on farmers

The Conservative Government's 2010 manifesto said they would raise the inheritance tax threshold to £1m. In 2015, a similar promise was made, with the words 'effective inheritance tax threshold'. But is this a reality? Katie Gibson-Green investigates.

Rather than raising the threshold to £1m, the Government has introduced a Residence Nil Rate Band (RNRB) to run alongside the existing Nil Rate Band (NRB), which by April 2020, will have reached £175,000. This means that an individual could potentially receive a total combined Residence and Nil Rate Band Allowance of £500,000. Just like the NRB allowance, married couples can transfer their unused residence allowance to their surviving spouse on their death, making a total combined allowance of £1 million.

Whilst on the face of it, this sounds like what was promised in 2010, there are caveats to the use of the RNRB which need to be borne in mind.

Certain conditions must be met to qualify for the RNRB. Firstly, you must own an

interest in a property in which you have lived. This could cause issues, in particular for tenant farmers who may own a property that they wish to leave to a descendant, but in which they do not live. They will need to prove that they lived in the property as their main residence at some point during ownership, as the RNRB cannot be claimed on properties that are purely investments.

"If your estate is worth over £2.35m the RNRB will not be available at all."

Secondly the RNRB can only be used if assets are being left to direct descendants (children, grandchildren etc.). This limitation can be unfair in a farming structure where other relatives, such as siblings, nieces or nephews may inherit the farm, either because the children are not involved in the business, or there are no direct descents. If the farmhouse is passed to direct descendants to secure the RNRB, this may affect the ability to claim Agriculture Property Relief (APR) if those descendants are not involved in the day to day farming activities.

What will the impact of leaving the European Union have for those businesses reliant on migrant workers from Europe? Emma Coke looks at the issues surrounding what could be a scarcity of labour.

Seasonal workers

we need you!

The agricultural and horticultural industries are very labour intensive and dependent on seasonal workers. Across all sectors, EU-born workers account for just 5% of the country's workforce but in these industries it's 65% - excluding seasonal workers according to the office for national statistics.

The Seasonal Agricultural Workers Scheme was implemented after World War II to help restore land and buildings in the UK and in

1973 it was adapted to allow access to a pool of workers from non EC countries. The scheme was terminated in 2013 when the last of the eastern European countries, the main suppliers of seasonal labour, joined the EU because a much larger than expected migration of seasonal workers provided a ready supply of labour.

However, Britain's exit from the EU will alter its access to this ready market and steps must be

Thirdly, and most importantly for farming clients, if the estate is worth more than £2m, the RNRB starts to taper away by £1 for every £2 the net estate exceeds this threshold. If your estate is worth over £2.35m, the RNRB will not be available at all. What is more of a concern is that the net value of the estate is calculated before the deduction of APR or Business Property Relief (BPR). For many farming families, the value of their estate means that they cannot claim the RNRB at all.

It is not all doom and gloom, however, as there are ways and means to use the RNRB, even if your estate exceeds £2m. Effective tax planning, or in extreme instances, deathbed gifts, can be effective ways to reduce the value of your estate to under £2m at the date of your death, therefore still qualifying for the RNRB. Tax planning, gifting, APR and BPR are all complex areas, and professional advice should always be sought before action is taken.

For further advice please contact Katie Gibson-Green on 01206 217602 or email katie.gibson-green@birkettlong.co.uk



Caroline's comments



Our winter newsletter was dominated by up and coming changes for the farming

community, and the UK as a whole, following the vote to leave the EU. Six months on we are still on the rollercoaster of politics both overseas and in the UK. Article 50 has been triggered, we have had a new Prime Minister and seen Donald Trump become president; all in the space of a year. And we are not finished! Teresa May has called an election on 8 June and many EU countries are threatening EU referendums, not to mention Scotland! I suspect that the journey is not yet over!

Whilst we are assured of subsidies until 2020, the feeling of continued assistance within the farming community is one of overwhelming caution. The last year's events do not inspire certainty and there is no room for complacency. To ride the times, the focus has to be nothing less than working hard, planning and trying to keep one step ahead so that businesses are best placed to deal with the challenges ahead.

Caroline Dowding
Head of Agriculture and Estates

taken to ensure a supply of labour is available to service those industries heavily reliant on it.

Addressing the Oxford Farming Conference earlier this year, Andrea Leadsom acknowledged the importance of EU seasonal labour to these sectors and indicated that the Government would seek to allow farmers to recruit from the EU post Brexit. She also told farmers to invest in machinery to boost productivity and that there were 'large numbers of farmers that are yet to seize these opportunities.'

The NFU has been pushing to secure more labour through the trialling of a fixed term work permit scheme for seasonal workers, targeting non EU nationals during 2017. However, this has

been rejected for 2017 by Immigration minister Robert Goodwill who states that reports of a UK farm labour shortage following the vote to leave the EU were not supported by the statistics. The Government will, said Robert Goodwill, keep the situation under review.

One of the barriers to any replacement scheme will be ensuring that seasonal workers do not acquire long term rights to remain in the UK. A work permit scheme allows this restriction and used to be in operation prior to the free movement of workers throughout Europe.

Emma will be pleased to talk to you about any of the legal issues that affect your rural business.



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With the increased demand and need for new housing in England, farmers are frequently being approached by developers, property finders and land promoters to consider future strategic land development. Daniel Sturman outlines what might be involved in such agreements and analyses whether land promoters can offer value to farmers and landowners.

land promotion...

...worth considering?

An increasingly popular trend developing in this area is land promotion and the use of land promotion agreements. So what is a land promoter and why do they use such agreements? A land promoter effectively acts as the land owner's agent and wishes to have exclusive use of the land owner's property for a specific period of time for promotion, planning and marketing purposes. The promoter will promote the land, make applications for planning consent to increase market value and deal with disposal. All of the leg work, including planning and promotion costs, will usually be paid for by the promoter, which is a massive incentive for land owners to consider such agreements.

Once the land has been effectively marketed and a sale is completed, the promoter will use the gross sale proceeds to reimburse the expenses incurred in promotion and then distribute the net sale proceeds with the land owner, with the promoter receiving a percentage of those net sale proceeds.

The land promotion agreement is entered into between the land owner and the promoter and is used to document the arrangement between the two parties. Usually the promoter will pay an initial sum to the land owner representing consideration for entering the agreement. The terms covered will include:

- the obligations on the promoter and the land owner
- what would be a satisfactory planning permission
- defining the promotion costs

- defining market value
- the initial promotion sum
- inspection of records and accounts in order to check the promoter's costs
- planning strategy, application, and statutory agreements such as s106 agreements
- meetings and cooperation
- disposal strategy and dispute resolution

Once agreed and exchanged, the land promotion agreement is usually registered against the land owner's property to protect the promoter's interest along with a restriction. If the promotion period expires and no sales have been achieved, the agreement is terminated and entry removed from the legal title.

As you can see, these agreements should be as comprehensive as possible so that both parties have a clear strategy and working relationship. Because of this, the down side is that such agreements are lengthy and costly. Usually when acting for land owners we advise that the promoter's solicitors provide an undertaking to pay the land owner's costs first, so that these are covered in case the matter does not proceed.

These agreements are becoming increasingly popular and allow farmers to have a third party pay for and deal with promoting the land, deal with planning on their behalf, and remove the risk and costs away from the land owner. Whilst such agreements are more risky for the promoter, if successful the result can lead to great profits being made by land owners and farmers. The benefits are obviously worth consideration but we would always advise taking legal advice before the agreement is finalised.

For more advice, please contact Daniel Sturman on 01245 453811 or email daniel.sturman@birkettlong.co.uk

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Reference: NEWS/RURALBUSINESS12/2017

