

rural:law

THE NEWSLETTER OF NAPTHENS' RURAL DEPARTMENT

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Green energy: support for your business

UK plc is committed to reducing carbon emissions
and is embracing the use of renewable energy.

Napthens specialist Energy & Renewables team are on hand to guide you through complex legislation that can allow you to capitalise on the opportunities the North West has to offer in the energy sector. Combined with our experience within the agricultural sector, we're able to support you through the ideas and issues that surround involvement in the green-revolution including obligations, diversification, contracts, protecting your property, protecting and utilising your asset base - and how to extract best value.

When it comes to your own energy needs, we recommend taking a look at NFU Energy:

What is NFU Energy?

NFU Energy is one of the UK's leading energy consultancies. It is unique as it specialises in the agricultural energy market and helps NFU members with everything from buying and selling energy through to securing new connections and upgrades, energy regulation, compliance and energy efficiency - anything to do with energy in agriculture.

Contracts: Whatever the size of your electricity supply, they will be able to find a fair and simple energy contract that suits you.

Compliance: Ensuring you become and stay compliant

Consultancy: Helping you understand, identify, implement and manage the best energy options for your business.

NFU Farmer & Grower, Partner and NFU Pro Business members receive preferential rates, including 10% discount on all NFU Energy standard fees.

Using the ever-growing buying power of NFU member's electricity supplies NFU Energy offers competitive electricity prices with trustworthy suppliers through the NFU Electricity Buying Group. Whatever the size of your electricity supply, NFU Energy will be able to find a fair and simple energy contract that suits you.

100% Renewable utility contracts at NFU Energy

NFU Energy have 100% renewable prices for all business electric supplies regardless of size with renewable buying group prices now available for NFU members. If you need to provide evidence of renewable energy sources to the companies you supply, they can source certificates of origin for you.

To find out more please visit the NFU Energy website www.nfuenergy.co.uk or contact them on:

T: 024 7669 6512

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Welcome

Welcome to the latest edition of Rural Law.



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In this edition I've taken a look at an issue that is increasingly a cause for concern for land managers, farmers and landowners – how to deal with applications to register new public rights of way.

Lorna Kelly from our Rural team explains the importance of registering land and how to apply for Voluntary First Registration.

And I've invited a colleague from our Family team, Gillian Rigby, to talk about the sensitive subject of divorce and the farming family. Gillian discusses how, with the right professional advice, it is possible for the farm business to continue even after divorce.

Finally, our front page article highlights the work of the NFU Energy team and the services provided.

With the UK commitment to reduce carbon and embrace the use of renewable energy, the move to greener, self-sufficient energy sources presents a major opportunity in our region. Napthens Energy & Renewables team can help guide you through the complex legislation involved, so do feel free to contact me if you have any questions.

In the meantime, if we can be of assistance on issues raised in Rural Law please get in touch with me or any member of the Napthens Rural team.

Divorce: What is the Impact on the Farm?

It's never an easy decision to end a marriage. As well as the personal issues, any divorce involves having to come to agreement on the division of assets – but when a marriage is closely tied into a farming business, this can throw up additional challenges.

The asset structure of a farm can be complex and valuations are often required for land, property, livestock, plant and machinery. There are often other intangible assets such as subsidies to be considered, which must be offset against mortgages and borrowing facilities of the farm.

Many farm owning couples want the farm to continue to operate once their divorce is completed. Each farm has a unique history – many have been in the family for generations, sometimes with rules of succession in place. Others have been built up during the marriage by both parties.

For any divorce, court proceedings are a last resort. Napthens always explore alternative dispute resolution such as mediation, which can result in an agreement allowing fair distribution of assets, protecting the viability of a farm for one or both parties.

“Divorce involving a complex business like a farm can present unique challenges, but they are not insurmountable.”

For anyone in business together, there should be a Partnership Agreement in place, which describes how the business should operate, and how it would be dissolved if it ever became necessary. Without a Partnership Agreement, tax implications may arise from the division or sale of land and assets, making specialist accountancy advice essential.

For couples about to get married, a pre-nuptial can be prepared which sets out plans for what happens if the marriage were to break down. This is particularly important for any inherited assets which need protection. If you are already married and have no pre-nuptial agreement in place, it is possible to cover these issues retrospectively with a post-nuptial agreement.

Divorce involving a complex business like a farm can present unique challenges, but they are not insurmountable. Here at Napthens we have the experience and expertise in dealing with these issues, and together with specialist accountants and valuers, we can help you achieve an outcome that meets your objectives.



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Preventing New Public Rights of Way (PRoW)

Access is a complex and contentious issue for land managers, farmers and landowners. Covid-19 has exacerbated this in some areas due to the increase in the number of new visitors to the countryside. Repeated trespass is a particular concern due to the ability of members of the public to create new rights of way through a period of use.

Preventing New PRoW

Often, applications to add new rights of way to the Definitive Map come as a surprise to the landowner, but once use has been established it can be difficult to defend claims. Unfortunately, it often takes a considerable amount of time to deal with applications - many local authorities have a backlog (some reports suggest the backlog could take years to complete, totalling around 4,000 paths). The cost of opposing applications can be significant, particularly where there is a public inquiry involved.

There are a number of ways landowners can protect land from applications to register new PRoWs. Simple steps include displaying signs or placing (safe) obstructions - although landowners need to be able to prove these steps have been taken. Landowners can prevent new claims by depositing a map declaration with the local Highway Authority that they don't plan to create any new PRoWs over their land. This is often referred to as a Section 31(6) application.

Landowners can make a Section 31(6) application by depositing a map and statement showing all rights of way they accept exist over land in that local authority's area. Deposits need to be kept up to date and renewed periodically to ensure protection is retained. The onus is then on a user to prove that, notwithstanding this declaration, the landowner did in fact intend to dedicate a new right of way. This is likely to be challenging - especially if steps have been taken to keep the declaration up to date.

Declarations only prevent claims that new rights have been acquired after the date on which they have been

deposited. They cannot prevent claims relating to historic rights of way nor claims that new rights were acquired before the deposit was made. However, they can be a valuable tool, particularly for those who experience regular trespass incidents.

NFU Legal Health Check Service

Due to increasing anxiety amongst members on the issue, NFU members who want to make a Section 31 (6) deposit can now use the services of legal panel firms through the NFU Legal Health Check.

As an NFU Legal Panel firm, Napthens offer a free initial "Legal Health Check" to help identify any issues or legal gaps members might need to address to help secure their businesses. This member benefit has expanded to include identifying whether a Section 31(6) deposit should be made to protect members' land from new PRoW applications.

Should a deposit be identified as the right approach, we would provide a quote for carrying out the work - with an NFU members discount applied.

LAS Special Offer

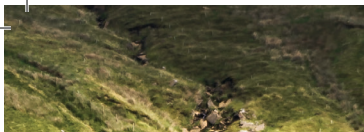
As further support, NFU members who subscribe to the Legal Assistance Scheme (LAS) and wish to commission Napthens to make the Section 31(6) deposit, can apply for a financial contribution of up to £250 towards the costs. The offer is available until 31 December 2021.



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First Registration of Land

Farmland has one of the highest unregistered areas in the UK -
but why is it important to register your land?



There are a number of reasons to register your land including:

- You will be notified if anyone attempts to either make a claim for, or register any rights over, your land. This then allows you the opportunity to dispute the claim. If the land is unregistered you may never get notice of the claim and it will be completed without you having chance to object.
- Registered land benefits from compensation for any loss caused to the registered proprietor for errors by the Land Registry on the register which need to be rectified
- Registration keeps a digital copy of the relevant deeds, so losing the deeds is not an issue. Establishing title in such cases where deeds have been lost can be an expensive, lengthy process otherwise.
- Where land is voluntarily registered, all information relating to the land is contained in the Title Register including a description of the property, whether freehold or leasehold, ownership, any mortgages and any rights and restrictions. Registration therefore speeds up transactions affecting the land as it makes title investigation simpler for potential buyers and sales quicker to progress.

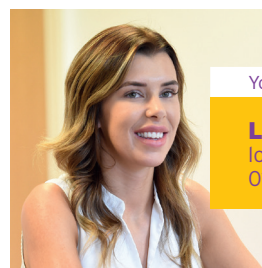
Planning for the Future

Registration of property at the Land Registry can play an integral role in planning for the future. First registration applications can be carried out as part of the property audit element of our Farm Future

package in which an audit of property interests is undertaken. This is helpful for business planning as lending can be secured more quickly as banks and accountants can see at a glance how the land is owned.

Finally, auditing your deeds can bring historical matters to light such as existing charges, covenants, restrictions and easements. This provides opportunity to review the title and deal with issues before land is passed on or lending is secured, meaning the owners with historic knowledge of the property are available to assist in resolving issues in advance.

If you are an NFU member and subscribe to the NFU Legal Assistance Scheme, you may be eligible to apply for financial assistance of up to a maximum of £1000 for four pieces of work (£250 each) generated by the legal health check. The contributions may be used towards a property audit and potentially towards the cost of registering any unregistered land revealed by the audit. For further information, please call NFU CallFirst on 0370 845 8458 and discuss further with us.



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Supporting the farming community across the North West
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