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Welcome to our 2023 edition of Rural News.

Our goal is to help you stay informed on the legal matters that matter most to you, and we strive to make them more accessible and understandable for our clients.

These are challenging times for everyone, but arguably more so for landowners. Unprecedented economic pressures are forcing many to restructure their operations, and while the potential avenues for diversification are many and varied, each is fraught with complexities – such as evolving technologies, ever-changing environmental and renewable energy opportunities, and new forms of taxation and requirements for funding streams.

This edition focuses on sustainability, which is timely as we are delighted to announce that we have achieved B Corp™ Certification. This is a significant milestone for us, highlighting our continued commitment to sustainable business practices, social responsibility, and environmental accountability.

We hope that our newsletter will inspire you in the ways you can support the move towards a more sustainable future. We look forward to sharing this exciting journey with you.

We also introduce two new partners joining our team, who have a wealth of expertise in the rural and agricultural affairs sector that will further enhance our service offering.

If you have any questions regarding the topics we cover, please do not hesitate to reach out to us. Our team is always available to provide guidance and legal advice.

Thank you for your continued trust and support.



Phil Reed
Head of Rural

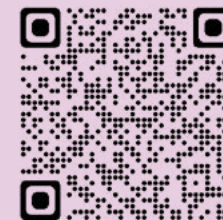


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WHAT'S ON GUIDE

Members of the rural team will be attending all of these shows and events.

3 MAY

CLA Southwest: Energy Roadshow

18 – 20 MAY

Devon County Show

8 – 10 JUNE

Royal Cornwall Show

17 JULY

Stithians Show

3 AUGUST

Honiton Agricultural Show

10 AUGUST

Okehampton Show

17 AUGUST

Chagford Agricultural and Horticultural Show

24 AUGUST

Holsworthy & Stratton Agricultural Show

28 SEPTEMBER

Cornwall Farm Business Awards

18 – 19 NOVEMBER

Cornish Winter Fair incorporating Wadebridge Primestock Show

6 DECEMBER

Truro Primestock Show

If you would like to arrange a meeting at one of these events, please let us know.

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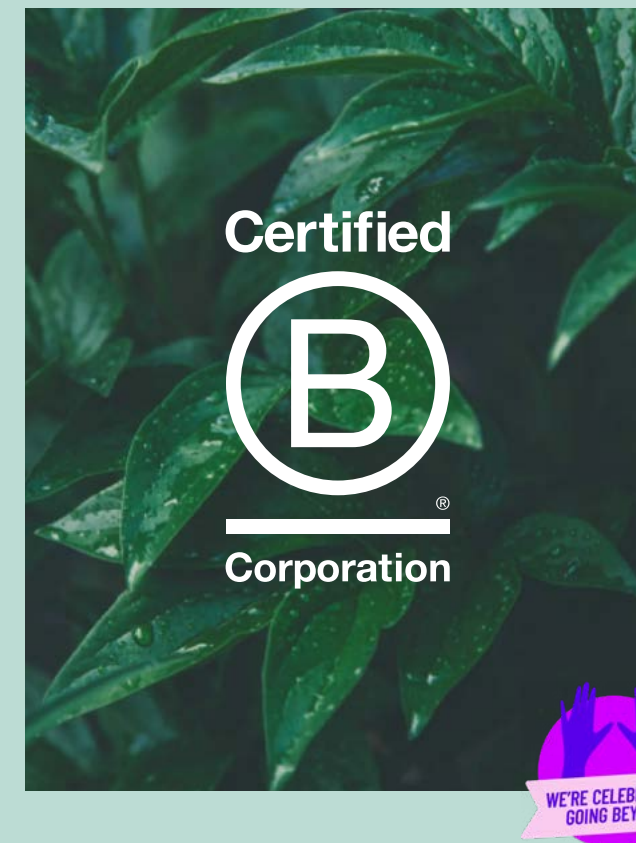
PROUD TO BE B CORPTM CERTIFIED

Following a rigorous independent assessment, we're pleased to announce that we have become a Certified B CorporationTM, joining a growing group of businesses across the world who are committed to balancing people, planet and profit.

We have received B CorpTM Certification by the non-profit B Lab, becoming the first law firm in the South West to do so and one of only a handful of B CorpTM law firms in the UK. B CorpTM Certification requires a holistic review of a business' social and environmental performance, accountability and transparency, and is based on a vision of creating a community of for-profit companies committed to redefining success in business.

"At Stephens Scown, we have always cared about doing things the right way for our people, our clients, our planet and our community. As the first large law firm in the UK to become employee-owned, we have built a dynamic and innovative business dedicated to delivering for its clients and providing a rewarding and supportive workplace. Gaining our B CorpTM Certification underlines our long-term commitment to also being a force for good in wider society," says managing partner, Richard Baker.

He continues, "With the backdrop of global challenges to tackle and the ongoing threat to our environment, it is vital that we showcase just how we are making a difference and that we are part of a much bigger movement, proving there is a better way to do business."



Empowering employees to do good through four key pillars of fundraising, volunteering, pro bono work and reducing the business' environmental impact, the Firm's Giving Back programme was first set up in 2018. Verity Slater, Giving Back partner and a driving force in the Firm's B CorpTM verification process, says: "I am really pleased to report a strong engagement with our Giving Back Programme this year. The whole Firm's enthusiasm and awareness of our drive to be a force for good has been noticeable. Undertaking the B CorpTM verification process has embedded this yet further and I am looking forward to the additional positive changes and initiatives that will come this year."

Joint head of Stephens Scown's Corporate team, Laurie Trounce has observed that sustainability (economic, social and environmental) is also becoming a key driver among business leaders, shaping their decision making. She says, "We work with a number of businesses who are evolving their decision-making frameworks and adopting new ways of working, including through employee ownership and B CorpTM certification.

"In light of the issues businesses are facing in a post-Covid marketplace, such as recruitment challenges and adapting to a hybrid working structure, businesses which are able to build their purpose into the DNA of their organisation will be able to use it as the glue that unites remote teams, creates brand value, and enables them to meet the inevitable consumer demand for more purposeful businesses in the future."

B CorpTM Certification doesn't just prove where a company excels now – it commits a business to consider impact for the long-term by building it into the very fabric of the firm. B CorpsTM are reassessed every three years. At each assessment, the criteria becomes more ambitious as B CorpsTM are encouraged to continuously develop their business and increase their positive impact.

LEGAL HEALTH CHECK

Stephens Scown is here to help farmers, landowners and agricultural businesses identify areas where they might benefit from advice from a law firm that genuinely understands both the rural sector and our region.

We have set out a list of the most common issues we find when carrying out a legal “health check” of our rural clients’ businesses and affairs. If any of these sound familiar, or if you have any other legal concerns, then please do not hesitate to contact one of our rural and agricultural specialists.

☐ Is your land registered at the Land Registry?

If your land is unregistered, you may wish to consider applying to the Land Registry for voluntary registration. This process can help identify any problems that could arise when considering any future transactions or succession planning. Registration will also ensure that if a third party claims any rights over your land, the Land Registry will be able to notify you and give you the opportunity to object. If the land is unregistered, there is no way for the Land Registry to know who owns it.

If your land is already registered, do the names on the Land Registry documents match up properly with the present owners? It isn't unusual to find that land is still registered in the names of family members who passed on some time ago, which can significantly delay sales, refinancing and other transactions.

☐ Have you reviewed your tenancy agreements (farm business tenancies, grazing licences etc.)?

Choosing the correct type of tenancy agreement and drafting it carefully is vital to ensure that the documentation matches what has been agreed between the parties. For example, it is important to avoid accidentally giving statutory legal rights to a tenant/grazier that the landlord did not intend them to have, making it difficult to remove them from the land if the landlord later wishes to do so.

Landlords and tenants should also not assume that the terms of a tenancy agreement will automatically roll over and continue to apply if the tenant continues to use the land when that agreement expires. A new agreement may need to be put in place.

If you would like your proposed or existing tenancy agreements reviewed, we can do that for you.

☐ Do you need a contract farming agreement?

It is becoming increasingly common for farmers and landowners to enter into agreements with third parties in relation to labour and machinery, particularly where there is no clear succession with a younger generation. We can assist with a contract farming agreement for the provision of services where the landowner provides land, buildings and other fixed equipment and engages a third party to provide labour and machinery. That could be in return for a fixed yearly payment and/or a bonus payment from net profits.

While it sounds simple to agree over a handshake, it is a good idea to have an agreement down in writing – this can prevent future disputes and ensures that both parties are on the same page.

☐ Do you have an up-to-date partnership agreement?

The Partnership Act is very old (1890!) and states that two or more people working together in the pursuit of profit are “in partnership” together. This means that you do not need to have an oral or written agreement to form a partnership – simply working together in business can be enough. The risks with this are that any dispute would be dealt with by legislation that is out of date and does not reflect the partners’ actual intentions.

A formal written partnership agreement will ensure that your business is structured in the most efficient way and also that you have agreed what will happen in certain circumstances (for instance the death or retirement of a partner). It also formally records the agreement you have made with the other partner(s) about voting rights and profit shares.

Written partnership agreements are also more beneficial if you are looking to obtain lending, as banks prefer to see a written agreement. Many banks will also now freeze a partnership’s bank account if a partner dies or loses capacity unless there is a written partnership agreement in place – this can have devastating impacts on the remaining partners at an already-difficult time.

☐ Do you have an up-to-date Will and Lasting Power of Attorney?

Without an up-to-date Will and Lasting Power of Attorney, the effect of your death or incapacity could have significant consequences for your business and your family. We would always recommend that you review your personal planning at the same time as you are looking into your financial/business planning so that you can ensure you have these points covered. This is also important if you are in a farming partnership, as your will should reflect the position in the partnership agreement and accounts.

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FARMING & MARRIAGE

PRE-NUPTIAL AND POST-NUPTIAL AGREEMENTS

If you work in the farming and agricultural sector you are likely to have heard of or know farming families who have been affected by divorce. This article looks at the benefits of pre-nuptial and post-nuptial agreements within farming families.

The depth of emotional and financial investment that a family farming business can often require means that if there is a divorce, a great amount of effort is sometimes needed to disentangle complications that wouldn't ordinarily arise for a non-farming family.

Why can farming divorces be so complicated?

The overlap of personal and business assets can lead to competing interests between personal divorce claims and maintaining a viable farm. Resolving those tensions can sometimes be extremely difficult when emotions are heightened through the divorce process. This can lead to protracted divorce proceedings and significant legal costs, which can themselves erode the very assets the couple are looking to share.

It is often this type of farming divorce that gets most exposure and which generates the greatest amount of discussion in farming circles. More senior farming family members will have heard lots of examples of this over the years and, rightly or wrongly, it can have a bearing when making decisions about how arrangements in your own farming family should be dealt with. It can prevent important succession provisions from being made that make sense in almost every other respect — why transfer your child an interest in a farming business if half of it is only going to be transferred away if they divorce?

More basic than this is the situation where a farmer wishes to marry but has concerns over the impact a divorce might have on their family's livelihood.

Both are conundrums faced by many farming families. They are, however, situations that can be assisted through the use of a pre-nuptial or post-nuptial agreement.

What is a pre-nuptial agreement?

A pre-nuptial agreement is the better known of these two 'nuptial' agreements and is entered into if the couple are not already married but plan to do so.

What is a post-nuptial agreement?

The post-nuptial agreement is the same, but entered into if the couple are already married.

How can pre-nuptial and post-nuptial agreements help protect your farm?

Both agreements record how the couple will hold the assets whilst they are married. Crucially, however, they also set out how the couple agree the assets should be divided and how claims should be dealt with in the event that they divorce.

Such agreements can carry significant persuasive weight in the English Courts. The weight that is attached to them will be at its greatest if the couple have each been advised by different solicitors and have each provided financial disclosure. The agreement also needs to be fair and adequately provide for the reasonable needs of both parties.



A farmer looking to transfer assets to other family members can request that the intended recipient and their spouse or betrothed enter into a pre-nuptial or post-nuptial agreement as a condition of that transfer. If the couple agree to it (both partners would need to agree) then the agreement can be drawn up and signed before the transfer takes place. If the couple don't agree then it might be that the transfer doesn't take place. More often than not in my experience the agreement is drawn up as the couple know they will not benefit from the asset if they don't agree to sign it.

If you are looking to marry but have concerns about the impact a divorce might have on your family farm then pre-nuptial or post-nuptial agreements can almost certainly offer a solution.

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MEET THE PARTNERS

Steve Panton



We are pleased to welcome our new Partner Steve Panton to the firm. With over 20 years' experience in regulatory compliance and enforcement, Steve advises on all aspects of health and safety, environmental, fire safety, food and consumer protection law. He also works on investigations involving suspected financial crime.

Steve joins Stephens Scown's highly regarded Commercial Dispute Resolution team, headed up by Stephen Wray, while supporting clients across a variety of practice areas and sectors, including rural, food & drink and mining & minerals. He advises clients on criminal investigations and prosecutions involving companies, partnerships, individual directors and employees brought by the main UK regulators, including the Health & Safety Executive, Environment Agency, DEFRA, Natural England and Historic England.

Richard Baker, Managing Partner at Stephens Scown, said: "We are delighted to welcome Steve to our firm. This strategic appointment will expand our capacity to support our existing and new clients with a whole range of regulatory compliance issues and critical incident support."

Steve advises clients on appeals against Prohibition Notices and Improvement Notices, defending statutory and private nuisance proceedings, Enforcement Undertakings under the Civil Sanctions & Enforcement Regime and defending prosecutions brought by Local Authority Environmental Health and Trading Standards Departments involving product safety, food safety and animal welfare offences.

He is a trusted port of call for clients experiencing a range of serious and fatal work-related accidents, such as those arising from falls from height, operation and use of vehicles and machinery, and incidents involving rights of way users and cows with calves at foot as well as environmental incidents including land contamination, slurry and fuel oil spills, water pollution and permitting breaches, accidents.

Commenting on his appointment, Steve Panton said: "I have always respected Stephens Scown's philosophy and the diverse range of sectors in which it specialises. I am looking forward to working with several legal teams at Stephens Scown, using my experience to support private businesses and public sector organisations with the challenges they face relating to health and safety matters and compliance issues."

Steve acts for public and private sector clients on all aspects of health and safety, environmental and consumer protection law.

With strong connections to the South West's farming community, we are also pleased to welcome Tom Biddick as the latest Partner to join Stephens Scown's specialist Agricultural and Rural Affairs sector team.

An experienced solicitor with expertise in private client matters, Tom has strong links to the farming community across the South West and acts for a number of farmers in the region. Having lived in Exeter since 2001, Tom also has deep roots in Cornwall, where he grew up and regularly returns to visit his parents' farm near Wadebridge.

Tom advises clients on all aspects of private client work including Wills, Powers of Attorney and Estate Administration, with experience of acting for a number of wealthy families and individuals. He has a particular specialism in Succession and Inheritance Tax Planning for farmers and landed individuals, regularly dealing with Agricultural Property Relief and Business Property Relief queries.

Stephens Scown's Rural team work with many farmers, landowners and estate managers across the South West and further afield, helping to get new projects off the ground while protecting their assets.

Phil Reed, who heads up the team, says: "Having legal advice from a law firm that genuinely understands the rural sector and the region – and who will proactively highlight new commercial opportunities – has arguably never been more important. We are delighted that Tom will be adding his expertise to our growing team in Exeter, as he brings with him a wealth of experience for our rural and landowner clients."

Tom adds: "Stephens Scown's Rural and Agricultural Affairs team has an impressive reputation for their expertise in the sector, which when combined with the firm's credentials as a great place to work that values its people, its communities and the planet, made a compelling choice as the next natural step in my career."

"Coming from a farming family in Cornwall and having spent my career in Devon, I am very excited to be joining a firm that is so committed to both the region and the rural community."

"I look forward to working with Phil and the team, to support their aspirations to grow the team further and to meeting up with old and new contacts at the upcoming agricultural shows across the region."

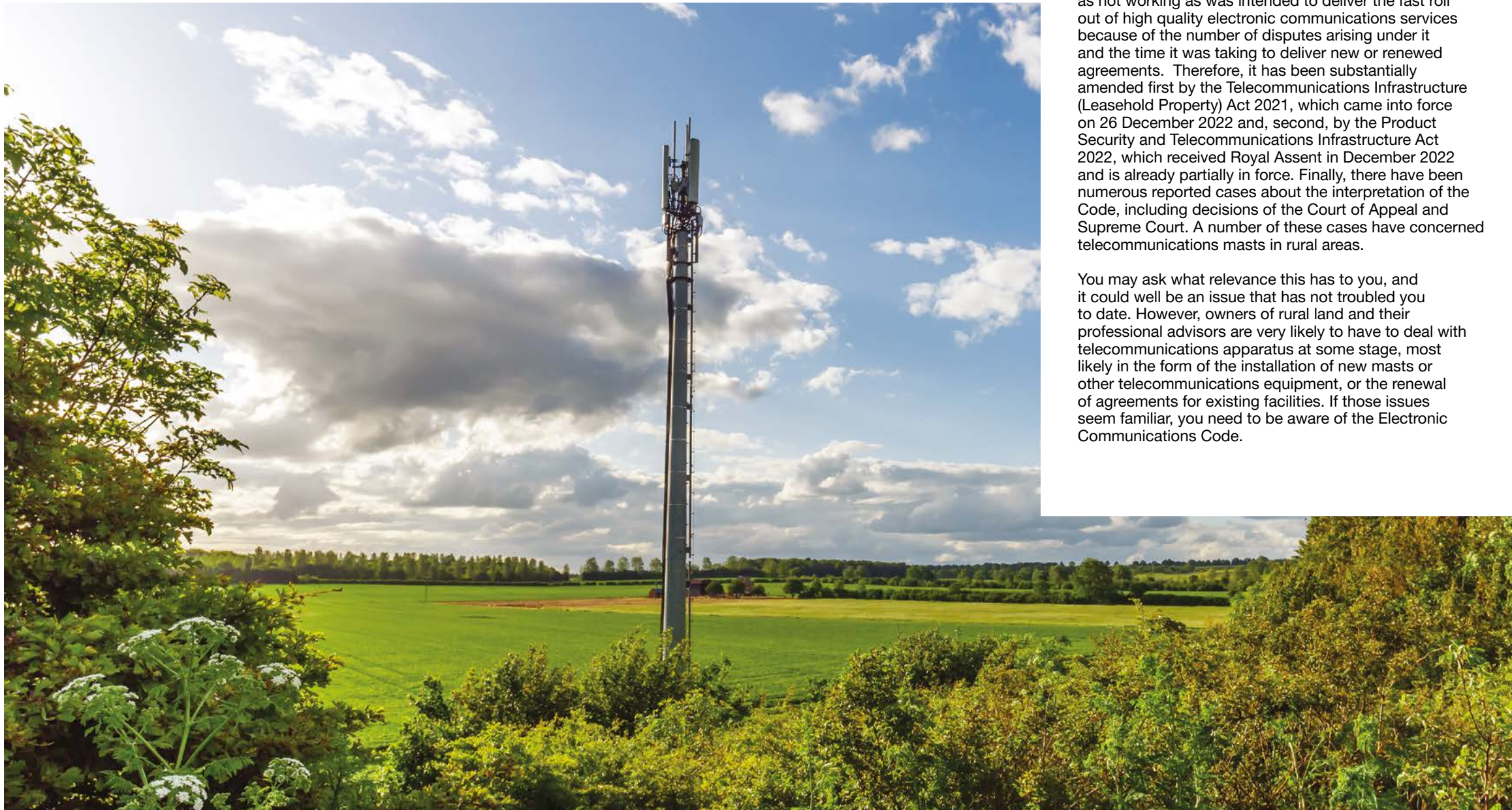
A member of the Society of Trust and Estate Practitioners (STEP), Tom has been recognised as a notable figure in the private client and agricultural practice areas by both the Legal 500 and the Chambers Guide to the Legal Profession. The Legal 500 2023 Guide describes Tom as "outstanding when it comes to matters affecting farming families." Tom is also a ranked lawyer in the Chambers High Net Worth Guide 2022 and is praised as "an excellent lawyer with a great manner, good at raising difficult subjects in a tactful and understanding manner."

Tom advises clients on all aspects of private client work

Tom Biddick



THE ELECTRONIC COMMUNICATIONS CODE – UPDATE FOR FARMERS AND LANDOWNERS



Is the lease on your telephone mast coming up for renewal? Here are the changes you need to know about.

The Electronic Communications Code, which governs the rights and responsibilities of telecommunications operators when installing equipment and carrying out other activities on other people's land, has now been in force for five years.

In the context of the fast-changing world of telecommunications and the surrounding law, over five years is a very long time, and a lot has happened in the intervening period. The Code was widely seen as not working as was intended to deliver the fast roll out of high quality electronic communications services because of the number of disputes arising under it and the time it was taking to deliver new or renewed agreements. Therefore, it has been substantially amended first by the Telecommunications Infrastructure (Leasehold Property) Act 2021, which came into force on 26 December 2022 and, second, by the Product Security and Telecommunications Infrastructure Act 2022, which received Royal Assent in December 2022 and is already partially in force. Finally, there have been numerous reported cases about the interpretation of the Code, including decisions of the Court of Appeal and Supreme Court. A number of these cases have concerned telecommunications masts in rural areas.

You may ask what relevance this has to you, and it could well be an issue that has not troubled you to date. However, owners of rural land and their professional advisors are very likely to have to deal with telecommunications apparatus at some stage, most likely in the form of the installation of new masts or other telecommunications equipment, or the renewal of agreements for existing facilities. If those issues seem familiar, you need to be aware of the Electronic Communications Code.

1. What is the Code?

The Electronic Communications Code regulates the rights and powers of telecommunications operators to install, keep, upgrade and replace telecommunications on land.

2. What are the current Code rights?

Under Part 1 of the Code, a "Code right" is defined as being a right for an operator to carry out various activities on someone's land for the statutory purposes of providing an operator's network or a telecommunications infrastructure system. Those activities include:

- Installing and keeping installed electronic communications apparatus on, over or under land;
- Inspecting, maintaining, repairing, altering, upgrading, or operating the electronic communications apparatus on, over or under land, or entering land and carrying out works in connection with these activities in respect of apparatus on, over or under land or elsewhere;
- Carrying out any works for, or in connection with, the installation of electronic communications apparatus on, over or under land or elsewhere; connecting to a power supply;
- Interfering or obstructing a means of access to or from land, whether or not the electronic communications apparatus is on that land (although only if the occupier of any other land is bound by a Code right);
- Lopping or cutting back trees or vegetation that interferes, or may, or will interfere with, electronic communications apparatus;
- Under Part 4 of the Code, if an operator requires a person (i.e. a landowner or tenant) to grant a Code right and the parties are unable to reach agreement, the operator may apply to the Upper Tribunal for an order requiring the relevant person to agree to grant that Code right.

3. Who are the operators?

An 'operator' is a person to whom the Code applies, under a direction from Ofcom. Ofcom's website contains a full list of operators, but the main telecommunications providers such as BT, EE, Vodafone, O2 etc are all 'operators'.

4. Why is the Code significant?

The Code gives operators significant powers to install equipment, even in the face of staunch opposition from the owners of the affected land. Various Upper Tribunal cases have tested the powers of operators to enter land to survey and install equipment, and only in limited circumstances can a landowner successfully oppose the operators. The Upper Tribunal can impose agreements and the level of consideration (rent) and compensation awarded is limited. In deciding whether to impose an agreement, the Tribunal is required to balance the "public interest in access to a choice of high quality electronic communications services" against the rights of private land owners. However, the policy behind the Code is that the government has put the public interest ahead of private property rights, and the balance of power under the Code is very much in favour of telecommunications operators.

It is also very difficult to force the removal of operators' equipment once agreements end. Operators enjoy statutory protection and have the right to renew their agreements. There are only limited grounds to terminate an operator's agreement.

5. What are the proposed changes in the Product Security and Telecommunications Infrastructure Act 2022?

Part 2 of the Act will make significant changes to the Code. Parts of it came into force in February 2023, and the most recent changes came into force on 17 April 2023. Further sections will come into force in due course.

The Act aims to encourage faster and more collaborative negotiations for the installation and maintenance of telecoms equipment on private land. The Government says this would help ensure the efficient roll-out of digital infrastructure such as gigabit-broadband and 5G.

The main changes the Act will make include:

- New provisions to actively encourage alternative dispute resolution rather than legal proceedings where possible;
- Introducing a faster procedure to allow telecoms operators to get temporary rights to access and install infrastructure on land when an occupier is unresponsive;
- Giving telecoms operators rights to automatically upgrade and share equipment that was installed before 2017;
- Changes to the drafting of the Code to clarify who can grant rights to host infrastructure on land in cases where infrastructure is already installed;
- Changes to the terms for renewing certain types of telecoms agreements that were in place before December 2017;
- Allowing a time period to be set for the court to resolve disputes on the renewal of Code agreements; and
- Changes to what can be sought as temporary, interim orders while a telecoms infrastructure agreement is being renewed (for example, access rights in addition to rent payments).
- Importantly, changes to the calculation of rents under the Landlord and Tenant Act 1954 on renewal of business leases of land used for hosting electronic communications equipment to align with the basis of calculation of payments under the Code. When in force, this is likely to mean lower rents for leases renewed under the Landlord and Tenant Act 1954 than may currently be achieved.

Telecoms operators and site providers had opposing views on most of the above changes, with telecoms operators agreeing that changes should be made and most site providers disagreeing. Given the government's levelling up agenda relies heavily on the roll out of 5G and superfast broadband, many of these changes strengthen the hand of telecommunications operators still further.

6. Conclusion

Many landowners (especially those with property close to main roads and railways) are likely to be concerned with telecommunications apparatus at some stage. Even if the Code and related legislation are not mentioned when you receive correspondence or requests from telecommunications operators, the Code will be relevant and it will be important to carefully consider what is being requested and whether you may be granting Code rights. Although it generally is not possible to refuse to grant Code rights to operators, there is much that can be done to limit the extent of those rights and to reduce their impact on your property.



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PRICING REVIEW CLAUSES - CAN GETTING CREATIVE MAKE YOU MORE COMPETITIVE?



Once a review has been triggered, the pricing review itself may take a number of forms, but may include the following:

- **Pre-determined price**
The review clause itself may enable the determination of the revised price, for example, by reference to a form of indexation such as the Consumer Prices Index or the price of particular components.
- **Variation by agreement**
The parties will work together to determine the price change, with a failure to agree triggering the contract dispute resolution procedure.
- **Price determined by one party**
One party determines the price, with the other party potentially having the ability to terminate rather than having to accept the price.

Customers may also wish to add provisions requiring the supplier to investigate other solutions to mitigate cost increases such as substituting alternative materials or suppliers.

Summary

Whatever mechanism is selected, the ability to vary pricing in a consistent way can be an important tool for mitigating contractual risk, and we would advise both customers and suppliers to consider whether their current pricing variation arrangements are fit for purpose.

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The agricultural sector continues to face a series of issues including energy costs, borrowing costs, regulatory uncertainty and human resourcing challenges. These issues can have a significant impact on the viability of a range of long term contracts. Can getting creative with pricing review clauses make you more competitive?

It is often in both parties' interests to settle trading arrangements in the longer term, but pricing review clauses often need particular care if they are to provide the supplier with adequate protection against the risk of inflation and other cost increases. Conversely, a customer will want to reduce costs, or at the very least ensure price certainty.

The creative use of price review clauses can be a key tool for parties looking to price competitively but maintain a proportionate and acceptable level of risk.

There are a range of options for deciding how a price review may be triggered, including the following:

Types of pricing review clauses

- **Periodic review**
The initial product prices are reviewed at pre-agreed intervals.
- **Supplier driven review**
The supplier is entitled to review prices to ensure that relevant changes are passed on to the customer. Applicable changes may be based on changes in the cost of raw materials, or be calculated by reference to some form of indexation. The price changes are not automatic, but at the option of the supplier.
- **Automatic review**
This will apply where underlying variable costs, or the cost of a single key component, are such an important element of the pricing that both parties have an interest in passing changes on to the ultimate consumer.
- **Mix and match**
If the supplier needs to adjust prices more frequently because the agreement relates to commodities or primary products with volatile price fluctuations, more than one review mechanism may be included within the agreement.

CREAM OF THE B CORPS?

We caught up with Stephens Scown client Rodda's Creamery to find out what becoming a B Corp™ has meant to their business and their future aspirations.





Liz and Nick Down,
Little Callestock Farm



Certified
B
Corporation

One of the key benefits of becoming a B Corp™ is the opportunity to collaborate with likeminded businesses, all working as a force for good.

We caught up with Stephens Scown client Rodda's Creamery to find out what becoming a B Corp™ has meant to their business and their future aspirations as part of the growing community of B Corps™ in the South West.

Why did you decide to go for B Corp™ Certification?

The B Corp™ certification is fast becoming a trusted accreditation for ethical businesses across the world. Wherever you see the B Corp™ logo, you know that a business has been thoroughly assessed, and proven to uphold high social and environmental standards. This is something we felt would help guide us for future developments, as we strive to continuously improve.

What does it mean for you to be B Corp™ Certified?

Becoming a Certified B Corp™ company helped us show to our customers and consumers all the fantastic work that is already going on here at Rodda's as well as demonstrate our commitment to continue to do better for our teams, the planet and the people within it.

What are you most proud of?

Our Rodda's mission since 1890 has been driven by a passion for Cornwall and the local community, and it's these values that embed our commitment to a purpose beyond profit.

Our B-Corp™ Certification has been secured largely thanks to our community initiatives, which is something we have always done and are particularly proud of.

The B Corp™ Certification also reflects our exceptional team, and why it's so important to invest in them. This is also something that we always strive to focus on and to continuously improve.

Why would you encourage others to go for it?

The journey to becoming accredited as a B-Corp™ has been a fun, yet challenging process, covering all areas of our business from our farmers, suppliers, community, environment, and our people.

We would encourage others to embrace the process because it is a great way to not only acknowledge and celebrate what you are already good at, but also to help you identify and prioritise what to focus on next.

You also become part of the B Corp™ community, which opens opportunities to meet other likeminded companies and to help each other with our respective B Corp™ journeys, based on our individual experiences and learnings.

What does the future hold for Rodda's as a B Corp™?

Becoming B Corp™ Certified has been a great achievement, but the work definitely doesn't stop here. We are continually striving to do better, as we further embed into the B-Corp™ community in 2023 and beyond.

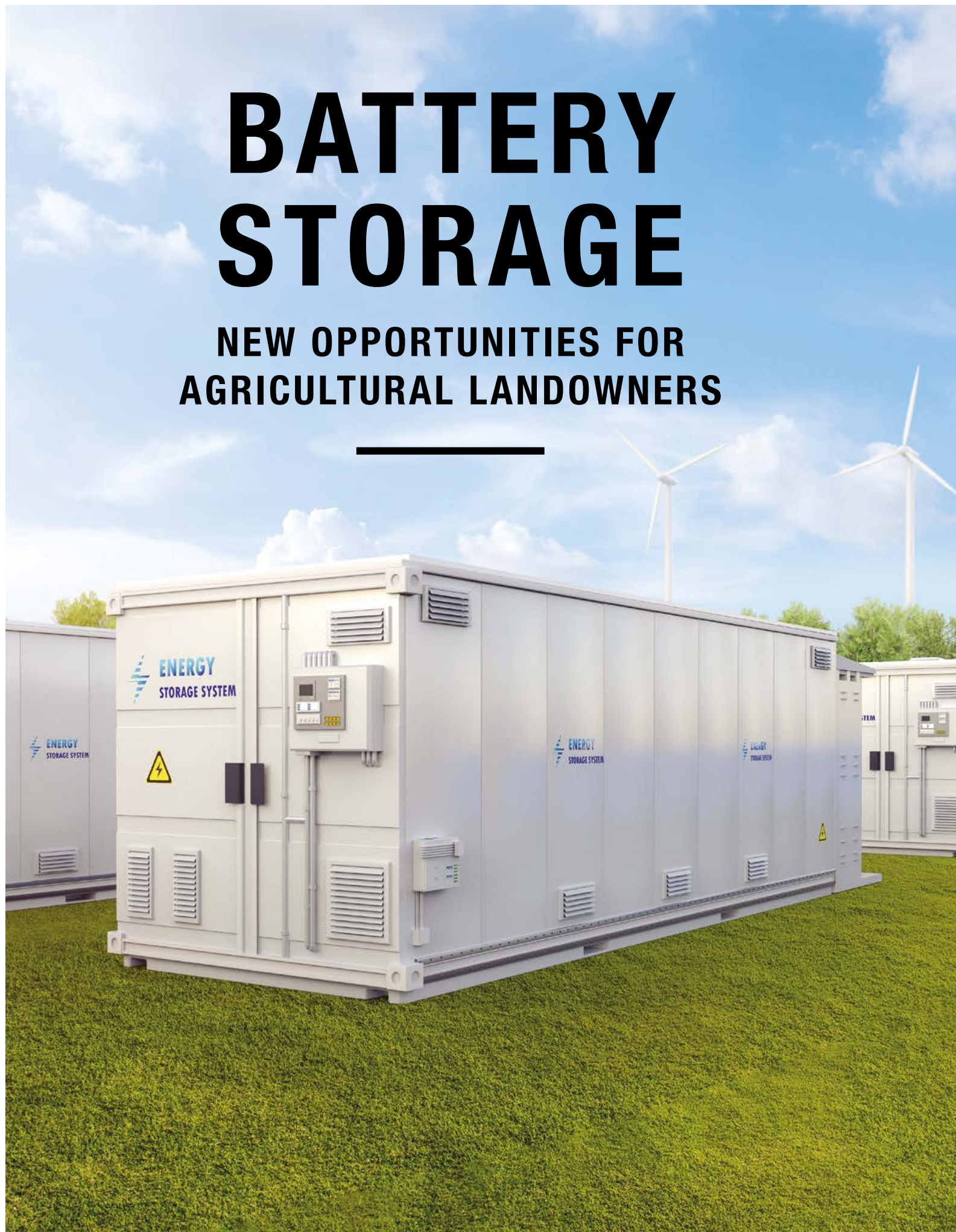
We are very much dedicated to putting even more focus on sustainability initiatives, and to identifying opportunities to drive more improvements, whilst continuing to look after the people in our team and our communities.



Nicholas Rodda

BATTERY STORAGE

NEW OPPORTUNITIES FOR AGRICULTURAL LANDOWNERS



Battery rents

Battery rents are attractive to a landowner because the development area required for such projects is usually far less than that of other renewable technologies such as ground mount solar. On an acreage comparison basis, battery projects can offer good returns to landowners especially to those who either do not have much land, or do not want to demise a substantial proportion of their landholding to a developer. That being said and as discussed above, landowners with battery storage developments on their land can often take advantage of other renewable sources such as solar or wind power, to which it is often seen as an ancillary technology.

The level of rent can vary depending on many factors, including the size and location of the area of land and its proximity to the grid, the amount of electricity the battery storage system can store, and the demand for electricity by the grid in the area. A renewable energy consultant and/or land agent with experience in this sector will be able to advise and negotiate the best commercial deals for landowners.

The future of battery storage

The future for battery storage looks very encouraging. Globally, demand for renewable energy is only expected to continue to increase with, for example, the growth of electric vehicles (EVs) and EV adoption driving demand for charging infrastructure, which in turn will require substantial energy storage capacity to accommodate the peak demand for electricity. It is without doubt that battery storage is therefore a crucial factor in supporting the integration of EVs and other renewable energy sources into the grid.

Developments in battery technology and economies of scale are key drivers in increasing its efficiency and affordability as a technology, creating an attractive investment for developers. The market is poised for substantial growth, as battery technology advances even further and costs reduce; it will continue to become an integral component of the national grid network, creating exciting opportunities for landowners and developers alike.

Developments for battery energy storage typically involve an option agreement for lease of a portion of land to a third-party energy developer, who is responsible for the installation and operation of the battery storage on the land.

For farmers and landowners looking to diversify, battery storage technology has advanced quickly in recent years and offers new and profitable opportunities.

How does battery storage work?

The battery energy storage system works by either charging the system from the grid or by storing electricity generated by other renewable technologies during periods of low demand or excess production, before discharging the stored electricity into the grid during periods of high demand or when other renewable energy sources (such as solar or wind) are unavailable. This helps to stabilise the supply and demand of electricity on the grid and ensure the grid produces a reliable supply of energy.

When considering battery storage, developers will take several factors into account, such as the availability of a grid connection, chances of obtaining planning permission, means of access and, if it is co-located with other renewable energy generation, the expected energy usage and storage needs. The size and type of the system can then be tailored to the specific site requirements.

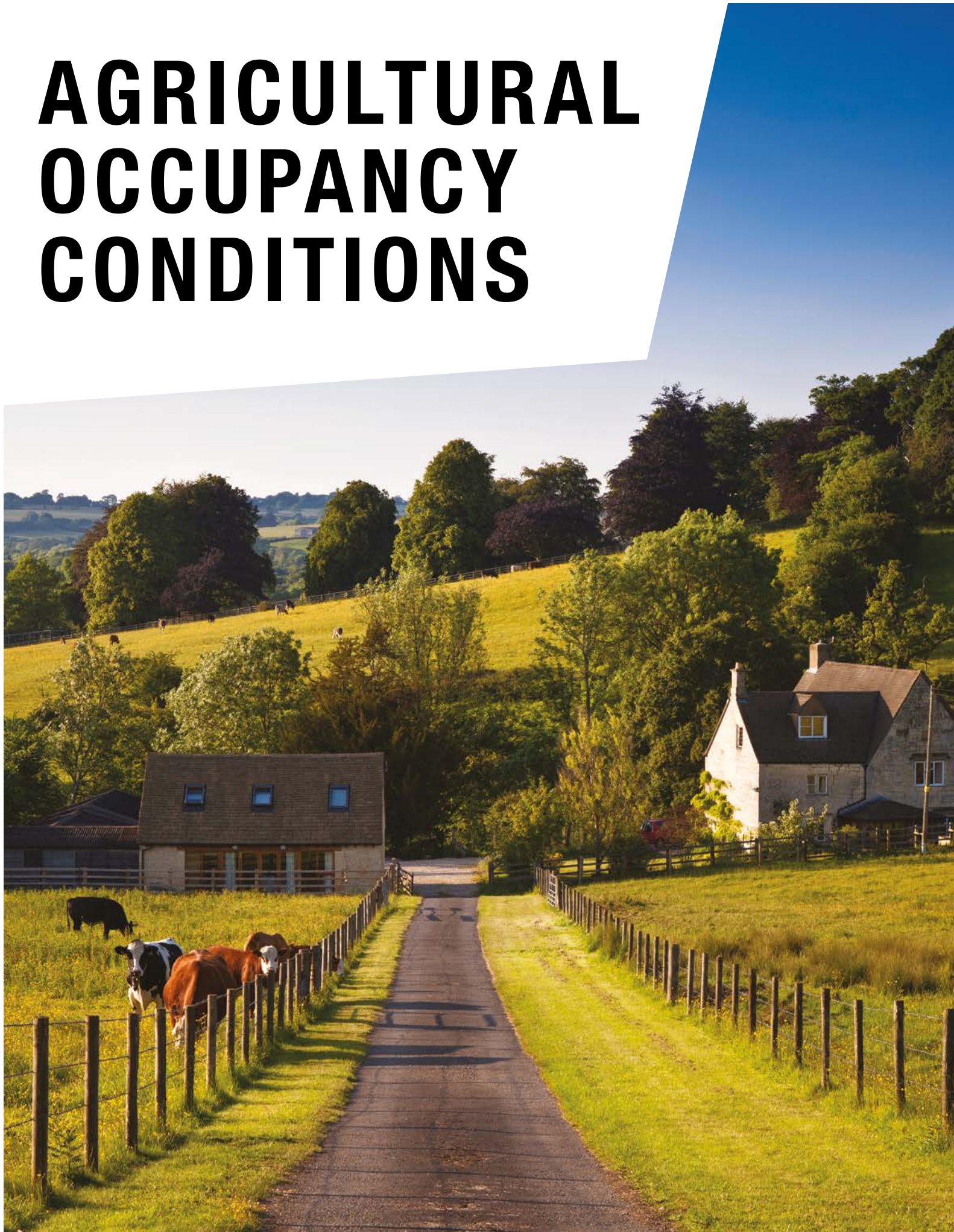
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AGRICULTURAL OCCUPANCY CONDITIONS



In rural communities, it is not uncommon to find dwellings that are restricted by Agricultural Occupancy Conditions. The wording of such conditions can vary, but follow a common theme and the purpose is to restrict the occupation of the properties to those who are employed or last employed in agriculture (or forestry) together with their dependants.

As decisions within case law judgments demonstrate, there are two main ways that an Agricultural Occupancy Condition (AOC) can become ineffective.

AOCs can be removed following a full assessment of the need for such a restricted property in the locality. This is normally done by marketing the property at a price which reflects the impact of the condition upon its value, generally for a period of at least 12 months and up to two years. This is a process which commonly occurs. An application to remove the AOC condition can then be made to the local planning authority with the marketing evidence put to the authority to demonstrate that the lack of interest reflects the lack of need or demand within the locality. In a successful application the condition would then be removed. In rare cases where a property has a value which is clearly unrealistic in relation to a standard agricultural wage, it can be argued from the outset that the property would be unaffordable.

Where an AOC property is resided in by people who do not meet the conditions, such breach can be deemed lawful where that breach has occurred for a continuous period of ten years or more.

Where an applicant making an application for a certificate of lawfulness demonstrates the continuous breach (on the balance of probabilities), a certificate of lawfulness should be issued by Local Authorities. The date of the certificate certifies that at that time the use of the property by persons not meeting the terms of the AOC was lawful. But be warned, should the property ever be resided in by someone who meets the AOC, because the condition has not been removed, the AOC would bite again and the lawfulness of the unrestricted occupation would be lost, unless ten years is built up again by another continuous ten-year breach (and perhaps another successful certificate application).

Whether an AOC has been breached can be complex.

For example, the definition of 'dependents' within an AOC has been considered by the courts. In one case the agricultural operations were operating at a substantial loss and therefore not contributing to the household in terms of financial support. It was claimed that this signified a breach of the condition as an occupier of the dwelling was not dependent upon income generated by agricultural work and thus they were entitled to a certificate. However, it was held that 'dependents' as a matter of ordinary language are capable of being dependent in a non-financial manner, with key factors such as emotional support and care considered just as important as finances and hence there was no breach of the AOC and no certificate would be issued.

Of course the result in that judgment meant that the occupants could continue to occupy the property as they met the terms of the AOC. As such, it is possible to occupy an AOC dwelling, where the land is being worked for agriculture in some form. It does not necessarily have to be done in a way which makes it the main source of financial support, or even a profit. The key is dependency, which is capable of manifesting itself in a non-financial capacity.

Demonstrating a continuous breach can sometimes prove difficult with each case turning on their own individual facts, with temporary breaks in occupation proving to be especially tricky.

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INNOVATION IN AGRI-TECH - KEY CONSIDERATIONS

As the agri-tech sector continues to grow, with new technologies on the rise, what do businesses operating in the agri-tech industry need to consider?

There have been many exciting developments in the agri-tech sector in recent years, from artificial intelligence to the use of drones, and there is great potential for further innovation.

How can I protect my new technologies and innovations?

If you are creating new technologies and innovations, it is important to consider the intellectual property (IP) rights that may be available to help protect your inventions – the agri-tech sector is no exception.

Some IP rights arise automatically, whereas others need to be registered in order to exist. Here, we have set out some examples of IP protection.

Copyright

An “idea” or a concept alone is not capable of IP right protection; it is the expression of the idea or concept that may be capable of copyright protection, if certain requirements are met.

Copyright arises automatically and can protect works such as written materials, music, design drawings, computer programs and art.

There is no means of registering copyright in the UK, however, there are strategies you can use to strengthen your copyright protections and preserve confidentiality. Copyright protection can make up part of your IP rights portfolio.

Database rights

Database rights are a subset of copyright; a database is a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means. Database rights last for fifteen years from the end of the calendar year in which the making of the database was completed. Each time there is a substantial change to the contents of the database, the amended database is likely to qualify for a new 15-year term.

In a legal environment where attaching IP rights to data is challenging, trade secrecy is emerging as the most likely right, especially in a more digitally connected, AI-enabled world. This is because the area of trade secrecy is relatively structured and harmonised and interoperates with national laws of confidence.

Design rights

There is also the possibility of applying for a registered design right in the UK if certain criteria is met – this is limited to the appearance of the invention (not the methodology or functionality).

Owners of registered design rights can prevent others from making, offering, putting on the market, importing, exporting, using or stocking a product to which the registered design applies.

For registered design right to apply, the design must be new and have individual character.

There is also the possibility of unregistered design rights for purely functional products if certain criteria is met.

Trade marks

Registered trade marks are a cost-effective way to ensure you gain a monopoly right over the name of your products in the sectors and locations in which you operate. Trade mark protection also helps differentiate your products from others in the market.

Having trade mark registration for your brand name and logo enables you to prevent third parties from using the same or similar brand name and/or logos in relation to the goods or services you provide (so long as you have the correct classes covered in your registration).

You should consider applying for trade marks for your business name and logo, as well as features of any product/service lines. The trade mark system works on a first to file basis, and therefore timing is key if you want to protect your brand name and/or logos.

Patents

Patents protect how an invention (or some part of it) works. Broadly, patent applications can be made for inventions which meet the following criteria:

- are new or novel;
- have an inventive step that is not obvious to someone with relative knowledge, skill and experience in the subject; and
- are capable of being made or used in some kind of industry.

Patent protection is not always suitable – or possible. For example, ways of doing business, simply presenting information, scientific theories and certain computer programs are not capable of protection.

Patents publish to the world at large how your invention works and therefore many businesses opt for an alternative route to protect their invention’s functionality. For example, by way of trade secrecy and routinely using robust non-disclosure agreements.

If you are considering patent protection, it is important to seek specialist legal advice from a patent attorney early on. Making your invention public or disclosing it to a third party without a non-disclosure agreement (NDA) in place will take patentability off the table.

How can we protect our technology when commercialising it?

Licensing
Licensing can be a great way to expand the reach of your technology and access markets that you may not have the resources to access.

Licensing of your technology occurs where you as the owner of the intellectual property (the licensor) allow another company (the licensee) to use, modify and/or resell the technology you have developed in return for compensation (such as a lump sum payment, royalties based on usage and/or the right to use the licensee’s technology).

The way you decide to license your technology and the respective compensation will depend on your business and commercial considerations. It is important to have a suitable licensing agreement in place with the other company that accurately reflects how you decide to license the product.

NDA’s
Making sure that you have a non-disclosure agreement in place before disclosing your technology and/or conducting demos for clients is imperative to safeguard your commercially sensitive information.

What about working with third parties to develop the technology?

NDA’s
When companies decide to work together on developing technology it is important that confidential information shared between the parties is protected right from the start.

You should carefully consider who you are going to work with and ensure there is a clear agreement in place. As part of this you should consider entering into an NDA prior to discussing any of your technology.

IP agreements
Making sure that you have a fit for purpose agreement in place to deal with the ownership of any IP output is fundamental – whether it’s software development, content creation or a collaborative project, it is key to make sure that you have the necessary rights to use the IP generated from the relationship.

Where does data protection come into it?
The UK GDPR and wider data protection regime requires you to put in place appropriate technical and organisational measures to implement the data protection principles set out in the regulations and safeguard individual rights.

It is important you consider data protection and privacy issues along with the requirements under the data protection regime when developing any new technology which processes personal data, to ensure you are complying with the law and have adequate security and policies in place.

If you are developing new technologies and innovations in the agricultural sector, you should be aware of the above key considerations and ensure your business’ IP is protected.

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