

Field Talk

Agricultural Law Briefing • Spring 2025

Precision breeding: Steve Reed MP confirms highly awaited precision breeding legislation to be introduced by the end of March 2025

At the beginning of January, at the Oxford Farming Conference, Steve Reed MP announced that secondary legislation for precision breeding in plants would be introduced in March this year.

I wasn't the only one who was delighted, there was a 'woop' from one audience member.

The Genetic Technology (Precision Breeding) Act became law in England in March 2023, but secondary legislation is needed to a regulatory framework in place and make the legislation usable.

The introduction of this framework will allow farmers and growers in England to genetically-edit plants. This will put us at the forefront of agri-food development, along with Argentina, Australia, Brazil and Japan and far ahead of those in the European Union.

The Act provides opportunities to grow crops that are more nutritious and resilient, with the aim to increase production rates and reduce costs for farmers.

What is precision breeding?

The Food Standards Agency (FSA) defines precision breeding as 'a way of changing the DNA of plants or animals in a precise way, using techniques including gene-editing'. The key distinction between precision breeding and genetic modification

is that any changes must be equivalent to those that could have been achieved using traditional breeding methods.

What does the Act mean for producers and consumers in England?

The Act grants Ministers in England the authority to decide how precision bred plants and animals (PBOs) are to be regulated. Central to this is the FSA, who are currently in the process of establishing a proportionate and scientific regulatory framework to assess the safety of PBOs for consumption.

According to the FSA, PBOs will only be authorised for consumption if they pose no health risks, are not misleading to consumers, and do not have a lower nutritional value than their traditionally bred counterparts. A readily available public register of all PBOs authorised for use in food and feed will be published online and could potentially include further information, such as details about allergens.

This legislation is expected to clarify how precision breeding technologies can be used and set out how PBOs will be brought

Continued on page 2.

Welcome to the Spring 2025 edition of Field Talk



In the six months since the highly criticised Autumn Budget my colleagues and I have been inundated with enquires from our farming clients.

The changes in Agricultural Property Relief and Business Property Relief have brought into sharp focus the necessity for good business planning and structures within farming businesses. Farming has long been the backbone of rural life in the UK, with many farm businesses having been passed down through generations. However, as the agricultural landscape faces a host of new challenges—from climate change to economic uncertainty—farmers are increasingly recognising the importance of planning for the future.

Succession planning, in particular, is becoming an urgent issue. Ensuring the long-term security and sustainability of a farming business requires careful thought and preparation, it isn't just about finding someone to take over the farm—it's about safeguarding the future of the business, preserving the family legacy, and adapting to new realities in agriculture. Our Private Wealth Partner, Philip Whitcomb, describes succession planning as a journey not a destination and this has never rung more true. This involves much more than simply deciding who will take over the farm. It requires careful consideration of business structures, financial strategies, and the training and development of the next generation of farmers. Generally speaking, there are 5 key priorities when planning for your farm's future: ensuring a smooth transition of ownership, maximising tax efficiency, safeguarding financial stability, giving flexibility to adapt to changing circumstances and preventing stress and disruption. And the five golden rules: start early, involve the whole family, seek professional advice, prepare the next generation and review/update your plan regularly. Succession planning is essential to the long-term success and security of a farming business. While it can be uncomfortable to confront the reality of passing on the business, it is far better to plan early than to face uncertainty or conflict later. By taking proactive steps to plan for the future, farmers can ensure the continuation of their legacy, protect their family's financial security, and help create a sustainable and harmonious future for the next generation of farmers. The sooner the planning begins, the more secure and stable the future of the farm will be.

**Esther Woolford,
April 2025**

Precision breeding *continued*

onto the market. Once these measures have been established, we should begin to see the introduction of PBOs within the agri-food market in England.

The evolution of precision breeding technologies presents exciting opportunities for both producers and consumers. Some examples include:

- Scientists in the Netherlands have been able to produce coeliac-safe wheat by removing the part of its DNA responsible for causing the symptoms of coeliac disease.
- The Sainsbury Laboratory has developed mildew-resistant tomato plants, which could minimize the need for fungicides in greenhouses.
- Vitamin D fortified tomatoes have been produced by the John Innes Centre to help tackle deficiencies linked to greater risks of cancer, dementia and many common causes of death.
- UK-based company Tropic Biosciences have developed bananas resilient to Fusarium wilt disease.
- Biologists from the University of Oxford suggest that precision breeding may allow for longer strawberry seasons in England and the production of climate-resistant lettuce.

As stated by NFU Vice President Rachel Hallos, precision breeding “can help achieve our net zero goals by enhancing crop and livestock productivity while supporting health, biodiversity and sustainable farming”.

What about livestock?

The Genetic Technology (Precision Breeding) Act allows for genetic modification of animals but at the moment there is no sign of the secondary legislation being expanded to allow this technology in animal genetics.

Having spoken with an expert pig geneticist at the Oxford Farming Conference, I can see the benefits to this technology particularly in relation to eradication of disease. As he put it, imagine if we could use genetic modification to eliminate TB in cattle – would this change your opinion on genetic modification?

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



Laura Mackain-Bremner

Partner

0345 209 1549

laura.mackain-bremner@clarkewillmott.com

Pig Regulations

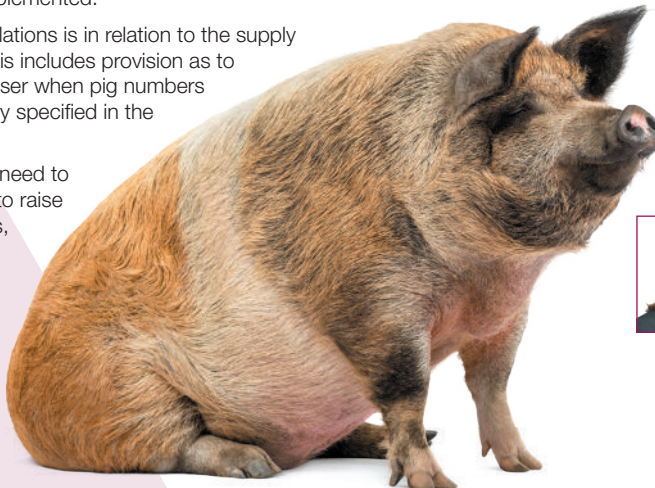
The Fair Dealing Obligations (Pigs) Regulations 2025

Following on from the implementation of The Fair Dealing Obligations (Milk) Regulations (“Dairy Regulations”) last year, new regulations to promote fairness and transparency in the UK pig sector were laid before Parliament last week.

The need for intervention in the sector was highlighted following a public consultation in 2022.

The Pig Regulations take a very similar line to the Dairy Regulations and will:

- Provide clearer pricing terms. Contracts will now set out the factors which will generate the price payable under the pig purchase contract, whether this be a fixed or variable price or a combination of the two. The Pig Regulations introduce transparency provisions, granting producers the right to request a written explanation of price determination when the price is not primarily based on factors that are quantifiable and freely accessible to both parties.
- Prevent unilateral changes to the contracts without both parties' consent. This will encourage the parties to discuss required changes and agree how the changes are to be implemented.
- A key element of the Pig Regulations is in relation to the supply of contracted pig numbers. This includes provision as to remedies available to a purchaser when pig numbers fall below the minimum quantity specified in the contract.
- All pig purchase contracts will need to include a straightforward way to raise concerns about their contracts, promoting accountability and timely issue resolution.
- Set out clear rules on notice periods and exclusivity. This will protect the rights of both parties and remove any ambiguity from contracts which have in the past led to disputes.



There is an opt-out provision, allowing a farmer to provide a notice to disapply the Pig Regulations and exempt sales of pigs from the requirements in the regulations. This is to continue to allow the popular practice of farmers selling on the ‘spot market’ within the sector.

The Pig Regulations also include a provision for the Secretary of State to review the regulations and publish a report within five years. This includes an assessment of whether the provisions remain appropriate or need to be changed.

For new contracts, the Pig Regulations will come into force on the day after the expiry of 12 weeks beginning with the day on which the Pig Regulations are made (the “Commencement Date”). For pre-existing contracts that were made before the Pig Regulations come into force, there is a twelve-month transition period before the requirements contained in the regulations apply.

We will provide further guidance on the regulations once they have been passed and provide guidance on the changes required to pig purchase contracts to ensure compliance.

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



Amy Peacey

Partner

0345 209 1329

amy.peacey@clarkewillmott.com

CEA for Farmers and Landowners

Benefits and Considerations

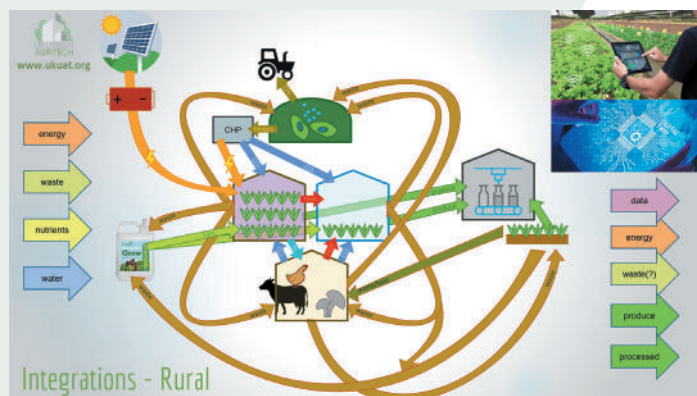
With the need to diversify and increase profit being more relevant than ever for farmers and landowners, one option which seems to be on the rise is Controlled Environment Agriculture (such as vertical farming). Partner, Laura Mackain-Bremner, recently met UKAT at an agricultural event and they provide neutral advice on the various CEA systems below, including some ways to get involved which may be novel to Field Talk readers.

UKUAT stands for UK Urban AgriTech, and that urban & peri-urban approach to growing is where we began our journey as an industry association. The simple reason for this is that that is where this kind of Controlled Environment Agriculture (CEA) technology was being used in this novel way in the UK.

Over the years, and especially recently, we have seen ever-increasing interest from rural and semi-rural farmers and landowners in the possibilities of integrating CEA into their operations. We've recently had a great many conversations with people asking us how they can go about bringing this technology to their operations.



Farmers and landowners want to know how they can manage integration of CEA, and how CEA can profit their business. The CEA sector, most notably vertical farming, has been through a hype cycle in recent years, and many are therefore sceptical of what it can actually achieve. Moreover, because of this hype, vertical farming in highly controlled environments has come to be seen as more or less synonymous with CEA, when in fact VF is just one of many types of CEA. In reality, CEA is better understood as a spectrum - from high-tech, high control, high cost systems like vertical farming at one end, to low-tech, less controlled, lower cost systems like hydroponic polytunnels at the other. Greenhouse systems and various others sit in the middle of these.



So the real question, as we often say to farmers and landowners, is “what’s your market?”. This is the critical question, and it defines everything that follows. For example, if you want to grow edible flowers for a 5-star restaurant down the road from the farm, then a fully controlled vertical farming type approach may be just the thing, as it’s a premium product which can deliver the necessary ROI. On the other hand, if the goal is to sell herbs in a farm shop, then a simple hydroponic polytunnel, or perhaps lower tech greenhouse is more likely to be the right choice.

Of course farmers are well versed in this logic and quickly grasp it. The question that inevitably follows is “where can I get this tech, and how can I know it will be right for me?”.

A vast array of options exist here, both in terms of the level of technology and the ways in which it might be implemented. There are tech-supply companies, from whom the relevant equipment can be purchased. There are also emerging conversations about CEA-as-a-service type approaches, where leasing may be an option, though these approaches are still very much in their infancy, with outright purchase still by far the most common approach.

Another option may be to partner with tech-suppliers and institutions like universities, to seek public funding for on-farm adoption of innovative technologies. This approach may substantially reduce the risk for the farmer, but may also limit the profitability in the short term.

Lastly there is the question of circular integrations. This again is more complex and so arguably carries greater risk, though also greater potential reward. For example, if CEA can be co-located with renewable energy, then the cost of energy for the CEA operation is likely to be substantially reduced, which in turn leads to great profitability. The secret here is likely to be to partner with others, with each providing their own specialist expertise.

All that said, the potential of these technologies for farmers and landowners remains enormous. Ultimately, CEA offers the opportunity to shorten supply chains, to push towards decarbonisation and sustainability more broadly, and to diversify revenue streams and so increase economic resilience.

As an industry association, UKUAT is keen to encourage and support this developing opportunity, which for us represents an exciting expansion of the sector as a whole. Of course our membership is made up of exactly the kind of organisations mentioned above. But we are also very happy to continue to have conversations, to do some myth-busting, and to help farmers and landowners get it right first time, if they make the decision to integrate CEA technology.

For more information please visit: <https://ukuat.org>

Guest v Guest where are we now?

On 19 October 2022, the Supreme Court handed down its much-anticipated judgment in the landmark case of *Guest v Guest*, a classic proprietary estoppel claim.

Since then, many cases have cited this authoritative Judgment but has this case provided any clarity or has it now muddled the waters?

We represented Andrew Guest at the High Court trial, the Court of Appeal hearing and the Supreme Court appeal. Here the team look back at the case and others that have been heard since.

Background

Guest v Guest [2022] UKSC 27 concerned the ownership of a working dairy farm, known as Tump Farm, that had been owned and run by the Guest family for several years.

David Guest and his wife, Josephine Guest had two sons, Andrew and Ross and one daughter.

When the relationship between Andrew and his parents broke down in 2015, the farming business partnership was dissolved and Andrew's parents executed new wills which disinherited Andrew. Andrew and his family were also served notice to vacate their farm cottage.

The High Court trial was brought by Andrew based on the equitable remedy of proprietary estoppel, who relied upon assurances by his parents that he would inherit a share of the family farm and farming business, which he worked on, for less than minimum wage, for 32 years since the age of 16.

As a brief summary, to succeed in a claim based on proprietary estoppel, there needs to have been:

- a promise, assurance or representation made by the promisor to the promisee; and
- the claimant relied on that promise to their detriment.

The *Guest v Guest* case was ultimately dealt with by the Supreme Court to deal with issue of remedy. It was determined that the correct approach to framing a remedy is based on Andrew's *expectation* of inheritance rather than the *detriment-based approach* put forward by his parents.

Judgment

The Supreme Court ruled that Andrew was entitled to his inheritance because his parents had repudiated on their promise that one day Andrew would inherit a share of the farm. The Supreme Court confirmed that the aim of the proprietary estoppel is to remedy the unconscionable conduct of the promisor by satisfying the expectation of the promise who had relied on that assurance to his/her detriment.

The Supreme Court rejected the theory that the remedy for proprietary estoppel cases is to compensate the detriment suffered by the claimant using a formulaic calculation. The Supreme Court was grappling with the difficult question of how to compensate someone for giving up the whole of their working life to the family business.

What has happened since *Guest v Guest*?

Since the Judgment from the Supreme Court, many proprietary estoppel

claims have continued to reach the High Court, and the case has been consistently cited in subsequent cases.

In *Spencer v Spencer* [2023] EWHC 2050 (Ch), in August 2023, the High Court addressed the question of proprietary estoppel in light of *Guest v Guest*. The facts were typical of a proprietary estoppel claim in a farming family and the High Court found that the son's claim against his father's estate was successful. Mr Justice Rajah commented:

"if an equity has arisen then the Court must decide how it should be satisfied. Earlier authorities must now be read in light of the judgment of Lord Briggs in *Guest v Guest* [2022] UKSC 27 with whom Ladies Arden and Rose agreed".

The same was said in High Court case of *Cleave v Cleave* [2024] EWHC 2492 (Ch) in September 2024 which concerned a proprietary estoppel claim relating to a farm in Devon. The claimant was successful in his claim against his mother.

Once again in November 2024, Judgment in *Armstrong v Armstrong* [2024] EWHC 2989 (Ch) was handed down in favour of the claimant which again cited Lord Briggs' framework in *Guest v Guest*.

When considering detriment in *Spencer v Spencer*, it was recognised that the non-financial detriment incurred by a claim who has committed his working life to a farm is a particularly cogent factor to take into account.

In June 2024, the Court of Appeal further cemented this long-established principle in the case of *Winter v Winter* [2024] EWCA Civ 699 has. The Court of Appeal followed the well-established principle (from *Gillett v Holt*, *Suggitt v Suggitt*, *Habberfield v Habberfield* and *Spencer v Spencer*) that where one devotes their life to something, the Court can recognise detriment even if the claimant has not shown a different path would have been more beneficial.

Guest v Guest has certainly shaped the way Courts will consider proprietary estoppel claims, but it has not provided absolute clarity for parties at the outset of a claim. Whilst the judgment has established some guidance on the issue of remedy, expertise is still needed to assess the various factors in determining the likely outcome and the overall question of conscionability.

The team at Clarke Willmott are uniquely placed to advise on the nuances of the judicial approach and to guide parties through litigation or help to achieve resolution at the earliest possible point.

For further guidance and advice relating to any contentious agricultural issues visit: <https://www.clarkewillmott.com/legal-expertise/agricultural-law/>



Jodie Coles
Senior Associate
0345 209 1029
jodie.coles@clarkewillmott.com



Esther Woolford
Partner
0345 209 1840
esther.woolford@clarkewillmott.com

Prenuptial & Postnuptial Agreements: Protecting Agricultural Assets

What are nuptial agreements?

An agreement entered into prior to marriage (prenup) or after marriage (postnup) is made between spouses to regulate the rights and responsibilities regarding their financial assets, including agricultural assets and farming business interests, in the event of a divorce or separation.

Who should enter into a nuptial agreement?

A couple who are either due to get married or are already married.

What assets can a nuptial agreement cover?

Assets include, but are not limited to, any land, farming equipment, livestock, agricultural businesses, and other farming-related assets owned by either yourself or your spouse prior to the marriage or received as a gift or inheritance during the marriage.

Why should you enter into a nuptial agreement?

If you recognise the importance of safeguarding specific assets that are important to you and want to ensure that they stay within the family, especially those related to family farms, agricultural businesses, and other assets that may be inherited or owned before the marriage, then you will want to consider a nuptial agreement.

A nuptial agreement will identify assets owned by yourself, or your spouse in your sole name or jointly, and will outline how those assets, as well as any future inheritance or business interests, particularly in relation to family farming businesses and agricultural assets will be protected and managed in the event of a divorce.

By entering into an agreement, the aim is to ensure clarity, fairness, and long-term preservation of family farms and agricultural assets, while mitigating the potential for conflict in the event of a later divorce or separation.

When should you consider a nuptial agreement?

1. Are you **considering bringing in the next generation** to the farming company/partnership?
If so, the next generation may become entitled to a share of the business, and this value will be taken into account in any divorce proceedings they may later be involved in.
2. Are you **considering gifting agricultural or business assets** to your child(ren) or business partners?
If so, the asset will form part of their assets for the purposes of any future divorce proceedings. If you want to ensure that the asset remains with them, they should consider a nuptial agreement.
3. Are you **reviewing your business structure** and putting assets into the farming company or partnership?
If so, this is likely to increase the value of the company/partnership and this value will be taken into account in divorce proceedings if any of the shareholders/partners later divorce.

4. Are you **considering creating a trust** and/or **transferring assets into trust**?

If so, it is important to remember that any beneficiaries of those trusts will be required to disclose their interest for the purpose of divorce proceedings and those interests may be taken into account as a resource to which they have access.

5. Are you **considering gifting assets** to your **spouse**?

Even if this is for legitimate tax or estate planning reasons, it is important to ensure that those assets are protected in the event of an unforeseen later divorce. If, having gifted items to your spouse and they later divorce you, they may get to keep those assets, or you may have to pay for their return. Even if you were content for them to keep those assets in the event of separation on the basis they will ultimately transfer to your children, what if they later married and got divorced again? Those assets could be divided again on a future divorce outside of the original couple.

We would not recommend that you undertake any of the above tax planning without speaking to a Private Client Lawyer and your trusted professional advisors. However, in all the above situations, a nuptial agreement would be useful. By considering these situations now, and addressing these issues upfront, a nuptial agreement provides clarity and protects your agricultural assets, giving you peace of mind for the future.

How will a nuptial agreement protect your family farm?

Often, either you or your spouse will recognise that family farms are passed down through generations and therefore it is important to preserve the continuity of family farming traditions. As such, the nuptial agreement establishes the intent to preserve the family farm, safeguarding it for future generations.

Where can you go to get further advice on whether a nuptial agreement is suitable in your situation?

If you have any queries or would like to discuss your own circumstances, please contact **Holly Smith** to request a free initial consultation or a member of our Family Law or Private Client teams.



Holly Smith
Associate
0345 209 1225
holly.smith@clarkewillmott.com



Philippa Yeo
Partner
0345 209 1749
philippa.yeo@clarkewillmott.com

Come and say hello!

Catch up with us this summer on the NFU stand at the following Shows:

- **North Somerset Show – Monday 5 May 2025**
- **Bath & West Show – Thursday 29 - Saturday 31 May 2025**
- **Three Counties Show – Friday 13 - Sunday 15 June 2025**
- **Gillingham & Shaftesbury Show – Wed 13 - Thu 14 August 2025**
- **Dunster Show – Friday 15 August 2025**
- **Melplash Show – Thursday 21 August 2025**
- **Moreton in Marsh Show – Saturday 6 September 2025**

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



Before, during and after: Environment Agency prosecution and orders show importance of early advice

A recent Environment Agency prosecution in Leicestershire, which culminated in a farmer receiving a suspended prison sentence, serves as a useful reminder of the range of enforcement options available to the Environment Agency and a stark warning to those being investigated of the importance of seeking early advice in order to reduce the risk of matters escalating.

On 12 December 2024 at Leicester Magistrates Court, William Clarke was found guilty of five charges under the Environmental Permitting (England and Wales) Regulations 2016 ("the **Regulations**") and the Environmental Protection Act 1990. These charges not only related to the unlawful deposit of controlled waste, but also a failure to comply with the conditions of an environmental permit and the failure to comply with an Environment Agency Enforcement Notice.

Background

In April 2018 the Environment Agency carried out an audit of Mr Clarke's farm following a number of complaints by local residents about large quantities of waste at the farm. That audit found that while the farm was permitted to carry out composting and land spreading operations, these were being carried out inadequately and compost material was being contaminated with other materials such as plastics, metals and textiles.

The Environment Agency's audit found that contaminated compost had been spread onto farmland at the farm, and that plastic waste had been allowed to escape onto nearby land. The audit found that waste being accepted at Mr Clarke's farm was contaminated with waste from other sources and that Mr Clarke was also accepting unauthorised waste types, in particular, treated wood.

Enforcement Notice

The Environment Agency is entitled, under regulation 36 of the Regulations, to serve an Enforcement Notice on a waste operator which requires that operator to take steps within a given period to address their failure to comply with a permit.

Compliance with the Notice will lead to its removal. However, non-compliance with such a Notice is a criminal offence and this is exactly what happened in Mr Clarke's case.

Prosecution

Mr Clarke was subsequently prosecuted, not only for failing to comply with the Enforcement Notice, but also for the underlying failure to comply with his permits and for the unlawful deposit of controlled waste. The Environment Agency highlighted to the court that Mr Clarke had ploughed controlled waste into the fields at his farm and had allowed controlled waste to spread beyond his land.

On 12th December 2024 Mr Clarke received a prison sentence of nine weeks for each offence, suspended for a year. However, the Environment Agency remained so concerned about the levels of contamination at his farm that it also sought a Remediation Order on conviction against Mr Clarke. This means that the sentencing hearing was not the end of the matter for Mr Clarke: far from it.

A Remediation Order, issued under regulation 44 of the Regulations, requires a person convicted of failing to comply with an environmental permit to take specified steps in order to remedy the environmental damage caused by any breach. A Remediation Order requires those steps to be taken within a specified period; in Mr Clarke's case, he is required to comply with the terms of his Remediation Order by noon on 12 December 2027.

Insights

It is essential for operators to understand the nature of the Regulatory framework and the many tools at the Environment Agency's disposal for using before, during and even at the conclusion of a criminal case. It is not inevitable that a person served with any form of Notice is going to be prosecuted – so seeking legal advice early and then engaging effectively with the Environment Agency will reduce risk here.

While in some cases achieving compliance with an Enforcement Notice or offering an 'Enforcement Undertaking' in lieu of prosecution may result in immediate cost, in the long run such actions may protect a farmer's good character and shield against the significant burden of a suspended sentence or a Remediation Order down the line.

Mr Clarke will continue to feel the effects of this case for some years yet. In granting the Remediation Order, District Judge Watson made it clear that the order must be complied with before the proposed development of a solar farm at Mr Clarke's farm can progress. Mr Clarke will therefore not only feel the knock-on effect financially of the need to comply with the Order, but has also potentially sabotaged an economic development on his land. At Clarke Willmott, our regulatory team regularly acts for farmers, land owners and businesses engaging with the Environment Agency and local authorities with regards to allegations of environmental pollution. These cases include some of the few cases nationally where the Environment Agency has commenced a prosecution following alleged non-compliance with an Enforcement Undertaking. We are well equipped to advise on managing investigations and alternatives to prosecution. Should you require these services, please do not hesitate to contact:



Bridget Sanger
Senior Associate
0345 209 1525
bridget.sanger
@clarkewillmott.com



Sam Harkness
Solicitor
0345 209 1842
sam.harkness
@clarkewillmott.com



Albert Goodman * clarkewillmott

Badminton Horse Trials

Badminton, GL9 1DF, Saturday 10 May 2025

Clarke Willmott LLP and Albert Goodman are delighted to invite you to join us in our Lakeside Pavilion at Badminton Horse Trials.

Pop in from 10:30am for a ringside view of the action and enjoy light refreshments. Admission to the horse trials not included.

Further information about the event: www.badminton-horse.co.uk

Please RSVP by Friday 2 May to ellen.litchfield@clarkewillmott.com

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

Great service... Great people...

clarkewillmott.com

Clarke Willmott LLP is a limited liability partnership registered in England and Wales with registration number OC344818. It is authorised and regulated by the Solicitors Regulation Authority (SRA number 510689), whose rules can be found at <https://www.sra.org.uk/solicitors/standards-regulations/>. Its registered office is Clarke Willmott LLP, Botleigh Grange, Hedge End, Southampton, SO30 2AF. Any reference to a 'partner' is to a member of Clarke Willmott LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications and is not a reference to a partner in a partnership.