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# Field Talk

**Agricultural Law Briefing • Autumn 2024**

# Why planning for retirement from the farming business is so important

## Recent research undertaken by Investec Wealth & Investment (UK) has revealed that 66% of farming businesses have significant capital tied up in land, equipment and livestock.

You may think this is unsurprising given that many farmers have worked their entire lives to build up and maintain their businesses and often prioritise reinvestment of profits (if any!) over setting aside funds for retirement. It does, however, present challenges for succession when the bulk of the wealth is tied up in the farm and the ageing farmer is reliant on the income being generated to fund their retirement.

The positive is that the research also showed that 92% said that they also had a private pension and it is these private pensions which can play such an important role in an overall succession plan. It is more than just a source of income or pot of savings from which to draw in retirement.

One particularly useful mechanism is to release cash from your pension by the pension buying your own farmland and buildings. This provides cash for you individually or for the business which could then be used for the benefit of a non-farming child, whilst your pension then holds an asset used by your farming business which ultimately could be left to the intended farm successor.

So how does this work? Funds from existing pension schemes can be used or, perhaps more commonly, can be transferred into a new fund, often a self-invested pension plan, to purchase the property in question. The property is then purchased at market value releasing funds to the individual. That purchase is subject to capital gains tax (though there is a potential for rollover relief to apply). The pension scheme can then let the property back to the farming business and the business then pays a rent to the pension scheme. The advantage of this arrangement is that the rent payment is tax deductible and the pension scheme itself pays no tax on receiving the rental income. Following the transaction, the property then sits outside of the seller's estate and therefore outside of the scope for inheritance tax. The money released from the pension fund could be reinvested in assets outside of the farming business.

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# Welcome

## to the Autumn 2024 edition of Field Talk

The team here at Clarke Willmott is busy finalising transactions in advance of the fast approaching 2024 Autumn Budget. We anticipate this may be a balancing act—providing fiscal tightening alongside strategic investments in environmental sustainability, rural communities, and labour shortages. In short, the UK agricultural sector could be in for a period of adjustment, particularly in light of Labour's policy priorities. Changes to the tax landscape, including potential reforms to capital gains tax and inheritance tax, could have far-reaching implications for farmers and landowners. Agricultural Property Relief (APR) and Business Property Relief (BPR), both crucial tools for minimising tax liabilities on inherited farmland, are also under scrutiny. Any modifications to these reliefs could potentially place greater financial burdens on farmers, landowners and agricultural businesses, especially those with significant holdings. These shifts may affect the way agricultural properties are valued and passed down through generations, making succession planning a key concern for those managing family farms. This might drive further restructuring and prompt farmers to explore different business models. Environmental sustainability is also expected to be a central focus in this Budget. Labour's emphasis on green farming initiatives could lead to increased government funding for carbon reduction strategies and biodiversity projects. These measures, while environmentally progressive, will require careful implementation to ensure food production remains at the heart of British farming, whilst making the most of new grants and subsidies aimed at bolstering small and medium-sized agricultural businesses. As ever, we will be carefully assessing how these changes affect the day-to-day operations and long-term planning of all our farming and landowning clients so we can continue to provide the best strategic advice. Finally, why not come along and hear this advice straight from the horse's mouth at one of our Autumn Agricultural Seminar's in association with Albert Goodman, Andersons and Lloyds, more information overleaf.

**Esther Woolford,**
**October 2024**

# Planning for retirement *continued*

**Let's look at an example of how this could work in practice…**

*Two brothers, David and Tom have been farming in partnership all their lives having inherited the farm from their parents. David wishes to retire and his children do not wish to go into the farming business. Tom also wishes to retire in about 10 years time and would like his daughter Emma to continue the farming business. David's capital within the farming partnership (including his interest in the land) amounts to £1.2m and Tom doesn't have the capital to buy out David's interest. However Tom does have an existing pension and this is transferred to a new self-administered pension scheme. This can be used to purchase buildings and land owned by the farm partnership resulting in a cash injection enabling David to retire from the partnership and invest the net cash proceeds to provide an income for his retirement. The new pension scheme also raises a mortgage to purchase the balance of the land capital owned by David. Emma is admitted as a partner in the business in place of David and the farming business pays rent to Tom's pension scheme for its occupation of the farmland and buildings. The result is that David has cash for his retirement, Tom and Emma are now farming together in partnership ensuring a smooth transition to the next generation and Tom's pension has a flow of income into it which can be invested to provide for Tom's retirement when he decides to hang up his boots.*

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# The Fair Dealing Obligations

## (Milk) Regulations 2024

### The Fair Dealings Obligations (Milk) Regulations 2024 ("Regulations") came into force on 9th July 2024.

The intention of the Regulations is to regulate contracts between milk producers and processors, processors being those who purchase milk in the course of carrying on their business. Whether you are a milk producer or a processor what do you need to know?

**When will they apply?**

Any new contract from the 9th July 2024 made for the purchase of milk will need to comply with the Regulations.

There will be a transition period of 12 months for existing agreements. All such contracts will need to be compliant with the regulations by 9 July 2025.

**Do the contracts have to have a specific format?**

The Regulations introduce strict requirements for the format and duration of the milk contract. All milk contracts must be in writing and must be signed by both the milk producer and the processor, electronic signatures are permitted. The milk contracts can either be for a fixed period or evergreen. An evergreen contract is one which will continue until terminated. The Regulations make it a requirement for the milk contract to state which form it is taking and be clear on the date at which the obligation to supply milk commences.

A "cooling off period" has been introduced which will allow the milk producer to terminate the contract immediately within 21 days of entering the milk contract without reason.

There is a requirement for each milk contract to include an express term which requires the processor to act in good faith in relation to the contract. These means that the processor must not use their powers for an ulterior purpose, and they must consider and take into account not only its own interests but also have regard to the milk producer's interests, amongst other things.

The Regulations also provide that the milk contract may only be varied by agreement in writing by both parties. This is quite usual in commercial contracts. However, the new legislation specifically prevents changes to milk contracts being imposed without both parties' agreement.

The ability to terminate the milk contract has also been confirmed in the Regulations. A milk contract can be terminated on providing no less than 12 months notice unless there has been a material breach, or a reduced period is agreed with the milk producer.

**How do the Regulations help with pricing?**

One of the main purposes of the new legislation is to protect milk producers from sudden price changes and provide a mechanism where both the milk producer and the processor share the risk associated with the volatility in pricing. The Regulations provide that milk contracts may specify that a price is fixed, variable or a combination of the two.

In a fixed price contract, the price for the milk may include fixed prices for different periods provided it is clear which price applies to which period including a clear start and end date. A fixed price contract must also specify what will constitute exceptional market conditions together with a procedure by which the price can be reviewed due to those conditions being satisfied.

The other pricing option is to have a variable price. The Regulations require the milk contract to include the factors that the processor must consider when determining the price. The processor may only have regard to these factors when looking to vary the price. The milk contract must specify the period within the contract to which each set of factors relate as these may vary for different periods. The Regulations state that price cannot be determined more often than once per month or less often than three month and allows the milk producer to request an explanation from the processor as to how the price was determined and what factors have been considered. The processor must respond to within 7 days. The contract is also required to contain a procedure for an independent third party to verify the price where the milk producer requests an explanation.

**What happens if you fail to comply?**

The Regulations include enforcement mechanisms to ensure compliance. A milk producer will have the ability to refer complaints to the Secretary of State. The Secretary of State will have powers to make processors pay a civil penalty and/or compensation to the milk producer if they fail to comply with the requirements. The maximum civil penalty is 1% of the processor's turnover. Incentive for both processors and milk producers to get their contracts in order.

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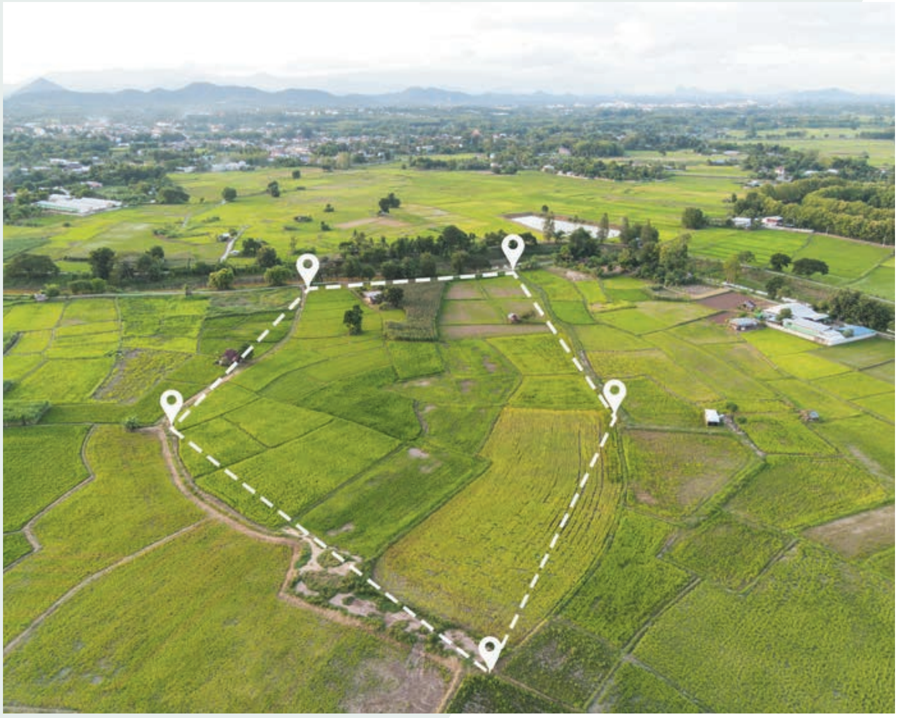
# Selling your farm? Ten key legal considerations

## Deciding to sell your farm can be a challenging and emotional process.



There are numerous factors to consider early in the legal process to ensure the sale goes as smoothly as possible. Engaging a solicitor early on, ideally before marketing the farm, is crucial. Doing so allows time to address the following important matters:

### 1. Title Deeds

While the majority of land in England is registered with HM Land Registry, a significant amount of property remains unregistered. Selling unregistered land is certainly possible, but registered titles are not always straightforward either. Your solicitor will need to review the title deeds to ensure that all necessary documents are in order and to identify any potential issues that might complicate the sale. This is an essential first step in avoiding delays later on.

### 2. Enquiries and Documentation

As a seller, you will be required to complete detailed enquiries regarding all aspects of the farm. This process can be time-consuming, so it's best to start gathering the necessary documents as early as possible. These enquiries serve as a comprehensive checklist for preparing the property for sale.

Documents you may need to provide include:

- Planning and building regulations documentation for any work undertaken on the property.
- Details of any restrictions, such as an agricultural tie, on residential properties.
- Wayleave agreements.
- Information about services, including private drainage systems and water supplies.
- Participation in environmental schemes affecting the farm.

### 3. Searches

Although it is typical for the buyer to arrange property searches, in some areas, local authorities can take several weeks or even months to return search results, potentially causing delays in the sale process. If you are selling in such an area, you may wish to consider conducting these searches in advance. The buyer could then reimburse you upon completion of the sale.

### 4. Covenants

If parts of your farm have development potential and you wish to sell subject to a development clawback covenant (also known as overage), it is important to discuss this with your solicitor early on. The terms of this agreement, such as the length of time the covenant will apply and the types of planning permission that will trigger it, need to be defined before negotiations with prospective buyers begin. Leaving this to the contract drafting stage often results in unnecessary delays.

### 5. Retained Land

If you are retaining some of the land or a residential property, it's important to consider whether any rights of way or rights for services will need to be granted to the property being sold, or vice versa. Your solicitor will ensure that these rights are properly incorporated into the sale documents.

### 6. Tenancies and Other Occupiers

If any part of the farm is occupied by tenants, whether under formal or informal agreements, these arrangements will need to be reviewed. Any unwritten agreements should ideally be formalised to avoid uncertainty during the sale process. If the property is to be sold with vacant possession, arrangements must be made to serve any necessary notices to vacate well in advance.

### 7. Employees

If you employ workers on the farm, you will need to determine whether their employment will continue under the new owner or if it will be terminated. It is advisable to seek advice from an employment law specialist to ensure that all legal obligations are met prior to the sale.

### 8. Tax Considerations

The sale of a farm can have significant tax implications, including potential liabilities for capital gains tax, VAT, and capital allowances. Additionally, long-term inheritance planning may be affected by the sale. To avoid surprises and ensure the sale is structured in the most tax-efficient manner, it's vital to involve your accountant at the outset.

### 9. Bank Security

If you are only selling part of the property and not repaying the entirety of your debt, early discussions with your lender will be necessary. You will need to negotiate the release of the sold portion from their security.

### 10. Seeking Legal Guidance

Selling a farm involves complex legal, financial, and practical considerations, all of which require careful planning. To ensure that your sale proceeds smoothly, it's essential to engage with a solicitor specialising in agricultural property early in the process. If you are considering selling your farm or any portion of your land, contact Helen Lock or another member of our agricultural property department for expert guidance and support.

By addressing these key legal factors in advance, you can minimise delays and ensure a successful sale.

To avoid complications, engage a solicitor early. Contact Helen Lock or our agricultural property team for expert advice on selling your farm.

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# Waste crime and fly-tipping

## Who pays the price?

### Unfortunately it is far too easy to picture the scene when someone mentions the phrase "fly-tipping".

The sight of household appliances abandoned in hedges and ditches, or rubbish strewn across farm tracks, has become almost commonplace in the countryside. Fly-tipping remains a substantial issue for almost two-thirds of farmers, causing significant costs both financially and to the environment.

The NFU's latest survey in the early summer of 2024 highlighted some stark figures. Of those surveyed, 54% said they had experienced small-scale fly-tipping on their farm, while nearly a third (30%) said they had suffered from large-scale fly-tipping.

In the NFU's latest summer 2024 survey

**54%**

experienced small-scale fly-tipping on their farm

**Offence**

Fly-tipping can be the deposit of any waste onto land where an individual does not have permission to deposit controlled waste. While the term has come to be most closely associated with household waste such as appliances or waste bags, any form of industrial waste or commercial waste can also be involved in fly-tipping.

Section 33 of the Environmental Protection Act 1990 makes it illegal to deposit controlled waste, or permit that controlled waste to be deposited, in or on any land or watercourse unless there is a permit in place to deposit that waste. Fly-tipping has become increasingly common as people look to dispose of large items and controlled waste without having to pay the fees involved in its correct disposal. As correct disposal then becomes the responsibility of the landowners, criminals look to shift the burden onto innocent landowners.

In practice, there is substantial difficulty in dealing with offenders. Local councils have been given increased powers to issue Fixed Penalty Notices of up to £1,000, but this does not appear to have had a real deterrent effect on the scale of offending. If an offender is identified and sufficient evidence is gathered by the Environment Agency or a local council to enable a prosecution, the maximum penalty can be up to three years in custody, but such penalties are generally only reserved for the most significant offenders who cause stark environmental harm through their actions.

Even where an offender could be sentenced to a community order, the sentencing guidelines for fly-tipping provide that fines are "normally the most appropriate disposal", bringing down the level of sentence (and neutering the potential deterrent) further.

In the NFU's recent survey only

**45%**

of farmers received assistance from their local authority with the clean-up of fly-tipping

**Solutions**

In spite of the previous government increasing the maximum fines which can be issued by way of Fixed Penalty Notices from local authorities for fly-tipping, this has not acted as a sufficient deterrent and almost 85% of those surveyed believe that the scale of fly-tipping nationwide has not decreased.

Landowners remain responsible for clearing up any waste deposited on their land and disposing of it correctly. This often comes with substantial costs, and only 45% of those farmers involved in the NFU's recent survey reported that they received assistance from their local authority with the clean-up of fly-tipping. This perceived lack of assistance may contribute to the low rates of reporting incidents (52% of those affected reported an incident to their local council, while only 4.4% had reported to the Environment Agency).

Any landowner or farmer who has been the victim of fly-tipping should look to report an incident immediately and record evidence of the waste. Even if evidence of the tipping in progress has not been gathered, evidence of the waste deposited and the steps taken to dispose correctly of that waste goes a long way to ensuring local authorities are aware of issues and can track likely offenders based on location.

Only through proper reporting of these incidents will the rural community be able to accurately demonstrate the scale of an already significant issue, and apply greater pressure for more assistance to tackle rural crime.

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# Can Labour deliver more agricultural mutuals & co-operatives?

## With our new Labour government ready to make their manifesto concepts into reality, our Agri Sector Head, Esther Woolford, discusses their pledge to double the number of agricultural co-operatives and mutuals.

A key Labour manifesto pledge for agriculture is to double the number of co-operatives and mutuals in the industry from the current level of around 800. Approximately half of UK farmers are currently members and co-owners of these businesses, which play an important role in the UK's agricultural sector by giving farmers more control over the supply chain, helping them cut costs on key inputs through economies of scale, and allowing the sharing of innovation that can boost output and productivity. Successful examples include the likes of Arla, one of the country's biggest dairy co-operatives, owned by 2,000 British dairy farmers and responsible for supplying more than a quarter of the nation's milk pool.

The volatility and uncertainty currently facing UK agriculture means our farmers are already looking to alternative business models. Joint ventures, share/contract farming, and Producer Organisations (POs) are all different forms of co-operation and offer opportunities and benefits to different owners. Government support for creating more of these businesses will be welcome, but sound legal advice will be key in ensuring their success.

The new administration plans to support this initiative by introducing a comprehensive package of measures designed to encourage the formation and growth of co-operatives and mutuals. This includes:

- Financial Incentives: Introducing grants and low-interest loans specifically for the development of co-operatives and mutuals.
- Education and Training: Providing farmers with access to education and training programs on the benefits and mechanics of forming co-operatives.
- Regulatory Support: Simplifying the regulatory framework to make it easier to establish and operate co-operatives.
- Partnerships and Networks: Facilitating partnerships between co-operatives and research institutions to drive innovation and efficiency.
- Marketing Support: Assisting co-operatives in developing strong marketing strategies to promote their products both domestically and internationally.

To spearhead this initiative, Labour propose to establish a dedicated task force that will work closely with industry stakeholders, legal experts, and financial institutions to identify and overcome barriers to the creation and expansion of co-operatives. Within our Agricultural Team at Clarke Willmott our specialist corporate lawyers have extensive experience in the formation of various trading entities and groups. There are multiple aspects to consider when joining a cooperative or mutual including the

> ***"Doubling the number of co-operatives and mutuals is not just a target; it's a necessary step towards a more resilient and self-sufficient agricultural sector ..."***

rules, standards and contracts that you will be committing to. Like any contract it is important to consider the impact they will have one your business operation, succession planning and the flexibility you may need if your circumstances change. As such it important to take experienced legal advice based on your particular circumstances.

In the words of the incoming Agricultural Minister, "Doubling the number of co-operatives and mutuals is not just a target; it's a necessary step towards a more resilient and self-sufficient agricultural sector. By empowering farmers through co-operation, we can build a future where they have greater control, security, and prosperity."

As the new government takes the reins, the agricultural community looks forward with cautious optimism, eager to see how these promises translate into tangible improvements on the ground. The success of this pledge will be a critical test of the new administration's commitment to revitalising the agricultural sector and supporting the nation's farmers.

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## Notes from the NFU:

# Staying safe on farm

**A recent survey by the NFU found that around 85% of respondents were concerned about health and safety on farm, with 43% saying they have an increased perception of risk on farm.**

One quarter of those who responded said they knew someone who had an accident on farm over the last year and one further quarter said they felt their mental health had deteriorated.

Of the various risks that may be encountered on farm, there are three activities that cause the most accidents, injuries and – all too often – fatalities.

They are working at height, handling livestock and farm machinery.

- **Heights**

A fall from even a modest height can result in fatal or life changing injuries.

The majority of workplace falls occur from a height of 2m or less from the ground.

The Work at Height Regulations 2005 cover all work activities where people could fall and be injured. Employers, the self-employed and others who have control over work at height all have duties.

You must make sure work at height is properly planned, uses the correct equipment, is supervised and carried out by people who are competent to do the job.

- **Livestock**

Livestock remain one of the top causes of fatal and serious injury in agriculture.

No matter how well a handler knows their livestock, they need to be vigilant at all times.

Always allow plenty of time for moving and testing cattle and never handle livestock alone. Ensure you have a working and appropriate crush and handling system, and that everyone knows how to use it.

No one wants to have an incident on their land, so it is worth considering what steps can be taken to reduce the risks of injuries occurring.

It is also important to check the terms of your insurance policies to ensure that you are familiar with any requirements regarding livestock which are kept on land to which the public has access.

- **Machinery**

The Provision and Use of Work Equipment Regulations 1998 (PUWER) apply to any equipment and machinery that you use at work.

They state that equipment must be suitable for the task, properly maintained and guarded and that adequate training and information about the equipment is available for employees.

One of the easiest ways of keeping yourself safe is by ensuring all the equipment you require is properly maintained and suitable for the task it is intended for.

By completing daily checks before commencing use of the machine or vehicle, you are more likely to notice any defects that could prevent the task being carried out safely.

One piece of equipment that should be regularly maintained and replaced when damaged is a PTO shaft cover.

The potential risk associated with a missing or damaged cover is high and can result in a life-changing or fatal injury, so missing or damaged covers should be replaced as soon as possible, and the PTO should not be used until an appropriate cover is fitted.

As every farm is unique, there is no 'one size fits all' package of safety measures. Farmers need to decide what is appropriate on their land in light of their specific circumstances. A risk assessment will be vital to inform these decisions.

The NFU offers members a range of resources to help them stay safe on farm. This includes business guides on topics including risk assessments, machinery safety, transporting loads safely, vehicle operating licences, working with livestock and many other topics.

NFU members can also obtain free initial legal and professional advice in relation to their own personal circumstances from **NFU CallFirst** on **0370 845 8458** or:

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