

Field Talk

Agricultural Law Briefing • Spring 2023

Breeds at risk register: Changes and challenges for farmers and breed societies

Breeds at Risk

As all livestock farmers will know, Defra maintain a list of breeds deemed to be at risk. The list is maintained and sets out specific breeds. Those breeds included on the list obtain various benefits including potential exemption from culling in the event of a disease outbreak.

Criteria for eligibility

For a breed to be included on the UK list of breeds it must satisfy the following criteria:

1. be a 'Native Breed'
2. be eligible for inclusion in the 'UK National Breed Inventory'
3. have a population of registered breeding females below the thresholds set by Defra.



Changes

Defra recently reconsidered the definition of a 'breed' and emphasized the need for consistent genotype and phenotype as well as a recognised history and administrative framework. More importantly Defra made it clear that within a given breed it is no longer "appropriate to split that breed on the basis of minor trait differences".

This change means that separate breed recognition will no longer be granted for sub-

populations of the same breed. For example, different coats / colours or polled vs horned will not receive separate status.

Challenges

This change in policy by Defra has wide ranging consequences for farmers of rare breeds which are sub-populations of a breed and are registered in a herd book along with the general population of that breed.

Defra has specifically set out that breed societies can decide whether or not they wish to register different sub-populations within their breeding book. However, all breeds included on the list must have a recognised history and administrative framework meaning it is not possible for a sub-population to register on the Breeds at Risk register if the overall size of the Herd Book precludes that.

Given the onslaught of diseases affecting livestock in recent years, most notably TB and Bird Flu, removal from the Breeds at Risk register could present a challenge for a number of rare breeds registered as sub-populations.

Further, we anticipate issues for Breed Societies, who will no doubt face pressure from members whose livestock are no longer protected due to their status as a sub-population within the society and herd book. Breed Societies may receive calls to lobby Defra to remove the reference to sub-populations or see members calling for separation of sub-populations within herd books or by splitting herd books entirely.

If disputes arise between farmers and breed societies, it will be important to review the breed societies' articles and membership rules in the context of any action which can be taken to support members whilst also protecting the breed as a whole.

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Welcome to the Spring 2023 edition of Field Talk



Welcome to the Spring 2023 edition of Field Talk, our agricultural law newsletter.

As we look forward to Summer and meeting up with friends

old and new on the agricultural show circuit it is against the backdrop of one of the most uncertain times farming has faced in living memory. In what has always been a challenging industry, the phasing out of the BPS, ambiguity of the new government schemes combined with eye watering rises in costs and an increasingly volatile climate is giving everyone involved in farming sleepless nights. Navigating these new challenges will test all of us but the team at Clarke Willmott are dedicated to safeguarding the farming future of our clients.

In January, we were delighted to receive the Tim Sell Award for Excellence from the NFU. This award is presented annually to the legal firm who has shown outstanding contribution to agriculture. Our work in helping 17 NFU members obtain hundreds of thousands of pounds in settlement of a group legal claim against firms accused of mis-selling finance deals and seizing their property demonstrated the tenacity and commitment of our team in a case that spanned 8 years. This team continues to be ranked as Band 1 in the South West in the recent Chambers and Partners 2023 Guide and I am very proud of all they continue to achieve on behalf of their clients.

This Summer's shows represent a vitally important opportunity for members of the farming community to come together and celebrate the very best of British Agriculture. Alongside this we are pleased to facilitate the relaunch of South West Women in Agriculture. This, female only, networking group provides a valuable opportunity to the many women involved in farming across our region to make new connections and friends in the industry. If you know anyone who would enjoy being part of this group, please do get in touch so we can add them to the mailing list.

We hope you enjoy reading this edition of Field Talk, and as ever please do not hesitate to get in touch to see if we can help you or your business.

Esther Woolford, May 2023

Breeds at risk register *continued*

How can we help?

Clarke Willmott are well equipped to assist with the issues raised in this article and act for farmers and breed societies. Our litigation team can assist with any disputes which arise in relation to breed societies and their members, or with issues more widely. We are NFU panel solicitors for Somerset, Gloucestershire, Wiltshire and Dorset and have one of the biggest agricultural legal teams in the country.

For more information about this article and our agricultural legal services generally please contact:



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Divorce and the family farm

Providing a realistic valuation of farm assets in the case of divorce can be 'tricky' not only because of the inherent uncertainties farmers face such as weather, rising prices and subsidies but now also because of a seven-year Brexit transition rule, says family law specialist Philippa Yeo.

Philippa, a partner at Clarke Willmott LLP, who works in the firm's Bristol and Taunton offices, says changes to payment and support via the Agriculture Act 2020 that replaces the EU Common Agricultural Policy currently make it difficult to value the business in the event of marital breakdown.

"The transition period, and the change in payment criteria, are making it increasingly tricky to provide a reliable valuation of assets and income," said Philippa.

"For a farm business, income in recent years cannot necessarily be relied upon as being indicative of future levels of income and this should be borne in mind in any current valuation.

"It is also still too early to estimate if a farm will meet the criteria or whether it is even possible to value such holdings at present, knowing that the income could drastically fall in the next few years."

The seven-year transition period, which began in 2021 will lead to a scheme which is said to reward farmers and land managers with public money for 'public good' such as better air and water quality, thriving wildlife, soil health or measures to reduce flooding and tackle the effects of climate change.

"Getting divorced is often referred to as one of the top five most stressful life events. And for farming families, the complexities of assets plus additional complications stemming from Brexit can lead to even higher levels of stress," Philippa added.

"Complex, emotive and sometimes multi-generational assets such as farms highlight the benefit of marital agreements, such as pre and post-nuptials, in defining and ringfencing wealth. The benefits of alternative dispute resolution methods such as mediation and private financial dispute resolution hearings are also more pronounced as they allow families to be creative in ways in which the court's more blunt approach would not provide for."

The impact of Brexit specifically on farmers was highlighted by TV's Jeremy Clarkson in the latest series of Clarkson's Farm on Prime Video, who hit out at the government over the lack of EU subsidy for farmers following Brexit.

Clarke Willmott has an established reputation in the agriculture sector and specialises in helping farmers, landowners and their families plan and manage all aspects of their finances, including wills and probate, trusts and tax matters.

For more information please contact:

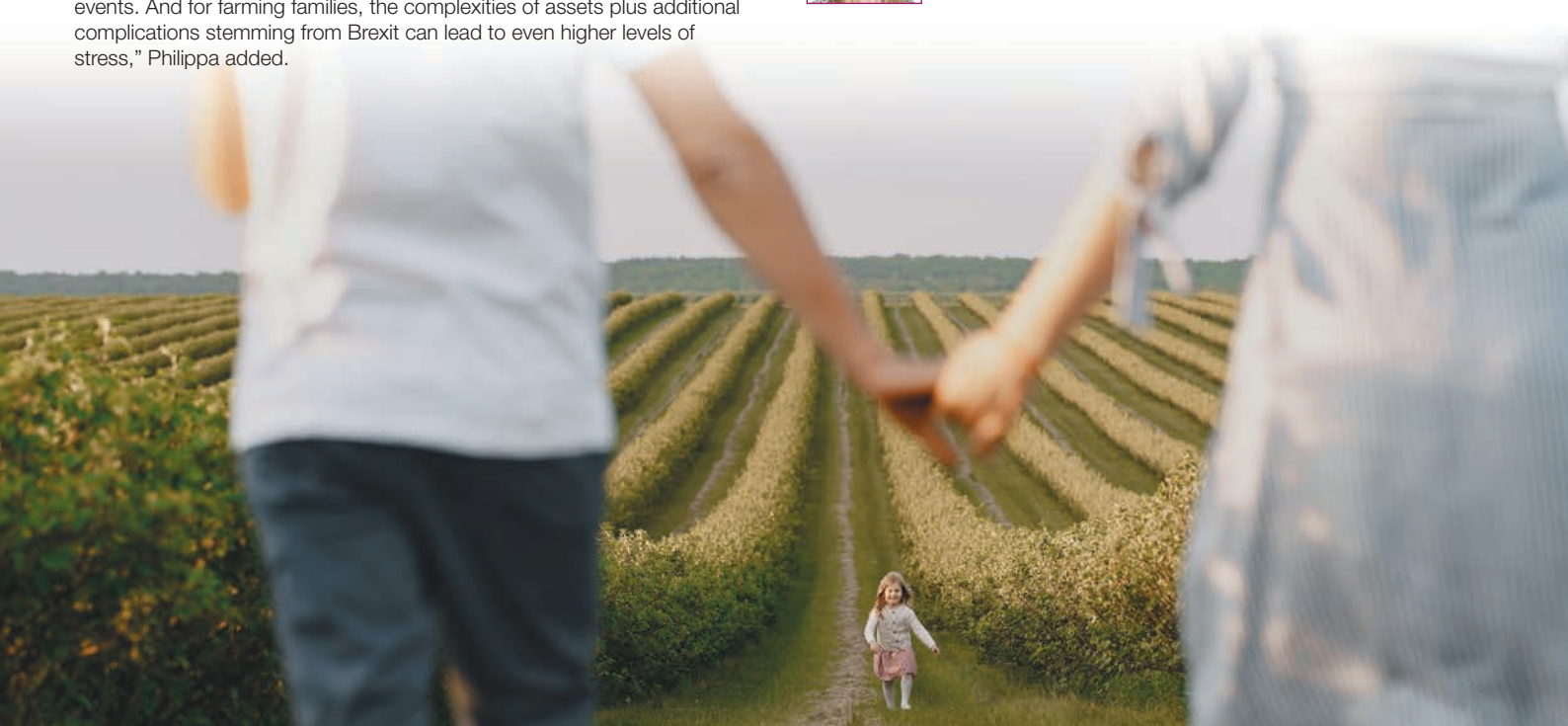


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Spring Forward, Fall Down?

A brief reminder of the risks of working at height



Spring is upon us!

As daffodils emerge, tiny lambs take their first, timid, steps, and the birds break into song, the mornings are lighter and the possibilities seem endless.

Spring feels like a time for new beginnings and for many farmers, as you sip your morning cup of tea and look out across a sunlit farm, the mind turns to all those tasks that have been placed on the back burner over the winter. That barn roof that needs replacing, that wall that needs to be rebuilt, those couple of fence posts that need knocking in....

Perhaps it is time then, for a cautionary tale. Every year, the Health and Safety Executive releases its workplace injury statistics and the agriculture, forestry and fishing sector consistently scores highly.

FOCUS ON: falls from height....

Falls from height were the most common cause of workplace death (across all sectors) in 2021-22. Most of those falls could have been prevented, saving injury, heartache and massive fines imposed by the courts.

This all makes rather grim reading but there is good news! You can avoid all this by effectively planning and risk assessing your tasks. Farmers undertaking their own work at height are vulnerable to prosecution. All too often this is a conviction against an individual, resulting in individuals being convicted and fined or, in some case, imprisoned.

CASE STUDY 1: Renka Limited, February 2023

A window manufacturer was fined £12,000 plus £4,000 costs after an incident where a worker fractured his back and ribs following a fall from height.

The company was installing a rooflight but the tower scaffold they intended to work from was too large to be safely positioned. The workers therefore constructed a temporary platform using boards wedged between roof joists. One of the workers stepped through the board and fell to the ground. Although the workers had taken it upon themselves to construct a temporary platform, the employer was the party that was prosecuted.

The moral of the story: It's on you! As an employer, you have a non-delegable duty to plan and manage the work so that it can be carried out safely, provide the correct equipment and provide effective training and supervision.

What does the law require of employers in respect of planning and managing work at height?

Sections 2 and 3 of the Health and Safety at Work Act establish a duty on employers to ensure, so far as is reasonably practicable, the health, safety and welfare of employees and non-employees (including contractors, visitors and the general public).

The Work at Height Regulations 2005 require employers to ensure that work at height is planned and managed so that risks are assessed and managed.

Health and safety law is all about risk assessment. There is no "one-size-fits-all" approach. The law provides for a statutory defence: if the duty holder can show that it did all that was reasonably practicable to ensure the health, safety and welfare of the relevant people, then a court will return a not guilty verdict.

So, what can you do to avert risk? There is a hierarchy of safety measures when it comes to planning work at height. It all starts with **assessing the risks**: a sufficient risk assessment ought to identify what the risks are. From there you move on to work out how you can mitigate them.

STOP. THINK. PLAN.

Think about preventing falls. If you can't, mitigate them.

Consequences of Breaches

An incident which results in injury will usually attract the attention of the Health and Safety Executive and, in certain cases, the police.

In the most serious cases and almost always where injury or fatality ensues, breaches of these regulations can result in the prosecution of a limited company, a farming partnership or individuals. In serious cases, individuals can receive custodial sentences. In less serious cases the fines imposed are substantial, meaning that it really doesn't pay to take a short cut.

CASE STUDY 2: Eden Veg Limited, June 2022

In June 2022 a farming business in Buckinghamshire, was fined £13,400 (with costs of over £8,000) after a worker fell from the roof of a barn that was under construction in April 2021.

The worker suffered life changing injuries when he fell from a ladder while installing metal cladding to the roof.

The company had decided to install the building itself because the suppliers were not able to travel to site due to COVID-19 lockdown. HSE identified a lack of risk assessment resulting in failure to identify safe working methods and described the incident as "wholly avoidable".

If it does go wrong, we are only a phone call away. Your initial interaction with the HSE after an accident is critical and our expert team is experienced in advising the sector.

Be safe on the farm and remember: when in doubt, wait it out!

For more information about this article and our agricultural legal services generally please contact:



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Notes from the NFU: Environmental markets

By Alex Stevens, regional policy
manager South West NFU



There has been much discussion in farming circles recently around the potential of what are known as environmental markets.

Essentially these markets present opportunities for private businesses to invest in projects to preserve or enhance the environment, through the creation of 'credits' – which might be, for example, a tonne of carbon or a defined amount of biodiversity – that can be sold in the market.

This would mean that, for instance, a developer putting up a new housing estate which might have a planning condition to maintain biodiversity could buy credits that would enable a neighbouring farmer to increase their biodiversity, meaning the development could go ahead and the farmer could gain some income.

A similar system could also be used for water management projects or carbon storage.

Although environmental markets have great potential, they are still very much an unknown quantity which means the discussion has ranged from confused, to hopeful, to highly optimistic.

The NFU has been working to bring some clarity to these rapidly developing markets. Their development will have an impact on future generations of farmers and producers, so it is important to get this right, so we have established five key principles necessary for successful environmental markets.

- Environmental markets must work alongside the domestic production of food, energy and fibre.
- Public policy and government initiatives must support the development of private markets.
- Environmental markets require clear rules and standards to allow farmers and buyers to participate with confidence.

- Markets should be accessible across a range of farm sizes, tenures and business structures.
- Farmers must be fairly rewarded for the delivery of environmental goods.

The way the environment and land use is valued, from a financial point of view, is changing quickly. New markets are already starting to develop and potential buyers of environmental services are emerging.

We need environmental markets which are farmer led and farmer owned, backed by technical professional expertise and work for both the tenanted sector and other farm business models.

If structured correctly, the potential benefit to farmers, growers, and agri-food businesses of engaging with environmental markets could be significant.

We have already seen environmental markets begin to emerge in the South West, with projects on the Somerset Levels and Poole Harbour being just two examples.

If you have been approached, or are interested in signing up to a scheme, we would strongly recommend taking legal advice before doing so – the NFU's Legal Assistance Scheme offers help with reviewing contracts.

Clarke Willmott are a part of this scheme, and the firm has already given its support to NFU meetings looking at some of the issues around environmental markets.

If you are an NFU member and would like to know more, contact Clarke Willmott or NFU CallFirst on 0370 845 8458.



An interview with...

Alan Lyons, Shows Consultant



Alan Lyons has spent a lifetime in Shows from competing at a young age, judging, commentating, stewarding, being an attraction with his Great British Sheep Show and as Head of Shows at the Royal Bath & West Show for over 15 years.

His love of livestock and equine showing has taken him around the world, but he always returns to his home in Somerset with his partner John and their prize-winning stallion, Wessex Starring Role. We asked Alan to give us the lowdown on the world of Agricultural Shows.

What are the biggest changes you have seen in Agricultural Shows over the last 20 years?

Probably reduction of livestock exhibitors, which is sad, and a high turnover of trade stands. Those are two negatives, but the positives would be the advancement of technology with online entries and the ability to send multiple and changing messages via social media.

The exciting change is the amount of talented younger people now running Shows, particularly in the south west. They will take the Shows forward for the next 20 year which is good news for Shows.

How has Covid changed Shows?

Sadly, the loss of some outstanding individuals across the country and the loss of exceptional professional Show administrators, through redundancy, or to take a different career path.

I think through "goodwill gestures" of refunds to trade stands, sponsors, Members and other supporters, relationships and trust has been improved.

Covid has made the relationships with contractors different in that we have less choice and their costs have increased to a level that may not be sustainable.

To end on a plus, post Covid people came back to Shows in terrific numbers which was a huge, and much needed, boost for Shows.

How can Shows help farming in the future?

Every Show is a "shop window" to the consumer and you can throw millions of pounds at marketing British produce, but nothing beats a face-to-face meeting with the producer. I love seeing a family chatting to a livestock exhibitor in the lines, asking questions about how the animals are kept. This is better than any episode of Countryfile!



Alan judging Sheep Interbreed Pairs at Great Yorkshire 2022.

Where is the first place you head to when you arrive at a Show?

The livestock of course! Followed by the horses.

What is the strangest thing you have ever seen at a Show?

I was blown away with the French microlight pilot, Christian Moullec and his flying Cranes. He was trying to teach them a new migratory route to stop them being shot over Eastern Europe. His display brought the showground to an absolute standstill. Although the second day he flew over the Coloured Ridden Horse class, which very quickly became a loose Coloured Horse class!

That was strange but good. I did see the actor who played Chewbacca in *Star Wars* at a Show...never understood that one!



Come and say hello!

Our agricultural legal specialists will be attending the following Summer 2023 shows. Please come over and say hello or get in touch if you would like to arrange to have tea/coffee and an informal chat with one of our Agri team.

- North Somerset Show 1 May 2023
- Devon County Show 18-20 May 2023
- Royal Bath & West Show 1-3 June 2023
- Royal Three Counties Show 16-18 June 2023
- Honiton Show 3 August 2023
- Gillingham & Shaftesbury Show 16-17 August 2023

Contact **Sam Mackenzie-Green** on sam.mackenzie-green@clarkewillmott.com to arrange a chat.

Proud supporters of FWAG South West and the Kingfisher Project

The Farming & Wildlife Advisory Group (FWAG) South West are a registered charity representing farmers and landowners in the delivery of wildlife conservation.

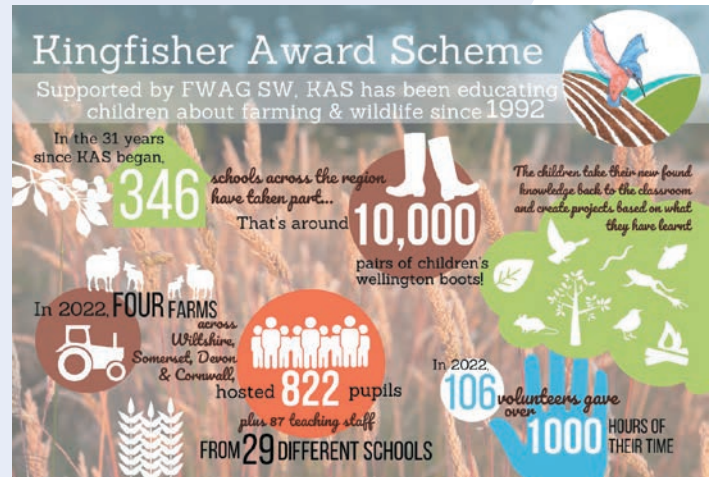
FWAG support farmers in going beyond the minimum legal requirements and maximising the environmental value of the work carried out. They also support farm businesses, whilst promoting and enhancing the conservation of wildlife, the environment and the landscape in relation to modern agriculture needs.

In 2019 FWAG celebrated 50 years of supporting farmers and the environment. FWAG participate in a number of other activities aside from farming advice. They support the Kingfisher Award Scheme (KAS) which provides children with the opportunity to go to farms to explore the natural world. The scheme promotes awareness of the countryside, farming and conservation to school children.



First launched in Devon by the late Poet Laureate Ted Hughes and friends in 1992, KAS has since grown into a regional educational initiative of the Farming & Wildlife Advisory Group South West, working with over 900 children a year across four counties (Devon, Cornwall, Somerset and Wiltshire). In 2023 the scheme is starting up in two more counties, Dorset and Gloucestershire, to provide more children with access to this wonderful opportunity.

Children in Somerset will visit a farm or wildlife site, which this year will take place in Curry Rivel. After additional research on the topic, they create displays based on an area of the farm or wildlife that has sparked the most interest. To finish, the schools return to the farm or wildlife site to present their displays and compete for a trophy. The Kingfisher Award is presented to the winning school and this is all organised by volunteers and funded



solely on donations. We would urge you to visit the KAS webpage if you are interested in what they do or would like to get involved Somerset KAS | Farming and Wildlife Advisory Group South West Limited (fwagsw.org.uk)

Clarke Willmott LLP are proud sponsors of the Kingfisher Award Scheme and will be visiting them in May to see how the schools are getting on with their learning of the farm and view the competition!

GET INVOLVED

KAS takes place every year thanks to the support of local farmers funders and volunteers. Any farmers or potential volunteers who may wish to get involved in an event are encouraged to contact louise.wallace@fwagsw.org.uk

If you would like to receive future editions of **Field Talk** or if you have any comments or suggestions for the newsletter please contact our editor, **Sam Mackenzie-Green:** sam.mackenzie-green@clarkewillmott.com

SWAg Network
SOUTH WEST WOMEN IN AGRICULTURE

South West Women in Agriculture is a networking group aimed at bringing together women from across the region who work in farming. Open to professionals, students, farmers and farmer's wives, we are a friendly group who enjoy supporting each other and organising fun and informative events several times a year.

JOIN OUR MAILING LIST
email sam.mackenzie-green@clarkewillmott.com

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