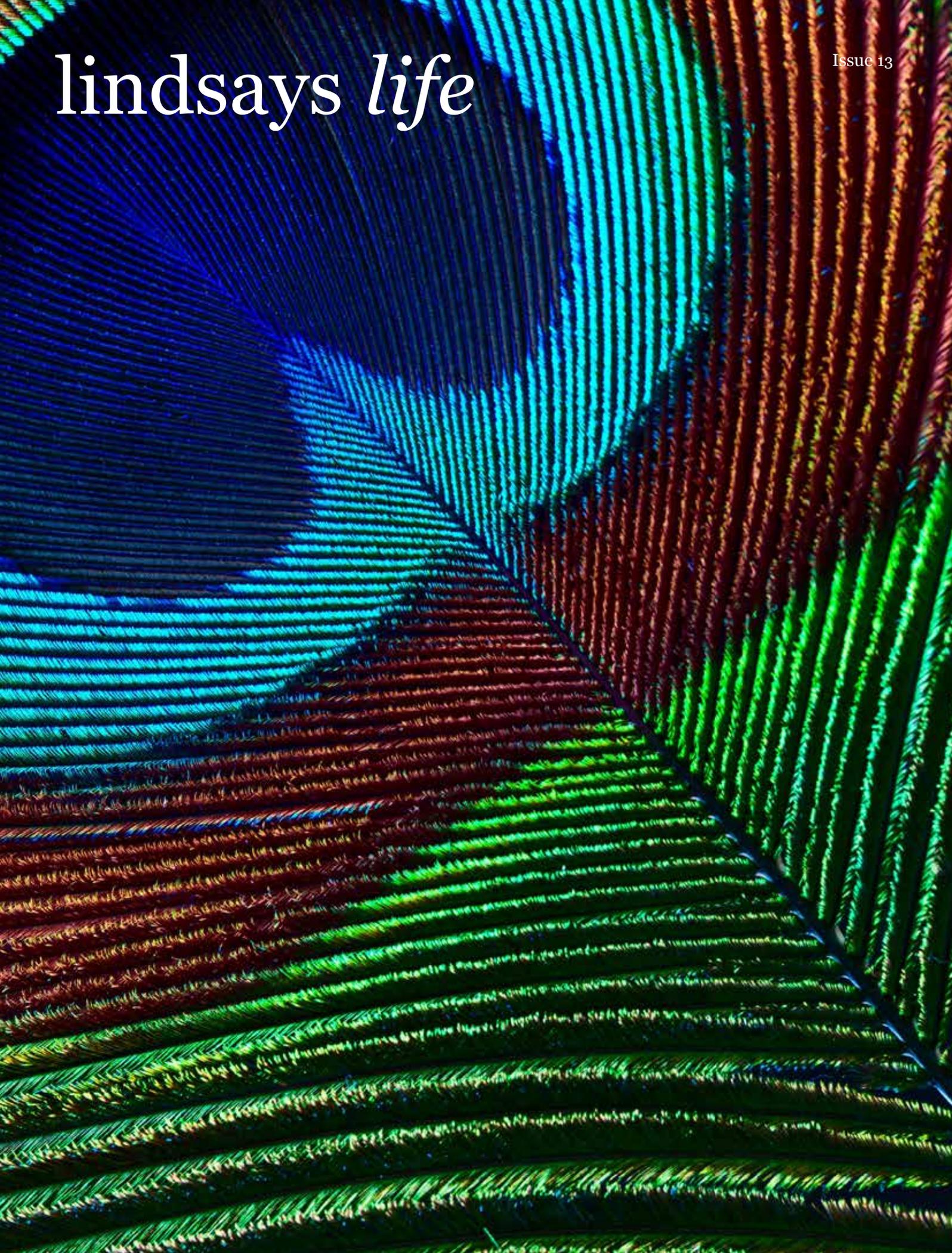


lindsays *life*

Issue 13



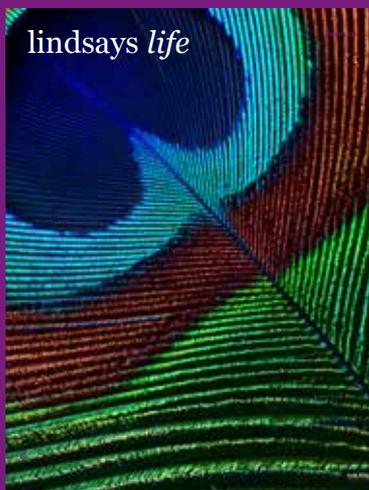
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Restructuring and Insolvency
Technology and IT



the *life* of this magazine

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“ Welcome to our thirteenth issue of *lindsays life*

The past few months have been busy ones for Lindsays, as our Glasgow team moved into new offices at 100 Queen Street. On pages six and seven, there's more about the new space, and the growth that led to the move.

As a result of our steady growth, we're now full-service in Glasgow, Edinburgh and Dundee, and have come a long way since our start in a family home in Edinburgh.

It's not just Lindsays that has moved forward in recent years; so too has the way individuals, families and small businesses manage their legal affairs.

New possibilities and challenges are emerging all the time – whether it's online legal advice around Wills or divorce; modern ways of selling houses; digital land registration; new inheritance tax allowances; alternative ways of planning business succession; increased data protection requirements for employers, or growing pressures on charities.

This issue of *lindsays life* will help you navigate these new areas, flagging up some of the pitfalls or complexities involved.

We also catch up with Eilish McColgan's latest progress, and we introduce you to some new team members at Lindsays.

We very much hope you enjoy this issue.

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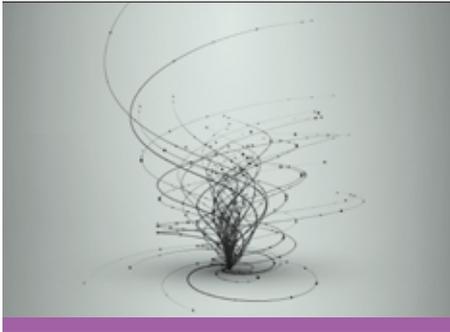


Let us continue sending you *lindsays life*

With new rules on data protection and consent to receive communications taking effect in 2018, subscribers to *lindsays life* will need to 'opt in' to receive it after May next year.

Current subscribers will receive the Spring issue as usual; but to receive *lindsays life* beyond that, please sign up online (www.lindsays.co.uk/update-your-details), or complete the form on the back of this issue's cover letter. We look forward to supporting you, your family or your business in future issues.

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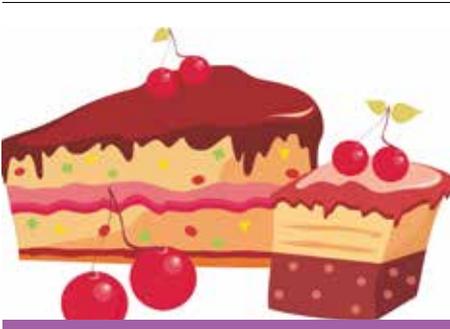
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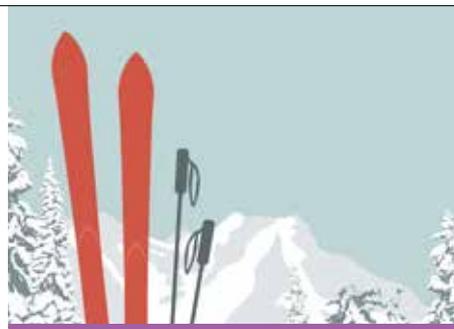
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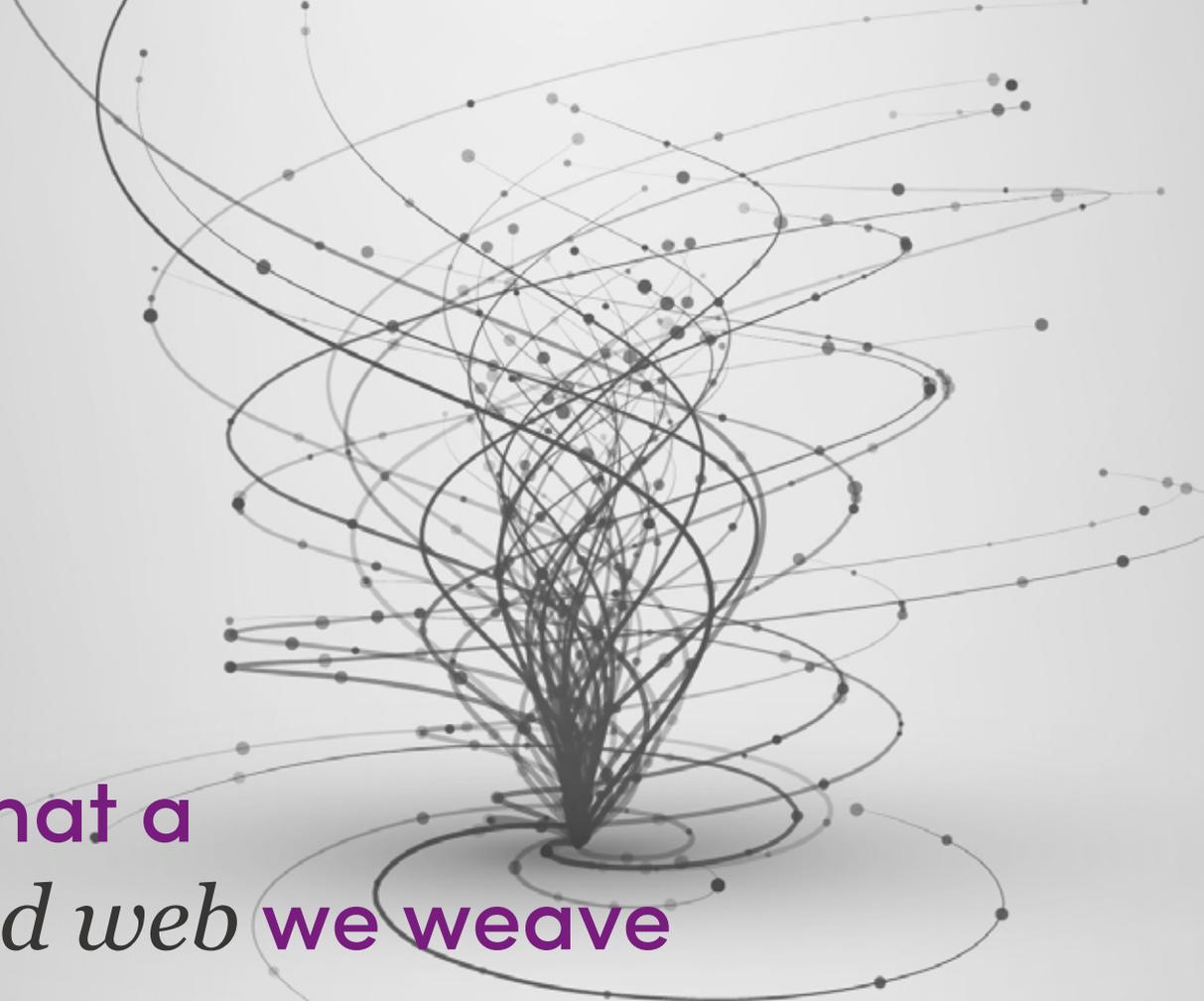
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Oh, what a tangled web we weave

The internet can be great for researching aspects of law for families and individuals, but beware of advice based on different jurisdictions

The internet plays a huge role in family and personal life nowadays – from how we run our social lives to the way we watch TV, plan holidays or even find a date.

So it's no surprise that many people look online for their legal needs too, from writing Wills, to using apps designed to ease divorce or separation.

Anything that encourages people to write a Will, or make a divorce more amicable has to be a good thing. However, there are also risks to using online legal solutions.

Take divorce by app. The English and Scottish legal systems regarding divorce and separation have different rules around financial settlements and matrimonial property, for example.

Therefore, using an app based on English (or another jurisdiction's) law to plan a divorce in Scotland could land spouses with strategies completely inappropriate to their own situation.

There are similar limitations to 'DIY' or low-cost Wills. They often turn out to be unsuitable for the Scottish legal system; or inadequate for the complexity of modern family life, where people may have children from previous relationships, or may have built up significant assets before a second marriage.

“There are also risks to using online legal solutions.”

In addition, using a DIY Will can thwart people's intentions to pass on their estates tax-efficiently, or lead to lengthy disputes or uncertainty. Correcting these situations can be far costlier than asking a solicitor to prepare a properly drafted Will.

The appeal of online law is understandable, as families and individuals try to keep down their legal costs. Doing some homework will certainly be beneficial as you work out

what you want to achieve from a Will or a divorce settlement – helping you to ask the right questions, spot potential pitfalls, or identify possible compromises in a difficult situation.

However, law is far from a one-size-fits-all aspect of life. A lawyer can make sure you get advice relevant to your own jurisdiction and your own circumstances.

This may well be cheaper than trying to unravel the mess of a divorce settlement, Will or other family arrangement gone wrong.

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Charities: *change is the only constant*

As the leaves fall and the nights grow darker, charities (especially in hard-pressed sectors like social care) could well take a lesson from nature: it's change that keeps things ticking over

Almost one in five UK charities are struggling to survive in the face of financial pressures and growing demand for their services, rising to over one quarter of smaller charities. Around one third have had to reduce staff numbers, or are set to do so.

These figures, from a survey of charity chief executives earlier this year, show that business as usual is no longer an option for many charities. The old ways of doing things may not be the best response to the financial and management demands of 2017.

For trustees looking for innovative ways to take a charity forward, there are various options available.

Learn from the private sector: in social care, and also other sectors, charities may be unaccustomed to using commercial approaches when negotiating contracts with councils or NHS trusts.

But getting to grips with mechanisms such as adding break clauses, warranties or indemnities in contracts – all common in the commercial world – could provide more financial security.

Ride the social enterprise wave: Scotland is home to over 5,000 social enterprises, and they make money for good causes through an astonishing range of activities – from making gin to running community halls.

"For trustees looking for innovative ways to take a charity forward, there are various options available."

Charity trustees could well borrow some ideas from the sector – perhaps raising more finance from trading, or adopting their go-getting approaches to communications and marketing. There may also be opportunities to join forces with social enterprises to provide services.

Looking at partnerships or mergers: trustees are often reluctant to merge with other charities, fearing a loss of control or identity, or provoking technical and legal issues around legacies, pension liabilities or redundancies. On the other hand, funders (especially the Scottish Government, the NHS and local authorities) are increasingly keen on charities jointly working together in partnership.

A merger or joint working arrangement can often be the best way to support service users, and use resources efficiently. Technical, legal, governance and identity issues can generally be resolved or avoided with good advice.

Charities often view such changes as a solution of last resort, but trustees should learn to be more proactive. Change could well be the way to ensure long-term continuity.

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Lamborghini? Holiday home? *Around the world trip?*

You've received an inheritance (or perhaps another form of windfall), and you can think of plenty of treats you want to buy. But what else should you consider?

The arrival of a solicitor's letter bringing news of an inheritance can evoke mixed feelings. Grief about the loss of a friend or relative, perhaps. Surprise, maybe, or excitement. And also some uncertainty about what to do next. Here are some key steps to consider.

Make or review a Will: it may be some time since you made a Will, or you might not have one. As the inheritance will have changed the value of your estate, this is a good time to take action.

If you die without a Will, the law will decide who inherits your estate. In contrast, having an up-to-date Will gives you control over who receives what, and helps you protect the interests of young or vulnerable beneficiaries.

Set up a Power of Attorney (PoA): a PoA lets you appoint someone to act on your behalf – including dealing with your financial affairs – in the event that you cannot do this yourself.

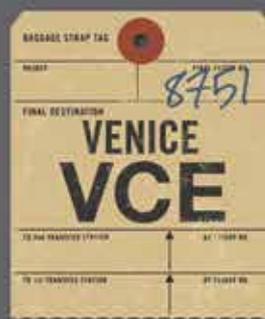
“A solicitor could help you put in place a Deed of Variation, which would redirect your assets to other people or organisations.”

Pass assets onto others: perhaps you would like another person or organisation to have some of your inheritance. A solicitor could help you put in place a Deed of Variation, which would redirect your assets to other people or organisations.

Ask for advice about using trusts: these can be straightforward to set up, and enable you to place assets outside your estate while retaining an element of control. They can also be used for tax planning, or to pass on funds to someone unable to manage their own affairs – for example, a young child.

Talk to a family lawyer: if you're in a relationship and inherit money, it may be sensible to protect your new assets in case of a future separation – however unlikely this may seem now. A prenuptial or postnuptial agreement could be useful here.

Other tasks will include taking financial advice on how to invest your inherited funds; and looking at insurance for property or other valuable items. And perhaps for the Lamborghini or dream holiday as well.



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Is your data *safe* enough?

With new data protection rules due next year, it's important to review what information you hold on employees (as well as clients, suppliers and potential customers), and what you do with it, to minimise the risk of substantial penalties

True or false? The new General Data Protection Regulation (GDPR) applies only to businesses larger than mine.

The answer is almost certainly false. If you hold any personal data (even a home address or email address) on employees, job applicants or clients, the GDPR is likely to affect you.

When it comes to HR, your obligations are twofold: first, to comply with the new rules in respect of employees' data, and, second, to ensure staff handle your data, such as client, customer and supplier data correctly.

In order to comply with the GDPR, which takes effect on 25 May 2018 and is much stricter than current data protection rules, employers and HR teams should start making plans:

- audit the personal data you hold, what you do with it, and why. This will help you understand where you need to make changes
- review the basis on which you process data. At present, it's common for employers to rely on employees' consent to process data, but after May, this will be valid only in very restricted circumstances. You may need to amend staff contracts, and find new grounds for holding data
- think about how to train employees on the new data protection rules, and whether to appoint a data protection officer.

This is just a snapshot of the planning required. The exact detail will depend on what types of data you hold (e.g. personal or sensitive personal data), who it's about, and the state of your current data protection policies.

The key aspect to note is that many of these preparations will be time-consuming, so we recommend that employers start them as soon as possible. And if in doubt, take advice.

"Make a plan for how you will identify, handle and report data breaches."

- plan how you will respond to subject access requests (i.e. requests from individuals about the data you hold on them). These are likely to increase in volume from May, so you may want to develop procedures and pro forma letters
- make a plan for how you will identify, handle and report data breaches

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The *next chapter* in the Lindsays story

With a new client-friendly office and a bigger team in Glasgow, we've grown our presence in the West

As of September this year, our Glasgow team has a new base at 100 Queen Street, in the heart of the city's corporate and professional services district.

The move follows the expansion of our team in Glasgow, where we now have almost 60 people, including 11 of our 44 partners. As a result of this growth, we outgrew our old office in Royal Bank Place.

The latest arrivals in Glasgow include the personal injury team from Brodies, who joined us earlier this year. Acquiring this experienced team – comprising two partners and 18 lawyers, paralegals and support staff – has added to our strength in dispute resolution and litigation.

“Our first expansion into Glasgow took place a decade ago.”

100 Queen Street

Our new home is an Art Deco building which recently won an award for the Best Refurbished and Recycled Workplace at the British Council for Offices' regional property sector awards.

“The move to Queen Street has put us exactly where we want to be – with the space, professional facilities and location to support individuals, families, corporate clients and charities with all the legal services they need”, says our Managing Partner Alasdair Cummings.

And Ben Doherty, a Glasgow-based Partner and Head of our Employment team, adds: *“All our partners and staff here are delighted with the new office. It's an ideal place to work, look after clients, hold events, and play a growing role in the life of Glasgow's businesses and families.”*

Clients too have been impressed, *“retaining a friendly and welcoming approach while being in a more professional setting.”*

Our growth across Scotland

It's fair to say that we used to be thought of as an 'Edinburgh law firm'. But we now have a full-service presence in Dundee and Glasgow as well and business is growing in all three cities. From our office in North Berwick we provide services for our clients in East Lothian.

Our first expansion into Glasgow took place a decade ago. After first using serviced office accommodation, we then moved to our previous office at Royal Bank Place.

Over the past five years, we have worked hard to build up our team in Glasgow, which has led to an expanding client base and a growing presence in the West. Hence, our latest move.

And what next? In a recent interview for the Herald newspaper's Business HQ section, Alasdair Cummings and Ian Beattie, our Chief Operating Officer,



summed up our future ambitions: "We want to continue doing what we do well ... We aim to provide an excellent level of service and to be a firm that people want to work for, and are happy to stay with"

They also affirmed our commitment to the Scottish market: "We want to remain an independent Scottish firm, controlled and managed in Scotland with a wide network of clients across our Scottish offices. There are relatively few substantial legal firms like that in the Scottish market today. We don't have any aspirations to head south of the border or indeed tie up with an English firm, and we are confident that our way forward is the right one for us."

We believe our move to Queen Street – the right place for our clients and lawyers – will reinforce these ambitions. We look forward to seeing you there.



Alasdair Cummings, Managing Partner and Ian Beattie, COO

Eilish's standout success in 2017

A collection of new personal bests this year has given Eilish McColgan an enormous confidence boost. She tells us about the strides she has taken this season

“ The year started well with the European Indoor Championships in January in Belgrade. I ran a huge personal best in the 1500m and was delighted to get my first major championships medal, a bronze.

There were some ups and downs following that, but my performances continued to improve. I geared up for August's World Championships in London in the best shape of my life. I wanted to make another global final, in the 5000m, and I did it – after a personal best of 15 minutes flat.

Keeping motivated after a major championship isn't easy but during the rest of the season I was determined to put in some good performances and knock out some more PBs.

And over a whirlwind few weeks in the summer, they just kept on coming. First, an 8.31.0 PB in the 3000m at the Birmingham Diamond League. Then a new PB for the 1500m in Berlin.

Finally it was the big one, my last 5000m of the season at the Diamond League in Brussels. I've been on the brink of breaking 15 minutes numerous times – so frustratingly close but not quite achieving it.

Crossing the line in the Final, I was jubilant to see a brand new PB of 14.48.43! It was a great way for me to end an excellent track season.

2017 has taught me a lot – most of all to believe that I can compete amongst the best athletes in the world. I'm looking forward to the opportunities that 2018 will bring to do that.



Time to offer *staff a slice of the pie?*

Employee ownership has been shown to boost results, resilience and staff retention. It also offers tax breaks. Could it be a solution for your own business?

Whether you're starting a business or thinking about your exit, employee ownership has plenty of attractions.

For a start, there's performance. Numerous studies and statistics show that employee owned businesses outperform other businesses on measures such as sales growth, absenteeism, job satisfaction, and growing their workforce.

Offering staff a stake in a business certainly seems to boost their commitment. Customers too could become more engaged: in a survey this year, almost 60% of people thought employee owned businesses were more trustworthy than businesses not owned by their employees.

“Almost 60% of people thought employee owned businesses were more trustworthy than those not owned by their employees.”

Then there are the tax benefits. Owners who sell more than 50% of their company to an Employee Ownership Trust receive capital gains tax relief on the sale. In addition, staff at employee owned businesses can receive a tax-free annual bonus of up to £3,600.

There is also the issue of succession, with sellers and buyers able to phase a buyout over a number of years. This can reduce risk for the business and assist its cashflow whilst allowing owners to control the pace and manner of their exit.

If you're interested in employee ownership – whatever business stage you're at and whatever the size of the stake you want to be employee-owned – there are three main structures available:

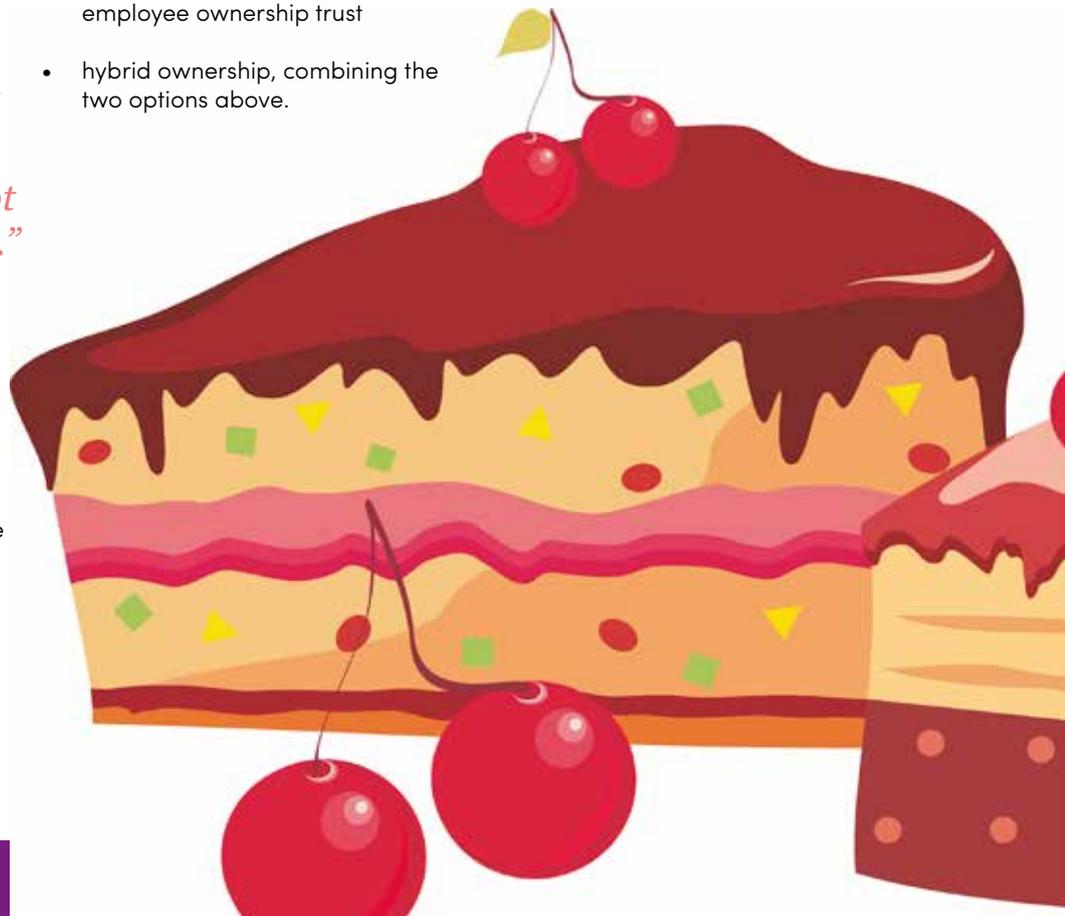
- direct employee ownership, where employees become individual shareholders
- indirect employee ownership, where shares are held collectively on behalf of employees, normally through an employee ownership trust
- hybrid ownership, combining the two options above.

Each of these choices has its pros and cons, and a solicitor experienced in this area can explain which might work best for your business.

As with any decisions around starting or exiting a business, there are also issues to consider around tax, employment law, governance, finance and the structure of the company. Again, a solicitor with experience of employee ownership can guide you through these issues.

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Don't let a neighbour *pip you to the post*

Complacency about registering your land on Scotland's new digital-based system could risk legal shocks or loss of land

Mention "land registration" and the images that come to mind may involve ancient title deeds in barely legible script, parchment, dust, and a smattering of cobwebs. After all, Scotland's General Register of Sasines – ground-breaking at the time – dates back to 1617.

Far less likely to spring to mind is a trail-blazing, twenty-first-century system that will have all Scottish land on a new digital map-based Land Register by 2024.

With approximately 30% of land currently registered, Registers of Scotland has introduced 'Keeper-Induced Registration', or KIR, to accelerate the process. Rather than rely on 'trigger events' – such as sale of land – or wait for owners to register land voluntarily, it is registering the land itself.

KIR can apply to homeowners, rural landowners and businesses alike. And if you live in certain postcodes in Angus, Midlothian, Glasgow or Dumfries, it may already have happened to your property.

On the face of it, KIR seems like an easy option for property owners, with no registration fees payable to Registers of Scotland, and no application paperwork to fill in.

However, leaving registration to the Registers means owners have no control over the process.

Firstly, errors and inaccuracies may creep in during KIR, especially if there are issues around unfenced boundaries, land outside fences, or rights of access. If this happens, owners may face high costs to rectify a mistake or prove their title.

“By being proactive on voluntary registration, property owners are better placed to control the process themselves.”

Secondly, title deeds from the old Sasine Register often overlap. So those who wait for KIR or procrastinate on voluntary registration may risk a neighbour pipping them to the post to register a piece of land.

By being proactive on voluntary registration, property owners are better placed to control the process themselves. They can prevent errors, get clarity over boundaries (being the first to register a piece of land may strengthen your title in the event of an overlap) and obtain a state-backed guarantee of title.

By registering your land voluntarily, you may also make it more marketable, and speed up the conveyancing process if you come to sell. It's worth thinking about.

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Selling your property *the modern way*

Technology has opened up amazing possibilities when it comes to buying and selling houses

Digital technology, video, smartphones, apps and the Internet have transformed the way people market their property or search for a new home.

Slideshows, video and floorplans offer wonderful opportunities for showcasing property at its best, and potential buyers from all over the world can 'view' property virtually.

As a result, we now see people buy or rent property purely on the basis of video, Facetime tours and Google Streetview, without even physically seeing it.

However, the rise of online tools and agencies has not removed the value of traditional estate agency skills. It's as important as ever to get good advice on when is the best time to put a home on the market, and at what price; or when to accept an offer and when to hold out for a better one.

Also key to a successful sale is putting a home in front of the right people – as opposed to lots of the wrong people.

We saw a recent example of this in Central Edinburgh, where a flat had been marketed solely via an online platform, and attracted just two viewers.

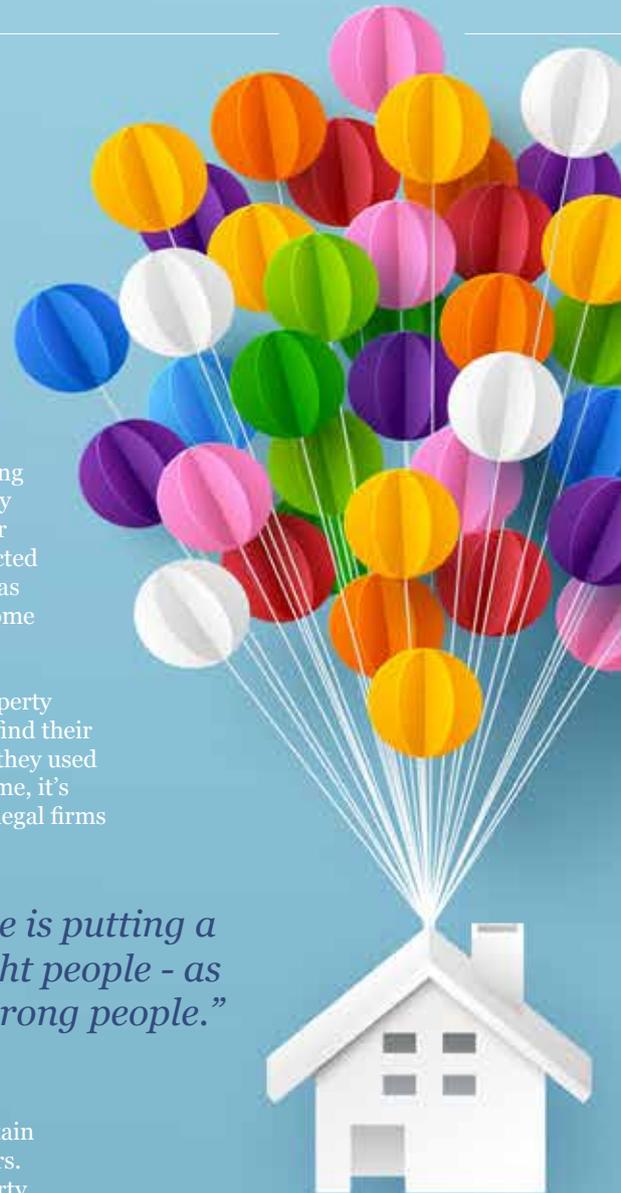
The sellers then opted for a more 'traditional' approach, including putting it on the Edinburgh Solicitors Property Centre (ESPC) website as well as other online property portals. The flat attracted 19 viewers in a single weekend, and was sold after two days for 5% over the Home Report value.

With 85% of buyers of Edinburgh property saying they used an ESPC channel to find their new home, and 64% of buyers saying they used an ESPC channel first to find their home, it's clear that buying and selling through legal firms retains its attraction.

“Key to a successful sale is putting a home in front of the right people - as opposed to lots of the wrong people.”

In other regions too, legal firms maintain their popularity with buyers and sellers. For example, nearly 7.5 million property pages were viewed on the Tayside Solicitors Property Centre (TSPC) website during January-September 2017.

If you're thinking of selling or buying this winter, modern digital and online tools will certainly ease your task. But so too will 'old-fashioned' aids like local knowledge and contacts. Put together, they're a powerful combination.



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Introducing the new *Residential Nil-Rate Band*

A new Inheritance Tax (IHT) allowance increases the value of assets that people can pass on IHT-free

April this year saw the introduction of the new Residence Nil-Rate Band (RNRB). As yet, the allowance has a low profile, but it is certainly worth consideration when planning how to pass on the family home.

The existing nil-rate band allows individuals to pass on assets worth up to £325,000 IHT-free. The new allowance provides an additional nil-rate band worth £100,000 (and more in future years – see box) when they leave an interest in a home to a direct descendant.

Direct descendants can include children, grandchildren, stepchildren, adopted and foster children, but not nephews, nieces and siblings.

Like the nil-rate band, the RNRB can be transferred between spouses and civil partners, meaning they can potentially pass on an estate worth up to £850,000, free of IHT. This will rise to £1 million in 2020 (see box).

Another drawback is the tapered withdrawal of the RNRB for estates with a net value of over £2 million. With a withdrawal rate of £1 for every £2 over the threshold, an estate worth £2 million could get the full £100,000 RNRB, but an estate worth £2.2 million would lose it completely.

Other details to consider when planning to make use of the RNRB include: which residences qualify; what happens if you want to downsize or move into a care home; and the options if you want to share your estate between those counted as 'direct descendants' and those not.

A small slip on any of these details could lead to the loss of the RNRB, so careful planning is recommended.

“However, anyone hoping to benefit from this new band should note the numerous conditions and complexities that come with it.”

However, anyone hoping to benefit from this new band should note the numerous conditions and complexities that come with it.

One complication relates to the use of trusts. Properties held in discretionary trusts – which are often used to hold assets for children – do not qualify for the RNRB. But some other trusts used for children may qualify, so expert advice will be essential here.

Value of the additional nil-rate band

2017–2018	£100,000
2018–2019	£125,000
2019–2020	£150,000
2020–2021	£175,000

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Heading for the slopes or some *winter sun*?

If you're unlucky enough to suffer an injury abroad, taking the right steps after an accident can protect your interests

The British take around 45 million holidays a year, according to last year's figures. Almost 2 million people take a cruise, and around 1 million a snowsports holiday. Some will experience an accident or injury, which could range from a minor inconvenience to something life-changing.

If you do have the misfortune to suffer an injury or ill-health abroad, are there steps you can take at the time to protect your interests and claim compensation?

The precise details of how and what you can claim vary according to the circumstances and also the type of travel. Compensation for accidents on cruise ships is governed by one international convention, and accidents on international flights by another. There are also specific UK regulations around compensation for negligence during package holidays.

However, it is useful to follow a few general steps if you are able to:

- make notes about what happened as soon as you can
- take photos or videos – with road traffic accidents, try to photograph number plates, and the position and state of the vehicles
- find out names and contact details of any witnesses
- report any incidents to hotel/accommodation providers and/or tour reps while you are still abroad
- report accidents, damage or injury to your insurers swiftly
- seek professional medical attention for injuries while still abroad, and try to get copies of any medical records
- obtain legal advice as soon as possible after your return, as there are time bars on compensation claims.

In addition, having your legal arrangements in good order can prove useful in the event of an accident. For example, a Power of Attorney (PoA) allowing someone else to manage your finances or your business can be invaluable if you become unable to do this yourself.

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Introducing our

Personal Injury lawyers David Armstrong and Jonathan Cornwell along with their 18-strong team joined Lindsays' Dispute Resolution and Litigation team in February 2017 building on our firm's existing experience in this area

Our Personal Injury team deal with a wide variety of claims, including road traffic accidents, slips and trips and injuries at work. They are experienced and committed specialists who strive to build relationships based on trust and mutual understanding, and to find solutions that maximise claimants' financial security and secure their long-term well-being.

...and a warm *w*



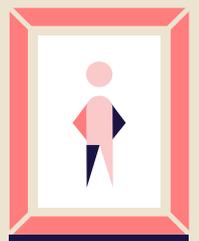
Anne McDowall - Paralegal
Commercial Property
Glasgow



Calum Stewart -
Trainee Solicitor
Edinburgh



Gail Walshe - Property Manager
Estate Agency
North Berwick



new team...



David Armstrong - Partner
Dispute Resolution and Litigation
Glasgow

David heads up our Personal Injury team. He is a solicitor advocate and deals with high value and difficult cases in both the Sheriff Court and Court of Session in Scotland. His wealth of experience in litigation has earned him praise for being a rational litigator who "is very commercially astute and very efficient" (Chambers 2017). David specialises in commercial disputes, libel law, reparation and health and safety legislation.



Jonathan Cornwell - Partner
Dispute Resolution and Litigation
Glasgow

Jonathan is also a solicitor advocate and has broad experience of both pursuing and defending claims in the Sheriff Courts and the Court of Session. Having represented a wide range of major insurance clients in high value and complex litigation matters, Jonathan understands what is required to progress a matter efficiently and effectively. Jonathan is noted by clients as being 'compassionate, understanding and attentive at all times' in Legal 500.

"We are delighted to have welcomed David, Jonathan and their team to the firm earlier this year. David and Jonathan are excellent additions to our growing partnership, their expertise allows us to further enhance the services we offer to clients in this area of our business."

Alasdair Cummings
Managing Partner



welcome to



Christopher Meaden - Solicitor
Employment, Edinburgh



Claire Brown - Trainee Solicitor
Dundee



Darren Lightfoot - Solicitor
Commercial Property
Edinburgh



Emma McGinley - Trainee Solicitor
Glasgow



Gillian Smillie - Paralegal
Private Client
Glasgow



Kirsty Strachan - Solicitor
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Laura McKinnon - Director
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