

## Season's Greetings!

The festive season is upon us, so now is a time to both reflect and look forward to next year.

What a year it has been and so different from 2007! After a crisp and dry start, the ground dried up sufficiently in the spring to allow all those spring crops to go in that couldn't be planted in the autumn. We were then blessed with a sustained period of weather that can be best described as "average", with average rain, average sunshine and average temperatures all of which led to an above average harvest. This was coupled with sanity in the market place with the speculators seeing the error of their ways and allowing a period of stability to establish itself with wheat reaching the prices anticipated a year ago, but staying there!

In the dairy sector the processors, finally realising that they had to pay a realistic price for a constant supply of good quality milk, unilaterally increased prices by 5ppl across the board. The livestock sector also had a more settled time, with disease being under control, vaccination plans working and the weather helping productivity. This sector also benefited the stable wheat prices,



matched with the willingness of buyers to pay a price that reflected the increased input costs.

Away from the farm, the Government implemented a policy of the public sector sourcing British produce wherever possible. It also acknowledged that there was a need for a sustainable, strategic food production industry within the UK and started working with the NFU to create a stable environment allowing farming to invest in new technologies and techniques so as to ensure that production efficiencies could increase.

Finally the last thing to reflect on was the newly appointed Minister of Agriculture, Hillary Benn being spotted at a busy - and sunny - Royal Show with a bacon buttie in his hand!

Well, I can dream, can't I? Best wishes and good luck for 2009.

## CAP Health Check – plus ça change?

Will the Health Check have a profound effect on farming structures in England? My view is that any impact will be limited.

The "Mid-term review" in 2005 brought about a sea-change in approaches to claims for payment from the CAP. Any claimant must be a farmer, defined as a legal entity engaged in an agricultural activity. This emphasis on agricultural activity caused many people to review their farming structures and to identify who was actually the farmer for SPS purposes, causing a restructuring to take place. I am aware, still, of situations where landlords who are not farming, remain claiming subsidy. There is a risk that the RPA will one day catch up with them.

The Health Check, announced in 2005, was intended to be a review of the SPS. As such it is just that; the basic definitions remain the same, so the concept of a farmer, with entitlements, keeping land in GAEC and activating them once a year remains unchanged. Thus the basic approach should remain unaltered.

However, in 2005 Member States (MS) were

given various choices, including whether to adopt a flat-rate or historic payment approach; what rate of voluntary modulation to adopt and how to interpret GAEC. In England Defra adopted as many of the variables as possible, to the apparent detriment of the English farmer.

One of the stated aims of the Health Check is to make the market more common. However in the political discussions that took place last month, national interests were protected in certain sectors and discretions given. This means that the SPS will be administered in different ways and different rates throughout Europe. Examples are:

EU modulation is to be increased from 5% to 10%. There have to be commensurate reductions of national modulation. In England this is currently 14%. Therefore in 2012 the marginal rate in England will still be 19% with much of the rest of Europe at substantially less (but more than today).

Set-aside is abolished from 1/1/09; however MS have the option to increase GAEC standards in order to preserve/enhance habitats. They have until 1/1/09 to state what measures should be

adopted. There is a real chance that Defra will impose a flat rate of 5% "environmental set-aside".

There is a desire that all SPS payments will be made on a regional/flat-rate basis so those paying on an historic basis have been given the option (not made subject to the requirement) to convert. Thus in 2012, England will be flat-rate but Wales and Scotland will, probably, remain historic.

Milk quota will go up by 2% in 2009, and a further 1% each year thereafter to 2012 in anticipation of its abolition in 2015. However the Italians will get the whole 5% in 2009.

Finally, Article 68 permits an additional 10% of modulation to be deducted for use in areas such as marketing, improvement of quality or the establishment of "mutual funds" to deal with exceptional environmental events or animal or plant disease outbreaks. The concern is that Defra will be more "enthusiastic" in their adoption of this than other MS.

In conclusion the Common Market remains singularly uncommon!

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# Opening the Floodgates?

Keen to avoid a repeat of the widespread flooding of the summers of 2007 and 2008, the Environment Agency (EA) is now taking proactive steps to mitigate and, where possible, to prevent a reoccurrence.

Temporary barriers, such as those at Worcester and Upton on Severn, and the demountable barriers at Bewdley, are amongst the more visible faces of these proactive steps. However, the EA, also keen to spread the message that prevention is better than cure, is emphasising that the legal responsibility for drainage of most land lies with the landowner.

The duties of owners of land adjacent to a watercourse (known as 'riparian duties') are based upon the legal presumption that in most cases the landowner (the 'riparian owner') owns the adjacent watercourse up to its mid-point. If the landowner



owns land on both sides of a watercourse (such as with a drainage ditch), their riparian duties will extend to the whole width of the watercourse, so far as it passes through their land.

The riparian owner is required to maintain the bed of the watercourse and to keep it free from obstruction. However, there is no duty to 'improve' the watercourse, for example, by widening it, or excavating the bed of the watercourse beyond its usual, natural, unobstructed state.

If a watercourse becomes obstructed, the relevant authority (the EA or local authority) will serve the landowner responsible for the blocked section of the watercourse with a notice to remedy the problem, specifying what needs to be done and by when. The enforcement notice can be appealed within 21 days of its receipt on the basis that: the work is unnecessary; the time limit is unreasonable; or that the relevant authority has failed to accept an alternative, reasonable scheme of works.

If the work is not carried out within the specified time, the landowner may be charged for the cost of the work if the relevant authority undertakes it. In addition, anyone who ignores an enforcement notice may be prosecuted and liable to a substantial fine.

A landowner can also apply to the Agricultural Land Tribunal (ALT) for an order permitting the applicant to carry out works to a watercourse on a nearby landowner's property. These orders are uncommon and will only be granted where the works are necessary to prevent damage to, or to improve drainage upon, the applicant's own property.

The EA recognises that the majority of landowners do maintain their land and watercourses responsibly. In its efforts to encourage landowners to undertake additional voluntary measures to help

prevent flooding over a wider geographical area, it has recently published guidance about some 'soft measures' that landowners can adopt to try to reduce the run-off rate of rainwater from land, thus lessening the impact of future heavy rainfall.

These include:-

- avoiding cultivations up to the margins of the field next to watercourses in order to reduce direct runoff;
- creating beetle banks or grassy buffer strips alongside streams and watercourses in order to divert and/or slow down runoff; and
- loosening the soil and creating a rough soil surface after harvest, and leaving it for as long as possible to allow water to soak in rather than run off.

'Best Farming Practices' published by the Environment Agency at <http://www.environment-agency.gov.uk/> gives more details of these and other suggested voluntary measures.

The impact of severe flooding over the last couple of years has left an indelible mark on the collective consciousness of the nation. In future, the EA is likely to send landowners increasing numbers of requests to carry out works of maintenance upon their watercourses. If you should require any further information about public or private enforcement of riparian duties, please contact James Leyland on 01926 883013 or via email.

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## Stop press...

We know that current economic conditions are tough. That's why our insolvency team has set up a dedicated Insolvency Helpline.

We can advise you on how to deal with slow or non-payers and strongly recommend that you take immediate action, when your debtor is not responding to your letters or phone calls or when promises of payment are made, but not kept.

We can also advise you if you are experiencing cash-flow problems and have a wide network of insolvency practitioner contacts, with whom we can put you in touch if necessary.

Our insolvency team is also able to assist in cases where you receive a notice that your debtor has entered into administration, has been wound-up or is declared bankrupt. We are happy to explain the nature and consequences of your debtor's insolvency. Alternatively, simply forward the notices and accompanying proxy forms to our offices and our insolvency team will get in touch with you.

Please do not hesitate to contact our Insolvency Helpline at any time on 01926 883007. Alternatively, you can email [insolvency@wrighthassall.co.uk](mailto:insolvency@wrighthassall.co.uk).

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