NEWS from the Farming and Rural Business Unit

SPRING 2007

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SPS 2007 – back on familiar territory

As this newsletter goes to print, many of you will have completed and submitted, no doubt with a sigh of relief, the 2007 SP5.

I anticipate that many of you will have been frustrated by the fact that the pre-populated form was not necessarily that. The Council Regulation governing the SPS states that *"a Member State may decide that the aid application needs to contain only changes with respect to the aid application submitted the previous year. A Member State shall distribute pre-printed forms based on the areas determined in the previous year and supply graphic material indicating the location of those areas...".* The idea (and ideal) is that if nothing has changed from the one year to the next, the pre-population should mean that all one has to do is sign and date the form and the application will be complete.

As ever with the SPS the ideal is somewhat removed from the reality and, virtually without exception, no pre-population has been 100% accurate. In one example a farmer with more than 100 parcels had column C10 (area to be used for activation) pre-populated in all cases bar one 10ha field. No reason but had this not been picked up there could have been a loss in excess of £2000.

Paul Rice, left, with Wright Hassall clients David Brightman (centre) and Alistair Brooks.

In addition to the above, discrepancies have appeared between the 2006 data and the 2007 data resulting in the majority of SP5s that I am aware of being accompanied by covering letters.

As I have said before, the SPS depends on the base data (2005) being correct. RPA is under a legal (and fiscal) responsibility to get it right. You will have read in the farming press about the possible disallowance (fine) being imposed by the Commission that could be in excess of £300 million. Until RPA gets the data and controls right this figure could be added to. Therefore RPA has no option other than to work through all discrepancies/anomalies

If you are over or underpaid, RPA has to recover or make good those payments. Under European law that could occur up to eight years after the original "mistake". Therefore the message is that if you think that the data that RPA is operating on is incorrect, tell them and do not give up.

In the meantime – good luck!

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Deposit change for landlords

Those of you who have tenants on assured shorthold tenancies as part of your farm diversification projects will be affected by a recent change to the way tenants' deposits must be handled. The change affects all new assured shorthold tenancies entered into after 6 April 2007 but does not affect existing agreements unless there is a re-let.

Landlords of a residential property let on an assured shorthold tenancy must now join a Tenancy Deposit Scheme (TDS) when the tenant pays a deposit.

Landlords can choose between two types of TDS:

- a custodial TDS where the landlord pays the tenant's deposit to a scheme administrator (within 14 days of receipt) who then holds the money until the end of the tenancy, or
- an insurance TDS where the landlord keeps the deposit but, through a scheme administrator, insures the possibility of any balance owing to the tenant not being returned at the end of the term.

The custodial TDS will be free to use but the insurance TDS will incur a fee payable by the landlord.

Three companies, established by the government, have set up their own schemes: The Deposit Protection Service (www.depositprotection.com) is the only provider of the custodial TDS, whilst both The Tenancy Deposit Scheme (www.tds.gb.com) and Tenancy Deposit Solutions Limited (www.mydeposits.co.uk) will run insurance TDSs.

Landlords need to provide tenants with key information about the TDS, including the contact details for the scheme administrator; the procedure for the repayment of all or part of the deposit; what happens if there is a dispute about the deposit; and the circumstances in which landlords can retain all or part of the deposit. All schemes provide free alternative dispute resolution services which may help to avoid court proceedings in relation to deposits.

For more information, please contact Jennie Cuthill on 01926 883021 or email jennie.cuthill@wrighthassall.co.uk.

SHOW TIME

Once again Wright Hassall is delighted to be sponsoring the Kenilworth Show on Sunday 3 June. As last year, we will have a stand adjacent to the members' tent so do please seek us out for some rest and recuperation. The show continues to grow in size and stature while remaining true to its agricultural roots – hence our continued support. We'll look forward to seeing you there.

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- Handing over the reins – efficient tax planning

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Pressing need to make decisions

Farmers have often balked at passing on the farm to the next generation because of the perceived risk of one of the children overspending or divorcing, resulting in split assets.

However, since retirement relief for capital gains tax (CGT) has been phased out, as well as the advantages of holding assets at death (whereby the property is revalued at death for CGT purposes), the need to pass on assets during lifetime has become less important. Another disincentive to handing over the reins has also come in the form of the inheritance tax (IHT) agricultural and business property relief rules.

Over the last few years, HM Revenue & Customs' review of the availability of agricultural and business property relief has increased the risk of farmhouses and other land bearing a tax charge on death. This has been complicated by the possibility of having to pay for care home fees in the event of becoming too frail to stay in your own home. Local authorities will only pay for long-term care if your assets fall below £21,000: to help them assess your capital, they follow national guidelines – CRAG (Charging for Residential Accommodation Guide).

Although your farmhouse, if you live in it, cannot be taken into account when paying care fees, this does not apply to the other assets of the farm and business once long-term care becomes permanent. CRAG suggests that local authorities have discretion as to whether the business assets are taken into account, but with increasing numbers of people needing nursing care, and the corresponding call on local authority funds required to pay care fees, your local authority is less likely to exercise its discretion favourably. With care fees averaging £25-£30,000 per annum, a prolonged stay in nursing care may result in you having to draw on the capital of the business and possibly jeopardising the ongoing viability of the farm.

Even in the worst case scenario for CGT and IHT, the highest rate of tax is 40% whereas a prolonged stay in nursing care can amount, in effect, to a 100% tax on assets.

To avoid drawing on the partnership assets, the partnership deed can be amended to include a provision that the partnership assets or an individual's capital account cannot be withdrawn to pay for care fees. Whilst there is no guarantee this will prevent the local authority assessing that capital, it will certainly deter the local authority from placing a person in a position where they are acting in breach of contract.

Bearing in mind the joint strictures of a more strict interpretation of agricultural property relief for IHT purposes and the increased risk of assessment for care fees, the decision whether to retire and pass on the farming partnership and assets suddenly becomes rather more pressing!

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Waste not, want not

Paul Rice reports on the Waste Management (England and Wales) Regulations 2006 which came into effect in May and considers what sort of impact they will have on the landowner.

Animal, vegetable or mineral?

Whichever it is, there is a risk associated with it if it "escapes" from your land.

Over the last few years there have been a number of developments relating to the above, all of which have increased the chance of action being taken against occupiers of land in certain circumstances.

The Waste Management (England and Wales) Regulations 2006 which came into force on 2 May 2007, require that all agricultural waste must to be dealt with (either disposed of or recycled) in such a way that protects both the environment and human health. Farmers have to send or take their waste to licensed sites for disposal; apply to the Environment Agency for an exemption to recycle farm waste on-farm; or apply for a licence so that disposal on farm can continue. Exemptions from the licensing requirements need to be sought from the EA by 15th May.

These regulations join a growing raft of provisions (including fertilizer and pesticide legislation) governing people's actions which, if breached, may result in enforcement action and/or reduction in your SPS.

Over the last few years other developments have also impacted on matters outside your control of which you may be unaware.

The case of Mirvaheady v Henly has had a significant impact on insurance premiums for all animals, particularly horses. In this case, which considered the Animals Act 1971, it was decided that even when an owner of horses had taken all reasonable precautions to ensure that a paddock was properly fenced, if the animals behaved in a way, that, although not generally displayed by animals of that species, is normal in the particular circumstances or at the particular time, then the keeper was liable for any damage caused by it/them.

In this particular case something had spooked the horses in their paddock; they had bolted out of the field (through the fencing that the judge acknowledged would ordinarily have been adequate) and had collided with a vehicle, injuring the driver. There was nothing the keepers could have done, yet they had to pay compensation.

Trees! If you have trees abutting the highway be aware because a recent case has increased your responsibility for ensuring that they are safe and do not have latent defects. In the case of Poll v Viscount and Viscountess Asquith, a motorist driving in the highway collided with a tree that had fallen from the defendants land. This was because the tree had suffered from a structural and an undetected fungal defect. The defendants had employed an independent forestry consultant to conduct a drive-by inspection of all their trees who had not spotted these defects. It was argued that a competent inspector would have spotted the structural defect and thus considered a further, more detailed inspection that, in turn, would have revealed the fungal defect.

The case is important because it reinforces the principle that landowners owe a duty of care in respect of their trees; highlights the importance of regular inspections of trees on privately owned land and the regular conduct of risk assessments; and underlines the necessity for management plans to be in place. It also emphasises how important it is that inspections are carried out by a competent and suitably qualified Arboriculturist.

To sum up, you must ensure that you are disposing of your farm waste in the correct manner, that your insurance policies are up to date and that anyone you employ to undertake risk assessment is properly qualified. Or, in other words, dump it, cover it and assess it in a way so as to reduce the risk to you.

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