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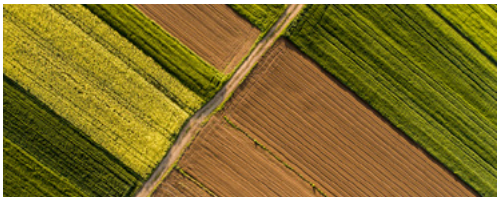

Contents

Spring 2025

Welcome to this Spring edition of AgriLore.

As expected, the Autumn budget brought about some major changes to taxation, affecting both rural and farming businesses and the security of the UK food industry disproportionately more than others.

We witnessed the announcement of changes to Agricultural Property Relief which has caused uncertainty for the succession planning of future farming generations. Furthermore, the increase in national insurance contributions and the increase to minimum wage added further challenges for employers.

On page 7 of this edition, Edward Porter summarises the changes to Inheritance Tax on pension pots, the impact of which will be vast. Arguably, many affected by the changes do not yet realise the implications; those with large pension pots should take advice to plan for a tax efficient transfer of wealth to future generations.

The end of 2024 witnessed the announcement that delinked payment schemes for 2025 were to be capped at £7,200 sending shock waves through the farming community. For many, absorbing this shortfall in anticipated payments will be a challenge. It remains to be seen what, if anything, will be paid in 2026 and 2027.

The austerity has continued into 2025 with the unexpected announcement from DEFRA on 11 March regarding the closing of applications this year under the Sustainable Farming Incentive. From that date, only outstanding eligible applications that have been submitted will be processed. For disappointed farmers who have missed out, it is unclear yet what will follow, but DEFRA has said that a revised scheme will be announced this summer.

Meanwhile with the government focussing energy on house building to encourage elusive growth in the economy, further change is on the horizon with the publishing of the Planning and Infrastructure Bill (discussed by Fergus Charlton on page 19). This proposes a new compulsory purchase regime and a new process for nature recovery.

Alongside those developments, over recent weeks our team has seen a considerable increase of instructions relating to Landscape Recovery Schemes which, after many months of development, are now coming together.

In this edition of AgriLore, we cover a wide range of issues from regenerative farming to Inheritance Tax on pension pots and from Unmanned Aerial Vehicles to holding land within a farming partnership.

We are looking forward to Cereals in June where we are delighted to be sponsoring the Young Farmers stand and would love to see many of you there – further details will follow over the coming weeks.

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Congratulations to the winner of our Autumn 2024 quiz, Kate Russell BSc(Hons) FRICS FAAV PMIAgrM CEnv, Chief Operating Officer of Tellus Natural Capital Ltd, the well deserving recipient of two bottles of English sparkling wine.

Click **here** for the answers to the Autumn 2024 quiz.

Regenerative Farming:

How to avoid the “bull” when promoting regenerative farming products and techniques

The Advertising Standards Authority (**ASA**), the UK's advertising watchdog, has published guidance called "Sowing the seeds of compliance: communicate your regenerative farming initiatives with confidence" which is designed to help those in the agricultural sector get their marketing materials correct.

Why is it important?

The ASA is a relatively benign regulator which is generally seen as helpful to both consumers and producers alike. However, even a single complaint, if upheld, will result in a business's advertising and marketing materials being banned. Therefore, it is important for agri-businesses to take notice of this guidance and check that they are compliant.

Detail

Even though there is no legal or universally agreed definition of the term, "regenerative farming", its use must be in accordance with the applicable UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (CAP) and/or UK Code of Broadcast Advertising (BCAP) the "advertising codes". Given that the term can be used in a wide-ranging way, its use must be backed by evidence to support the intended interpretation and the likely interpretation consumers will give it.

What is regenerative farming?

As the guidance says "Regenerative farming, regenerative agriculture - or simply 'regen' - was coined as far back as the 1980s, but whilst it has gained particular traction within the agricultural sector and food industry over the last ten years, average consumer understanding and awareness of the term remains relatively low".

With consumers' increasing focus on the effects of climate change and the UK Government's switch to ELMS as the principle method of supporting the UK farming industry, it is tempting for agri-businesses to lean into their regen credentials. However, if a business is merely meeting mandated standards, then that will not be enough to substantiate advertising claims.

Advertising do's and don'ts

The primary role of the ASA is to ensure that consumers are not misled and so agri-businesses must not overclaim credentials when communicating their regenerative farming initiatives.

Transparency is key

Given the lack of consumer understanding as to what "regenerative farming" means, businesses should:

- Clarify the basis on which a claim is made and be precise regarding which regen practices have been adopted. For example, are all or just some of the following being used:
    a. limiting soil disturbance
    b. maintaining year-round soil cover
    c. promoting biodiversity and crop rotations
    d. keeping living roots in the soil
    e. integrating livestock and arable systems.
- Explain any outcomes relied upon by reference to objective justification to support consumers' understanding of them - by explaining how they are measured or benchmarked.
- Be clear as to whether a reference is to future goals (and how working towards them is being achieved) or actual measurable results.
- Finally, set out any caveats.

Other key points

The guidance makes clear that you should also:

- "Avoid cherry-picking or tokenism" - therefore ask: is the description actually about the adoption of particular technique or genuinely talking about a whole farming system?
- "Avoid absolute claims" – without really good evidence, avoid unqualified claims such as "regenerative", "nature-friendly" or "sustainable" within a food production context.
- "Avoid misleading comparisons with other farming methods" – it should be remembered that consumers may conflate different farming methods; regenerative is not the same as organic (and the term "organic" does have legal status in the UK).
- "Avoid exaggerating environmental or animal welfare-related benefits" – any suggestion that a product is "better" needs to be substantiated by reference to a baseline.

Further help & reading

The ASA's Insight Article around environmental claims in food advertising can be found here, whilst a copy of its formal Environmental Guidance can be found here.

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Tax:

Inheritance Tax on pensions

A key announcement from the Autumn Budget, which has received relatively little media coverage, is the change to the Inheritance Tax (**IHT**) treatment of pensions from April 2027.

What will change?

Currently, the capital value of most pension death benefits is not subject to Inheritance Tax. That pension pot can be passed down to future generations in a very tax efficient manner.

However, the government is concerned that pensions are not being used for their intended purpose: to encourage saving for retirement. Instead, they consider that pension rules under previous governments have created a tax efficient way to transfer wealth. It is proposed that from April 2027 most unused pension funds and death benefits will be included within the value of a person's estate for Inheritance Tax purposes on death.

By aligning the tax treatment of pension schemes with other types of inherited assets, the Government intends to achieve a fairer tax treatment of inherited wealth.

Who will be affected by the changes?

The new rules represent a significant change for those who die leaving an unused pension pot.

The changes will not affect those with a pension that dies with them. Similarly, where funds can only be used to provide a dependants' scheme pension, that will remain outside the scope of Inheritance Tax.

Including pensions in the Inheritance Tax net will increase the number of estates liable to that tax and also the amount of tax those estates will have to pay.

Additionally, the changes are likely to push estates over the £2m threshold at which they are no longer eligible to claim the full Residence Nil Rate Band. That allowance is worth up to £175,000 per person but is reduced by £1 for every £2 that an estate exceeds £2 million. It falls away completely at £2.35 million for a single person or £2.7 million for the survivor of a married couple.

These changes add up to significantly more Inheritance Tax being paid by many families.

Double taxation

But it is not only Inheritance Tax. There is concern that pension funds will be subject to a double tax hit of Inheritance Tax followed by Income Tax.

Currently, when a pension holder dies after the age of 75 withdrawals from the inherited pension (as income or lump sums of capital) are taxed at the recipient's marginal rate of Income Tax. From April 2027, when a pension has already been subject to Inheritance Tax and the beneficiary is subject to Income Tax at the top rate of 45%, this could result in an effective 67% rate of tax on the pension overall.

Estate planning

Until now, Inheritance Tax planning has often focussed on ways to reduce the value in a person's estate that will be subject to tax and funded retirement from those assets, whilst preserving the value of the tax-free pension as far as possible. This strategy will now need to be looked at again.

Once we have the new legislation, those likely to be affected by the changes should take advice on their death benefit nominations and their overall estate planning strategy.

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Adverse Possession:

Know your boundaries

The boundaries shown on the vast majority of title plans are not definitive. Rather, they show only "general" boundaries. The actual legal boundary will usually depend on the original conveyance or transfer dividing one piece of land from another and may be better shown on the plan attached to that conveyance. But that plan might not be especially clear, and the boundaries may have been moved by adverse possession, so one should also look at the physical features on the ground, such as a hedge, ditch or fence.

Therefore, when buying a property it is very important to check both the plan and the physical boundaries on the ground, and to investigate any discrepancies before proceeding. The perils and costs of not doing so are illustrated by *Clapham v Narga*.

The case

Dee Narga bought Brook Barn in 2020. The Barn had first been registered in 2003 and was separated from the property to the south by a brook about 1.2 metres wide.

When Ms Narga bought the Barn, a fence ran along the northern side of the brook (i.e. the Barn's side). Studying the title plan, Ms Narga concluded the boundary was on the southern side of the brook, so she removed the fence and put up a new one on the southern side of the brook.

Then followed a boundary dispute with costs over £300,000.

The dispute: conveyances, adverse possession

In the County Court, the judge reviewed the original conveyances of the properties to the south of the Barn and found that their boundaries were on the southern side of the brook, as Ms Narga argued, and so the Barn's title plan appeared to be correct. However, the owners of the land to the south (the Claphams and the Wrights) had subsequently acquired the land on the northern side of the brook by adverse possession: they had been in factual possession of the land for the required twelve years or more; they had intended to possess the land; and they did not have permission from the original owner.

Ms Narga had to accept that the Claphams and the Wrights had been in possession of the disputed strip of land, but she argued that the registration of the title to Brook Barn (with the title plan showing the disputed strip as included) effectively trumped their possession of the land.

Judgment

The Court of Appeal did not agree with Ms Narga. The judges reiterated the general boundaries rule: a title plan will not settle the exact location of a boundary regardless of whether it accords with pre-registration conveyances or has been moved by adverse possession.

When the Barn was registered in 2003, the title plan had been based on the plans in the pre-registration conveyances. But the boundary had already moved by then: the Claphams and the Wrights had already acquired the strip by adverse possession; the title plan was immaterial.

Lessons to learn

The neighbours' adverse possession had been achieved before the Barn was registered. Because registration is founded on the state's guarantee of ownership, it is much more challenging to acquire land by adverse possession once it has been registered. But even then, there is an exception making it easier along boundaries. How much land, registered or unregistered, can be "acquired" along boundaries is an open question, and will depend on the facts and circumstances in each case.

In this case, the judges had little sympathy for Ms Narga, pointing out that she could easily have inspected the boundary and consulted the neighbours before purchasing Brook Barn.

As rural property lawyers, there is nothing we enjoy more than pulling on our wellies and investigating those boundaries!

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Partnerships:

What is partnership land?

Land used by farming partnerships can be held as partnership property or held outside of the partnership. Which option is best will turn on individual circumstances, but when land is brought into a partnership as partnership property it must be used by the partners exclusively for the purposes of the partnership.

Before transferring land into a partnership, it would be prudent to take advice and ensure there is a well-drafted partnership agreement in place so that the individual positions of the partners are protected.

In this article we consider the consequences of holding land within a partnership.

Legal v Beneficial Ownership

It is important to note the distinction between the legal and beneficial ownership of land assets. The legal owners are those named on the deeds or on the registered title at the Land Registry. If land is owned jointly, they hold the freehold interest on a trust of land for the beneficial owners, who may not be the same people as the legal owners.

If land is held as partnership property, the land is held on trust for the partnership and the individual partners are the beneficial owners. This may not be immediately apparent on the face of the legal title, and it is important to consider the basis on which the legal owners may be holding the land assets.

Transferring land into a partnership

To transfer land to a partnership it is not necessary to transfer the legal title: the legal owner(s) can instead declare that they hold the beneficial interest on trust for the partnership, with the legal title remaining in their name(s).

The legal title cannot be held in the name of the partnership itself, because a partnership is not a legal entity in its own right (unlike a limited company, for example) and so cannot 'own' anything in its name.

Consequences

Once the land becomes partnership property, the nature of the asset changes and there are several issues to be aware of:

- The legal owners now own an interest in the capital of the partnership which corresponds to the value of the underlying land assets: they no longer have any direct ownership rights or proprietary rights in the land itself.
- The land is now being farmed and used for the benefit of the partnership business and is at risk from the partnership's trading activities in the same way as the other partnership assets.
- Landowning partners cannot take assets out of the partnership 'in specie' (i.e. the land assets themselves) without the consent of the other partners. Following dissolution, the land is available to meet the demands of creditors, with any surplus distributable between the partners in accordance with the terms of the partnership agreement. The debts and liabilities of the partnership will be paid in preference to the re-payment of the partners' shares.
- The partners are not able to make specific gifts in their Wills of land which has been introduced to the partnership, as they do not hold an interest in that land, but instead an interest in the capital of the partnership. They can bequeath the value of their partnership shares via their Wills, but not the underlying assets themselves. However, any such bequest must reflect the terms of any partnership agreement.

The partnership accounts should clearly show how land assets are held. Best practice is to give each landowning partner a separate land capital account and allocate property (and its associated value) to it. The property is still a partnership asset and thus "at risk" but it allows the partnership to allocate the underlying capital (and profits and losses arising from it) to specific partners in agreed shares. The land capital account is distinct from a partner's general capital account (which deals with working capital).

Conclusion

It is important to have clarity on whether a land asset is partnership property, for the reasons outlined above and because of the significant impact it can have on the partners' tax and succession planning.

Whilst it is sometimes difficult to unpick the position, it is a vital exercise to ensure that ownership of the underlying assets is properly understood, and any opportunities to change the partnership structure or the underlying ownership of assets are maximised. This is particularly pertinent since the October 2024 budget, given the upcoming changes to Inheritance Tax reliefs.

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Archaeological features:

Farmer liable for damage due to cultivation

The recent case of *Natural England v Cooper* considered Natural England's (**NE**) right to seek an injunction for a tenant farmer's cultivation of pasture land, which could damage archaeological features of national significance.

The Court of Appeal held that NE had the power and standing to apply for a civil injunction to prevent non-compliance with the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006 (**EIA Regulations**). Natural England can act independently (without requiring the Attorney General) where an injunction is needed to fulfil its statutory role and functions.

The Facts

The Defendant, Mr Cooper, was the tenant farmer of Croyd Hoe Farm.

In 2012, Mr Cooper wished to start cultivation of some of the land and applied to NE for an Environmental Impact Assessment (**EIA**). NE concluded the land must remain uncultivated because of the presence of archaeological artefacts including Mesolithic flints and World War II pillboxes.

Mr Cooper started cultivating the land in breach of the EIA Regulations and NE issued a Stop Order. In April 2021, NE prosecuted Mr Cooper for failing to comply with the Stop Notice and Mr Cooper pleaded guilty and was fined £7,500. However, he continued to cultivate the land in 2021 and 2022.

In May 2023, the High Court granted an interim injunction to prevent Mr Cooper from further cultivating the land without compliance with the EIA Regulations. Mr Cooper argued that the archaeological features on the land did not fall under NE's remit and that the injunction was an infringement of his rights under his tenancy and under the Human Rights Act 1998.

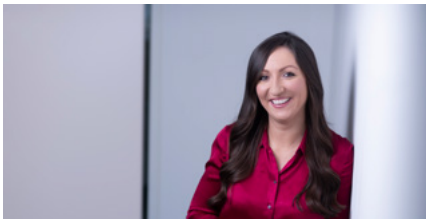
In April 2024, the High Court refused NE's application for a final injunction concluding that NE did not have the power or standing to bring the claim because it was not 'conducive or incidental' to NE's functions. NE appealed.

The Court of Appeal

NE cited the Natural Environment Rural Communities Act 2006 (**NERC 2006**) and successfully argued that they had power to litigate that which is 'conductive or incidental' to the discharge of their statutory functions. NE has a statutory function to enter and inspect land to ascertain whether the EIA Regulations have been breached, or an offence committed.

The court concluded that NE did have the power and standing to enforce compliance with the Regulations. This power was not express but was implied owing to NE's statutory functions.

The case is an important reminder to both landowners and farmers to tread carefully when working with land containing archaeological artefacts precious to the UK's national heritage or to risk a hefty bill for non-compliance with the Regulations.



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Telecoms:

Tribunal adopts strict interpretation of the Code's termination provisions

On 20 February 2025, the Upper Tribunal (Lands Chamber) handed down its judgment in *Vodafone Limited v Icon Tower Infrastructure Limited* and *AP Wireless II Limited (Vodafone v Icon)*.

This case provides important guidance on the strict application of the termination provisions in the Electronic Communication Code (**Code**).

Background

The Claimant, Vodafone Limited (**Vodafone**), sought to renew its existing code agreement for a mobile communications site at Steppes Hill Farm.

However, the First Respondent and site provider, Icon Tower Infrastructure Limited (**Icon**), who had recently purchased the freehold from the Second Respondent, AP Wireless II (UK) Limited, sought the termination of the agreement and the removal of Vodafone's apparatus.

The Preliminary Issues

Icon sought to rely on the following three termination grounds within the Code:

1. Substantial breach:

   Icon alleged that Vodafone had substantially breached the existing agreement between the parties. In particular, it was alleged that Vodafone had breached the alienation provision (no assignment, transfer etc.) as a result of its relationship with Cornerstone Telecommunications Infrastructure Limited (**Cornerstone**).

2. Redevelopment:

   Icon presented the Tribunal with their plan for proposed works to the Vodafone site and a small parcel of neighbouring land (the **Orange Site**), some of which had already been completed.

   Icon claimed that their plan demonstrated an intention to redevelop the land which could not be achieved without the removal of Vodafone's apparatus.

3. Public benefit (Paragraph 21 test):

   In accordance with paragraph 21 of the Code, a Tribunal can only grant Code rights where:

   a) the prejudice caused to the site provider by the imposition of the Code agreement is capable of being adequately compensated by money; and

   b) the public benefit likely to result from the imposition of the Code agreement outweighs the prejudice to the site provider.

   Icon's case was that neither limb of this test was satisfied.

The Upper Tribunal's Decision

The Upper Tribunal held that Icon failed to establish any of the termination grounds and, therefore, Vodafone were entitled to renew the existing agreement. More specifically:

1. **Substantial breach:**

   There had been no breach of the alienation provision as Cornerstone managed the site as Vodafone's agent.

2. **Redevelopment:**

   Icon could not demonstrate the requisite intention to redevelop the land. Broadly, this was because:

   a) Some elements of the works had already been completed. The Tribunal adopted a literal interpretation of the term 'intends', concluding that a person cannot intend to carry out works that have already been completed.

   b) The proposed demolition of the masts could not constitute redevelopment. The Tribunal clarified that 'redevelopment' requires the construction of something new.

The Tribunal also clarified that:

- 'Neighbouring land' is capable of including land which is not actually adjacent to the code agreement land. It is a question of proximity to be determined on the individual facts of each case.

- For the redevelopment ground to apply, the site provider must demonstrate an intention to commence the redevelopment work within a reasonable time of the Code agreement coming to an end.

3. **Public Benefit (paragraph 21 test):**

   To determine the first limb of the paragraph 21 test, the Tribunal assessed whether a renewal of the Code agreement would cause Icon reputational loss. Icon had constructed a new mast on the Orange Site pursuant to planning permission requiring the demolition of Vodafone's apparatus and, therefore, if the existing agreement was renewed, they would be unable to use the new mast lawfully. Following a detailed analysis of historic case law, the Tribunal held that no reputational loss would occur. The only loss would be a financial one (i.e. a failed investment) which could be adequately compensated by money.

The Tribunal held that no reputational loss would occur. The only loss would be a financial one (i.e. a failed investment) which could be adequately compensated by money.

On the second limb of the test, the Tribunal considered the cost implications to the public of enabling Icon to terminate the agreement. Paragraph 24 of the Code governs the amount of rent payable by an operator. By terminating the agreement, Icon would be able to force Vodafone to migrate to their new mast and, without the limits of paragraph 24, charge higher, unchecked, open market rates. The Tribunal concluded that it was in the wider public interest to ensure that operators benefit from the protection of paragraph 24 as this guarantees the availability of mobile communication facilities to the public at a competitive price.

Comment

The Tribunal adopted a strict interpretation of the termination provisions in this case which is a welcome result for operators. However, site providers can take some comfort from a few small victories in the judgment, such as the broad interpretation of neighbouring land for the purposes of development and clarification on when development work should commence for the purposes of exercising the termination provisions in paragraph 31 of the Code.

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Employment:

Neonatal leave and the Employment Rights Bill

It is set to be a busy time in employment law, with the most significant package of reforms in a generation expected over the next two years. We highlight below two key developments: the introduction of neonatal leave from April 2025, and a wider roadmap of changes under the Employment Rights Bill (**ERB**) anticipated from 2026 onwards.

Neonatal leave from 6 April 2025

From 6 April 2025, eligible employees will have a new statutory right to take up to 12 weeks' neonatal leave without having to use existing leave.

Key points for employers:

- Entitlement arises where a child is admitted to hospital within 28 days of birth and remains in care for at least 7 days.
- Leave is a day-one right - there is no qualifying period.
- Leave is in addition to other family leave (e.g. maternity, paternity or adoption leave).
- Statutory Neonatal Pay (**SNP**) is paid at the same rate as statutory paternity or shared parental pay (but only payable where the employee has 26 weeks' service and meets earnings thresholds).
- Where multiple births occur, a maximum of 12 weeks applies across all children.

Employees taking neonatal leave will benefit from similar protections to those on maternity leave, including:

- Right to return to the same (or a suitable alternative) role.
- Protection from detriment and automatic unfair dismissal linked to their leave.
- In certain redundancy situations, priority access to suitable alternative roles.

Rural businesses should prepare for the introduction of neonatal leave and consider their internal family leave policies, provide suitable training for managers and ensure that payroll is ready to administer SNP where an employee is eligible.

Employment Rights Bill: roadmap of wider changes

Looking ahead, a raft of reforms under the ERB are expected to come into force from autumn 2026 onwards. These include several changes of note for agricultural employers:

1. **Unfair dismissal rights from day one.** The qualifying period to bring an ordinary unfair dismissal claim will be removed, although there will likely be a 'light-touch' dismissal procedure required during the first 9 months.

   Implications: Managers will need to be cautious when dismissing new starters. Early documentation, robust probation processes and consistent reviews will be key.

2. **Fire-and-rehire restrictions.** Employers will be restricted from dismissing and re-engaging employees to force through contractual changes unless facing genuine financial distress.

   Implications: This may limit flexibility for employers needing to respond quickly to seasonal or market changes. Contract reviews and early engagement with staff will be essential.

3. **Sexual harassment reforms.** Employers will be required to take 'all reasonable steps' to prevent workplace harassment, including by third parties.

   Implications: Policy updates, staff training and a clear complaints process will be essential. This is especially relevant where employees interact with clients or the public (e.g. at farm shops or events).

4. **Changes to collective redundancy thresholds.** Redundancy thresholds will apply across a business, not per site.

   Implications: For larger, multi-site operations, this may increase the chance of triggering collective consultation obligations.

5. **Further changes to be aware of include:**

- Flexible working requests: employers must give a reasoned refusal based on statutory grounds.
- Time limits for bringing tribunal claims set to extend from 3 to 6 months.
- Introduction of rights for zero-hours workers (including guaranteed hours in certain cases).
- Reforms to family leave, including enhanced protection for returning parents and earlier rights to paternity leave.

Although the changes are not coming into force immediately, early preparation will ensure that your organisation is ready for the more employee-focused legal framework on the horizon.

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Unmanned Aerial Vehicles

CAA and Ofcom announce new radio frequency for transmission

In our previous article here we reported on the growing use of commercial unmanned aerial vehicle (**UAV**) operations and looked at some of the legal issues involved. The widespread innovation of new UAV operations across the UK raises a number of questions for landowners in relation to issues such as overflying rights, trespass and nuisance and rights to privacy.

The announcement

This month the UAV industry has taken a step further towards greater commercial drone operations through the UK Civil Aviation Authority (**CAA**) and Ofcom announcement of the dedication of 978MHz as a radio frequency available for airborne transmission of UAV applications.

Greater autonomy for UAVs

The latest changes follow the CAA in November 2024 enabling new rules giving drones with much greater freedom to fly beyond visual line of site (**BVLOS**) restrictions. One of the big new beneficiaries of the new policy is the National Grid Electricity Transmission who will be able to use UAVs to conduct aerial surveys of grid infrastructure such as pylons and cables much more efficiently.

These latest changes are steps towards the CAA achieving its road map for the establishment of routine BVLOS operations across the UK by 2027. A market report provided by Business Gateway for the Scottish Government estimated the UK commercial drones market will grow rapidly to £2.2bn by the end of 2027.

The impact

Greater uptake in UAV usage is likely to result in more widespread issues for landowners and with legal enforcement. UK law enforcement agencies have already referred to preparations for new penalties and controls on drone violations with a more rigorous set of exclusion operating restrictions around sensitive sites such as airports and military sites.

Conclusion

Whilst the opening up of UAVs creates new legal issues and risks for landowners, at the same time it presents opportunities. Commercial businesses looking to employ UAVs will have a requirement for new operating sites and locations. Many existing commercial premises will be unsuitable due to their existing planning or constrained legal rights.

As we have seen with telecoms and solar, there is likely to be a level of competition amongst commercial UAV operators to create hubs and networks of site locations.

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Planning and Infrastructure Bill

The headlines

How does the nearly new government get 1.5 million new homes built in five years and meet challenging renewable energy targets? By pulling every lever possible in the planning system. In December last year, the government turned the dial on housing targets in local plans from 'go slow' to 'full steam ahead' and at the same time formalised the concept of 'grey belt' with the hope of unlocking the green belt.

The levers it is pulling in this predominantly England-focused Planning and Infrastructure Bill are further set to streamline development processes, accelerate housing delivery and create a more efficient planning system all whilst trying to maintain democratic accountability and sustainable development principles.

This article sets out four key areas that the Bill seeks to address.

Nature recovery

Natural England will be required to prepare Environmental Delivery Plans (**EDP**s) identifying the impact from certain developments and setting conservation measures to be taken by Natural England to mitigate their impact on the environment. EDPs will be funded by a nature restoration levy paid by developers into the Nature Restoration Fund overseen by Natural England. These pooled contributions are intended to facilitate developments that are currently unable to progress because they are not nutrient neutral i.e. they are producing unmitigated new sources of nutrients into protected catchments.

Landowners should be alive to Natural England's proposals for EDPs in their area. The presence of a proximate EDP may affect the local markets for nutrient and water neutrality schemes as farmland becomes increasingly sought after as a means of mitigating the environmental impact of development.

It is unclear exactly how the developer funding for EDPs would work in practice. Currently they have the look and flavour of the existing community infrastructure levy, a development tax with which developers and planning authorities are broadly familiar.

Compulsory purchase

Following on the heels of recent changes from the Levelling Up Act 2023, further changes to compulsory purchase powers are proposed in the Bill, including allowing parish and town councils and Natural England the ability to secure compulsory purchase orders.

Compulsory purchase is certainly being made easier in the Bill and understandably landowners will be concerned. Landowners eagerly wait to hear how land affected by compulsory purchase will be valued in the face of the government's drive to curtail hope value and payment of 'excessive compensation'. Landowners in an area at risk of compulsory purchase, who are seeking planning permission or who may wish to do so in the future, should consider taking advice to protect the value of their land.

Nationally Significant Infrastructure

Nationally Significant Infrastructure Projects (**NSIP**s) are the big-ticket development applications determined under the Planning Act 2008 rather than the Town and Country Planning Act 1990 (**1990 Act**).

Recognising that developers may want flexibility in the determination of the route to consent for their projects, the Bill makes provision for developers to opt out of the NSIP regime subject to Ministerial approval, allowing their schemes to be consented under the 1990 Act. This change, offering a choice to developers, will be particularly relevant to consenting of solar farms. From the end of the year solar farms below 100 MW will require planning permission whereas those above 100MW will need an NSIP and will require development consent.

Although not strictly NSIP related, it is worth mentioning that there are proposed amendments to the Forestry Act 1967 which would allow the Forestry Commission to use its land for energy generation.

Planning

The proposed changes to the 1990 Act are extremely wide and at this stage, the scope of impact is not entirely clear. However, it is worth mentioning the proposal for new strategic planning authorities for which a focus on improving biodiversity and adapting to climate change will be a priority.

Conclusion

The repercussions of the Bill, if enacted, would be felt by many. For landowners and farmers, keeping a watchful eye on the proposals for and changes to nature recovery and compulsory purchase will be key. Landowners should consider future proofing their land value where there is a threat of compulsory purchase and thinking, what if anything, they can do to mitigate the risk and exploit the opportunities of EDPs.

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