

Welcome

Welcome to our latest issue of **Agricultural Law Quarterly**. We hope you will find these articles on recent developments in agriculture to be of interest.



Fetes, Festivals and Fairs



When one pictures a summer festival, it's all too easy to conjure up a picture of baying unwashed hordes, mud, crippling congestion and overflowing toilets. Aside from the media feeding frenzy around Worthy Farm in July, the reality of the modern music or arts festival is very different. Recent years have seen an explosion of smaller, more family-orientated events, showcasing acoustic or roots music, locally-produced organic food and drink and local arts and crafts. Attendance can range from 500 to around 5000 people, and as long-standing music festivals become increasingly commercialised, peoples are turning to smaller, more intimate events for their summer fun.

Organisers of smaller festivals are always on the lookout for suitable venues for their events. Any large, relatively flat and well-drained parcel of land that has reasonable road connections could be a potential venue, and the fee for hiring the land can be substantial. Even greater potential rewards await a landowner who chooses to organise their own festival, but there are clearly risks that

come with this and such a venture should not be undertaken lightly.

There are quite often problems with securing a licence for an event, particularly if it is a new festival. These issues may include safety, noise, traffic congestion and local opposition, but with a well-structured approach to organisation and a willingness to work with the relevant authorities, these problems are not insurmountable. Also, if an event has an attendance of fewer than 500 people, the procedure for getting a licence is very straightforward, as only police can object to its grant.

Burges Salmon have extensive experience in organising outdoor events both large and small, from negotiating the right of organisers to occupy land to securing the all-important licences. **Should you have any interest in using land (or allowing land to be used) for any sort of show, fair or festival, please contact Chris Pritchett on 0117 902 6684 or email chris.pritchett@burgessalmon.com**

Contents

• Environment	p2
• Powers of Attorney	p2
• Tax	p3
• Real Property	p4
• Farming	p4

The New Scammell and Densham

The 9th edition of Scammell and Densham's Law of Agricultural Holdings is about to be published. Having contributed to the last two editions, and following a long line of Burges Salmon partners, Peter Williams took over as sole editor of this edition. Known as the definitive text on the Agricultural Tenancies Act 1995 and the Agricultural Holdings Act 1986, it has been

updated and expanded into several new areas. New chapters include those dealing with possession of land for non-agricultural use, an extension of the text on mixed user and a new chapter on the mid-term review of the common agricultural policy. Copies of the book can be obtained from the Publishers (see insert).



Environment

When is a recycled product not waste?

Does unwanted lubricating oil processed into fuel oil for burning cease to be "waste" for the purposes of the Waste Framework Directive ("WFD") when it is processed or finally burnt?

The Court of Appeal has found that the processed fuel ceased to be waste when it was processed, overturning the High Court decision.

The Court embraced the aim of the WFD that "material which was originally waste needs to continue to be so treated until acceptable recovery or disposal has been achieved". In this case, OSS had converted the waste material into a distinct, marketable product that could be used in exactly the same way as an ordinary fuel, and with no worse environmental effects. Disappointingly, the Court refused to go further and develop workable criteria for determining waste.

OSS Group Limited v Environment Agency [2007] EWCA Civ (611)

For further information on this case please contact Georgie Messent on 0117 902 7732 or email georgie.messent@burges-salmon.com or Chris Pritchett on 0117 939 6684 or email chris.pritchett@burges-salmon.com

Waste Regulations

New Waste Management regulations have come into force which amend the list of activities that are exempt from waste management licensing. The practices which are affected are the application of liquid milk, plant tissue, ash or dredging spoil to land. There are also changes to the disposal of pesticide solution and the burning of containers.

Waste Management (Miscellaneous Provisions) (England and Wales) Regulations 2007.

For further information on this please contact James Phillips on 0117 902 7753 or email james.phillips@burges-salmon.com

Contaminated land liabilities - who is responsible?

A dispute arose over contaminated land liabilities for a former gasworks site in Bawtry, Doncaster.

Previously, the High Court had dismissed National Grid's contention that the Environment Agency did not have any legitimate grounds for holding it to be an 'appropriate person' under the contaminated land regime and therefore accountable for the actions of its predecessors. The House of Lords reversed that decision and agreed with National Grid. That body was not an appropriate person under the contaminated land regime and that as liabilities did not exist at the time of the statutory transfers through the Gas Acts, they could not have been transferred to National Grid.

The case is very disappointing for developers and landowners who have purchased or leased land from statutory undertakers as they will have been hoping to hold National Grid, and other similar companies, liable for contamination caused by their predecessors.

There are rumours that legislation may be introduced to address the question of how liabilities for contamination by gas companies (or similar companies) that took place some time ago, can be apportioned fairly. The issues in this case concern a further 2,000 gasworks sites across the UK, so the impact of the decision cannot be underestimated.

Developers, landowners and others with interests in contaminated sites that were previously owned by companies that were subsequently privatised should look again at the question of whether the relevant liabilities existed at the time of the transfer of ownership of the site from one company to another and whether they could argue for recovery of remediation costs.

R (on the application of National Grid Gas plc) v Environment Agency [2007] UKHL 30.

For further information on this case please contact Georgie Messent on 0117 902 7732 or email georgie.messent@burges-salmon.com or Mike Barlow on 0117 902 7708 or email michael.barlow@burges-salmon.com

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Powers of Attorney

Going Going Gone - last chance for Enduring Powers of Attorney

From 1 October 2007 Enduring Powers of Attorney (EPAs), which are used to transfer control of financial affairs and property to a third party, will be replaced by Lasting Powers of Attorney (LPAs). Existing EPAs will continue to be valid but no new EPAs can be created after this date.

It is expected that LPAs will be more time

consuming and costly to prepare and will also be less flexible in their use. Anyone who has not yet signed an EPA should consider doing so before the 1 October deadline.

For further information please contact Alice Clewes on 0117 902 7738 or email alice.clewes@burges-salmon.com



Loss Relief - non-active farmers beware!

The availability of sideways loss relief (trading losses arising to an individual that can be set against his other income and gains) has now been significantly reduced.

Claims for relief will be limited to £25,000 annually for limited partners and other partners who do not spend on average at least ten hours a week personally engaged in the partnership business. This is likely to affect not only "lifestyle farmers" but also those farmers forced to diversify into other activities outside the partnership. For those not involved on a full time basis it would be prudent to keep records of time spent as it is likely any claims for loss relief will be closely scrutinised.

For further information, contact Alice Clewes on 0117 902 7738 or email alice.clewes@burges-salmon.com

Goodbye to agricultural business allowances...

One of the surprises to come out of Gordon Brown's last Budget was the revelation that Agricultural Business Allowances (ABAs), which were first introduced in 1945, are to be phased out over a 3 year period from 6 April 2008.

ABAs are currently available as a relief against capital expenditure on the construction of new farm buildings, the rate being 4% of the costs of construction every year over a 25 year period. The intention is that from April of next year the relief will be scaled down by 1% each year (ie a 3% allowance will be given for the 2008/2009 tax year and so on) until ABAs end in 2011.

ABAs have long been a valuable relief to farmers. The decision seems particularly unfair when one considers that it will not only apply to all future construction costs but will also mean that the relief will cease to be available on costs incurred during the last 25 years – essentially, therefore, a retrospective tax increase.

...and hello business rates?

Amongst the many recommendations put forward in the Lyons report in March was the suggestion that the exemption from business rates for farm land and buildings – a key feature of the local government tax regime since the 1920s – should be abolished.

Unlike domestic rates, business rates are not banded or capped and the Report estimates that abolition of the exemption could bring in as much as £450 million per year. This would represent a huge burden on the farming industry.

The Report did suggest possible ways of softening the blow through phasing the changes in over time, or offering some form of continuing relief for environmental benefits or where land and buildings are genuinely used for agricultural production rather than simply occupied for lifestyle or amenity purposes. However, whether these recommendations will be adopted in practice remains to be seen.

For further information, contact Melanie Robinson on 0117 902 7192 or email melanie.robinson@burges-salmon.com

100% APR for landlords?

Since the Agricultural Tenancies Act 1995 came into force, many landlords have been encouraged to let land on farm business tenancies by the prospect of securing 100% agricultural property relief for inheritance tax.

At the same time, landlords have looked at their pre-1995 Agricultural Holdings Act tenancies, where only 50% APR is available, and pondered whether there was any way of increasing the rate of relief to 100%.

The holy grail of 100% APR for the landlord and continued AHA protection for the tenant has, until now, been difficult to achieve. A new AHA tenancy (after September 1995) qualifies for 100% relief. However, the circumstances where a new AHA tenancy can be granted after 1 September 1995 are extremely limited. 100% relief has only ever been a possibility for the lucky few.

The good news for landlords and tenants is that, following the implementation of the TRIG reforms last year, the new section 4(1)(g) of the Agricultural Tenancies Act 1995 allows a landlord to grant a new AHA tenancy to his existing AHA tenant provided the holding is the same or substantially so. This will qualify for 100% relief.

This presents a real tax planning opportunity for landlords because from now on, there should be no risk of the tenant losing AHA protection.

Tenants should however take advice to ensure that they are not creating a tax liability on surrendering the old tenancy. In most cases our view is that any tax issues can be overcome.

For further information contact Tom Hewitt on 0117 902 2717 or email tom.hewitt@burges-salmon.com

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Real Property

Discrimination

The Disability Discrimination Act 1995 is having wide implications for property lettings. A local authority tried to recover possession of a flat from a tenant who had sublet in breach of tenancy. The tenant was a schizophrenic who was not taking his medication when he agreed to sublet. The Court of Appeal overturned the possession order that had been made at first instance. The tenant's mental impairment had a substantial effect on his ability to carry out day to day activities and he fell within the definition of disabled under the 1995 Act. The subletting, and hence the reason for the possession proceedings, was linked to the disability and a possession order, if granted would amount to discrimination. The same reasoning might apply where there are rent or mortgage arrears or insolvency proceedings. It is questionable whether this is what Parliament intended.

Malcolm v Lewisham London Borough Council [2007]

Adverse Possession

The Grand Chamber of the European Court of Human Rights has finally delivered judgment in the appeal by the government against the ruling of the ECHR that acquisition of land by adverse possession was in breach of the European Convention on Human Rights (the entitlement to peaceful enjoyment of possessions). The Grand Chamber has allowed the appeal, much to the relief of the government. The Pye Companies will not be entitled to compensation for the loss of their land at the taxpayer's expense and the potential flood of claims has been averted.

J A Pye (Oxford) Ltd and another v United Kingdom [2007] All ER (D) 177 (Aug)

For more information on this case contact Vivienne Williams on 0117 939 2285 or email vivienne.williams@burges-salmon.com

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Farming

Cross Compliance

The Court of Appeal confirmed the first instance High Court decision that it was obliged to refer the case to the European Court of Justice because the court raised the substantive issue of whether there was discrimination between farmers in England, Wales, Scotland and Northern Ireland. Merely stating that there were internal constitutional arrangements in the form of devolution did not mean that the different treatment of farmers in different devolved jurisdictions was necessarily justifiable. The Court of Appeal noted in appropriate measured words that were the Secretary of State to lose the case in European Court it would be "constitutionally unsatisfactory". In layman's terms this translates roughly into "administrative and political dynamite".

R (on the application of Mark A B Horvath) v Secretary of State for Environment Food and Rural Affairs [2007] EWCA Civ 620

For more information on this case contact William Neville on 0117 939 2202 or email william.neville@burges-salmon.com

Succession

A triumph for the editors of Scammell & Densham over the rival landlord and tenant text. On a succession case the ALT were asked to state a case to the Divisional Court for a ruling on the timing of the principal livelihood test. The Court endorsed the commentary that appears in the book that the seven year period expired on the date of giving the retirement notice and did not end with the date of the ALT hearing.

The Honourable Andrew Shirley & Others (as Trustees of the Shirley Children Settlement) v Ruth Crabtree [2007] EWHC 1532 (Admin)

For further information on this case contact Peter Williams on 0117 939 2000.