

# the word

Woodfines Solicitors' newsletter for Agricultural Law

Spring/Summer Newsletter 2018

In this newsletter, we re-join the Smiths on their farm, and look at some of the legal issues that they are currently facing...

## Do Mr Smith's tractors need MOT's?

Following an extensive consultation into whether or not tractors should undertake roadworthiness testing in the UK, the Government decided in September 2017 that tractors would remain exempt from MOT-style testing. This news has been welcomed by those in the farming community, and by Mr Smith who was concerned that their two agricultural tractors would now be subject to testing at additional cost to the farm.

The introduction of roadworthiness testing went to consultation in respect of tractors being used for commercial haulage. Many respondents recommended that testing for tractors used for agriculture should also be contained within those changes. However, the outcome of the consultation has been that testing would only commence for fast tractors used for the purposes of commercial haulage.

Testing will only apply to vehicles capable of more than 40kmph (approximately 25mph), this being in line with limits contained in EU directives on roadworthiness. The Government found during the consultation that there was no evidence presented that tractors incapable of travelling above 40kmph are routinely involved in commercial haulage.

Further, the 2017 consultation proposed that testing should apply to vehicles being driven further than fifteen miles from the base of operation, as that implies a greater risk to road safety. It was felt that the fifteen mile threshold was a reasonable compromise for the point beyond which fast tractors are likely to undertake significant haulage and could reasonably therefore compete with HGVs, but yet allows for agricultural



**Mike Hayward,**  
Partner

businesses which need to make journeys between two sites accessed by public road(s).

The DfT considered that the distance limits allowed for easier enforcement by the Police or the Driver and Vehicle Standards Agency (DVLA) and was more suitable than alternatives such as cumulative use, e.g. distance travelled over a set period of time. It should be noted that if there were to be any enforcement then the burden of proof would be on the vehicle operator to demonstrate that they qualify for the distance based exception.

A farming business such as the Smiths' should check the vehicles in use and whether these fall within the definition and exemption of agricultural vehicles, as some of those vehicles may require a different driving licence and may be exempt from certain Vehicle Excise Tax. Vehicle driving licences are also categorised by type of vehicle and can vary according to the weight of the vehicle.

Whilst most agricultural tractors can be driven on the public highway by anyone who has passed a car driving test, it is still worth checking who is driving your vehicles and for what reason. Under special licensing arrangements you are allowed to drive larger vehicles on your farm without holding a large

goods vehicle (LGV) permit, for example. But if you wish to drive a larger vehicle, the maximum authorised mass, which is made up of the total weight of the vehicle plus the maximum load it can carry, would determine which driving licence entitlement you require.

There are further exemptions in place in relation to agricultural material handlers, agricultural engines and agricultural processing vehicles. Again, these can be distance limited and these vehicles must only be used on public roads when passing between different areas of land occupied by the same farmer.

It can be seen there is a whole mix of regulation to be considered in relation to agricultural vehicles. Farming Associations and specialist agricultural lawyers, such as at Woodfines, will be able to assist Mr Smith in relation to identifying these aspects and may be able to help in liaising with the DVLA in making applications for exemptions. Enforcement and prosecution of farmers is rare, and it is certainly not in the interests of Rural Police Officers to seek to enforce against farmers going about their agricultural activities. However, where there are concerns about road safety or the driving ability of those in operation of large machinery, or where there is any concern of anti-competitive behaviour (i.e. a farmer using its vehicles for the purposes of competing with a local haulier), then a farmer becomes more likely to face some form of enforcement or regulatory action.

**For further information or advice,  
please contact Mike Hayward  
on 01908 202150 or email at  
mhayward@woodfines.co.uk**



# Prenuptial Preparations

Kevin, the middle son of Mr and Mrs Smith, is getting married soon to Annie. His grandmother, Victoria, is concerned about the marriage as Annie is a 'city girl' and might not adapt to farm life.

The family want a prenuptial agreement (Prenup) in place to protect the farming assets and Kevin's catering business which is based at the farm. They are also keen to protect the farmhouse which the couple will live in as it has been in the family for several generations. With 42% of first marriages ending in divorce, Victoria's worries are understandable.

## How assets are divided on divorce

Without a Prenup in place, the financial outcome is uncertain and the courts have a very wide discretion how to distribute assets on divorce taking into account a number of factors, not least financial needs and the resources available to meet those needs. Where one party to the marriage has greater assets, as is the case here, an equal sharing of the assets division can seem unfair and unbalanced. Having in place a formal written agreement that sets out the rights and obligations of each party should the relationship fail makes good legal sense.

A Prenup gives both parties a clear understanding from the outset as to how their assets, debts and financial commitments are to be dealt if they decide to part, and can include financial provision for any children of the marriage too.



**John Egan,**  
Partner

## The protection a Prenup provides

Anyone who is not entirely comfortable with the idea of sharing all their assets with their other half if their marriage or civil partnership were to break down should consider a Prenup.

Kevin and his family want to protect the farm assets used in his catering business. The couple will be living in one of the farmhouses which has been inherited and passed down the family for several generations, so the financial and family fall-out from a divorce could have far-reaching implications for all concerned. Although inherited assets such as farms are sometimes excluded from the pot of shared assets on divorce (depending on the circumstances of the marriage) this does not generally extend to the matrimonial home and other mingled assets, in this case the farmhouse.

## Putting plans in place

A Prenup must be entered into freely and willingly by both parties. Kevin and Annie will need to take independent legal advice to ensure they understand the nature and implications of the agreement they

intend to be bound by. There also needs to be transparency as to your financial circumstances with full financial disclosure being exchanged to ensure you know the implications of the agreement.

Although a Prenup doesn't (yet) have statutory support, it will usually be upheld by the Court provided that:

- it was entered into by each party with a full appreciation of its implications
- it doesn't give rise to a manifestly unjust result
- there is no evidence of one party being coerced into signing it against their will
- it was drawn up well in advance (if it is made close to the ceremony, the other party could challenge it, taking the view that it was made under pressure, and so not enforceable)
- Full financial disclosure is exchanged

Whilst they aren't always viewed as the most romantic of gestures, Prenups can play an important role in establishing an open and honest relationship from the outset.

For farming families, they can provide a practical and pragmatic tool that protects their livelihood for future generations.



For further information, please contact John Egan on 01908 202150 or email [jegan@woodfines.co.uk](mailto:jegan@woodfines.co.uk)



# Securing the future

Victoria (Mr Smith's elderly mother and co-owner of the land) will soon be turning 90 and wants to ensure that the farm and land stays in the family, with effective tax planning. She owns 50% of the land farmed by the Partnership, having previously farmed it with her husband, Albert, when he was alive.

Victoria is wise to seek advice. The farming business needs to have a partnership agreement and succession plan in place to reduce Inheritance Tax (IHT) and ensure the future success of the farming business.

## Partnership agreement and succession planning

It is common for farming businesses to trade as partnerships; however it can sometimes be the case that either there is no formal agreement in place or that it is out of date. As a first step, the advice to Victoria would be to ensure that an up-to-date partnership agreement is in place to provide clarity and ensure that valuable IHT reliefs will be available to be claimed on her estate.

Without a partnership agreement in place it can be unclear in the case of owner-occupiers whether the land, buildings and farmhouses from which the farming business operates are partnership property, or owned personally outside the partnership. This can have major implications for IHT.

For IHT purposes, each partner owns a share in the partnership. Under the current rules, if a partnership business is trading on a partner's death, their share will be eligible for up to 100% Business Property Relief (BPR) subject to a two-year qualifying period. If the partnership includes the value of the property from which the business trades, that will also be eligible for 100% BPR.

However, if the land and building are owned personally and outside the partnership, then BPR is likely to be restricted to 50%. This is important as Agricultural Property Relief (APR)



**Tim Addinell,**  
Partner

may not be available on all property used in the farming business and the Smiths must remember that if there is no written partnership agreement in place and no provision for continuity in a written agreement, in the event of a partners death the partnership will come to an end which could have disastrous consequences.

## Safeguarding the future of the business

Key decisions will have to be taken as to what will happen to Victoria's share of the partnership on her death. If Victoria and Mr and Mrs Smith as the existing partners of the business want to introduce new partners, perhaps Mr and Mrs Smith's three children, they should consider putting plans in place now. A new partner can be introduced without assets having to be transferred at the same time, allowing a gradual approach to be taken.

It is often the case that the issue of fairness arises when considering a succession plan. It is important for the partners to consider those family members who may not be directly involved in the farming business, as this can be a potentially difficult area. However, there are ways around this such as using the proceeds of life insurance to transfer cash to heirs, and adding carefully crafted wording to wills and partnership agreements.

## LPA for business interests

Business continuity is an important concern for many farming businesses. Ensuring that the business continues to run smoothly if the one of the owners becomes unable to continue working in

it, through mental or physical incapacity, or through absence or a change in personal circumstances, simply makes good commercial sense.

As a partner, Victoria needs to consider what would happen to the business if she was unable to make decisions about its future. This is where a Lasting Power of Attorney (LPA) for business can be invaluable. Without this important safeguard, the business might face real problems if Victoria was unable or unavailable to carry out her duties.

Whilst it's easy to assume that if Victoria wasn't able to play her part in running the business, someone else, perhaps a family member could automatically take over her duties and responsibilities, as far as the law is concerned this isn't the case. For example, they may not be able to access bank accounts or authorise the signing of contracts.

Entering into an LPA gives the person(s) she nominates as her attorney(s) the necessary legal status to run business affairs on her behalf. In addition, she can choose the roles she wants her attorney(s) to fulfil. For example, she could appoint one person to act independently on some aspect of the business, but jointly with others on, say, financial matters.

When considering an LPA for business use, it is important to refer to the partnership agreement as there may be clauses relating to the incapacity of directors or partners, and the LPA shouldn't conflict with these provisions.

Along with creating an LPA, Victoria should ensure that she has a valid will in place. She may also want to consider using her annual IHT/CGT exemptions to pass on her wealth to the family during her lifetime.

**For further information or advice, please contact Tim Addinell on 01767 680251 or email [taddinell@woodfines.co.uk](mailto:taddinell@woodfines.co.uk)**

# How to set up a farm-based livery business



Mr and Mrs Smith's youngest daughter, Sarah, is looking to set up her own livery yard at the farm. Here are some tips on setting up this type of business.

## Deciding what service to offer

Sarah will need to think about the sort of service she wants to provide, and whether it will be her main source of income, or if she just wants to make some money from renting out spare stables. If it's the latter, then running a DIY yard may be the answer. In this case Sarah will be responsible for the maintenance of the place and won't be expected to provide additional facilities.



If she's thinking about running a larger yard, then she'll need to consider the facilities she'll provide, and work out how many stables she needs to fill and at what price in order to make the business pay.

It makes sense to put a business plan together and to look closely at the costs involved in establishing the business. These will include providing suitable stabling, insurance (farm insurance covers only agricultural activities), security measures and daily running costs. Sarah may have to pay business rates, although small business relief may be available for new farm diversification businesses with a rateable value of £12,000 or lower for five years.

## Business issues

Sarah will need to apply to her local planning authority for change of use for the farm buildings she'll be using for her business. If she decides to add facilities such as a training arena, she'll need planning permission for any building or conversion work that's required. She will also need to think about how she will dispose of waste; the average horse produces 7.5 tons of manure a year and there are regulations concerning its disposal.

Whilst public liability insurance is optional for some businesses, it's compulsory for horse riding establishments. So if Sarah plans to do more than just offer livery, perhaps providing lessons, she will need to take out a suitable policy, and obtain a

licence from her local authority under the Riding Establishments Act 1964.

## Customer contracts

As the business will be offering a paid service, Sarah will need to have a legal contract for use with her customers. This will need to cover what is and isn't provided by the yard, the charges for services provided and the responsibilities each party has in relation to matters such as; vets bills, food and turn-out. In addition the contract should address commercial risks such as breach of contract, negligence and breach of statutory duty and apportion/limit legal liability for such risks accordingly.

## Tax considerations

Taking farm assets out of agricultural use means that they no longer qualify for agricultural property relief for Inheritance Tax purposes, although they may be eligible for business property relief, so the family needs to be aware of this.

## Practical help

Organisations such as the British Horse Society (BHS) provide a lot of valuable information for start-up businesses in this field, including their BHS Approval scheme. Although there is a charge, being a member of the scheme would show that Sarah's business meets the Society's standards.



**Alice Wooler,  
Solicitor**

For further help or advice, please contact Alice Wooler on 01908 202150, or email [awooler@woodfines.co.uk](mailto:awooler@woodfines.co.uk)

For further help with any aspect of farming and agricultural law please contact a member of our Agricultural team at:

[agriculture@woodfines.co.uk](mailto:agriculture@woodfines.co.uk)

If you would like unsubscribe from this newsletter, please email [marketing@woodfines.co.uk](mailto:marketing@woodfines.co.uk).

For the avoidance of doubt, please note that this newsletter is not intended to and does not constitute formal legal advice. Should you require advice then we will be happy to assist and will issue you with our formal terms of business.