



Agricultural employer's guide to 2014

The last 12 months saw major changes for agricultural workers and the year ahead holds key changes for employers.

Agricultural Wages Board (AWB) changes in 2013

The AWB was abolished and the final Agricultural Wages Order (AWO) expired in September 2013. This fundamental change applied to both new and existing agricultural workers. Employers will need to put in place terms and conditions of employment (T&Cs) whilst being aware that different rights apply to certain classes of agricultural workers:

Existing workers employed before June 26, 2013

- The existing AWO terms will still apply unless varied by consent of the parties. Failure to obtain consent will be a breach of contract and may amount to unlawful deduction of wages where the changes impact upon pay.
- There is no requirement to review/increase salaries from October 1, 2013 unless an employer voluntarily awards a wage increase or needs to increase wages to comply with the National Minimum Wage (NMW). Employers must now consider future pay increases having regard to the NMW and market forces.

Workers employed after October 1, 2013

- Employers can dictate the terms of employment for workers engaged after October 1, 2013 provided that the terms comply with the NMW and the Working Time Regulations limits on working weeks, annual leave and rest periods.
- Whilst providing flexibility, the abolition of the AWB may create a two tier workforce. This can create employee disharmony and give rise to discrimination claims, particularly where businesses treat new workers differently in relation to pay and other T&Cs without justification.

New for 2014...

- **Discrimination**
Questionnaires to be abolished from April 6; a welcome relief for employers given the time consuming and costly nature of replying to questionnaires.
- **ACAS Pre Claim Conciliation**
Mandatory for every claim pursued through the Employment Tribunal from April 6. Details of disputes will have to be submitted to ACAS and a period of conciliation attempted before proceeding to the tribunal.
- **New Sickness Absence Management**
The Government will introduce a health and work assessment and advisory service from Spring 2014, providing for a state-funded assessment by occupational health professionals for employees who are off sick for four weeks or more.
- **Financial Penalties**
From April 6 an employer who loses at the tribunal can be ordered to pay a financial penalty equal to 50 per cent of the compensation (subject to a minimum of £100 and a maximum of £5,000).
- **Pension Auto Enrolment**
Will apply to employers in 2014 with a PAYE Scheme size on April 1, 2012 of between 59 and 500 employees.
- **Holiday Pay**
Whilst subject to appeal, recent decisions suggest that holiday pay calculations should include regular overtime worked.

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Welcome



Andrew Holden

2014 promises to be an interesting year for our clients and the firm alike.

Our Penrith office has now been open for more than 12 months and we continue to develop our offering in Cumbria with three seminars across the region in the next few weeks.

Also, as you will see from his article, Geoff Tomlinson is leaving the firm after 38 years at the helm of the Rural team. I would like to thank Geoff on behalf of myself and the rest of the team for the training and support he has offered to us all.

For our clients, 2014 will see the new Common Agricultural Policy rules, changes in employment legislation and potential changes to planning legislation.

The CAP reforms are touched upon by Adam Briggs of the NFU in a guest article but will also be covered by another NFU County Adviser, Mike Sanderson, at the Cumbrian seminars we are holding – and we look forward to seeing some of you there.

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Riding off into the sunset

People of my generation will remember a comedy record by Peter Cook and Dudley Moore in the mid-sixties entitled “Now is the time to say goodbye.” Well, now it’s my turn as I will be retiring at the end of March.



Geoff Tomlinson

I have been with Napthens for 38 years, and have had no other employer. I trained with the firm, qualified in 1978 and became a partner in 1980 at the age of 26 (...I had a lot more hair then).

Both the firm and the law have changed very significantly since I started, largely for the better in both cases. Napthens has grown considerably in recent years, becoming a major player in the

North West legal market, and I have been pleased to play a small part in that development. I’m sure the firm will continue to thrive, and I wish the partners every success.

I have specialised in acting for farmers for my entire career and as a result I have got to know many wonderful people. In my journey with them I have experienced their kindness and generosity, I have known encouragement and

endured stubbornness, I have shared in joy and in tragedy....but it has certainly never been dull!

I have worked with, and for, some great people, and I want to express my heartfelt thanks to colleagues who have helped me along the way, to clients who have given me their business (and often their friendship too) and to fellow professionals who have worked alongside me and have been kind enough to recommend me to their clients.

I started life as a farmer’s lad, and that’s really how I still see myself so that is the title of my memoirs, written over the last couple of years. If you want to know more you will have to buy a copy of the book. All the proceeds will go to the RABI and a copy can be obtained from bookshops, as an e-book or by contacting Georgina.Lamb@rabi.org.uk

I am delighted to be leaving behind me a great Rural team at Napthens, now led very ably by my successor, Andrew Holden. Please give them your full support.

Key dates for your diary

Over the coming weeks, we are holding a number of legal updates focusing on the Common Agricultural Policy reform. The events will start at 7.30pm, with supper served at 9pm.

CAP, Renewables and Tax Update

13 February -
Cockermouth Auction Mart
20 February -
NWA Auction Mart (J36 M6)

CAP, Farming Legal Update and Tax Update

4 March -
Skipton Auction Mart

For more information or to book a place at one of these events, contact:

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Welcome changes to simplify rural planning

The Government has made a welcome announcement which would allow homeowners to relocate historic rights of way on their land.

The plans were put into place following calls from campaigners who pointed to walkers using historic routes which often take in modern gardens or lie very close to properties.

In addition to the existing rights registered, additional routes may be applied to be registered as rights of way if they have been used by the public for 20 years or more.

Under the plans, ramblers would find it easier to open up rights of way, requiring them to apply to their local council rather than directly to the Government’s environment secretary.

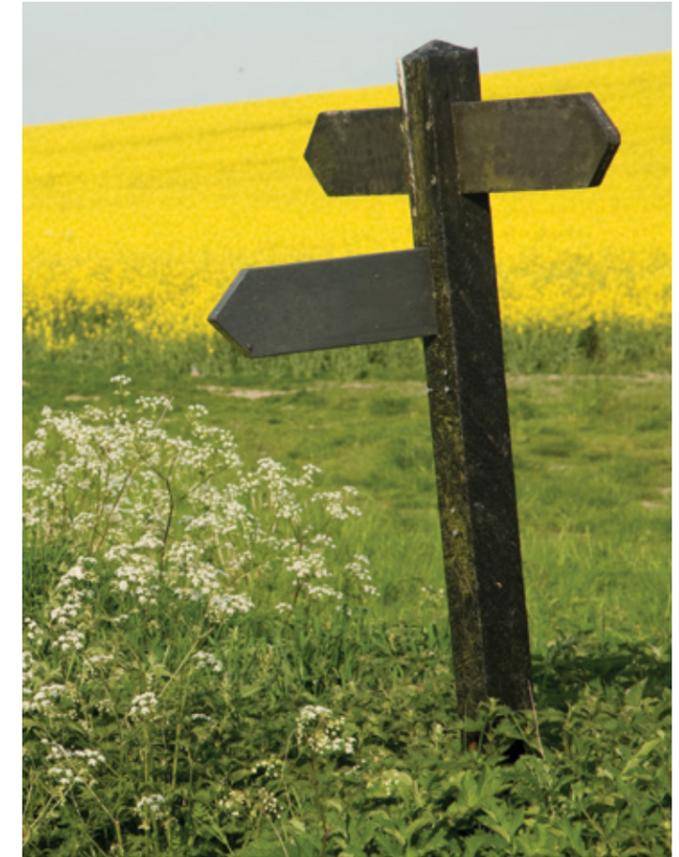
Property owners would also be given the right to ask for existing and new paths to be diverted to

go around a disputed piece of property, rather than across it. Such a request would be expected to be accepted under the plans, currently being drawn up.

Head of Rural, Andrew Holden welcomes the plans. He said: “Anything which simplifies what has become a complex and costly process is to be encouraged. Diverting a right of way and proving a new route is expensive, and can take a substantial amount of time.

“Under the existing system the cost of applying to divert a route was often needed up front, but there was no guarantee of success.

“Homeowners should also be looking to protect themselves against new claims as well as reacting to existing ones. This



can be done by submitting what is known as a statutory deposit, a declaration by the landowner with an attached plan showing any rights of way over their land that it is agreed the public should have access to.

“This, along with physical steps such as locking gates and erecting signs, has proven sufficient in defeating any potential future claims.”

Meet the team

Siobhan Turner of the Rural department



Siobhan Turner

As a legal assistant in Napthens’ Rural department, I deal mainly with rural and agricultural property matters. This ranges from sales and purchases of farms and land to leases for wind turbines and easements for utility companies. I also carry out first registrations and adverse possession applications, acting for clients ranging from private individuals to large landowners.

Agricultural property law is more complex (and interesting!) than normal residential conveyancing due to the manner of additional issues that need to be investigated.

This can range from existing easements, public rights of way, boundaries and drainage rights, all of which are important to a rural landowner...even though they might not know it at the time.

I started working in this area of property law during several years spent at a large firm of solicitors in Cambridge.

The farming landscape (and indeed the physical landscape) differs hugely between East Anglia and the North West, but the property issues are the same in the two areas.

Following my time in Cambridgeshire, I returned to my Lancastrian roots, moving back to the rural village outside Preston where I was brought up. I have had a keen interest in rural life for as long as I can remember – I am an active member of Agricolae and enjoy attending a number of agricultural shows throughout the year. I feel privileged to work with and for the many agricultural clients that Napthens has.

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Role of the NFU county adviser

While the last 12 months have been particularly challenging for farmers in the region, they have also seen some substantial changes to the way in which the NFU operates here in the North West. These changes saw the creation of the new role of county adviser, replacing the old role of regional policy adviser.



Why were these changes made? Following the move to a regional structure we conducted a review of how the NFU was operating at a regional level.

We found that farmers and landowners who had regular contact with the regional staff or commodity board representatives were very happy with the activities of the NFU.

However, the message came back that not enough NFU members were engaging with regional staff and that farmers identified very much with their own county – strongly considering themselves to be Cumbrian or Lancashire members. That led to the introduction of the county

advisers, tasked to become more active within a county and provide more connection with members.

On that basis, Helen Forrester and Mike Sanderson were appointed to share the role of county adviser in Cumbria while I took on the role of the man on the ground in Lancashire.

The main responsibilities of the county adviser are to support the local group secretaries in their work retaining and recruiting NFU members as well as providing advice to members and helping to resolve any local issues which may arise.

We organise and attend meetings with key individuals

and organisations such as MPs, local councillors and police as well as local representatives or government bodies such as the Environment Agency and trading standards.

Whilst the group secretary will remain as the first point of contact for NFU members, the hope is that through the work of the county adviser, members will be better informed about the activities of the NFU and as a result feel more connected to their organisation. The response from members to this change has so far been overwhelmingly positive.

Over the next few months some decisions will be made which will have significant implications

Guest Article



for farmers in Cumbria and Lancashire. The most eagerly awaited decision concerns the future of the Common Agricultural Policy and what the successor scheme to the Single Payment will look like. Uncertainty remains over how much money will be transferred from Pillar 1 to Pillar 2, what the greening obligations will look like and how much money will be 'moved up the hill.'

On top of that the Government will publish its report into the pilot badger culls. Although we will hopefully never see any culls in Cumbria or Lancashire, these are vital if the spread of TB is to be controlled. Closer to home we will still be working with the Environment Agency to try and find long term solutions to the drainage and flooding problems which have impacted on various parts of the region.

So as we look forward to the year ahead, we will keep members well informed on the latest developments which impact on their businesses. Hopefully we can build on a successful first year.

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