



Field Talk

Agricultural Law Briefing • Spring 2024

New dairy sector contract regulations set to enhance fairness and transparency

In a move aimed at bolstering fairness and transparency within the dairy sector, new regulations have finally been put into law.

Following a comprehensive consultation process initiated in 2020, stakeholders within the industry eagerly anticipate the implementation of these regulations.

Outlined within the regulations are several key provisions designed to address longstanding concerns and promote equitable practices within the sector:

Clearer Pricing Terms: Contracts will now explicitly delineate the factors influencing milk prices, providing greater clarity for all parties involved.



Consent Requirement for Contract Changes:

Unilateral alterations to contracts will be prohibited without the mutual consent of both parties, fostering open dialogue and agreement on necessary modifications.

Establishment of Farmers' Contract Grievance Procedures:

All farmer contracts will incorporate straightforward mechanisms for raising concerns, fostering accountability and facilitating timely resolution of issues.

Defined Notice Periods and Exclusivity Rules:

Clear guidelines will be set regarding notice periods and exclusivity clauses, aiming to prevent ambiguity and mitigate potential disputes that have arisen in the past.

Enforcement Mechanisms: An enforcement mechanism will be established to ensure adherence to the regulations, thereby solidifying a framework for a fair and transparent dairy industry poised for future success.

Further guidance on the specifics of these regulations will be disseminated upon their passage, along with instructions on adapting milk supply contracts to ensure compliance with the new standards.

These regulations signify a significant step forward in promoting fairness and transparency within the dairy sector, laying the groundwork for a more robust and sustainable industry landscape. Before signing any new contract you should consult an expert lawyer.

Welcome to the Spring 2024 edition of Field Talk



As we continue to navigate a new chapter in agriculture, there are three recent legal developments affecting farmers across the UK: the new dairy sector regulations,

a landmark NFU victory on poultry compensation and the new legislation compelling developers to deliver Biodiversity Net Gain when building new housing, industrial or commercial developments.

The new dairy sector regulations promise to usher in a new era of fairness and transparency. With clearer pricing terms, protection against unilateral contract changes, and mechanisms for dispute resolution, these regulations aim to instil confidence and stability in the dairy industry. By promoting accountability and enforcing compliance, they give hope for a more equitable playing field to ensure sustainable livelihoods for all stakeholders. We hope that these regulations will act as a blueprint for similar initiatives across other areas of the agri supply chain.

The recent legal success of NFU members in securing fair compensation for poultry farmers marks a significant milestone. The successful challenge against the Animal and Plant Health Agency underscores the importance of advocacy and legal recourse in safeguarding farmers' interests. This victory not only sets a precedent for equitable compensation practices but also underscores the vital role of collective action in addressing systemic injustices.

The new Biodiversity Net Gain (BNG) policy in the UK aims to ensure that development projects result in a measurable increase in biodiversity. For farmers, BNG can present both challenges and opportunities. On one hand, farmers

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Counting the cost: Fixed and variable penalties as an alternative to prosecution

In December 2023 and January 2024, significant changes were made to the way penalties are issued for breaking rules and regulations.

These changes affect how organisations like local authorities and the Environment Agency handle offences without resorting to a full legal prosecution.

Penalty notices, which are like fines, can now be given out without requiring someone to admit they did something wrong. Instead of going to court, people can pay the fine to resolve the issue. If they don't pay, though, they could end up facing a full legal case later.

These changes are particularly important for the farming industry. They cover things like how animals are treated and cared for, as well as pollution issues that weren't previously dealt with using penalty notices.

For animal welfare, new rules allow authorities to issue fines of up to £5,000 for certain offences, such as mistreating animals. The police can also give out fines for specific dog control problems.

The government has given guidance to local authorities and police on when to use these fines. They need to consider things like how serious the offense is and whether the person has tried to fix the problem before.

When it comes to environmental issues, the Environment Agency has had the power to issue fines for a while. But now, they can give out even bigger fines for things like polluting water or not following waste rules.

Before these changes, there was a cap on how much these fines could be. But now, there's no limit, meaning big companies can be fined more for serious pollution problems.

If someone is going to be fined, they have a chance to argue against it. They can send in a written response within 28 days explaining why they shouldn't be fined. And if they're still not happy, they can appeal to a special tribunal.

These changes mean that farmers and other businesses might find themselves facing more fines than before. While going to court can be expensive and time-consuming, paying a fine might seem like a simpler option.

For the authorities, these fines offer a way to deal with smaller problems without going through a lengthy legal process. And for big polluters, the threat of unlimited fines might encourage them to clean up their act.

But it's important to remember that these fines aren't meant to replace going to court altogether. Serious offenses will still be prosecuted, especially if they cause a lot of harm to animals or the environment.

If you're facing legal issues related to the environment or animal welfare, our highly experienced team can help guide you through the process. Feel free to get in touch for advice or support at any stage.

For more information about this article and generally on our criminal & regulatory legal services for farmers, please contact:



Sam Harkness

Solicitor

0345 209 1842

sam.harkness@clarkewillmott.com

Welcome *continued*

may face increased scrutiny and regulatory requirements related to biodiversity conservation, particularly if they undertake land development projects. Compliance with BNG regulations may necessitate additional planning, monitoring, and implementation of biodiversity enhancement measures, which could entail costs and administrative burdens. On the other hand, BNG policy will create opportunities for farmers to generate revenue through biodiversity offsetting schemes using conservation projects on their land to sell biodiversity credits. As with any new market there will be a great deal to learn about how this will work in practice and the devil, will as ever, be in the detail of the contracts. There was also welcome news in the budget announcement that Agricultural Property Relief will be extended to environmental agreements from 6 April 2025.

However, amidst these triumphs, farmers continue to grapple with the ramifications of Brexit. The phasing out of direct payments under the Common Agricultural Policy and the introduction of new subsidy schemes have introduced uncertainty and complexity. Navigating post-Brexit regulations, trade agreements, and market fluctuations requires resilience and adaptability. As farmers adjust to evolving realities, proactive engagement with policymakers, industry stakeholders, and support networks becomes indispensable in mitigating risks and seizing opportunities.

In conclusion, as we confront the challenges and opportunities of a new agricultural landscape, collaboration, resilience, and advocacy emerge as guiding principles for farmers. By leveraging the forthcoming dairy regulations to foster transparency, drawing inspiration from the NFU's legal victory to champion fairness, and navigating post-Brexit challenges with agility, farmers can navigate the complexities ahead. Our team of agricultural specialists at Clarke Willmott look forward to supporting the farming community as they pave the way for a prosperous and resilient future.

Esther Woolford, March 2024

How to make Nature Recovery pay

Nature Recovery is a hot topic at the moment.

Recent legislation means property developers are now having to achieve mandatory levels of improvement to the natural environment for wildlife (known as "Biodiversity Net Gain" or "BNG") in connection with the sites they deliver. This has created interesting opportunities for landowners to make nature recovery pay.

BNG is an approach to development and/or land management that aims to leave the natural environment for wildlife in a measurably better state than it was beforehand. As of 12 February 2024, the relevant provisions of the Environment Act 2021 came into force meaning that all major commercial and residential development must achieve a minimum of 10% BNG. The same will apply to minor sites on 2 April 2024 and is expected to extend to Nationally Significant Infrastructure Projects, from late November 2025.

If developers cannot meet this requirement through their development, the gain can be delivered on separate land, as long as it is maintained accordingly for 30 years. This has led to developers seeking off-site solutions on 3rd party owned land to meet the BNG requirements for their projects via a variety of legal frameworks, offering new income and capital opportunities for landowners.

The requirements vary in each Local Planning Authority but the principle is that a habitat management and monitoring plan is put in place (via a s106 agreement or conservation covenant) which will record the number of units that the scheme generates. Then the units can then be sold to a particular development, which then allows the developer to proceed with their development.

We are pleased to confirm that CW were involved in creating the first live habitat bank in Devon. We are also assisting a wide range of landowners and unit providers in establishing their own habitat banks. There are a number of ways in which land can be owned, controlled and managed to deliver saleable BNG units. Some of the possible frameworks available to landowners to make nature recovery pay are:

1. Leasehold Habitat Banks

- The landowner will grant a lease, either directly to the developer or to a third party unit provider or "broker". The leaseholder will then manage the land as a "habitat bank" generating the BNG units to be allocated and sold.
- Depending on the scheme, the landowner could receive 1 lump sum payment as a premium or a guaranteed income stream via annual rental payments. Landowners should carefully consider which best suits your circumstances and take advice on the tax implications, as it's not always clear how the income or capital received from BNG schemes should be taxed.
- Consider who has the management responsibility. Some schemes place the responsibility on the leaseholder, whereas some schemes require co-creation or co-management. Registering the scheme will restrict the use of the land, so a co-creation/management scheme may be favourable if a landowner is concerned that the scheme needs to fit with wider business operations and not compromise other income streams.
- Landowners should make sure that the lease doesn't include break options that could leave them open to habitat management obligations which require expense and expertise.
- There may be significant upfront capital costs required for the design approval, registration and creation of the habitat bank. Check who will be responsible for these.

2. DIY via Self-fund or Green finance

- This framework allows the landowner to create and maintain the habitat with a view to selling the units directly to a developer.
- The obvious benefit is that landowner will directly receive the income from the sale of the units and will have complete control over the management of the land.



- However, there is no guarantee of units being allocated/sold. Landowners should consider whether they have sufficient routes to market and speak with land agents to take advice on the best way to market the units.
- As outlined above, there could be significant costs involved in the habitat creation. 'Green finance' can assist. There are specialist lenders who will assist with the funding of these projects, who offer loans with lower rates which could assist with other projects or cashflow generally.
- Advice needs to be taken as early as possible from ecologists on scheme viability and cost.

3. Strategic land deals

- If you are in the process of agreeing a strategic land deal, remember that developers may be open to the possibility of acquiring extra land for habitat creation. They may also want to take an option for BNG units if you have already created a scheme. It's worth asking the question.
- As with any deal, ensure you get appropriate valuation and tax advice on potential disposals.

Finally, a few general considerations for any landowners considering any of these schemes:

- Teamwork can make the dream work. Consider forming a consortium with neighbouring landowners to maximise potential. A landowner's agreement between the consortium will set out the responsibilities to one another.
- Remember that a section 106/Conservation covenant will be binding on successors in title and crystallise the use for at least 30 years. Consider your circumstances carefully and that of the next generations.
- You should take advice early on to establish whether the land is encumbered by restrictive covenants, easements or charges which would frustrate BNG potential.

This is an interesting time for landowners and developers alike. To ensure that you maximise the potential of your land, please get in touch to speak with our Real Estate and Planning teams.



Caroline Waller
Partner
0345 209 1814
caroline.waller@clarkewillmott.com

NFU victorious in poultry compensation claim



A group of NFU members recently emerged victorious in a legal battle against the Animal and Plant Health Agency (APHA), an arm of DEFRA, concerning compensation for poultry farmers affected by Avian Influenza outbreaks.



Assisted by the NFU and its legal support scheme, these members successfully challenged APHA's handling of compensation procedures.

The case centred on farmers who promptly reported suspected Avian Influenza cases to APHA, which then dispatched officers to investigate. Upon confirmation of an outbreak, APHA mandated the culling of all birds on affected farms, regardless of their health status, with the culling to occur at a later time.

Delays in the culling process led to healthy birds contracting the virus during the interim period. Compensation is based on the number of healthy birds culled. Consequently, it was argued that affected farmers should be compensated from the point when APHA determined the need for culling, rather than the later date of actual culling, which often resulted in more birds being infected and reduced compensation payouts.

In a significant victory for NFU members, the Court ruled in favour of their argument during the Judicial Review, deeming the government's culling policies unlawful.

As a result of this landmark decision, other poultry farmers may now have the opportunity to have their compensation reassessed based on the revised interpretation of the law.

For more information about this article and our agricultural legal services generally please contact:



Laura Mackain-Bremner

Partner

0345 209 1549

laura.mackain-bremner@clarkewillmott.com

Clarke Willmott are the longstanding NFU panel firm for Dorset, Somerset, Gloucestershire and Wiltshire.

Come and say hello!

Our Team are looking forward to attending a number of agricultural Shows this summer. Look out for our Legal Drop In Sessions, hosted on the NFU stands, where you can pop in for a cup of tea or coffee and chat to our experts about any legal issues. Alternatively, if you would like to meet up with one of the team at a Show please do drop us a line. Find us at:

- North Somerset Show – Monday 6th May
- Devon County Show – Thursday 16th – Saturday 18th May
- Royal Bath & West Show – Thursday 30th May – Saturday 1st June
- Royal Cornwall Show – Thursday 6th – Saturday 8th June
- Royal Three Counties Show – Friday 14th – Sunday 16th June
- Honiton Show – Thursday 1st August
- Dunster Show – Friday 16th August
- Gillingham & Shaftesbury Show – Wednesday 14th – Thursday 15th August
- Melplash Show – Thursday 22nd August
- Alresford Show – Saturday 7th September



- Moreton in Marsh Show – Saturday 7th September
- Dorset County Show – Saturday 7th & Sunday 8th September
- The Dairy Show – Wednesday 2nd October

Contact **Sam Mackenzie-Green** on sam.mackenzie-green@clarkewillmott.com to arrange a chat.



Badminton Horse Trials

Badminton, GL9 1DF,
Saturday 11 May 2024

Photo © Badminton Horse Trials

Clarke Willmott LLP and Albert Goodman are delighted to invite you to join us in our Lakeside Pavilion at Badminton Horse Trials.

Pop in from 10:30am for a ringside view of the action. Enjoy a tea or coffee, glass of bubbly and light refreshments, available throughout the day. Admission to the horse trials not included.

Further information about the event: www.badminton-horse.co.uk



Harry Meade and Esther Woolford at Badminton Horse Trials 2023.



Photo: Katie Mortimore Photography



David Maddock and Rod Lloyd-Jones at Badminton Horse Trials 2023.

The Route to Diversification



Farmers have been exploring ways to diversify for many years now and adding a new avenue of revenue to supplement the agricultural return is now fundamental to the business model of many farms.



One business which makes dreams of diversification into reality are the highly successful Appetite Me who have overseen the creations of award-winning farm shops, cafes/restaurants and even retail villages. We asked them to talk us through their approach to delivering these complex projects.

The Power of a Solid Business Plan & Financial Study

A strong business plan serves as the foundation of every thriving business. It defines your goals, strategies, and potential challenges, offering clarity and direction. Appetite Me use industry-specific knowledge and real-life data to ensure these plans are robust and realistic. A comprehensive business plan and financial study are also a key part of any successful grant application which may be an avenue of funding available to you. This strategic approach not only increases revenue but also provides stability, making it fundamental for developing farms and estates eager to reach their full potential.

Case Study: Roots Café, Bury St Edmunds

Rougham Estate opened the doors on their new diversification, Roots Café in October 2023. This was the culmination of a long and detailed process, from project planning to the appointment of key personnel. The team at Rougham aspired to create more than just a café; they envisioned a communal gathering place that was deeply rooted in the surrounding community. This was reflected in the modern, vibrant design that not only encapsulated a warm and inviting atmosphere but also emphasised their commitment to local sourcing.

To start this project off, an internal and external block plan was developed which provided the building blocks specific to the business needs and a strategy was devised to strike a balance between maximising profitability and delivering a unique customer experience. From this plan they were then able to build a procurement plan for a range of soft furnishings, shop fit, kitchen equipment and all other requirements to create a functioning café operation that remained focused on being sustainable and practical.

Sourcing and recruiting the right people to fit the business was another important step and finding excellent leadership was crucial. Once the team had been recruited, they set to work with the chef to create a menu that both reflected the local produce available and provided a synergy between the wider estate offerings while reflecting their brand.

The result? Roots Café has blossomed into a thriving hub within Blackthorpe Barn, significantly enriching the visitor experience and generating a steady stream of revenue throughout the year.

Appetite Me is at the forefront of this sector, dedicating its services to enhance your financial return.

For more details, visit www.appetite.me.uk



Divorce in farming families

With the new year now in full swing, and the alleged spike in marriages purportedly breaking down immediately after the festive period (the 8th of January having been dubbed ‘divorce day’ by the media), now is an apt time to be getting your affairs in order as part of a personal ‘spring clean’.

Divorce can be a complex and emotional process, and for farming families the stakes are often higher with concerns about the future of the farm being at the forefront of concerns for many farming clients. To ensure that matters are structured in a way to provide future protection, where possible, or at least provide clarity which helps minimise costs on divorce, consider these top tips:

Review Your Partnership Agreement: A current partnership agreement, delineating asset and liability ownership among partners, is paramount. This precludes ambiguity and fosters a smoother separation. Given the intersection of legal and accounting principles, it's advisable to seek guidance from both your accountant and lawyer. This becomes particularly crucial when contemplating long-term tax strategies or incorporating a spouse into the partnership.

Consider Nuptial Agreements: Proactively addressing potential issues during amicable times is a strategic approach to averting acrimonious divorces. Nuptial agreements, encompassing pre-nuptial and post-nuptial agreements, outline asset division protocols in the event of divorce. Though not legally binding, courts are increasingly deferential to well-crafted agreements, depending on the specifics of each case.

Estate Planning: A family discussion on trusts and ownership structures can fortify the farm's future and delineate intended beneficiaries, underscoring its dynastic essence. It's imperative to seek counsel on these wealth planning tools to navigate competing objectives, such as tax optimisation and asset preservation.

Update Your Will: A comprehensive Will ensures the accurate reflection of your wishes and provides an avenue to shield farming assets within a trust framework. Despite divorce not nullifying the Will, it treats the former spouse as deceased, necessitating a revision to reaffirm your intentions.

Seek the Right Professional Help: Initiating consultation early on is pivotal to safeguarding your interests and forestalling costly errors. Engaging a lawyer who resonates with your circumstances is indispensable. Given the evolving political landscape impacting farming, it's imperative that your legal team possesses agricultural expertise to navigate potentially intricate farming arrangements. Collaborating with other advisors, such as accountants and land agents, facilitates a well-rounded approach.

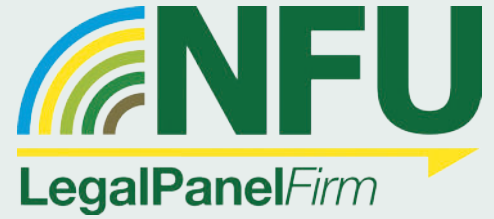
While 'divorce day' may be a media fabrication, the onset of the new year serves as a timely prompt for farming families to proactively safeguard their future. By meticulously reviewing key legal documents, assessing asset structures, and seeking counsel from professionals well-versed in agricultural matters, you position yourself favourably to protect the farm's continuity amidst life-altering events like divorce.

For more information and expert advice on this complex area of family law please contact:



Philippa Yeo
Partner
0345 209 1749
philippa.yeo@clarkewillmott.com

Notes from the NFU: Food labelling: Does it do what it says on the tin?



There are few topics that divide opinion more than food labelling. Poor labelling can cause huge frustration for farmers.

Shoppers – who, according to the AHDB, take no more than 80 seconds to make their minds up about what they are going to buy – need to be able to make informed choices about the food they eat. To do that, they need accurate, clearly presented information about the product they are buying.

But attempts to distil the complex processes involved in the food chain into something simple enough for the small space available on a label may actually leave them more confused.

What does the law say?

Labelling regulations govern what is displayed on a label, but they also protect consumers from being misled as to the nature of the food, including where it comes from.

Under the Food Information to Consumers (FIC) regulations, there is a mandatory requirement to label the origin of meat from pigs, sheep, goats and poultry. This means that unprocessed product, sold in packaging, in-store or to caterers, must be labelled with details of where the animal was reared and slaughtered.

The term 'origin' should only be used if the animal was born, reared and slaughtered in the same country. For other sectors, including fruit, vegetables, eggs and beef, there are specific marketing standards which lay out the requirements to label the origin of the product.

Where the country of origin indicated on a label is different to the origin of its primary ingredient, the country of origin of that primary ingredient must also be labelled. For example, labelling for a 'British Shepherd's Pie' made with lamb mince from New Zealand must also provide the country of origin for the lamb mince on the pack in the same field of vision.

Even so, we have seen examples of mislabelled products including 'British carrots' from Spain and 'British mushrooms' from Poland. This is usually caused by labelling errors at the processing or packaging stage, rather than by the retailer purposely trying to mislead the consumer.

But what about the so-called 'fake farm' brands which try to persuade consumers a product was produced on a very British sounding farm, when



it may not even originate in the UK? These sit in a grey area, where it's a matter of opinion on whether they are misleading or not.

If you see a label you feel are misleading, contact your local Trading Standards service – which is responsible for enforcing the law around labelling – and highlight it to the retailer.

The NFU's view is that labelling should be "clear, simple and contain accurate information" and allow the public to choose products produced by British farmers, who are rightly very proud to have some of the world's leading standards in animal welfare and food safety.

There is clearly an appetite for this. Ocado has joined Sainsbury's, Aldi and Morrisons and become the fourth retailer to back our farmers by adding a 'buy British' tab to its website.

The online supermarket says 87% of its customers consider it important to support British farmers with searches for 'British produce' on its website up 77% year-on-year.

If consumers wish to learn more about the welfare and sustainability of a product, more details can be provided online and QR codes on shelf labels can be used to direct shoppers to further information.

Defra is launching a consultation about clearer labelling, giving us the opportunity to feedback on improvements to origin labelling online and on processed products, and the use of the British flag in promotional activity.

For more details contact **NFU CallFirst on 0370 845 8458** or:



Laura Mackain-Bremner

Partner

0345 209 1549

laura.mackain-bremner@clarkewillmott.com

If you would like to receive future editions of **Field Talk** or if you have any comments or suggestions for the newsletter please contact our editor, **Sam Mackenzie-Green:**
sam.mackenzie-green@clarkewillmott.com



SWAg Network
SOUTH WEST WOMEN IN AGRICULTURE

South West Women in Agriculture is a networking group aimed at bringing together women from across the region who work in farming. Open to professionals, students, farmers and farmer's wives, we are a friendly group who enjoy supporting each other and organising fun and informative events several times a year.

JOIN OUR MAILING LIST
Email: sam.mackenzie-green@clarkewillmott.com





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