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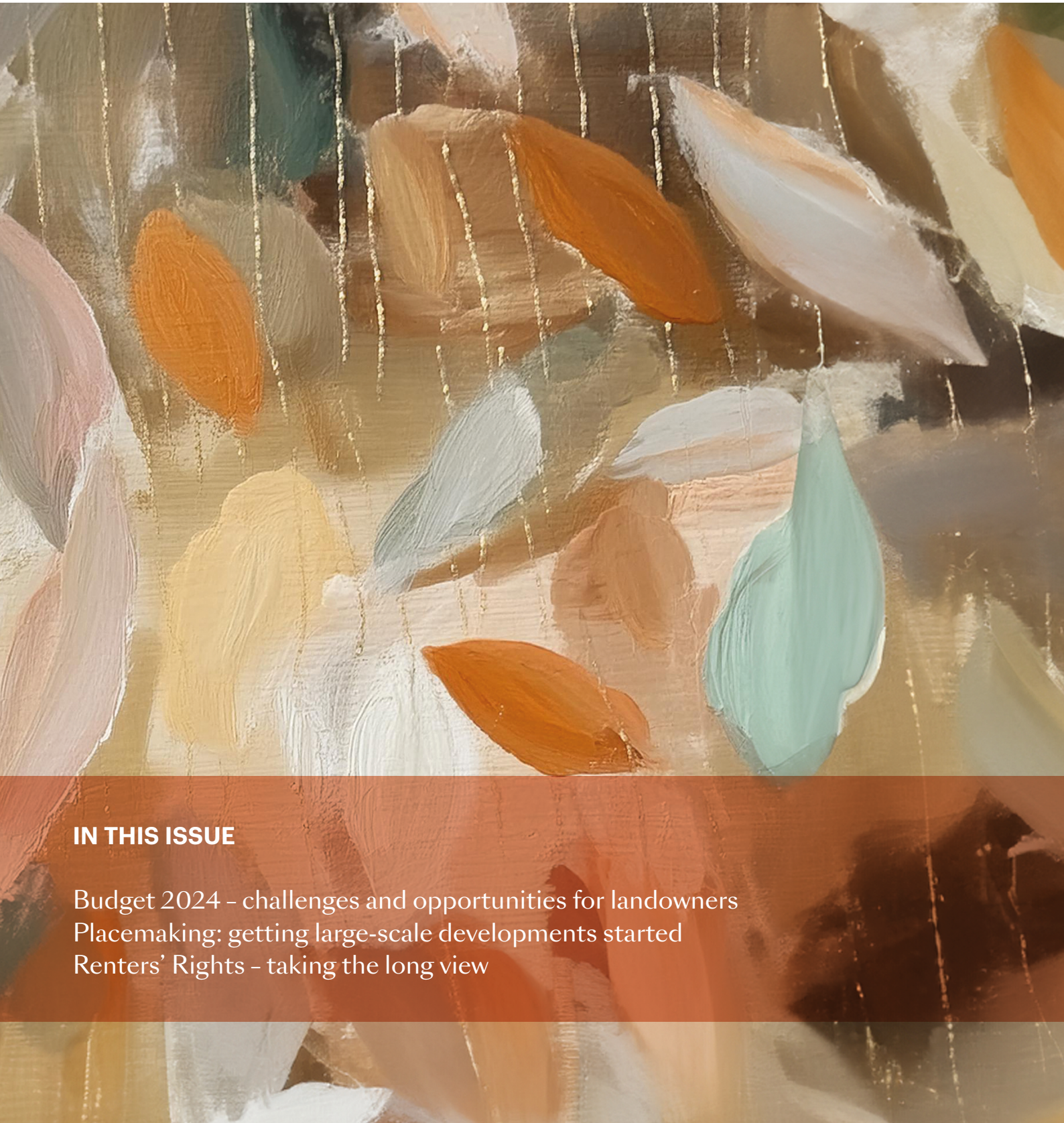
Rural Estates Newsletter

February 2025



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James Maxwell
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The January rain it raineth every day. Stuck inside, enjoying a family game of Scrabble, the famous Serenity Prayer comes to mind (last year I made it my new year's resolution):

God, grant me the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference.

That didn't last long, of course – if it ever began. But these words contain an important piece of practical wisdom: we are surrounded by facts of life we cannot change, and much anguish ensues when we mistakenly think we can. The Serenity Prayer offers a salutary attitude, perhaps, towards Rachel Reeves' changes to Inheritance Tax reliefs (Jennifer Ridgway writes on the effect on tax planning for rural estates), or for estates to maintain in relation to the coming reform of employment law (our Employment Team on key changes in the Employment Rights Bill). It certainly guides the thinking in my article on Renters' Rights and rural estates.

My 17-year-old daughter sometimes gets cross with winter weather. I tell her there is no point railing against something outside our control. Better to be British about it: dress up wind- and watertight and (with hey, ho, the wind and the rain!) get out there and make the best of things.

You can imagine the eye-roll.

Budget 2024 – challenges and opportunities for landowners

The first Budget from a Labour government in 14 years was a challenging one for landowners and their families. The Chancellor announced plans to cap Agricultural Property Relief (APR) and Business Property Relief (BPR) from Inheritance Tax (IHT). This is a seismic change that upends decades of careful succession planning. However, as the dust settles, it is clear that there are opportunities here, too, and a window to take advantage of them.

Jennifer Ridgway
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Will Cudmore
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What is changing?

From 6 April 2026, each individual will have a combined allowance of £1m for APR and BPR with all value in excess of the allowance charged to IHT at 20% (half the usual rate). The Government's announcements so far suggest that this allowance may not be transferrable between spouses, but there is no definitive guidance on this yet.

It is understood that any trusts settled before Budget Day (30 October 2024) will also have their own £1m allowance. Trusts settled after Budget Day will share an allowance, so if a landowner settled two new trusts the trusts would have an allowance of £500,000 each.

The new rules will apply to any transfers made on or after Budget Day where the charge to IHT occurs after 6 April 2026. Deaths or IHT charges on trusts that fall before 6 April 2026 will be taxed under current rules, with up to 100% APR or BPR. Lifetime transfers made before Budget Day will still be taxed under the old rules even if the donor dies after April 2026.

What is not changing?

Most coverage of the Budget has focused on what will change, but some important planning tools for landowners will remain exactly the same.

First, the lifetime gifting rules are unchanged. Anybody making a significant outright lifetime gift can do so without IHT so long as they survive the gift by seven years. If the donor survives at least three years from the gift, then taper relief applies and the IHT bill is reduced by 20% each year until the seventh year when no IHT is charged. In other words, the same IHT is levied if a landowner makes a significant gift and dies within three years, but after three years there is a significant tax saving.

Secondly, holdover relief for Capital Gains Tax (CGT) continues to be available for gifts of relievable property. If a landowner makes gifts of assets that qualify for either APR or BPR (at 50% or 100%) they can do so without an immediate charge to CGT: the gain is held over and the recipient of the gift inherits the base cost of the assets from the donor. While this can mean missing out on the date of death uplift (assets owned by the deceased are rebased on death for CGT, as are assets in a qualifying interest in possession trust where the deceased had a life interest), holdover relief allows lifetime gifts to be made without having to fund an upfront tax charge.

Finally, the means by which APR and BPR are assessed (including the so-called Balfour test) stays the same, too. In summary, Balfour planning involves managing activities across a whole estate as a single, trading business. That business will usually be a predominantly farming and woodland business, but is likely to include other activities reflecting the variety of the estate. A typical farming and woodland business on a varied estate will almost always include residential properties commercially let to non-agricultural tenants, the income from which is important to diversify from farming and other potentially volatile trading activities. The estate business (often a farming partnership) must be "wholly or mainly" trading, meaning more than 50%, assessed over a range of factors including turnover, profit, capital, time etc. Before the Budget, some commentary suggested that this test might increase to 80% trading. Balfour planning is almost the only way in which the value of residential properties can be relieved from IHT. A 50% IHT relief on these properties is likely to remain beneficial given the value of residential property in most parts of the UK. Landowners should therefore continue to use Balfour planning to attract the lower 20% IHT rate that will apply above the £1m cap.

For APR, land owned for seven years and occupied for agriculture by tenants is still relievable, despite concerns that this might be changed in the Budget.

Time-limited opportunities

Landowners have until April 2026 to take advantage of the current rules and might consider setting up or winding up trusts.

Relievable assets can be transferred to a new trust before April 2026 without an upfront IHT charge, and with holdover relief for CGT. Any transfers out of that new trust should be free of IHT for the first ten years, unless anti-forestalling measures apply after 2026. For the first ten-year anniversary charge and any subsequent exit charges, we expect IHT to be charged at up to 3% on the excess value (half the usual 6% rate). This could be a good way to capture relief before it is capped, as long as the trustees have a clear plan to pay future IHT charges. After April 2026, transfers of relievable assets to a new trust will be subject to an upfront IHT entry charge of 10% on any value in excess of £1m.

Relievable assets can also be transferred out of existing trusts within the ten-year charging regime before 6 April 2026 with no IHT charge. This is an option where there is a clearly defined successor who is ready to take personal ownership of estate assets, and is especially attractive if paying IHT at 3% every ten years is unpalatable. Transferring assets out of interest in possession trusts (or onto a discretionary fund within the trust) might also be an option, but this depends on the terms of the trust. Alternatively, existing trusts could be retained to take advantage of each having its own £1m allowance, so long as this does not complicate the running of an estate business.

The usual capital and income rules will continue to apply to trusts. IHT and CGT are capital expenses and trust income can only be used to pay tax where nobody is entitled to it by right (ie there is no life tenant) or if the trustees still have power to accumulate (ie capitalise) income. This means that life interest trusts, and trusts where income can no longer be accumulated, should start planning now to consider how to fund IHT charges on assets that have up to now been relievable in full.

What next?

The Government has not yet legislated for the changes they propose, and we do not expect Parliament to do so until later in 2025. There is due to be a consultation on how trusts will be taxed under the new regime. It is still possible that the Government may give way to pressure to, for example, increase the £1m allowance or defer the point at which the new rules come into effect.

However, while we do not yet have the small print, landowners should make the most of the window of opportunity before 2026 to review their current estate planning and take appropriate steps. This should start with a review of their estate's likely IHT liability once the changes take effect and move on to consider whether any of the suggestions we have outlined here might be relevant to their circumstances.

While tax rules change, the wisdom of careful and timely succession planning remains constant.

Placemaking: getting large-scale developments started

Delivering 1.5 million new homes over the next five years is the ambitious target set by the Government, but when coupled with its additional objective to adhere to the principles of sustainability and enhancing the environment, it can create a tension for developers. This is where the principles of placemaking can offer answers. Placemaking is about delivering sustainable, high quality, mixed-use developments (residential and commercial) which are community-led and which have safeguards in place post-development to ensure the developments thrive in the long term.

Henry Stevens
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Principles of placemaking

In placemaking, there is a strong emphasis on delivering a mix of open-market and affordable residential properties across the site to create an inclusive community. Commercial buildings are also included because they provide employment opportunities and reduce the need for transport.

The use of community facilities encourages a vibrant social life for residents and should be designed to support healthy living (both physical and mental) by providing a stimulating and varied natural environment. From a sustainability perspective, green infrastructure networks and communal areas can also help enhance the natural environment, provide a biodiversity net gain and help reduce carbon emissions.

Fundamental to all placemaking is the implementation of an effective design control regime. The design and construction principles are often set out in a series of estate documents, typically including a building manual, design guidance and an estate masterplan. The design code will also set out the types of materials that can be used and the design detail to be incorporated into the development.

How to deliver a placemaking project

There are a number of ways to approach a large-scale placemaking development, and the most suitable approach will depend on the landowner's financial position, available capital, expertise, risk appetite, and goals – both financial and otherwise. Ultimately, the landowner needs a clear vision from the outset of what they are trying to achieve; that vision should inform how they proceed. It is equally important to choose the right development partner – one who shares the estate's visions and values.

Pre-development

The first question for landowners is what level of involvement they want: selling the site outright to a developer is a low-risk option that delivers a quick financial return, but doing so means the landowner may be foregoing a higher financial return by losing the ability to realise profits over a longer timeframe. Further, the landowner will lose any say in the delivery of the scheme, which could present reputational issues if the developer takes it in a direction which is inconsistent with the landowner's views.

Where the landowner wants to sell, there are different ways of structuring the disposal which will suit different situations.

1. A build licence structure: here, the land is not transferred to the developer, but the developer is granted a licence to build. The landowner will then be directed to transfer built units to end-users by the developer. Typically, a landowner will receive a licence fee for the grant of the licence and a percentage of each sale. Although this option allows the landowner strong controls over the delivery of the development, which may be attractive, the developer's key concern will be whether they have a sufficient interest in the land to obtain finance from a lender.
2. A freehold transfer: this can either be conditional (ie the developer only buys if reserved matters approval is granted by the local authority) or on an unconditional basis. Either way, the landowner should register a restriction against the developer's title to the land to ensure the landowner's design code and vison is adhered to. Typically, the landowner will receive a premium (potentially in staged payments) but no share of sale proceeds. This structure is often the developer's funder's preference.
3. A development lease: where the landowner grants the developer a lease, permitting them to develop the site, subject to the conditions of the lease. This is a halfway house between a freehold transfer and a build licence. Price is also flexible: usually a premium is paid on the grant of the lease, and the landowner and the developer then share the proceeds of the sales to end users in agreed proportions. Funders are comfortable with this arrangement, because the developer has a proprietary interest in the development site. The landowner can also exert a reasonable amount of control via their role as landlord.

Where, on the other hand, the landowner does not want to sell (perhaps because it is seeking greater control or a higher return) and would rather deliver the scheme together with a developer, there are a different set of options.

1. The parties could enter into a joint-venture arrangement, either using contractual arrangements (such as a collaboration or framework agreements) or incorporate a corporate body (typically a limited liability partnership) to document the relationship. Either way, it will be important to ensure that the parties are aligned in how they want to develop the site and have a shared ethos concerning finance and long-term management arrangements.
2. The landowner could also look to deliver the scheme in conjunction with a master developer, who would oversee the design, planning, funding, infrastructure provision and construction in accordance with the landowner's vision. The master developer could also assist in determining the principles for the development and creating the building manual and design code.
3. Alternatively, the landowner could deliver the scheme in-house. Here, the landowner has no problem retaining control and the financial rewards could be much greater, but there are risks with deploying significant capital, especially where borrowing is involved. Demands on the landowner's time and resource must also be factored in (and landowners need to be honest with themselves about whether they have sufficient expertise in-house).

Which option is right for a particular situation will be determined by a combination of drivers, including levels of control required, the phasing of the development, appetite for risk, the bargaining powers of the parties, and, crucially, the market.

Post-development

A core principle of placemaking is the long-term stewardship of the development. This falls into two main categories, both of which should be considered from the outset.

1. How the design is protected and promoted: this is supported through the use of a design and community code. This code will be based on the building manual and will provide a set of rules for residents making alterations to and maintaining their homes. The code may also include estate stipulations, which can be made to bind homeowners by direct covenants with the landowner. A management company or trust may also be set up to manage the development and it is usual for residents to be closely involved with this, to promote a sense of ownership and stewardship.
2. How the development is managed: in particular how services and works are provided, to preserve and enhance the communal areas. Thought must also be given to how consents and other matters under the design and community code are dealt with.

The need for houses is ever present, but the Government's ambitious housebuilding targets (alongside their environmental and sustainability goals) present a real opportunity for large-scale development which puts placemaking and community at its heart.

Renters' Rights – taking the long view

The year ahead will bring the Government's Renters' Rights Bill into force. The initial reaction from landlords to this radical change in the private rented sector has been predictably negative (with good reason), but rural estates must soon face up to a "new normal" of rent control and enhanced security of tenure for tenants. In taking stock of the situation, it is perhaps possible for rural estates to find reasons, if not to be cheerful, at least to be sanguine about the forthcoming changes and to seek to approach them positively.

James Maxwell
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Looking back

The historic context is important. We have been here before: first introduced in 1915, rent control and security of tenure legislation was a feature of the landscape for most of the 20th century, consolidated in the Rent Act of 1977. Before 1989, protected tenancies under the Rent Acts afforded residential tenants strong security of tenure, the fair rent system and generational rights of succession. The unintended consequences of this are well-explored – landlords became reluctant to let and unwilling to invest in the fabric of buildings, leading to constraints in the quantity and quality of supply (a cautionary tale for the present). Deregulation of the private rented sector began with the Housing Act 1988 and the introduction of assured tenancies. This stimulated the expansion of the sector, and the advent of buy-to-let mortgages encouraged investment.

The climate has been benevolent for landlords since 1989. For much of our professional lives section 21 of the Housing Act 1988 (allowing landlords possession "as of right" on two months' notice) has empowered landlords to remove unwanted tenants and enforce de facto rent reviews. However, this has arguably contributed to other social mischiefs and the pendulum of public policy is now swinging back. Landlords are rightly wary of the changes proposed. The Renters' Rights Bill will indeed make things more difficult for rural estates – more difficult to remove tenants, to raise rents, to manage properties generally – but not by any means impossible. Indeed, the new regime will not be greatly dissimilar to that which obtained for assured tenancies in the early nineties – and the sector survived.

Changing perspectives

The period since 1989 has coincided with the increasing professionalisation of rural land management, which has in turn encouraged estate dwellings to be considered as investments, judged on their ability to create a return on capital. This has been part of a wider trend where the increase in residential property prices in recent decades has caused the public to view their own homes increasingly as investments, or to invest in buy-to-lets. Within society generally, there has been an increasing (and perhaps narrowing) focus on the exchange value of residential property, rather than its utility value as a home. This has not always been a force for good.

The great increase in the capital value of freehold property over this same period, and its relationship to average earnings, is well known. In 1997 the cost of a home in England was 3.5 times annual earnings; the factor in 2023 was 8.2. The cultural impact of this lack of affordability is huge – boomerang kids unable to get on the housing ladder until their later 30s; generation rent starting families on the shaky foundation of assured shorthold tenancies. The instability and insecurity of living within the private rented sector has been recognised across the political spectrum. As the current Government's guide to the Bill observes, "Millions of people in England live day in, day out with the knowledge that they and their families could be uprooted from their home with little notice and minimal justification". Michael Gove in the original White Paper, A Fairer Private Rented Sector, published under the previous government, also aspired to create "a modern tenancy system that gives renters peace of mind so they can confidently settle down and make their house a home … so that everyone can live somewhere which is decent, safe and secure – a place they're truly proud to call home."

Owners of rural estates (both private and institutional) may well find some sympathy with that sentiment. Many will find it chimes with their own sense of being responsible landlords embedded in a locality; their vision of an estate that produces and sustains public goods; their values that emphasise stewardship, not just of the land, but of the wellbeing of individuals within a local community.

Farewell section 21

The ban on "no-fault evictions" is, of course, the headline news, but the power of the section 21 notice can be overstated. Since the Housing Act 2004 the enforceability of section 21 notices has been gradually eroded, as governments increasingly saw it as a lever to pull to advance other policy agendas – be that the provision of EPCs, gas safety certificates or to tackle retaliatory eviction. Anyone involved in contested section 21 notice proceedings in recent years will know that serving an enforceable section 21 is not straightforward – if a previous agent failed to provide the TDS prescribed information, took more than five weeks' rent as deposit, or committed some other minor misdemeanour, the process can be stymied as a result. Even an enforceable notice does not mean a tenant will simply up sticks and leave (indeed, some local authorities advise tenants to ignore them and stay put until the court process takes its tediously long course). With that in mind, the need to rely now on a section 8 procedure engaging the new grounds in the Bill may not turn out to be the catastrophic step-change for landlords we are tempted to predict in more gloomy moods. The section 8 grounds have been extended and enhanced and include several which are helpful for rural estates:

- Sale: where the landlord wants to sell the property, they can serve notice on that basis. Tenants will have a protected one-year period at the start of their tenancy when this ground cannot be used, the landlord is likely to need to produce evidence of their intention to sell and cannot then relet within a further one-year period (to prevent abuse of the ground).
- Redevelopment: where the landlord needs possession to demolish or "substantially redevelop" the property, notice can be given, where certain conditions are met.
- Employment: landlords can serve notice to regain possession from tenants who are employees when their employment ends (or the property is needed for another employee). Note, however, that this cannot be used for agricultural workers.
- Agriculture specific: there are grounds permitting notice to be served where the tenancy has been granted by a farm tenant and the superior, agricultural tenancy under which the holding is let to that farm tenant has been terminated; also, where the dwelling is needed to house an agricultural worker.
- Bad tenants: grounds for termination where there has been anti-social behaviour or non-payment of rent.

Even if a tenant is sub-optimal (and the rent equally so), having someone in the cottage paying the Council Tax is often better if the alternative is a long void: empty houses cost money and yield none. Estates also generally do not use section 21 on a whim and, where it is used, there is likely to be a "real" reason. The sense we are getting from a number of our clients is that although they may use section 21 because it is convenient, there is usually a good reason to seek possession – most of which are covered in the new grounds.

Taking stock: estate cottage audit

The cultural and political perspectives on reform in the private rented sector are multi-faceted. But what is certain is that rural estates face a practical need now to pause and take stock of their residential portfolio before the changes take hold. Many estates are doing just such an audit, considering the following among other matters:

1. Purpose: what is the purpose of owning a particular cottage? Often it is revenue – some estates will look at outlying cottages, consider the low yield, the increasing burden of management, and decide that the capital is more fruitfully deployed elsewhere. Others, rather than selling,

are experimenting with capital investment to create a higher specification in the hope of an uplift in rent. Others are moving from renting to AirBnB. The equation will depend on the dwelling and can be very different for a core property in the heart of the estate, where there is a sense of dynastic responsibility.

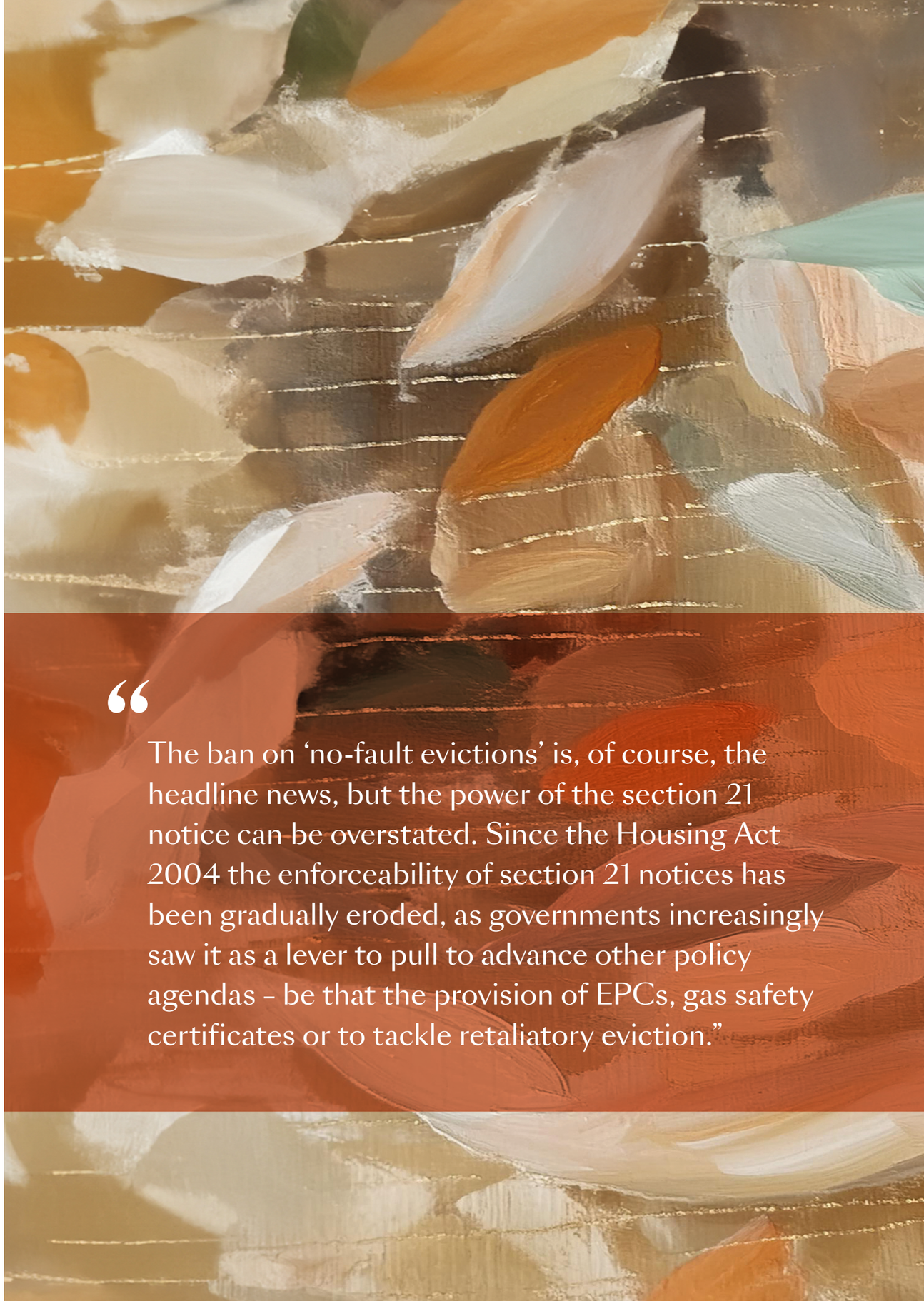
2. Occupant: considering whether a particular tenant is a good long-term fit for a dwelling close to the main house is prompting some estates to take the last opportunity to use section 21 to terminate occupation (or to set the rent). But there are other questions to ask about occupants of cottages close to home. Many such cottages house estate employees on low rents – would these better be moved on to service occupancies? Others accommodate old retainers or their widows on a "promise" dating back decades, often on a soft rent – is now the time to formalise that one way or another (and is the occupant on the right rent)?

3. Condition: now is also an opportunity to consider the fabric of the dwellings. When was the last time this was looked at carefully by your managing agents? The application of Awaab's law to the private rented sector will mean a much closer focus on issues of damp, mould and fitness for human habitation (not to mention EPCs and MEES). An estate's concern on these points will largely be motivated by the desire to do the right thing by its tenants, but the potential for negative publicity arising from problems is important to bear in mind.

Starting the new year with such a review can be a positive management step.

Lean in

Perhaps inevitably, measures designed to clamp down on the undesirable elements of a sector will also unduly burden "good" landlords. And there is no doubt the Renters' Rights Bill will present considerable challenges to rural estates when enacted. But it is a reality that must be faced. Just as with winter weather, there is little point railing against something beyond our control. In a stoic spirit of making the best of things, rural landowners may choose to lean in to what is coming, try and make virtue out of necessity, and wait for the skies to clear.



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EPCs and MEES: a farmhouse-shaped hole in the law

The law on how the Energy Performance Certificates (EPCs) and Minimum Energy Efficiency Standards (MEES) regulations apply to farmhouses is complicated and unclear, but it is an important issue for rural landlords. Given the Government's net zero trajectory, requirements concerning the energy efficiency of buildings are only going in one direction: September 2024 saw one of the first enforcement cases for breach of MEES and it seems likely that the current EPC minimum standard of E will rise to C by 2030. As it is likely that few farmhouses would achieve an E or above without work, rural estates may want to review their properties now to spot potential problem areas and plan for the future.

Elizabeth Earle
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From 1 October 2008, the EPC Regulations required the relevant person (here, the landlord) to make a valid EPC available to prospective tenants or purchasers, free of charge, when a property is marketed, sold or "rented out" (also on construction). Some limited types of property, such as those with a low energy demand, are excluded from the need to have an EPC, which leads to the first question.

The farmhouse is listed, isn't it exempt?

The point to remember is that listed buildings are not automatically exempt and may need an EPC. The EPC Regulations are nuanced (probably because they hail directly from European law, which does not have the concept of a listed building) and state that where compliance with certain minimum energy performance standards "would unacceptably alter [the] character or appearance" of "buildings officially protected as part of a designated environment or because of their special architectural or historical merit", then they do not need an EPC. In theory, therefore, a listed building needs an EPC if there are changes that could be made to it to improve its energy efficiency, but only where those changes would not unacceptably alter its character or appearance. In practice, the safe course of action may be to obtain a (draft) EPC as evidence that none of the changes could be carried out without unacceptably altering the building's character or appearance. If, however, there are changes that can be carried out, then an EPC is required and the changes must be carried out.

Assuming your property is not exempt from needing an EPC, the next question is:

Has there been a trigger event?

The EPC Regulations state that an EPC is required when property is "rented out" after 1 October 2008, but do not define what is meant by "rented out". Clearly, that must include any new tenancy, but it is not clear whether renewals, assignments or successions of (pre-1 October 2008) tenancies made after that date will also act as triggers.

- Renewals and extensions: although not mentioned in the EPC Regulations, the Government's guidance on EPCs for both dwellings and non-dwellings sets out a list of things it does not consider to be sales or lets. That list includes renewals and extensions, as well as surrenders. Admittedly the Government's guidance does not have legal status, and if one were being very cautious, one might choose not to rely on it for that reason – however, it is entirely reasonable to rely on it.
- Successions: where the tenancy is made under the Agricultural Holdings Act 1986 (1986 Act) there is the trickier question of whether post-1 October 2008 succession events will trigger the need to obtain an EPC. The guidance is, perhaps unsurprisingly, silent on this point. Successions are different from renewals and extensions in the sense that there is a different tenant. The underlying European legislation refers to EPCs being made available to "new tenants", which may indicate that it is having a "new" tenant (rather than a new tenancy) that triggers the need to obtain an EPC. On the other hand, a succession is far from an open market letting; the so-called "new" tenant will necessarily already have a connection with the holding and a close relationship with the outgoing tenant (and will not be choosing between a host of available properties). Ultimately, different situations may lean towards different interpretations and should each be scrutinised on their own facts.

Where an EPC is not (or not yet) required for a farmhouse, then it will not be subject to MEES – the definitions for both domestic and non-domestic properties exclude property for which an EPC is not required. But where an EPC is required, the next question is whether MEES applies and which regime.

Are farmhouses domestic?

The MEES Regulations require property that is privately rented to have an EPC of at least E (or a registered exemption) and are split into two parts, "domestic" and "non-domestic". This creates a problem. "Domestic" property includes only those properties let on certain, named tenancy types and these do not include 1986 Act tenancies or farm business tenancies. By a 2015 Order, assured agricultural occupancies and tenancies under the Rent (Agriculture) Act (referred to as "domestic agricultural tenancies") were specifically added to the list, but are unlikely to be relevant to the farmhouse itself. The definition of non-domestic property, on the other hand, specifically excludes dwellings – and farmhouses are nothing if not dwellings.

Here, the Government's guidance is unenlightening. It does not refer to farmhouses at all, and where it talks about mixed-use properties let as a single unit, it advises merely that the landlord should "examine the tenancy to determine whether the property is domestic or non-domestic". The safe option, therefore, may be to interpret the spirit of the law rather than the letter of it and assume that farmhouses for which EPCs are required will be caught by MEES. After all, they are privately rented properties, let as an individual's home, the energy performance of which will be relevant to the tenant who is paying the bills. Although it would not be impossible to seek to rely on the gap in the definitions and argue that farmhouses fall outside the MEES regime entirely, the wording could well be tightened in the future.

Does a voluntary EPC change things?

The Government's guidance states that where a voluntary EPC has been obtained and even registered (perhaps because the owner was unsure whether one was needed), that will not, by itself, require the landlord to comply with MEES. That said, it probably looks somewhat inconsistent to obtain a voluntary EPC and then seek to argue that one is not required.

What now?

Assuming farmhouses come under the domestic MEES regime (if at all), there are a number of exemptions which might assist. The most frequently used is the "high cost" exemption. This requires the landlord to carry out "only" £3,500 worth of work, but where the property remains below E, the landlord can then register an exemption. There has, however, been discussion of raising this cap to £10,000, which may make this exemption a considerably less practical option for estates.

Ultimately, it is likely to take a court case, or a change to the current law, to resolve the grey areas. In the meantime, it may be useful for estates to audit their properties to see where their own questions lie. They might also consider formulating some general guidelines on how to deal with these situations (perhaps in discussion with the local authority, if at all possible), taking into account not just what is reasonable and practical for them to do given their portfolio and resources, but also their own attitude to risk.

Managing estate workers: key changes in the Government's Employment Rights Bill

In October 2024, the Government published its Employment Rights Bill which, alongside its Next Steps to Make Work Pay document and the subsequent Amendment Paper, sets out Labour's plans to implement sweeping employment reforms aimed at prioritising fairness and family-friendly rights. The Bill follows a variety of other employment-focused changes over the past year, including legislation permitting rolled-up holiday pay for holiday years starting from 1 April 2024 (which will be a welcome change to estates with seasonal workers). In this article, we consider some of the key changes and how they may impact the management of estate workers.

Charmaine Pollock
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Emily Part
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Unfair dismissal

One of the Bill's most significant proposals is to remove the current requirement for an employee to have at least two years' service before they can bring a claim for unfair dismissal. For a dismissal to be fair, the reason must be one of the potentially "fair" reasons set out in the Employment Rights Act 1996: misconduct, capability, redundancy, a legal reason or "some other substantial reason", and a fair process must have been followed.

This will seriously impact employers' ability to dismiss staff (without a fair reason and/or a fair process) within the first two years. There may be some flexibility, as the Bill also proposes an "initial period of employment" of between three and nine months, during which a simplified dismissal procedure may be acceptable. Although more detail is awaited, this is still likely to be more onerous for employers than at present.

These changes are likely to be of particular concern to estates where teams are small and achieving a combination of people who can work together is crucial. Workers may often "live-in" on the estate too, which adds an extra dimension. Increased care will therefore need to be taken during the recruitment process to select the best applicant. New recruits will also need to be managed proactively when they do start, to ensure that the new procedures (whatever they may be) are followed if there are problems. Fixed-term contracts could also be considered, where appropriate, for short-term seasonal work.

Harassment

Since 26 October 2024, employers have been required to take reasonable steps to prevent sexual harassment in the workplace, including by third parties. The Bill plans to strengthen this, making employers take all reasonable steps. Further, if an employee successfully brings a claim for discrimination and is awarded compensation for their losses, they can then be given an additional 25% of that compensation (without proving additional loss) if they show that their employer failed in its duty to prevent sexual harassment. Disclosures regarding sexual harassment will also be considered "protected disclosures" for the purposes of whistleblowing.

Requiring employers to take "all reasonable steps" to prevent sexual harassment, including by third parties (over which the employer may have little control), is a very high bar and particularly challenging for rural estate employers where visitors, guests and contractors may all be present. Appropriate training and policies are vital to protect employers in this area.

Family leave

The Bill will extend current family leave rights in several ways. It will become unlawful to dismiss an employee who has been pregnant within six months of their return to work, except in specific circumstances. Parental and paternity leave will become "day one" rights; at present an employee needs 26 weeks or one year's service, respectively, before they benefit from them. Additionally, bereavement leave will be extended beyond parents to create a more general right. Again, the detail is yet to be confirmed.

These changes may be particularly significant for smaller rural estates, for whom gaps in staff coverage can be harder to manage than for larger employers, with a larger pool of employees to draw on. It can be difficult to find specialists with the skills required – such as gamekeepers or foresters – to fill gaps, especially where the work may only be seasonal. Regular communication and encouraging staff to give as much notice as possible of any intention to take statutory leave is likely to be helpful for employers.

Flexible working

Since April 2024, the Bill has made the right to request flexible working a day one right for all employees. Employers must respond to requests within two months and consult with employees before refusing a request. Employers must also consider a request properly and will only be able to refuse if it is "reasonable". Employers will need to explain their reasoning to employees, including reference to one of the eight permitted business reasons for refusal; these include factors such as cost, impact on performance and difficulties hiring extra staff to cover relevant duties.

It is important to remember that the right is for employees to request flexible working, not to be given it. In the context of rural estates, there are many cases where it may well be reasonable to refuse certain types of flexible working request. Clearly, working from home is not practical for a gamekeeper, nor a request to job-share a role which may make the role either financially or logistically unviable due to the lack of suitable workers. Each request should be considered on a case-by-case basis, with reasons for any refusal being fully explained and documented.

Statutory Sick Pay (SSP)

The Bill removes both the waiting period and the previous earnings limit, which required workers to be earning a minimum amount per week before receiving SSP. All workers will now be entitled to SSP from their first day of illness (rather than the fourth day) and there will be a consultation on the rate of SSP. This is likely to increase costs for a business, and it will be important to ensure any sickness and absence policies are up to date and sufficient.

Time limits

The Amendment Paper produced alongside the Bill proposes to increase the time limit for bringing Employment Tribunal claims from three to six months. Taken together with day one unfair dismissal rights, this is likely to create increased uncertainty for employers and a higher number of claims overall. Following the ending of any employment, therefore, estates should be aware of any potential claims and keep records of the circumstances surrounding any termination or exit for at least six months (or longer).

Anticipated timeline and next steps

Although the draft Bill has been published, much of the detail relies on consultation and secondary legislation and is currently unknown. As such, the new laws are not expected to take effect for some time: the majority are expected to come into force by April 2026, with unfair dismissal "day one" rights coming into effect "no sooner" than Autumn 2026 (according to the Government's factsheet). As with all draft bills, this could change.

That said, starting preparations early and consulting with legal and HR professionals now will help estates ensure a smooth transition when the new obligations do come in. Whilst nothing is set in stone, the general tone of the changing landscape is clear: estates should take steps now to review policies, sure up recruitment processes and assess the future needs of the workforce to put the business in the best position.

Protecting rural estates from drones and trespass

"[T]he house of everyone is to him as his castle and fortress as well for the defence against injury and violence, as for his repose". Though Sir Edward Coke penned these words in 1604, the desire for privacy and self-containment, a frequent driving force in rural estate purchases, still rings true today.

Will Johnson
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Threats to a landowner's privacy have traditionally come from trespass: ramblers straying off public footpaths, protestors making a stand, or vandals causing damage. Social media is making it increasingly easy to share information too; a private security team had to be brought in to protect Drayton House in Northamptonshire (the setting for the film Saltburn) after TikTok posts shared information about how to get to the property from public footpaths, causing a spate of trespasses.

The threat of trespass now comes from the sky too. The use of drones is becoming more common and rural estates are a particular magnet for drone users seeking aerial footage of grand houses, historic sites and areas of natural beauty. How is the law evolving to deal with these new trends?

What happened in Anglo International?

The 2023 case of Anglo International Upholland Ltd v Wainwright concerned a 320-acre estate owned by the claimant, which included a large, dilapidated seminary built in the 1880s. The defendants (Mr Wainwright and persons unknown) trespassed regularly and flew drones over the seminary, taking photographs which were then posted on social media, in turn encouraging further trespass. Some of the trespassers also took to camping in the seminary and even ringing the bells. The claimant had well-founded concerns about the risks the building posed to them; it was in an extremely unstable condition and had experienced several recent collapses. The claimant was, no doubt, also aware of his potential liability under the Occupiers' Liability Act 1984; this requires landowners to take reasonable care to ensure the safety of trespassers. He had spent significant sums – approximately £260,000 annually – on securing the site, including erecting a two-and-a-half-meter fence and employing security guards. But that did not deter the trespassers, and the claimant resorted to seeking an injunction against Mr Wainwright and the persons unknown to prevent them entering the site and flying drones over it.

The availability of injunctions against persons unknown is a recent development. It was confirmed in a case in November 2023 in which an injunction was obtained by a landowner against trespass by gypsies and travellers. It can be useful in this sort of situation, where it may be impossible to identify the transgressors, but action is needed to prevent similar, future trespass.

In the Anglo International case, the judge accepted that a drone was, for these purposes, an aircraft and considered section 76 of the Civil Aviation Act. This section provides that there is no actionable trespass by reason only of the flight of an aircraft, where the height is reasonable in all the circumstances. Here, however, the court concluded that whilst the simple act of flying the drone was not itself trespass, the use to which the drone was put during the flight was a problem. Flying the drone at a height from which photographs and videos could be taken, which were then used to facilitate and encourage further trespasses was sufficient to constitute a trespass. On that basis, the court granted an interim injunction against Mr Wainwright and the persons unknown, preventing them from entering the site and banning drone flights over it for two years.

What can landowners do to stop drone trespass?

Where landowners are concerned about drone activity, the Civil Aviation Authority (CAA) offers guidance. The CAA sets out when flyer and operator ID is required (whether there is a camera on board makes a difference) and also publish the Drone and Model Aircraft Code. The Code makes the following provisions, which may assist a landowner in judging what is reasonable:

- Drones should not fly higher than 120 meters from the ground.
- Generally, drones should not fly within 50m of people horizontally (including those in vehicles and buildings) and must not fly over people in the 50m no-fly zone, regardless of height (there are qualifications to this, based on drone size and skill level of the operator). The rules do not apply to family and friends.
- Drones cannot be flown over crowds, such as festivals or sporting events.
- Drone users need the landowner's permission to enter private property, for take-off and landing.

Where drone activity appears to be breaching the Code, or as in the Anglo International case, the flying is within the law, but is being used for unacceptable purposes, landowners may consider taking the following steps as a precursor to more formal action:

1. Identify what is attached to the drone. Can you see a camera? Can you find any footage being uploaded online? These could be evidentiary points to argue the drone use is not "reasonable".
2. If photographs or videos are shared online, what is their purpose? Is it simply a one-off post showing the natural beauty of a property? Or are specific points of interest being targeted, with regular videos being posted with a description of how access can be obtained?
3. Keep a diary of any trespass that has occurred and any associated loss or damage. Have incidents become more frequent since drone activity has increased? Are you having to spend more on means to prevent against trespass, such as fencing, CCTV, alarms and manned security?

Although landowners are unlikely to obtain injunctions to prevent the routine passage of future Amazon deliveries, say, or one-off use by private individuals, the situation is different where the use becomes targeted and what happens in the sky impacts what happens on the ground. As drone use increases, cases like Anglo International are likely to become more common and landowners may need to defend their privacy on frontiers that Sir Edward could have only dreamed of.

> "... rural estates are a particular magnet for drone users seeking aerial footage of grand houses, historic sites and areas of natural beauty."

Rough sleepers on rural estates: advice for landowners

Despite the time of year and the cold, damp weather, rural land remains a prime location for the homeless and other individuals seeking a quiet spot from which to base themselves. Homelessness is a growing problem and individuals who have no fixed abode may also be suffering with physical or mental health issues. Whilst it is outside the scope of this article to address the causes of homelessness, we look at why landowners should be alive to the challenges it can present for rural estates and suggest some practical ways in which they might sensitively deal with rough sleepers on their land.

Sian Walker
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Monitor

As most rural land spans large areas and is likely to include secluded, wooded areas, monitoring the existence of rough sleepers – and even larger encampments – can be difficult. Landowners may, therefore, be tempted to ignore the issue entirely (unless problems become apparent and their hand is forced). Although monitoring is difficult, it is not impossible; regular inspections of land, including woodland and secluded areas, are important and will enable landowners to identify whether they have a problem with rough sleepers and encampments quickly. The longer any problem goes undetected, the harder it will be to deal with, and it will also increase the likelihood of accidents, incidents and damage occurring.

On the subject of accidents, landowners should remember that they have a duty to take reasonable care to ensure the safety of those on their land, including trespassers, under the Occupiers' Liability Act 1984 and can be sued by the trespasser if that trespasser comes to harm. It is therefore imperative that landowners take positive steps to monitor the existence and emergence of unauthorised encampments and, where found, take appropriate steps to manage any risks. Where there are dangers near where people are staying, especially those where the risks are not immediately apparent, such as old mine workings or submerged objects in water, landowners should consider fencing those areas off and erecting warning signs to prevent trespassers from going into those areas.

Prevent

Although it may not be possible to prevent rough sleepers and encampments entirely, when inspections find evidence of such activity, there are steps landowners can take to discourage the use continuing and growing.

- Consider whether steps can be taken to restrict unauthorised access to the site, such as fencing it off. Although implementing any measures might prove difficult, especially as certain areas might contain public footpaths or comprise large, open areas, landowners should still explore this option.
- Erecting "no trespassing" signs might act as a useful deterrent in relation to the construction of any would-be encampments. Where the encampment already exists, erecting signs close by will alert individuals to the fact that they are trespassing on private property, and hopefully encourage them to relocate. It will also prevent any attempts to claim that they were not aware they were on private land.
- Although potentially quite costly, installing sensor lighting in any particularly susceptible areas might be worth considering to deter individuals from creating encampments. If the lighting is tampered with or damaged, a criminal trespass will also have occurred (in addition to the civil trespass) and at that point landowners should contact the police to intervene.

Act

Landowners should be aware that many individuals who have set up encampments or who are sleeping rough will be categorised as vulnerable. Landowners should therefore approach the local authority and/or local homeless charities at an early stage and ask for their advice and help as to how they might deal with the situation. This will often be the best – and most appropriate – angle from which to engage with the problem. Local authorities or charities will often be able to relocate the individual or offer them alternative accommodation. If it becomes apparent that the individual does not intend to relocate or is otherwise uncooperative, however, further steps may need to be considered, but it is important to have tried a conciliatory approach first.

From a purely legal point of view, where rough sleepers or established encampments are found, the starting point is that the individuals are trespassing on private land and that is a civil wrong. As a first step, landowners can therefore prepare letters for the individuals, giving them a reasonable timeframe (probably at least 21 days, depending on how established the encampment is) within which to vacate the area and remove their belongings. If the individual is not present, the letter can be attached either to their belongings or a nearby tree. Photographic evidence should be kept of the letters. Where an individual vacates the land but leaves their belongings on it, a pragmatic view will need to be taken as to how a landowner should best clear the site up. Where the situation merits it, solicitors can be instructed to prepare a "torts notice": this confirms that the landowner has taken the possessions but can be contacted by the rough sleeper to arrange their return. If the possessions are not reclaimed, the landowner can sell or dispose of them – but this approach will not be proportionate in all cases. Where the individuals do not vacate at all, after having been given notice to do so, enforcement action may be required. Instructing enforcement agents to remove the individuals and dismantle their encampments is a possibility, but this should very much be viewed as an option of last resort.

While most trespass instances remain in the civil domain, if any individuals are causing a public disturbance, causing damage to the land or there is evidence that illegal substances are being used, then their actions may constitute criminal offences and the police should be contacted immediately. It goes without saying that landowners should not put themselves, or anyone else, in danger when dealing with encampments or individuals residing on them.

> "... landowners should remember that they have a duty to take reasonable care to ensure the safety of those on their land, including trespassers, under the Occupiers' Liability Act 1984 ..."

Buying property with a private water supply

Private water supplies always present problems in a purchase. Whether you are buying a house or part of an estate with a private supply, there is much to consider.

James Maxwell
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Local authorities and private supplies

In England, private supplies are governed by the Private Water Supplies (England) Regulations 2016, which were amended in 2018 (Regulations). There are subtly different regulations in Wales. They set out the duties of local authorities in relation to the wholesomeness and sufficiency of private supplies and afford them powers to enforce against "relevant persons". A relevant person is widely defined and will catch the owner or occupier of premises served by the supply, the owner or occupier of land on which any part of the supply is situated, and any person who manages or controls that supply.

Under the Regulations, local authorities are required to register all private supplies and carry out risk assessments. For small private supplies (those supplying under 10 cubic metres of water per day, or roughly fewer than 50 people) assessments must be reviewed at least every five years. Where a supply is suspected to be unwholesome the local authority must investigate, inform those affected and offer advice. If there is a danger to human health, it must serve a "regulation 18 notice" specifying what action needs to be taken to restore wholesomeness. Where a private supply is failing to provide a sufficient supply of water for domestic purposes, the local authority can serve a "section 80 notice", setting out what steps must be taken to remedy the problem.

Buying a house on a private supply

As the private supply of water is so regulated, it is essential when buying a house to understand where its water comes from. Due diligence must establish the facts. What and where is the source? How does the water reach the house, where is it stored and how is it treated before consumption? Who is the manager of the supply? What is the history of wholesomeness, sufficiency, test results and remedial works? The sales particulars may state "Mains Water" but even this must be questioned. Water direct from the mains is one thing, but where a water company supplies the water from the mains and it is then distributed by a private network of pipes, that is a private distribution network and a "regulation 8" supply subject to the five yearly risk assessments by the local authority.

Most private supplies involve water from a privately owned spring or borehole that serves a single dwelling. Where such a supply has been used solely for domestic purposes (drinking, washing, cooking) and not for any commercial purposes (B&B, holiday cottage or letting to tenants) then the house may escape the requirement for mandatory risk assessment and monitoring by the local authority under the "single dwelling exemption". The lack of formal oversight may, however, mean that there is no history of water quality testing, and the quality of the water will be an unknown to a buyer. A buyer may request a local authority to carry out a risk assessment, but in this case will need to pay the authority's costs.

A buyer (and its mortgagee) will also be concerned to understand the legal underpinning of the supply. Where the water is piped from third party land there must be an easement for the continuing right to a supply of water, which should also deal with rights of entry for repair and replacement (in case of landowner default). There may also be separate contractual arrangements with the adjoining landowner covering responsibility for management and maintenance of the supply and payment for water consumption.

Private supplies to houses present real difficulties for a house owner and professional advice may be appropriate to consider the effectiveness of treatment systems. Whether the supply is adequate for modern essentials such as dishwashers and power showers – and even modern boilers – is another question.

Buying an estate with a private supply

The difficulties are greater for the buyer of a farm or part of an estate that has a private supply. Here the buyer will become not just a consumer, but also a manager (a relevant person for the Regulations), which brings much greater responsibility, cost and risk.

Again, due diligence must establish the physical facts of source, pipe routes, pumps and reservoirs. Having a plan of the network from the outset of a transaction is essential – and if the current owners profess vague knowledge of the facts, a buyer must still insist on a plan. As with a single house, the history of test results and treatment systems must be understood, but the issues go deeper.

In addition to the Regulations concerning private supplies, an abstraction licence may also be required for abstraction in excess of 20 cubic metres per day. A buyer must check the licence is assignable and that there have been no breaches of conditions.

A private supply serving several dwellings comes with a heavy maintenance burden, and there is often "someone in the village" who does the daily checks and general management. This knowledge of where everything is and how it works can be a valuable resource for a buyer into the future, but thought needs to be given to the legal status of this person. Often, nothing is written down: is this person a contractor or an employee? Will that employment transfer to the buyer on the purchase? Who is responsible for the actions of this person in the event of negligent management of the water supply? And finally, what happens to that knowledge if that person leaves, or dies?

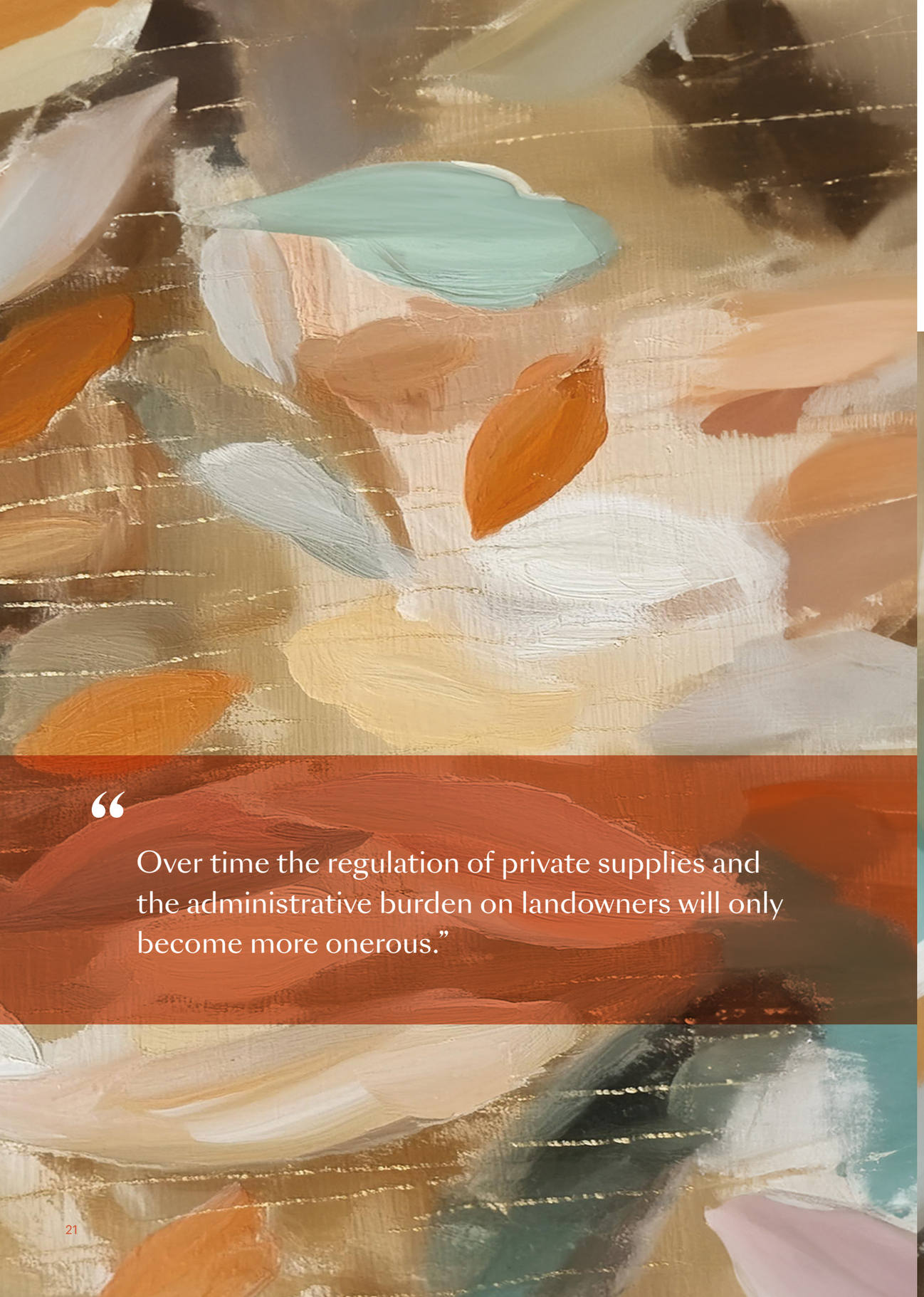
For obvious reasons, the purchase of part of an estate where a private water supply is being split (whether permanently or in phased completions) throws up further drafting challenges. The sale documentation will need to set out who has management control of which parts of the private supply and for how long; it will contain reciprocal obligations and indemnities, as well as the necessary cross-rights needed by either party for the future. The thinking around these issues is greatly facilitated by having clear plans of the network early in the transaction.

The future

One quirk of the Regulations at present is that although there are duties on local authorities to act when they become aware of private supplies, there is no corresponding duty on relevant persons to notify authorities that those supplies exist. However, this is likely to change: a 2024 report on the impact and future of the regulatory model and legislative framework surrounding private supplies recommended mandatory registration, ending the single dwelling exemption and requiring additional disclosures regarding private water supplies in the conveyancing process, as well as in the planning process.

Over time the regulation of private supplies and the administrative burden on landowners will only become more onerous. In practice, the capital expenditure for remedial and improvement works and the running costs of managing a private supply will never be covered by the contributions of consumers. Even if users are under contractual obligations to pay for their water, local authorities will intervene and serve section 80 notices if there is any threat to cut users off for non-payment, which makes enforcement of payment problematic.

The obvious duties of care that managers of private supplies owe to the users mean questions of personal liability must be taken seriously. Whilst corporate vehicles can be considered as means to shelter individual landowners from potential liability, their use is not straightforward. Buyers must therefore be warned – owning a private water supply is not for the faint-hearted.



“Over time the regulation of private supplies and the administrative burden on landowners will only become more onerous.”

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