

AGRICULTURAL

Whitley Stimpson

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SPOTLIGHT

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CROSS COMPLIANCE INSPECTIONS

WHAT ARE THE IMPLICATIONS OF YOUR FARM BEING SELECTED?

PLUS: EMPLOYING STUDENTS INCREASE IN PLANNING FEES

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WELCOME



Welcome to the Autumn 2012 edition of our quarterly newsletter. The eyes of the world have been on the UK this summer and our green and pleasant land did indeed play a small part in the Olympics opening ceremony, at least until the Industrial Revolution rudely tore up the fertile pastures! Despite this, rural life still continues, with developments across all aspects of the agricultural sector.

This issue focuses on new developments in Cross Compliance, Environment Stewardship, Inheritance Tax and planning, whilst also providing an informative look at Agricultural Property Relief.



CROSS COMPLIANCE INSPECTIONS

AS APPLICATIONS ARE NOW BEING PROCESSED FOR THE 2012 SINGLE PAYMENT SCHEME, WE TAKE A LOOK AT THE LIKELIHOOD AND IMPLICATIONS OF YOUR FARM BEING SELECTED FOR AN INSPECTION.

Under European legislation, annual cross compliance inspections must take place of:

- ▶ at least 1% of farmers submitting applications to the Single Payment Scheme and other direct payments; and
- ▶ at least 1% of farmers that entered into new commitments under relevant rural development schemes from 1 January 2007.

These are undertaken by the Competent Control Authorities (CCAs), who are responsible for inspecting the different cross compliance areas. These are the Rural Payments Agency (RPA) and the Animal Health and Veterinary Laboratories Agency, although Natural England may also carry out checks.

Each CCA will select and carry out inspections on the farm businesses that need to meet the rules for which it has responsibility. The farms are mainly chosen by risk assessment, but there is also a random element. Complaints and referrals from members of the public and other Government Bodies will also be investigated. The

inspections are likely to be unannounced which means you may not be given any notice of a visit. If you are notified, it is likely to be less than 48 hours before the inspection.

You may be subject to more than one inspection during the year. This could be because the relevant CCA was unable to check all the rules for which it has responsibility at a single inspection or because your business has been selected for inspection by more than one CCA. The CCAs will try to co-ordinate inspections wherever possible and they will also make sure that inspections cause minimum disruption.

You must cooperate with the inspectors and provide facilities and labour to allow the necessary checks to be made safely. If you refuse to allow an inspection, obstruct an inspector, or fail to give reasonable help, you may lose all of your payments and/or have movement restrictions placed on you.

Before leaving your farm, the inspector will explain what they found during the inspection. They will then complete a full written report detailing the results of the inspection to send to the RPA in its role as



paying agency. RPA will then decide on the basis of the evidence if your payments are to be reduced and how much they will be reduced by. You will normally only be told in writing of the cross compliance inspection results if you have not met the rules. RPA will not be able to confirm any payment reduction until it has assessed the results of all of the inspections that have taken place on your holding in the calendar year.

Payment reductions and exclusions may only be applied where the farmer acted negligently (or intentionally) and so inspectors also assess whether or not reasonable care had been taken.

If you negligently fail to meet a standard or requirement, your SPS payments and other direct payments can be reduced by between 1 and 5 per cent for the first instance of non-compliance. The figure depends on the extent, severity and permanence of the breach. Intentional repetitive non-compliance can result in your payment being reduced by up to 100 per cent.

You have a right to ask for a review of any decision to apply a penalty or exclusion. Details of the review procedure will be sent with the letter advising you of the breach and subsequent penalty.

It is important to remember that many inspections do not result in penalties being imposed, so do not panic if your claim is selected.

The RPA has published its findings in cross compliance inspections in 2012 to date. Areas of concern were:



- ▶ NVZs (SMR 4) - Some 34% of farmers inspected so far in Nitrate Vulnerable Zone (NVZ) areas were found to have poor - or no - NVZ records in place.
- ▶ Soils/Soil Protection Reviews (GAEC1) - Some 23% of farmers inspected so far were found to be breaching Soil Protection Review requirements, either due to poor record keeping/lack of information or by not having a Soil Protection Review in place at all.
- ▶ Sheep ID (SMR 8) - Some 22% of farmers inspected were found to be breaching requirements under this Statutory Management Requirement, either by having no records, poor records or through issues with movements and recording dates.

Further information is available on
<http://rpa.defra.gov.uk/>

INHERITANCE TAX UPDATE

In recent years, HMRC has had success in challenging claims for Business Property Relief (BPR) on holiday cottages run as businesses. However there has been a surprising conclusion in the case of *Pawson (Deceased) v HMRC*.

Business Property Relief is given at 100% for an interest in a business owned by a sole trader or a partner, but the rules on what constitutes a business are complex. Property held as an investment, such as a property available for long term letting is excluded from BPR.

Mrs. Pawson owned 25% of a cottage in Suffolk, with the remainder owned by her children. The family occupied the property themselves for three weeks during the holiday season, however they also let it as a holiday cottage. Turnover was not particularly high and small profits were made in the last few years. When Mrs. Pawson died, a claim for BPR was made.

HMRC challenged the claim in the First Tier Tribunal, arguing that the income was derived from holding land and not from activities common to running a business. Their claim was dismissed on the basis that the partnership provided additional services and facilities which would not ordinarily be required, over and above the general upkeep of the property. For example, the Pawsons' property was let fully furnished; was cleaned between every stay; new bed linen was provided; television and telephone services were available for guests; and the garden was

tended to ensure a pleasant situation. Mrs. Pawson and the other partners would also be constantly looking to rent the property out.

It is understood that HMRC will be appealing the decision.

While there are no rules that can guarantee that HMRC will accept you are running a business rather than simply holding a rental property, if you are in such a situation there are several tips which could help your cause:

- ▶ Have annual accounts for the property only prepared by a professional advisor.
- ▶ Ensure profits are often made to support the existence of a viable business.
- ▶ Evidence the time spent at the property to indicate the level of involvement with the cottage – make it an active operation.
- ▶ Do not simply rent out to people who you know, ensure the property is available to all.
- ▶ Make it obvious that you are looking for custom. Advertise the property on a website or in relevant publications.
- ▶ Ensure that the property is available for letting all year round.

If you are concerned about the tax implications of any letting businesses, please contact Whitley Stimpson.

CHANGES TO THE ENVIRONMENTAL STEWARDSHIP SCHEME

Landowners should be aware that there are proposed changes to the Environmental Stewardship (ES) scheme due to come into force in 2013. Subject to approval from the EU Commission, these changes will affect all new agreements in Entry Level Stewardship (ELS), Organic ELS (OELS) and Higher Land Stewardship (HLS).

One of the most significant developments is the introduction of five new ELS options. These are as follows:

- ▶ Supplementary feeding in winter for farmland birds.
- ▶ A supplement to add wildflowers to buffer strips and wild corners on cultivated land.
- ▶ Ryegrass seed as winter and early spring food for birds.
- ▶ Legume and herb rich swards.
- ▶ Small scale hedgerow restoration with the intent to improve the condition of hedgerows and encourage management under long term laying and coppicing.

The options are applicable to new or renewed agreements starting on or after 1 January 2013, however the wildflowers supplement will not be available to existing agreement holders.

For new ELS and OELS agreements, there will be changes to the points value of options in order to refocus on options with greater environmental benefit. These changes will not affect existing scheme members. For example, there have been reductions in points awarded for buffer strips. These have been

replaced with increases in points for options encouraging the protection of soil and water.

The approved changes will be included in the fourth edition of the ELS Handbook. Natural England do advise that if you are planning an ELS application for a start date of 1 January 2013 onwards, please hold back from submitting the application until you have received the fourth edition of the handbook due in October 2013.

Further information on these proposed changes is available from Natural England: www.naturalengland.org.uk





EMPLOYING STUDENTS

HMRC is going to withdraw form P38(S), which can be used for student employees. From **6 April 2013** employers must treat students in the same way as all other employees for income tax and National Insurance contributions purposes.

The basic rule is that if you employ a student at any time other than their normal holiday periods, or if a student works for you both during and outside their holidays, then you should operate the normal PAYE procedures used for any other employee.

But under current rules, if you employ

a student solely during their summer, winter or Easter holidays, you may be able to pay them without having to deduct PAYE tax. In most instances, NICs will still have to be deducted. The P38(S) is the form which must be completed in order to get this special tax treatment.

The P38(S) treatment was designed to help students whose earnings for the year will not exceed their personal allowance. However, after the change they are likely to have tax deducted which they will have to claim back later.

THE BASIC RULE IS THAT IF YOU EMPLOY A STUDENT AT ANY TIME OTHER THAN THEIR NORMAL HOLIDAY PERIODS, OR IF A STUDENT WORKS FOR YOU BOTH DURING AND OUTSIDE THEIR HOLIDAYS, THEN YOU SHOULD OPERATE THE NORMAL PAYE PROCEDURES USED FOR ANY OTHER EMPLOYEE.

INCREASE IN PLANNING FEES

The Communities Minister Greg Clark has recently announced proposals for a one-off increase of 15% in the fees charged for planning applications, expected to be implemented in the autumn. This is designed to compensate for the lack of inflationary increases since 2008.

This is expected to pay for improved services from planning departments, including the proposed "planning guarantee" announced in March's Growth Review that it should take no longer than 12 months to determine any planning application, including an appeal.

The increase has disappointed bodies such as the Country Land & Business Association (CLA) who see that rural businesses would be discouraged from putting forward applications for potentially profitable development opportunities. CLA President Harry Cotterell claims the increase is "excessive", noting that "the application fee is only part of the cost of obtaining planning permission and already too many viable projects to boost rural economic growth are lost due to high costs".

HMRC GUIDANCE ON STARTING YOUR OWN BUSINESS

For those starting up a new business, HM Revenue and Customs have introduced a new interactive service which lays out all the necessary taxation matters which new business owners need to consider.

This has been produced with input from farming bodies such as the NFU and is recommended as a good place to start for those new to farming who are unaware of their tax obligations and experienced farmers who are currently diversifying. It gives:

- ▶ an overview of tax, National Insurance contributions and VAT
- ▶ information on registering as self-employed
- ▶ guidance on keeping business records
- ▶ help with completing tax returns
- ▶ information on paying HMRC

**The guidance can be found at:
www.hmrc.gov.uk/courses/syob/farm/HTML/farm_menu.html**

**For further information,
Whitley Stimpson LLP have vast
experience in assisting individuals
setting up or diversifying their
businesses, so please contact the
agricultural team.**



FARMHOUSES AND AGRICULTURAL PROPERTY RELIEF

Our recent editions have referred to cases where HMRC have challenged the eligibility of certain farmhouses for Agricultural Property Relief on the death of the owner. Therefore we outline the rules currently in operation so that you are aware of potential pitfalls which may jeopardise a future claim.

The house must be character appropriate.

This essentially means that it does not appear to be lavish and removed from the land, but should have the appearance of being part of the farm and being used for the purpose of running the business. Its size should generally be in proportion to the area of land farmed. In *Starke (Executors of Brown deceased) v IR Commrs* the taxpayers were unsuccessful in arguing that a substantial six bedroomed farmhouse, that was clearly not

of a character appropriate to the small (2 1/2 acres) property, could be treated as part of the 'agricultural land' itself.

One test which potential claimants should be aware of whether a reasonable and informed person would regard the property as a farmhouse.

The property must have been occupied by the transferor himself for the purposes of agriculture throughout the period of two years ending with the date of the transfer.

Therefore, if a transfer of a farmhouse passes on death, it must be shown that the owner lived in the property and still was involved in the day to day running of the farm. Often, an individual can become incapacitated, and in the case of

HMRC v Atkinson, the owner has to move into residential care. In that case, the taxpayer lost as HMRC successfully argued that the empty farmhouse was no longer used for agriculture.

An additional rule states that the farmhouse can be occupied by someone else for the purposes of agriculture in the seven years before transfer. Therefore, a good inheritance tax planning point is that the retiring farmer could move their successor into the farmhouse to preserve the property as a base from which the farm is run. This cannot be a salaried farm manager as it is the employer and not the employee who is deemed to occupy the land.

It is not absolutely necessary that the surrounding land should be owned by the owner of the farmhouse. The recent Hanson case has suggested that the occupation and not ownership of the land is the important factor in deciding whether a farming business is being run from the farmhouse.

However as good practice, the owner should not separate their land from the farmhouse as this may identify the house as a separable unit.

The farm must have been run on a commercial basis.

If the land surrounding the house is let out by the owner for agriculture, APR would not be available as the surrounding land is being held solely as an investment. It would be difficult to argue that the farmhouse is being occupied for the purposes of agriculture.

ONE TEST WHICH POTENTIAL CLAIMANTS SHOULD BE AWARE OF WHETHER A REASONABLE AND INFORMED PERSON WOULD REGARD THE PROPERTY AS A FARMHOUSE.

If the land is being farmed as non-profit or as a hobby, then the farmhouse will not be protected by APR. Therefore, retiring farmers must ensure that the business does continue in some form. In the case of Golding v HMRC, the claimant was successful in arguing that although in the years before his death, the deceased had scaled down his operations (so that turnover was only £1,600), he was still farming from the farmhouse and it therefore qualified for APR.

Similarly, if the farm business is continually loss making, it can be argued that the farmhouse and the land is not run as a commercial operation. The profit motive would have to be proven by the claimant.

As is clear from above, inheritance tax planning is extremely complicated and getting clear and comprehensive advice is crucial to the successful transfer of your assets. With current inheritance tax on the estates of the deceased standing at 40%, this can cause real problems for your beneficiaries. At Whitley Stimpson LLP, we have a team with considerable experience in succession planning. Please do contact us to see how we can help you protect your business further.

Talk to someone who understands the real issues

Accounting for agriculture, farming and rural business is a specialist area that requires expertise and an understanding of the industry. Our dedicated team come from farming backgrounds and offer a clear understanding of the issues facing farmers.

We provide professional knowledge and hands-on experience in the agricultural sector. We have worked with agricultural businesses for over 80 years, providing the expert advice that is required to help you enhance the potential of your farming business.

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