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RETIREMENT LUMP SUM - MORE DETAIL - 6.4.22

As the dust settles on the RPA's announcement on the specifics of the Lump Sum Exit Scheme, and with the regulations underpinning it now released this week, we have noted a few matters of specific detail that may become critical in how these schemes are handled.

Entitlements and the Retirement Lump Sum cap

This is one question that the release of the Agriculture (Lump Sum Payment) (England) Regulations 2022 (the Regulations) has enabled us to answer.

We know that if your Retirement Lump Sum claim would total more than the cap of £99,875, it will be reduced to £99,875. We also know that when you claim the Lump Sum, if you do not hand back as many entitlements as were used in your last claim in the reference period i.e. 2019-2021, the value of your Lump Sum claim will be reduced accordingly. In the event of a claim, which is subject to both of these, the order in which they are applied is important.

Consider a prospective retiree farming 500 acres of non-SDA land, all of which they claimed on in full over the reference period. This would entitle them to a Lump Sum payment, before the cap, of approximately £111,000 which is £11,125 over the cap. Let us say that instead of handing back the 202 entitlements used in their 2021 claim, they only give back 180. This is 89% of the amount used, so reduces their Lump Sum claim by 11%.

If this reduction were applied before capping, their £111,000 claim is reduced to £98,790, which is just under the cap, so the payment would not be reduced further. However, we now know that the cap is applied first, and then reductions from holding insufficient entitlements follow after. The £111,000 will first be reduced to £99,875 because of the cap, then by a further 11% to £88,889. The farm above would receive £88,889 rather than £99,875, a reduction of almost £11,000, from not having enough entitlements.

That means prospective retirees should ensure they can surrender as many entitlements as were used in their last claim during the reference period, even if they are above the £99,875 threshold. They may even need to buy more entitlements to enable this.

Entitlement leasing out and new purchases

The Retirement Lump Sum has had a marked impact on the entitlement market when combined with other factors such as the limitation of National Reserve applications this year and 2022's inclusion in the reference period for delinkage. Specifically, demand for entitlements is currently very strong. This presents an opportunity for anyone with entitlements they are not using this year.

However, people wishing to claim the Lump Sum still need to have as many entitlements to surrender as they used in 2021. This may lead one to think that they simply cannot take advantage of the current "seller's market" where prices are currently just under £200 per hectare for Non-SDA.

One way to take advantage of this might have been through leasing. If entitlements were leased out for this year only, they could in theory be returned in ample time for a 2023 surrender. However, we now know this will not work. The regulations make it clear that entitlements leased out after the 2021 claim year must still be surrendered if they are returned, but do not count towards the number of entitlements surrendered compared with the final claim during the reference period.

In other words, if a farmer claimed on 20 entitlements in 2021, leased out 10 of these in 2022, received them back in 2023 and then claimed the Retirement Lump Sum, they would see their Lump Sum claim reduced by 50%, unless they also purchased more entitlements from elsewhere.

A further question relates to short-term transfers between family members. It may be possible to transfer out both entitlements and land for the 2022 claim to, for example, the successor to the business. The successor then claims on the land with these “family entitlements” for 2022. Then they are returned to the prospective retiree for 2023. This would allow a “double dip” in which the same family takes advantage of both some delinkage and the Retirement Lump Sum. We do not yet know if this would necessarily be considered a “lease”, or if there is a way around the restrictions here. Businesses wishing to attempt an action like this should therefore make what preparations they can now, such as having tenancy documentation ready for any land involved in the arrangement.

Alternatively, a bolder landowner could perhaps bet on a weaker market next year (which we are expecting logically to be capped at something less than the £151 payment for the lowest Non-SDA claim tier) and sell their entitlements now at the current price of £195 for Non-SDA and hope to buy replacements at a cheaper price next year purely to surrender them. There is nothing in the Regulations preventing this, but the RPA have some further discretion on how the scheme is actually run, and they may try to limit such activity. It is difficult to see how such activity could fall foul of the artificiality rules. We have asked the RPA to clarify their position on this.

Entitlements as a capital loss

We know that the Retirement Lump Sum is to be taxed as capital, rather than income. We also know that to claim it entitlements must be surrendered. Entitlements will often have been purchased by the claimant, sometimes for significant sums of money. There therefore remains a question of tax: is the Lump Sum claim to be treated as a payment in exchange for the entitlements, so representing a capital gain in their value, meaning the acquisition price will not be taxed at this point, only the uplift relative to the initial payment? Alternatively, if the Lump Sum is taxed as a capital receipt, can the loss of the entitlements be offset against this?

Either way, an asset of some value in the form of entitlements is to be given up in order to claim the Lump Sum. It would be inequitable if this was not factored into its taxation.

There remain a number of important questions of fine detail in relation to the Retirement Lump Sum. Given the magnitude of the decision to retire, the lack of this information will make a difficult choice even harder.

Application Forms

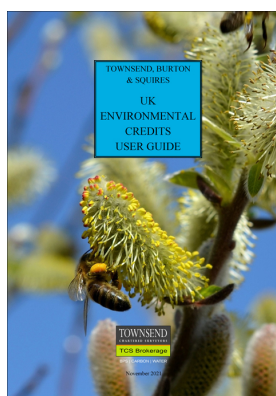
The actual application forms, expected later this month, may answer these queries. This may give only a few weeks to make decisions about entitlements. Unless the RPA clarify the current queries in the meantime, many retirees may face dealing with their entitlements at the last minute before the window closes.

Farm Facts 2022 - out now



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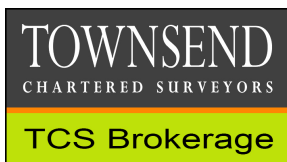
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