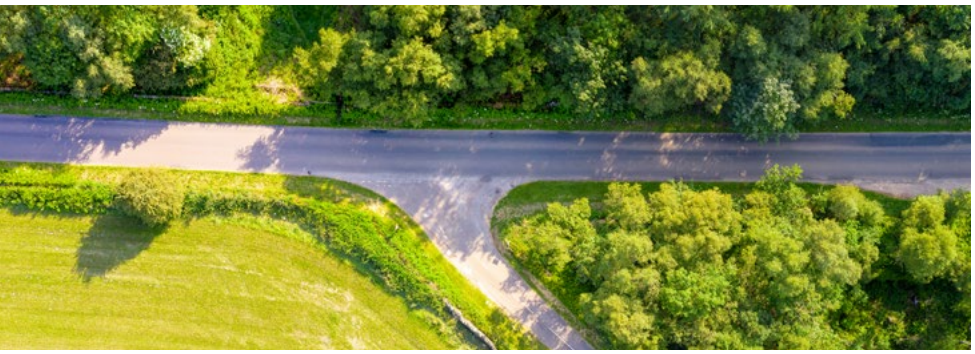

michelmores
agrilore
Spring 2026

# Contents

# Spring Edition 2026

Welcome to this Spring edition of AgriLore. With the sun shining and the daffodils out at last, hopefully we can now look forward to the end of an extremely wet winter.

The economic impact of the war in the middle east can be felt by almost everyone and farmers are no exception. For farmers, the war is affecting supply chains and increasing input costs at a key time in the farming year, bringing to the forefront once again the importance of - and need for - domestic production and a robust national food strategy.

The landscape in which farmers operate is undergoing a time of flux, with many changes ahead for food security, farming profitability, sustainability and agri-environment schemes. Early this year we are expecting the publication of the government's response to Minette Batters' Farming Profitability Review and the Farming Roadmap.

The renewed concerns around a UK food strategy (or lack of), will hopefully reinforce the need to review the long-term national food strategy alongside other vital pillars underpinning the UK farming system, to provide it with a resilient and stable future.

Whilst there was no mention of agriculture, farming or food security in the Chancellor's Spring Statement there were also no new tax rises. The farming community will be getting ready for the significant changes to APR and BPR coming into effect in the new tax year starting on 6 April 2026.

Farmers will also be preparing for the first window of the new SFI which is launching in June for both small farms and those without existing environmental land management agreements. Budgets will be set for both windows, but regular updates will hopefully ensure that application windows are not closed without warning.

The much-anticipated Renters' Rights Act 2025 will start to come into force on 1 May 2026. We hope you have been enjoying our **five-part article series** focussing on different aspects of the changes as we approach that date. Landlords would be well advised to review portfolios and consider serving any s.21 notices or rent review notices before grounds for possession and rent reviews are restricted.

In this edition, we discuss a diverse range of topics from public rights of way to animal welfare changes and from contaminated land to the IHT consequences of passing on the benefit of overage covenants.

We really enjoyed seeing so many of you at our Natural Capital Roadshow last month. We are delighted to be sponsoring the Young Farmers stand at Cereals again this year and hope to see you there.

**Vivienne Williams**
Partner & Head of Private Client
**View Profile**

# Estate planning:

## Don’t let overage trigger a tax shock

Overage covenants (or “clawback” provisions) allow a seller of land to share in any future uplift in value. For example, if planning permission is granted post-sale, the buyer may owe an additional payment. While these arrangements can be valuable, they also carry significant tax implications for beneficiaries. Overage covenants form part of the estate for Inheritance Tax (**IHT**) purposes; they do not qualify for Agricultural Property Relief (**APR**) and overage receipts may be subject to income tax.

The benefit of overage covenants usually remains with the transacting party, not the land. If it appears unlikely that the overage will be triggered during an individual’s lifetime, assigning these rights to the next generation could be a sensible step.

**How to assign the benefit of overage covenants:**

### Step 1: Speak to the Tax, Trusts & Succession team

The benefit of an overage covenant is treated as part of the estate for IHT purposes. It will be subject to the full IHT rate on death or a lifetime transfer on the value over the available nil-rate band (currently £325,000), subject to any relief. Crucially, these rights do not qualify for APR so it is likely that 40% of the value of the overage covenants could be payable in IHT.

Transferring the benefit of these covenants by way of gift to the next generation would take advantage of the Potentially Exempt Transfer regime for IHT. This means that after seven years, the value of the gift would be outside the estate for IHT purposes and taper relief would apply to reduce the rate of IHT after three years. There are, however, important rules to ensure that the benefit passed on has truly been given up.

While gifting the overage can offer IHT benefits, this should be balanced against Capital Gains Tax (**CGT**) on the transfer. The gift would be a disposal for CGT purposes, so any increase in value could be taxed at 24%. It also means that the estate would not benefit from the CGT ‘uplift’ that normally applies on death for assets within the estate. All the facts must be considered in each case to establish the most appropriate course of action.

### Step 2: Valuation

Valuing the overage covenant is a key part of understanding both the CGT and IHT implications. In many cases, transferring the asset sooner can be beneficial. Waiting until planning permission looks likely to be granted means that the value of the covenant may well be greater. This could lead to a higher CGT bill on the transfer, and - if the full seven-year period is not survived - a higher potential IHT charge as well.

### Step 3: Documenting the assignment

The first step is to check in the original agreement that the covenants are not expressed to be personal and may be transferred. It is also important to check for any restrictions, such as a requirement for the whole benefit to be transferred rather than allowing partial assignments.

Provided the original agreement allows for it, a deed of assignment can be drawn up between the original beneficiary of the overage (**Assignor**) and the person chosen to receive covenants (**Assignee**). This document will include important protections, making sure the Assignor is not responsible for any obligations under the original overage agreement after the transfer.

### Step 4: Deed of covenant

In most cases, the original overage deed will require the Assignee to sign a deed of covenant with the buyer, agreeing to comply with the obligations set out in the original agreement.

The deed of covenant will need to include matching commitments from the buyer to the Assignee, so that the Assignee is properly protected.

### Step 5: Update Land Registry and Companies House

Overage is often protected by a restriction registered at HM Land Registry. This means that, before the land can be sold or transferred, any new owner must enter into a deed of covenant (as set out above) with the overage beneficiaries. The Land Registry record should then be updated to reflect the names and addresses of any new beneficiaries.

In some cases, overage is protected by a legal charge over the land. If this is the case, the original charge will need to be released and replaced with a new charge in favour of the new beneficiaries. This needs to be registered at HM Land Registry and, where the beneficiary is a company, may also need to be registered at Companies House.

### Additional Step: Review the overage terms

Assigning the benefit of overage provides a good opportunity to review the terms of the overage agreement, check that interests are protected and identify any potential improvements.

### When negotiating overage:

When selling land with an overage provision, it's worth planning ahead:

1. **Consider ownership from the outset**

   If estate planning is a priority, think about putting the benefit of the overage in another person's name immediately.

2. **Include assignment provisions**

   Most overage agreements allow assignment unless expressly prohibited. For clarity, include wording confirming that the benefit of the overage covenants may be freely assigned without cost. This preserves the ability to transfer the overage benefit in the future as part of any estate planning.

### Final thoughts

Assigning the benefit of overage covenants can be an effective estate planning tool, but it requires careful drafting and compliance with the original agreement. Each step must be handled correctly to protect interests and avoid unintended liabilities.

Always seek specialist legal and tax advice before proceeding to ensure the assignment achieves the intended objectives, minimises risk, and delivers the best outcome both for individuals and their families.

**Elinor Crosbie Dawson**
**Managing Associate**
Tax, Trusts & Succession
**View Profile**

**Sophie Oakes**
**Associate**
Transactional Real Estate
**View Profile**

# What counts as rent?:

## Lessons from *Phillips v Garraway*

In the case of *Phillips v Garraway [2026] EWCA Civ 55*, the Court of Appeal (**CA**) considered the question of whether services provided by a tenant could be considered "rent" under the Housing Act 1988 (**HA 1988**).

**Background**

In January 2023, Mr and Mrs Phillips granted Ms Garroway a tenancy of a residential property on their estate known as The Lodge. The written agreement described itself as a tenancy and provided for a rolling six month term. Instead of a monetary rent, the agreement stated that "rent" consisted of a "minimum of two days' work" per week on the estate between specified hours. No monetary value was attributed to that work in the agreement, and there was no mechanism for valuing it later.

Relations broke down. The Phillips served a notice to quit and sought possession. Ms Garroway resisted and argued that she occupied under an assured tenancy under the HA 1988. She said she had security of tenure and the Phillips' could only evict her by relying on one of the statutory grounds under the HA 1988.

**Legal issue**

The central question was whether a tenancy requiring unquantified services still resulted in a tenancy "under which for the time being no rent is payable" for the purposes of Schedule 1 HA 1988. If no rent was payable, then the tenancy would fall outside the HA 1988.

**The decision**

The CA held that services performed by the tenant could not be considered "rent" under the HA 1988 because the parties had not agreed a monetary value for the services. Consequently, the tenancy was not an assured tenancy but a common law tenancy.

For the purposes of the HA 1988, "rent" means a payment of money, or goods or services to which the parties have attributed a monetary value or provided a mechanism for valuing it. It was determined that the court could not later place a value on those services.

The CA emphasised that Parliament deliberately adopted a narrow concept of rent in the HA 1988, consistent with earlier Rent Act authorities, and that extending protection to "rent in services" arrangements without valuation would create practical and statutory difficulties.

**Implications**

This decision is particularly relevant to the rural sector, where it is common for workers to occupy property belonging to their employer landlord. If accommodation is provided in return for work, but no monetary value is attributed to that work as rent, the occupier is unlikely to acquire assured tenancy rights.

Nevertheless, whenever dealing with agricultural workers it remains essential that the Form 9 Notice (or the new Form 24A notice post 1 May 2026) is served before any occupation to prevent an Assured Agricultural Occupancy from arising.

**Conclusion**

The Renters Rights Act 2025 will make it harder for landlords to obtain possession, revising both the mandatory and discretionary grounds for possession. In light of these changes, *Phillips v Garraway* may provide landlords with an option to keep a tenancy outside of the HA 1988 when the occupation is being provided in return for services (for which no monetary value has been provided).

**Charlotte Razay**
**Managing Associate**
Agriculture
**View Profile**

**Daniel Onafuwa**
**Graduate Solicitor Apprentice**
Private Property & Landed Estates
**View Profile**


# The Hound of the Bridleways:

## Landowners' duties relating to public rights of way

The real hero of The Hound of the Baskervilles is Mr Fankland, of Lafter Hall. He tells Dr Watson,

> *"It is a great day for me, sir—one of the red-letter days of my life," he cried with many chuckles. "I have brought off a double event. I mean to teach them in these parts that law is law, and that there is a man here who does not fear to invoke it. I have established a right of way through the centre of old Middleton's park, slap across it, sir, within a hundred yards of his own front door. What do you think of that? We'll teach these magnates that they cannot ride roughshod over the rights of the commoners, confound them! And I've closed the wood where the Fernworthy folk used to picnic. These infernal people seem to think that there are no rights of property, and that they can swarm where they like with their papers and their bottles."*

**Categories of public rights of way:**

There are four categories of public rights of way, or "highways" (the terms are generally interchangeable, though "highway" is sometimes used to refer to the land itself rather than the rights).

### 1. Carriageways, including Byways Open to All Traffic (BOATs)

The public have a right of way with vehicles over carriageways (i.e. what everyone other than lawyers call "roads") and BOATs. Generally, "the greater right includes the lesser", so the public also have rights of way on foot and with animals. But this is subject to exceptions, such as motorway regulations.

BOATs include footpaths and bridleways, and they are not regularly maintained by the local authority.

The term "green lane", often used to describe unsurfaced roads or tracks, has no legal meaning.

### 2. Restricted byways

The public right of way over restricted byways is on foot, horseback and for vehicles other than mechanically propelled vehicles (except electric bikes which are within the scope of the right). The public may have a right to drive animals over restricted byways, but not automatically, it would have to be proved (such as by long use or grant).

### 3. Bridleways

The public right of way over bridleways is on foot, on horseback, leading a horse, driving animals and on bicycles (perhaps not unicycles or tricycles!), though cycling may be prohibited by local orders or byelaws.

### 4. Footpaths

The question for footpaths is what a walker can bring with them: "usual accompaniments". Prams are permitted, and dogs are generally regarded as permitted, though there is no definitive ruling.

**Landowner's duties**

Landowners, their tenants and other occupiers have various duties concerning public rights of way over their land. They must keep the route visible and not obstruct it or endanger people using it.

### 1. Gates

Gates and stiles are permitted on public rights of way, if present when the right was originally dedicated. Gates on carriageways must be at least ten feet wide, and five feet wide on bridleways. The landowner is responsible for maintaining them, but the highway authority must contribute at least a quarter of the costs (s.146 Highways Act 1980).

### 2. Fencing

Electric or barbed wire fencing alongside a public right of way may amount to a nuisance if the public could walk into it, and the highway authority may order the removal of barbed wire (s.164 Highways Act 1980). It has been held that keeping ferocious dogs adjacent to a footpath (and scaring walkers) is not an obstruction.

### 3. Farming

Famers may plough over footpaths and bridleways, provided they make good within fourteen days of the initial disturbance, or twenty-four hours of any subsequent disturbance (s.134 Highways Act 1980).

Crops, other than grass, will constitute an obstruction where they overhang the minimum width (one metre for a footpath crossing a field, two for a bridleway).

The highways authority may require a landowner to cut back overhanging vegetation where it causes danger, obstruction or interference to the public (s.154 Highways Act 1980).

### 4. Notices

Displaying misleading notices likely to deter people from using a right of way can be an offence. This could include a "Beware of the Bull" notice if there is no bull in the field!

Generally, bulls are only permitted in fields crossed by rights of way if they are less than ten months old, or if the bull is not a recognized dairy breed and is at large with cows or heifers (s.59 Wildlife and Countryside Act 1981). A warning notice is required though.

**Maintenance**

The highway authority will usually be liable for maintaining public rights of way, and it is for them to prove otherwise. They are required to keep it safe and fit for the ordinary traffic of the neighbourhood, in all seasons of the year. If a highway is damaged by "extraordinary traffic" the authority may recover the extra expense of repairing the way from the person causing the damage.

A landowner with a private right of way over a highway (such as a right to use a bridleway for vehicular access) may have a right to maintain the way, but he will not have a right to interfere with the public's use of it.

Landowners should bear all this in mind, or they could find themselves victim to a claim from a modern Mr Frankland!

**Thomas Mawson**
**Associate**
Private Property & Landed Estates
**View Profile**

# What to reveal?:

## Trusts and the disclosure of information during disputes

In light of the upcoming restrictions to APR/BPR, farming families trying to protect their wealth and assets for future generations may have been considering setting up a trust. Their professional advisers will have been assessing the use of trusts and their impact on disclosure of documents when relationships break down - a common example of which is where a trust becomes a partner in the family partnership.

Disclosure in the context of trusts is a delicate balance between the rights of beneficiaries to hold trustees to account and the trustees' duty of confidentiality. In this article we consider what happens when a beneficiary of the trust requests information, and what information needs to be disclosed, and to whom, when a dispute arises.

**Right to disclosure**

Beneficiaries under a trust have a long-established right to hold their trustees to account. Without this, there would be no enforceable trust.

The court has a supervisory role regarding disclosure of trust information to beneficiaries and balancing that need with the trustees' duty of confidentiality. How that balance is to be achieved fairly will depend on the circumstances in each case.

**Why does it matter?**

A beneficiary may seek disclosure of trust accounts to see how trust assets have been invested and whether excessive fees or losses have been incurred. Disclosure may alternatively be sought where a beneficiary wants to consider grounds to challenge a trustee's decisions.

**What documents need to be disclosed?**

Each request for information needs to be considered on an individual basis. Under general trust law the following categories are useful:

**1. General documents**

A beneficiary will likely be entitled to see the trust deed and supplemental deeds (e.g. appointment and retirement of trustees) and trust accounts, unless they are unlikely to benefit from the trust. Care should be taken when agreeing to disclosure, to ensure that information will not be used against the trust; sometimes confidentiality restrictions will be imposed.

**2. Documents revealing trustee discretion:**

Documents may include agendas and minutes of trustee meetings, correspondence between trustees and correspondence between trustees and beneficiaries.

Beneficiaries are not usually entitled to view documents revealing how trustees have exercised their discretion. These documents are confidential unless the trustee considers disclosure is in the best interests of all beneficiaries.

**3. Disclosure of legal advice**

There is often confusion regarding the disclosure of legal advice. It is a common misconception that confidentiality between a client and their lawyer prevents trustees from having to disclose legal advice to beneficiaries. However, the court is quite clear that where legal advice has been sought for the trust as a whole and been paid for out of trust funds, confidentiality cannot be argued to withhold that advice from beneficiaries.

**Disclosure during court proceedings**

Court proceedings can be issued to force disclosure of trust information and in this case, the general trust law set out above remains relevant. For example, the 2018 case of *Lewis v Tamplin* concerned a claim brought by beneficiaries of the trust of a farm, regarding option agreements entered into by the trustees, where the trustees had failed to provide the beneficiaries with adequate information.

If a claim makes allegations against the trustees, then disclosure is dealt with under the Civil Procedure Rules 1998 (**CPR**) instead. This can lead to significantly more trust information being disclosed.

Under both the CPR rules and a court order the disclosure of confidential information is common. However, the court can limit those who receive disclosure and can redact certain information.

**Conclusion**

The information it is appropriate to disclose will vary from case to case. Trustees should apply carefully the principles of disclosure under trust law and can seek the court's guidance if uncertain about what should be disclosed. Professional advisers should note the distinctions between the different categories of documents and ensure there is no overlap between them and their advice on them, to preserve confidentiality as far as possible.

**Sarah O'Grady**
**Managing Associate**
Disputed Wills & Estates
**View Profile**

**Luke Harper**
**Trainee Solicitor**
Constructing & Engineering
**View Profile**

# Contaminated land:

## From an agricultural landowner's perspective

For many agricultural landowners their land is their legacy. Yet beneath the surface – literally and legally – there can sometimes lie a hidden complexity. Contaminated land, and the regulatory regime that governs it, has become increasingly important for rural landowners to understand.

Contamination issues can affect farmland in many ways including in tenancy arrangements, farming operations, redevelopment plans, liability exposure and even its value.

This article outlines what agricultural landowners and landlords need to know, the risks they face, and how those risks can be managed.

**What is contaminated land?**

The law defines contaminated land as any land where substances in, on, or under the ground are causing, or there is a significant possibility that they could cause, significant harm to human health or the ecological systems of which they form part or significant pollution of controlled waters. This legal definition effectively recognises that the mere presence of contamination is not itself enough to classify land as contaminated. That classification only arises if there is an identifiable pathway for the contamination to move off the land in a manner that significantly affects people or sensitive environments.

Some contaminants are distinctly agricultural: old sheep - dip pits, fuel stores or pesticide residues. Others reflect the layered history typical of rural holdings – former airfields, landfills, or ex-military sites.

In some cases, contaminants may have migrated from neighbouring industrial land or roads, creating problems for landowners who were not involved in the original pollution.

**How are contaminated sites identified?**

Under Part IIA of the Environmental Protection Act 1990, local authorities have a statutory duty to identify and secure the remediation of contaminated land in their area.

Local authorities look for what regulators call a "contaminant linkage" – a link connecting a contaminant by a pathway (such as soil or water) to a receptor (such as people or sensitive natural habitats). If all three are present and the risk is significant, the land may be formally classified as contaminated. The statutory process then moves to considerations of clean up or containment to reduce the risk of a significant impact on the identified receptor.

Throughout this process, regulators are meant to act proportionately and with a view to avoiding unnecessary disruption or alarm – although in practice, even mention of a contamination review can be unsettling for landowners.

**Liability**

The primary responsibility for remediation falls on those who caused or knowingly permitted the contamination (Class A persons). But where polluters are long gone, insolvent, or impossible to trace – a common occurrence on historically used farmland – the burden can shift to the current owner or occupier (Class B persons). This means a landowner with no hand in the pollution may nevertheless be required to undertake remediation of the contaminated land.

Tenanted farmland adds a further layer of complexity. Contamination arising during a tenancy – fuel spills, waste disposal, chemical misuse, or poor site management – may leave the landlord exposed if the tenant cannot meet remediation costs.

**Remediation**

Any remediation imposed by the local authority must be reasonable – considering cost, practicability and environmental impact. It will not always mean excavation or major works and authorities cannot require remediation to a standard beyond what is necessary to make the land suitable for its existing use, which is likely to be agricultural. Containment measures such as covering with a low permeability cap to reduce subsurface water flows, fencing to exclude receptors (both people and animals) and imposing land management practices to reduce dust may be required. The efficacy of these measures will need to be assessed with ongoing monitoring.

**Practical tips to manage risk**

### 1. Know the land's history

Understanding the history of the land is fundamental; many issues can be foreseen simply by reviewing old maps, farm records, and planning files. Past use of the land should be understood, for example establishing former farmyards, disused dumps and pipes.

### 2. Keep good records

Keeping records relating to the land is key to avoid being treated as the default responsible party under liability rules. Documents relating to sales / tenancies, historic remediation or clearance work should clearly set out the responsibilities of all parties involved.

### 3. Clear drafting

Well-crafted tenancy clauses can ensure that tenants maintain good environmental practices, notify the landlord promptly of spills, and bear responsibility for their actions. Restrictions can be placed on the tenant's use and management of suspect land, to avoid the mobilisation of pollutant. The restrictions could be a restriction on borrow pits or the need to maintain continuous cover crops.

### 4. Environmental due diligence

Conducting a baseline environmental survey before granting a tenancy or acquiring new land can prevent decades of uncertainty about when and by whom contamination was introduced. It is also important to ensure tenants understand what activities are allowed on the land, requiring notification of any pollution incidents and the requirements for hazardous substances.

### 5. Engage early

Where issues arise, early engagement with regulators is important. Local authorities frequently prefer collaborative solutions and are required to postpone formal determination if voluntary remediation is underway. Authorities are required to seek proportionate and reasonable outcomes, particularly where risks are manageable and interventions would be excessive relative to their benefit. It is important to understand the process of moving from land that is 'contaminated' to having the land statutorily designated as 'contaminated land'.

The outcome of such a designation needs to be carefully considered. Authorities are not as keen to designated new areas of contaminated land as you may think, and working with them to achieve an alternative outcome may be preferable.

### 6. Consider insurance

Taking out insurance can offer good risk mitigation. Specialist environmental liability policies can cover historical contamination, gradual pollution, remediation costs and third-party claims.

**Conclusion**

Ultimately, the best protection lies in awareness of the land's history, the regulatory framework, and the contractual relationships that govern how land is used. With thoughtful management, clear documentation and proactive engagement, agricultural landowners can navigate the contaminated land regime with confidence – protecting both their property and the people who depend on it.

**Fergus Charlton**
**Partner**
Specialist Real Estate
**View Profile**

**Sarah Reardon**
**Senior Associate**
Specialist Real Estate
**View Profile**

# Animal welfare:

## Changes in policy

Whilst England has always been thought to have high animal welfare conditions, new reforms set the direction of travel for improving these standards further, thereby ensuring that animals experience a good life throughout all life stages. Animal welfare is become increasingly valued and important for farmers' long term economic resilience.

Two recent reforms are the Animal Welfare Strategy published by the government in December 2025 and the Dogs (Protection of Livestock) Amendment Act 2025 which came into force on 18 March 2026.

This article summarises some of the headline points for farmers set out within these proposed reforms and legislation.

**Animal Welfare Strategy**

This strategy's primary aim is to set out the steps the Government wants to take to improve welfare standards by 2030 in the following four areas: farmed animals, companion animals, wild animals and international trades and standards.

Key topics are:

### 1. Livestock cages

This includes the transition from a confinement 'cage-based' system of rearing livestock, phasing out of enriched 'colony' cages for laying hens and bringing to an end the use of farrowing crates for sows over a transitional period.

### 2. Welfare conditions

The reforms are set to improve the welfare of animals throughout their life. Of particular note is the focus on ensuring humane conditions at the time of livestock slaughter for example by improving the welfare for farmed fish, phasing out the use of CO2 gas stunning of pigs and encouraging an end to the culling of male laying hen chicks.

### 3. Breeding practices

The improvement of breeding practices would be supported by tackling responsible breeding and promoting the use of slower growing breeds of chickens.

Farmers should review their farming practices to ensure they will be able to comply with any changes and to limit the risk of enforcement action. The government has emphasised the need to work in partnership with industry.

How this will work in practice remains to be seen but early indications show that the government is prepared to have consultations with stakeholders within the farming industry on the practical details of the reforms. Farmers should be ready to share their views as to how any new legislation or guidance should look like in practice.

**Dogs (Protection of Livestock) Amendment Act 2025**

Many farmers will be relieved by some of the changes this Act has brought to protect their livestock from livestock worrying and attacks.

Key changes are:

1. Attacking livestock is worded more clearly and as a separate offence from that of worrying livestock to better distinguish violent attacks.

2. Camelids (i.e. llamas and alpacas) are offered the same protections as farmed livestock.

3. Livestock attacks and worrying on roads and pathways will now be caught.

4. The penalty for breaches has been increased to an unlimited fine (from a fine of £1,000).

5. The police will be given new and improved powers including the ability to seize, detain and take samples.

**Conclusion**

Regardless of the above amendments, farmers should ensure they have fencing showing their land is privately owned and providing advice regarding dog control on their land.

The landscape of farming sector is changing - with the Farming Roadmap expected later this year, the new Farming and Food Partnership Board, and the expected response to the Farming Profitability Review. Taking animal welfare seriously and adjusting farming practices accordingly will allow farmers to stay ahead of the curve and in line with the direction of travel.

**Sarah Rhodes**
**Associate**
Agriculture
**View Profile**

# Energy Performance of Buildings Framework:

## Moving to a more sustainable future

On 21 January 2026 the government published their **partial response to the December 2024 Energy Performance of Buildings (EPB) regime consultation**. This response is part of the wider consultation on reforming the EPB regime to tackle the climate crisis, meet the government's decarbonisation strategy, and support its aspirations of achieving net zero by 2050. The reforms set out in the response support proposals in the **Warm Homes Plan** (also published on 21st January 2026), which seeks to lower energy bills and provide greater clarity for households.

The partial response addresses two of the consultation topics, Energy Performance Certificate (**EPC**) metrics and when certificates are required. The response to the remaining consultation topics is expected this year and will cover Display Energy Certificates (**DEC**), EPC and DEC data, managing EPC quality, and air conditioning inspection reports.

**Key changes set out in the response:**

### 1. New EPC metrics

- For domestic EPCs, the existing single cost metric will be replaced with four new headline metrics: energy cost, fabric performance, heating system, and smart readiness. This new domestic EPC model is being explored in the Department for Energy Security and Net Zero's (**DESNZ**) consultation '**The Home Energy Model: Energy Performance Certificates**'.

- For non-domestic EPCs the single carbon-based Environmental Impact Rating will be maintained.

### 2. Changes to when an EPC will be required

- Currently, an EPC is required at the point of sale or rent, or must have been commissioned prior to marketing. Where the relevant person commissions an EPC before marketing they should secure that it is obtained within 7 days of marketing, and failing that, secure that it is obtained within a further 21 days. The consultation response proposes a key change to this – that a valid EPC must be obtained prior to marketing (rather than only commissioned).

- Currently, an EPC is valid for 10 years, and this period is 'intended' to be maintained. However, there is an anomaly that a new EPC is not needed when an existing one expires during a tenancy. To ensure that the policy has its "intended effect," the DESNZ and the Ministry of Housing, Communities and Local Government are considering whether a valid EPC will be required throughout all private rented tenancies.

- Currently, a valid EPC is not required for an entire HMO when a single room is rented out. Moving forward, a valid EPC will be required for the whole HMO when a single room is let, thereby providing greater consistency across the private rented sector.

- The exemption allowing landlords to avoid obtaining an EPC for heritage buildings will be removed. This will bring many new buildings into the EPC remit. Where the Minimum Energy Efficiency Standards (**MEES**) apply, exemptions will remain to ensure that owners are not directed to make unsuitable retrofit recommendations. In the **Improving the energy performance of privately rented homes: government response** the government said it will update existing exemptions and include a new negative impacts exemption where a landlord can demonstrate that installing a suggested recommendation would negatively impact the building.

New regulations were expected later this year to address the proposals ahead of the implementation of the new domestic EPCs, however following engagement with industry on the delivery timeline the launch of the reforms has been pushed back to the second half of 2027.

The delay and continued uncertainty will be frustrating to both landlords and their tenants.

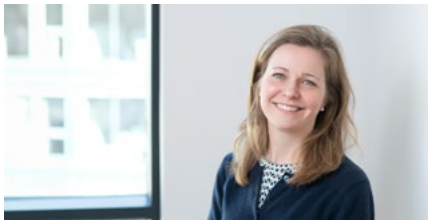
**A reminder of the current MEES**

| | MEES | Proposals for change |
|---|---|---|
| **Domestic private rented sector** | • Current minimum EPC is an E.<br>• Properties that are an F or a G cannot be legally rented unless there is a valid and registered exemption.<br>• One of the exemptions is that the MEES do not apply if the cost of making cheapest recommended improvement would exceed £3,500. | In the **Improving the energy performance of privately rented homes: government response** the following was announced:<br>• Costs cap will be increased from £3,500 to £10,000 per property.<br>• Landlords need to ensure properties are at least an EPC C by 1 October 2030.<br>The change to an EPC C in 2030 is becoming increasingly ambitious given the delay to the domestic EPC reforms set out above. |
| **Non-domestic private rented sector** | • Current minimum EPC is an E.<br>• Properties that are an F or a G cannot be legally rented unless there is a valid and registered exemption. | There is a lack of clarity as to the future for non-domestic MEES. However, the direction of the government and legislation is clear, and landlords should prepare for higher standards. |

**Conclusion**

While some aspects of the EPB consultation remain to be addressed, change is on its way. And whilst we await clarification of how existing EPCs will be treated within new regulatory requirements, early preparation for landlords will be key.

For rural estates, the cost of complying with any changes is likely to be particularly high, as many rental properties will need significant improvements. Landlords should plan early to determine how the cost of any remedial works can be shared with tenants.



**Emily Jeffrey**
**Senior Associate**
Agriculture
**View Profile**

**Will Dyer**
**Associate**
Agriculture
**View Profile**

We are proud to have a large team of leading lawyers with experience in the Agriculture sector.

### Agriculture

**Vivienne Williams**
Partner
**View Profile**

### Natural Capital

**Ben Sharples**
Partner
**View Profile**

### Private Wealth

**Iwan Williams**
Partner
**View Profile**

### Private Property & Landed Estates

**Chris Massey**
Partner
**View Profile**

### Employment

**Kate Gardner**
Senior Consultant
**View Profile**

### Transactional Real Estate

**Paul Beanlands**
Partner
**View Profile**

### Property Litigation

**Charlotte Curtis**
Partner
**View Profile**

### Strategic Land

**Julie Sharpe**
Partner
**View Profile**

### Agriculture & Landscape Recovery Schemes

**Josie Edwards**
Partner
**View Profile**

### Corporate, Investors & Funders

**Alexandra Watson**
Partner
**View Profile**

### Energy & Renewables

**Ian Holyoak**
Partner
**View Profile**

### Family

**Daniel Eames**
Partner
**View Profile**

### Agri Tech

**Chloe Vernon-Shore**
Partner
**View Profile**

### Planning & Environmental

**Fergus Charlton**
Partner
**View Profile**

### Sustainable Economy

**Rachel O'Connor**
Partner
**View Profile**

### Food & Drink

**David Thompson**
Partner
**View Profile**

### Contentious Planning, Environment & Administrative Law

**Adam Corbin**
Partner
**View Profile**

### Disputed Wills & Estates

**Tony Cockayne**
Partner
**View Profile**

### Commercial

**Charles Courtenay**
Partner
**View Profile**

### Banking, Restructuring & Insolvency

**Karen Williams**
Partner
**View Profile**

michelmores.com