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The latest in agricultural law  
(2021)

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The latest in agricultural law  
(2021)

The law as stated during this webinar is  
up to date as of **19 October 2021**



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Rajvinder Kaur  
Senior Associate  
Michelmore LLP

Seema Nanua  
Associate  
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**This webinar will cover:**

- **THE AGRICULTURE ACT 2020 (Seema Nanua)**
  - Purpose of the Act
  - Overview of the Act
  - Changes to financial assistance scheme
  - Schedule 3 (Landlord and Tenant)
  - Position in Wales
  
- **THE ENVIRONMENT BILL (Rajivinder Kaur)**

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**(1) THE AGRICULTURE ACT 2020**

Seema Nanua, Associate

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**Topics we will cover:**

- Purpose of the Act
- Overview of the Act
- Changes to financial assistance schemes
- Schedule 3 (Landlord and Tenant)
- Position in Wales



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## Purpose of the Agriculture Act 2020

- Designed to move away from Common Agricultural Policy ('CAP') and towards a "British Agricultural Policy".
- The underlying objectives:
  - drive competitiveness
  - increase productivity and the use of technology
  - generate fairer returns
- strong focus upon 'Public money for public goods'.



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## Overview of the Ag Act 2020

### *Part 1 - Financial Assistance*



- Chapter 1 – New schemes
- Chapter 2 – Changes to Basic Payment Scheme
- Chapter 3 – Changes to Rural Development schemes



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## Overview of the Ag Act 2020 continued...

### *Part 2 - Food and Agricultural Markets*

- Chapter 1 – Food Security
- Chapter 2 – Intervention in Agricultural markets – exceptional market conditions (severe disturbance in market)



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## Overview of the Ag Act 2020 continued...

*Part 3 - Transparency and Fairness in Agri-Food Supply Chain*

- Chapter 1 – Collection & sharing of data
- Chapter 2 – Fair Dealing with Ag Producers & others in supply chain
- Chapter 3 – Producer Organisations – applying to become a recognised PO

*Part 4 - Matters relating to farming and the countryside*

- Fertilisers
- Identification & traceability of animals
- Red meat levy
- Agricultural tenancies

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## Overview of the Ag Act 2020 continued...

*Part 5 Agricultural Products*

- Marketing standards re food products
- Organic products
- Carcass classification
- Reports relating to free trade agreements

*Part 6 WTO Agreement on Agriculture*

- Power to make regulations for the purpose of securing compliance with the UK's obligations under the World Trade Organisation's Agreement on Agriculture (at Annex 1A)

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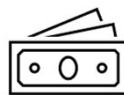
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## Financial Assistance - Basic Payment Scheme

- Lump sums
  - 2022
- De-linked payments
  - 2024
  - No requirements to farm or hold entitlements
- BPS to end - 2027



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## **Financial Assistance - ELMS**

- ELMS: 3 schemes
    - 2021 – 2024 - National Pilot
    - October 2021 - First ELMS scheme: Sustainable Farming Incentive National Pilot to be rolled out
    - 2024 – Planned full roll out of ELMS
  - Countryside Stewardship Schemes (improved + simplified) continues until 2024



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## **Changes affecting Landlords & Tenants: AHA Tenancies**

## ***Changes to the Agricultural Holdings Act 1986 ("1986 Act")***

- Rent Review
  - Improvement Financing
  - Appointment of Arbitrator
  - Request for landlord's consent
  - Case A notices to quit
  - Succession on retirement or death

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**Changes affecting Landlords & Tenants: Farm Business Tenancies**

## ***Changes to the Agricultural Tenancies Act 1995 ("1995 Act")***

- Limited Changes
  - Only change related to bodies which can appoint arbitrators
  - Appointed bodies widened
    - now includes AIA and CAAV

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## The Position in Wales

### Overview

- The Act provided little detail on how the issues covered would develop in Wales.

### Current Position

- Consultation: Agricultural (Wales) Bill White Paper which sets out proposals for Agricultural (Wales) Bill – closed March 2021
- Agriculture Bill to be published in autumn 2021
- Paying full BPS for 2021 / 2022
- Proposal to support Welsh farmers through ‘Sustainable Land Management’ (SLM)

### Landlord & Tenant Changes

- All but one of the LL&T changes proposed in the Act apply to Wales.
- The only one not taken forward is the proposal regarding requests for landlords consent

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## (2) THE ENVIRONMENT BILL

Rajvinder Kaur, Senior Associate

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## The Purpose

- The Bill is part of the Government’s overall goal for: *“this, to be the first generation to leave the environment in a better state than that in which we inherited it”*
- It is also a part of the government’s manifesto pledge to: *“protect and restore our natural environment after leaving the EU”*.
- There were concerns that after leaving the EU, there would be a loss of environmental principals and the EU structure for governing environmental issues
- The [Government’s policy statement](#) says that the Bill is: *“part of the wider government response to the clear and scientific case, and growing public demand, for a step-change in environmental protection and recovery.”*

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**KEY PARTS OF THE ACT**

- The Bill is lengthy and detailed, but the key areas are as follows:
  - it provides a new UK framework for policing environmental matters; and
  - There are specific provisions on the following subjects:
    - Waste
    - Air Quality
    - Water
    - Nature
    - Biodiversity
    - Conservation Covenants

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**Office for Environmental Protection**

- The Bill provides for the setting up of an "Office for Environmental Protection" (OEP). That office is to have the power to investigate the actions of the government and local authorities, take enforcement action, and to provide guidance and recommendations".
- Whilst the remainder of the bill sets out targets in certain key areas, the OEP will be responsible for monitoring whether or not such targets are actually being met.
- The OEP will not replace the environment agency. Environment agency regulates private actions. OEP governs actions by public authorities and the government
- The Government has committed to giving the OEP an estimated five-year budget which will be set aside within each spending review period.

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**Criticisms of the OEP**

- The Bill creates a new court procedure for correcting any breaches of environmental law that have been committed by a public authority. This known as an "**Environmental Review**".
- Where (after an Environmental Review has occurred) it is concluded that a breach has occurred, a "statement of non-compliance" will be issued. Many people are unhappy about the fact that such statement of non-compliance does not deem the unlawful conduct void.
- The OEP's decision notice is not binding upon the local authority
- There OEP is 'impartial' rather 'independent'.

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## Air and Water

- The Secretary of State is able to set long term targets in relation to the environment.
  - However, in certain areas, the bill states that a long term target must be set for certain priority areas e.g. water, air quality, bio-diversity etc.
  - Part 4 of the Bill covers air quality. The Bill introduces a legally-binding duty on the government to bring forward at least two air quality targets by October 2022. It changes the way that Local Air Quality Management Frameworks are managed, and gives local authorities increased powers in relation to smoke control areas.
  - Part 5 of the Bill covers water resources management. The provisions include:
    - joint regional frameworks for long-term water resource management;
    - water companies will be obliged to develop plans relating to drainage and sewerage management

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## Bio Diversity Net Gain

## What is Biodiversity?

- Biodiversity is a reference to the different species of life located in one area. When referring to 'life' we are talking about plants, animals, fungi, and even bacteria that make up our natural world. Each form of life is part of an intricate ecosystem in a careful balance which supports the earth.

## What is Bio Diversity Net Gain?

The problem being addressed by this part of the Bill is that the earth has been put under significant strain because humans are consuming too much of the earth's resources. There is therefore a very real risk that biodiversity will be lost.

At Part 6 of the Bill, it introduces a new ***biodiversity net gain requirement***, of 10% for developers through the planning system. It will be mandatory for developers to show that such and be met and maintained for 30 years.

- Bio diversity net gain is "*an approach to development, and/or land management, that leaves nature in a measurably better state than beforehand*"
  - planning applicants will have to avoid harm, and mitigate or finally compensate for losses

Defra has developed a biodiversity metric to measure whether the net gain requirement can be met or not.

Local authorities will now need to "conserving and enhance" rather than just conserve biodiversity.

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## **Conservation Covenants**

- Part 7 of the creates voluntary legally binding conservation covenants between landowners and “responsible bodies.”
  - Broadly speaking, a Conservation Covenant is a private, voluntary agreement made between a landowner and a conservation body to carry out conservations measures in relation to land.
  - Importantly, once they are entered into, Conservation Covenants will bind future purchasers of land.
  - The motivation behind the creation of Conservation Covenants was the Law Commission report of June 2014. The report highlighted that under English property law, covenants will only bind future land owners there is a benefit to neighbouring land (rather than just for public benefit). Even in those instances, it is only a restrictive covenant rather than a covenant to take some positive action which would bind future owners of the land.
  - To qualify as a conservation covenant, it must:
    - relate to land which the owners has a freehold interest in it or a leasehold interest for more than 7 years; and
    - require the owner to do or not to do something on the land; or
    - to allow/ place an obligation on a responsible body to do something on the land; and
    - have some sort of conservation purpose protection, restoration and enhancement

J. Paul Martinelli / Canadian Journal of

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## 2017 Electronic Communications Code ('the Code')

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### What is the Code?

- The Code gives telecommunications operators statutory rights to facilitate the creation and operation of their networks.
- Code rights can be granted only to "operators". An operator is an electronic communications operator who has obtained a direction from Ofcom that the Code applies to them

### What are Code rights?

- Code rights are rights in relation to electronic communications apparatus which enable an operator to:
  - install the apparatus on, under or over the land.
  - Keep installed the apparatus on, under or over the land.
  - Inspect, maintain, adjust, alter, repair, upgrade or operate the apparatus.
  - Carry out works on the land for or in connection with the installation of the apparatus on the land or elsewhere.
  - Carry out works on the land for or in connection with the maintenance, adjustment, alteration, repair, upgrading or operation of the apparatus on the land or elsewhere.
  - Enter the land to inspect, maintain, adjust, alter, repair, upgrade or operate any apparatus which is on the land or elsewhere.
  - Connect to a power supply.
  - Interfere with or obstruct an access (interference right).
  - Lop or cut back vegetation that may or will interfere with the apparatus.

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## Telecoms Cases

- There have been several telecoms cases since the new code was introduced which have required the court to interpret and provide guidance on complex areas of the code.

**Cornerstone Telecommunications Infrastructure (CTIL) v Ashloch Limited (1) & AP Wireless II (UK) Limited [2021]:**

- » only the occupier can confer Code rights, except for certain limited situations set out elsewhere within the Code.
- » Landlord and Tenant Act 1954 procedure to be used to renew the subsisting agreement, rather than Part 4 of the Code. This means that the rent for the renewed lease will be calculated in accordance with the 1954 Act rather than the Code.

**Cornerstone v University of the Arts London [2020] UKUT 248 (LC)**

- » Tribunal made it clear that the land owner will generally face an uphill battle to show the prejudice it suffers outweighs the public benefit.

**Cornerstone v London & Quadrant Housing Trust [2020] UKUT 282 (LC)**

- » The result was that while the site had a nominal value of £50, the annual rental value was 100 times as much at £5,000 p.a

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## Questions?

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### Commercial Property webinars in 2021

- WR0121 Commercial property and COVID-19 (2021) - **Q1 2021**
- WR0221 Rights of light in 2021 - **Q1 2021**
- WR0321 Brexit and commercial property (2021) - **Q2 2021**
- WR0421 The impact of CIGA 2020 on property lawyers (2021) - **Q2 2021**
- WR0521 The latest commercial property cases (2021) - **Q2 2021**
- WR0621 Planning reforms (2021) - **Q3 2021**
- WR0821 Tax issues in commercial property (2021) - **Q3 2021**
- WR0721 The latest in agricultural law (2021) - **Q4 2021**
- WR0921 Real estate finance in 2021 - **Q4 2021**
- WR1021 Commercial Property Law - end of year round-up 2021 - **Q4 2021**



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- A transcript of the webinar can be made available on request
- You can use the training and evaluation record form which is included in the supporting materials for this webinar to log this training activity and how it relates to the continuing competences that the SRA requires from all solicitors.
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Thank you for attending.  
We hope you've enjoyed this session.



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