

# lindsays *life*

Issue 08



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the *life* of this magazine

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Welcome to *lindsays life*.

2014 has been an historic and eventful year for Scotland – with the eyes of the world focused here through the independence referendum, the Commonwealth Games and the Ryder Cup. It has seen our nation emerge energised and with a new sense of purpose.

Next year promises to be exciting also, as we look to see how our devolved Government will develop further in the wake of the September decision. Interesting times lie ahead.

Some of the potential legal developments that may well affect you are outlined in this issue of our magazine – such as changes to parental leave and also the ending of Stamp Duty Land Tax. Some insights and advice are provided by our experts.

In addition, you can read more about our relationship with scottishathletics – our Chief Operating Officer, Ian Beattie is Chairman – as we continue to build on our support for Scotland’s athletes.

We introduced a new feature in the last issue, a profile of one of our clients, and we are delighted that Donald Cameron, son of the Chief of Clan Cameron, has kindly agreed to give us an insight into the duties of a modern day clan chief.

I am happy to report that we continue to recruit high quality, talented people to further strengthen our ability to help our clients, and you will read about some of our newest recruits.

Meantime, other topics covered include guidance on buying property for student offspring; good advice on picking a school for your child; and thoughts around the Scottish Government’s planned introduction of controversial elements of legislation aimed at the protection of children and young people.

As always, I hope you find the magazine interesting, entertaining and informative.



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# Lessons to *learn* in picking a school

It's an exercise as testing as any trigonometry exam – and one that many parents face when choosing a school for their children

Given the importance of the decision it can be a stressful and confusing time - with options including fee-paying schools, denominational schooling linked to particular churches or religious bodies, home schooling, and schools for children with additional support needs.

But for most, their children are still educated in state schools.

There are many considerations involved for parents, such as the school's academic reputation, and its proximity to home, or child care. Local authorities must publish schools' information and the first step for parents should be to request details of the school and perhaps arrange a visit.

Property located in the catchment area of a highly regarded school is often sought after. However, such popularity often means that the school cannot accommodate all the children within their catchment area. The council will advise parents whether or not their local school tends to be oversubscribed. Parents may have to provide proof that they genuinely live in the area and many councils do check, so beware!

If parents move house mid-term they may find the local school full and would have to wait for an available space with their child attending a different school meantime, which can be distressing. Parents intending to move into an area

“ Parents may have to provide proof that they genuinely live in the area and many councils do check, so beware! ”

with an oversubscribed school should notify the school or education authority as soon as possible and ask for their guidelines on school admission.

Generally, children should be educated in accordance with their parents' wishes. However, this means having the right to request that a child attend a school outside their catchment area. The education authority must grant such placing requests where possible. Parents should ask for a copy of their guidelines which cover allocation of places.

Placing requests can only be turned down on certain defined grounds. Such as: if an additional teacher would need to be employed; if the education available at the school is not compatible with the child's age, ability or aptitude; and, if the granting of the placing request would push the school over capacity.

Parents have a right to appeal within 28 days if they are unhappy with the education authority's decision.

It is advisable for parents to obtain legal advice in this increasingly competitive and complex area.

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# New parents' chance to *share the work* and baby care

A new scheme designed to give working parents greater flexibility when they have children comes into effect in April

Parents of children born – or placed for adoption – from 5 April 2015 will be able to share up to 50 weeks of parental leave and 37 weeks of parental pay, shifting the focus from mothers as primary carers to shared care between parents.

The new scheme is designed to give parents the chance to share the care of the child, potentially in discontinuous periods. This means that a return to work may not, as currently, end maternity leave. Employees expecting a child should consider now whether Shared Parental Leave (SPL) may suit them. Key features of SPL are:

- Both parents must be economically active to qualify, meeting continuous employment requirements and/or earnings tests
- Notification requirements must be met and employers given:
  - ▶ A non-binding notice of entitlement and intention to take SPL
  - ▶ A period of leave notice confirming periods requested at least 8 weeks before leave starts
- Periods of leave should be requested in blocks of one week and requests for one continuous period of leave must be accepted by the employer. Discontinuous requests may be rejected but we recommend negotiating to reach agreement
- Up to three notices may be served, but a refused request can be withdrawn within 15 days after it was made without affecting the limit
- SPL may be taken concurrently but each week taken by each parent will count towards the 50 week limit
- Each parent will also be able to take up to 20 keeping in touch days which will not end SPL
- SPL will be paid for 37 weeks at £138.18 or 90% of earnings whichever is the lower, provided minimum earnings requirements are met
- Parents are protected against detriment or dismissal for taking SPL and are entitled to return to the same job or to a suitable and appropriate alternative job

The SPL scheme adds to increased flexibility introduced by the extension of the right to claim flexible working to all, opening the possibility for grandparents to request flexible working arrangements to care for grandchildren.

In both contexts we recommend employees engage in early and open discussions with their employers to identify arrangements suitable for both parties.



## Recommendations for employers:

- Develop a policy on SPL and circulate widely
- Review your contracts with SPL in mind, e.g. do you want to offer enhanced SPL pay equivalent to contractual maternity pay?
- Be clear on which type of leave employees are taking as different rules may apply, e.g. SPL is paid at a lower rate than maternity pay
- Engage with employees over requests for discontinuous leave to identify suitable arrangements for all
- Take care to avoid detriment or dismissal related to SPL when employees return to work, even if redundancy related. Claims, including for automatically unfair dismissal, could result

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# Thinking of buying a student flat?

## *Make sure you get advice*

Parents – and grandparents – are increasingly supporting student offspring as they make their way through university, often by helping them buy accommodation

But before anyone sets out on this path, it is vital that each party seeks independent legal advice. Ideally a written agreement should be put in place to protect each party. People generally want to keep such an agreement as simple as possible and it can be structured to suit individual needs.

Clearly, every situation is different and requires tailored advice. For example, a young person has decided that he would like to move out of student accommodation and he wishes to purchase a flat in his own name. He has minimal savings, but his mother has offered to help him out financially. Here are some examples of initial points that should be considered:-

- Alternatively, is she lending the money? If so, what are the repayment terms? Will interest be payable?
- If it is a loan, does a standard security need to be put in place to secure the loan against the property?
- What would happen to the loan in the event of either mother or student dying? Would the balance outstanding have to be repaid immediately?
- When the property is sold, would the mother be entitled only to the loan funds or to any growth in the value of the property?

- Is it necessary to protect the mother's investment from any future partner of her son?
- What will be the names on the title deeds and in what proportions?

You can see that there are a number of issues to consider in connection with a person gifting outright or lending funds to their children or grandchildren to purchase a property.

Most importantly it is necessary to work out what is right for you and your family but the best advice is to seek legal guidance and put a written agreement in place to protect everyone involved.



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“ A written agreement should be put in place to protect each party. ”

- What sum of money is the mother able to comfortably give either by way of a gift or a loan? Is it the deposit, a larger sum or the whole purchase price? If it is not the full amount, where will the balance be paid from?
- Is she gifting the money outright? If so, this could have inheritance tax implications which should be considered. If she has other children, would she need to equalise the position among them in her Will or otherwise?



## Running is my *passion*; athletics is the sport I *love*

We are proud to support Eilish McColgan, one of the rising track stars of Scottish and UK athletics. Eilish reflects on 2014 and considers her next goals – successful winter training in Kenya to improve her time for the World Championships in Beijing next year and the 2016 Rio Olympics

2014 has been a roller-coaster of a year and one I will be very happy to see the back of. However, the Commonwealth Games in Glasgow was an amazing experience and I'm sure nothing will ever top the roar of the Scottish crowd in Hampden.

I came away with sixth place, two places higher than my Commonwealth Ranking and in a faster time than I have run all season, as well as setting a new Scottish Native Record. Only a few months before I was doubtful that I would even make the start line after battling illness on and off for eight months so perhaps I should have been happy with this, but athletes always want more.

As well as it being a home Games, it was also the first time that my whole family were in the stadium to watch me compete which made it really special.

An athlete can train passionately, be a perfectionist and follow meticulous routines but ultimately a little luck is needed. Unfortunately for me, I missed out on such luck this year! I'm hoping the biggest four leaf clover drops in my lap – to stay illness and injury free would be such a blessing.

I ended my season early to take a break so I was able to start winter training earlier than previous years which will hopefully help. Although I didn't get to see my family during my break, social media and the like, make it much easier to stay connected.

My break was great but I was itching to get back to running. Sport is intense. It's very easy to forget why you love it, until you take some time away and realise how much you miss it!

I have another trip back to Kenya planned this winter. Winter training is where the majority of hard slog training and mileage happen and Kenya is the ideal setting. Mile after mile of dusty, scenic roads and hundreds of other world-class athletes treading the same paths – it's an endurance athletes dream.

The past few months have made me more determined than ever to do well at the World Championships in Beijing next year. My aim is always to keep cutting chunks off my time. I have made some major changes which will hopefully improve my 2015 performance.

Now it's time to really focus. It is less than two years until the Rio 2016 Olympics. To compete at another Olympic Games is the primary goal. In London, I didn't make it through the heats so I have my eyes firmly fixed on the final. It's very difficult to make it in any sport but I need to give myself the opportunity. I don't want to look back and count anything as a wasted chance.

It may be my last year in the steeplechase before making the decision to move up in distance. My coach is very keen for me to make the move. Maybe a marathon will be on the horizon... but don't hold your breath. You could be waiting for a few years – 15 if I have my way!

# New *stamp duty* mirrors Scottish property tax

In his Autumn Statement on 3 December 2014 the Chancellor of the Exchequer announced the most radical changes to Stamp Duty Land Tax (SDLT) in many years

The changes came into effect at midnight on the date of the announcement. This contrasts with the new Land and Buildings Transaction Tax (LBTT) for Scottish property purchases, the details of which were announced some time ago but which will not come into effect until 1 April 2015.

The tax is still called SDLT but is significantly changed. This new stamp duty applies to Scottish property transactions, but only until 1 April 2015 when it will be replaced with LBTT.

New SDLT is a progressive tax (like LBTT) rather than a flat rate or "slab" tax (which old SDLT was).

The below points give a general overview of the impact of the changes, however, for more information on how it will affect you and your property, please contact one of our residential conveyancing experts.

- For purchasers buying for less than £324,300, who might have been inclined to delay their purchase until after 1 April 2015 to benefit from reduced tax, the incentive to delay their purchases is either removed or diluted. The benefits to be gained from LBTT are here now under new SDLT, either in whole or in part.
- For purchasers intending to buy at prices in the band from £324,300 to approximately £937,500 (the exact figure is complicated) the difference between new SDLT and LBTT will tend to be even greater than the difference was going to be between old SDLT and LBTT. Purchasers in this price range are likely to have an even greater incentive than before to complete their purchase before 1 April 2015.

- For purchasers buying at prices in excess of £1,125,000 the difference between new SDLT and LBTT is likely to be a bit less than the difference between old SDLT and LBTT. The incentive to those purchasers to get their purchase completed before 1 April 2015 is slightly diluted, but the increased tax burden from 1 April 2015 is still highly significant and accordingly the incentive is still likely to be strong.

For purchases which were on-going at the time of the announcement of new SDLT, and in relation to which missives were concluded by midnight on 3 December 2014, there are transitional provisions in place which effectively allow the purchaser to elect whether to pay old SDLT or new SDLT

(assuming the purchase is due to settle before 1 April 2015).

New SDLT	Rates
£0 - £125,000	0%
£125,001 - £250,000	2%
£250,001 - £925,000	5%
£925,001 - £1.5 million	10%
Over £1.5 million	12%

LBTT	Rates
£0 - £135,000	0%
£135,001 - £250,000	2%
£250,001 - £1,000,000	10%
Over £1,000,000	12%

The position can be demonstrated with some examples below:

Price	New SDLT	LBTT	Difference
£125,000	£125,000 @ 0% = £0	£125,000 @ 0% = £0	£0
£150,000	(£125,000 @ 0% = £0) + (£25,000) @ 2% = £500 = £500	(£135,000 @ 0% = £0) + (£15,000) @ 2% = £300 = £300	- £200
£250,000	(£125,000 @ 0% = £0) + (£125,000 @ 2% = £2,500) = £2,500	(£135,000 @ 0% = £0) + (£115,000 @ 2% = £2,300) = £2,300	- £200
£260,000	£125,000 @ 0% = £0) + (£125,000 @ 2% = £2,500) + (£10,000 @ 5% = £500) = £3,000	(£135,000 @ 0% = £0) + (£115,000 @ 2% = £2,300) + (£10,000 @ 10% = £1,000) = £3,300	+£300
£500,000	(£125,000 @ 0% = £0) + (£125,000 @ 2% = £2,500) + (£250,000 @ 5% = £12,500) = £15,000	(£135,000 @ 0% = £0) + (£115,000 @ 2% = £2,300) + (£250,000 @ 10% = £25,000) = £27,300	+ £12,300
£510,000	(£125,000 @ 0% = £0) + (£125,000 @ 2% = £2,500) + (£260,000 @ 5% = £13,000) = £15,500	(£135,000 @ 0% = £0) + (£115,000 @ 2% = £2,300) + (£260,000 @ 10% = £26,000) = £28,300	+£12,800
£1,000,000	(£125,000 @ 0% = £0) + (£125,000 @ 2% = £2,500) + (£675,000 @ 5% = £33,750) + (£75,000 @ 10% = £7,500) = £43,750	(£135,000 @ 0% = £0) + (£115,000 @ 2% = £2,300) + (£750,000 @ 10% = £75,000) = £78,300	+£34,550
£1,500,000	(£125,000 @ 0% = £0) + (£125,000 @ 2% = £2,300) + (£675,000 @ 5% = £33,750) + (£575,000 @ 10% = £57,500) = £93,750	(£135,000 @ 0% = £0) + (£115,000 @ 2% = £2,300) + (£750,000 @ 10% = £75,000) + (£500,000 @ 12% = £60,000) = £137,300	+£43,550

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# Should you *protect your business* from a relationship breakdown?

## The breakdown of a marriage – or a relationship where a couple live together – can lead to uncertainty over the future of any business owned

A business may have been built up over many years and in the case of a family business, over generations. When a relationship breaks down, is a spouse or former cohabitant entitled to half the business? In nearly all cases the answer is no.

On divorce there is a presumption that the matrimonial property (assets acquired by the parties during the marriage) will be shared equally. However, this does not mean that each asset must be shared equally. It is the net value of the whole property which must be divided. In many cases there will be other assets which can be retained by or transferred to the other spouse as his or her share of the matrimonial property. In some cases, payment can be deferred or made by instalments.

Courts are generally reluctant to force the sale of a business in order to achieve a fair division of the matrimonial property and frequently, other solutions can be found.

Where a business was owned prior to marriage, only that part of the value of the matrimonial property at the date of separation which is attributable to the period of marriage, will be taken into account.

“ It is possible to minimise the risk of damage to a business as a result of divorce or the cessation of cohabitation by entering into an agreement. ”

The position with cohabitants is slightly different. When a cohabiting relationship ends a cohabitant may make a claim for payment of a capital sum and/or an

amount in respect of the economic burden of caring for a child or children of the relationship. Therefore, as with divorce, there is no direct entitlement to a share of the business.

It is possible to minimise the risk of damage to a business as a result of divorce or the cessation of cohabitation by entering into an agreement. In the case of marriage, this can be done in a Pre or Post Nuptial Agreement. In the case of cohabitants, a Cohabitation Agreement can be entered into before or during cohabitation. Provided that the parties agree and have had appropriate legal advice, then such agreements are effective in ring-fencing business assets.

Clients who are contemplating marriage or cohabitation and are concerned about the possible impact on their business interests should seek legal advice at an early stage.



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## Client profile: *Donald Cameron*

**His family own some of Scotland's most beautiful scenery, played a prominent role in the Jacobite Risings, and during the Second World War provided training grounds for the Commandos. But today renewable energy shares the agenda with history**

When lawyers describe clients as being long-standing, they usually talk in terms of decades. They probably dealt with the client's parents, or in exceptional cases, their grandparents. So perhaps another adjective is needed to describe the relationship between Lindsays and the Camerons of Lochiel, which stretches back almost 200 years. Fee notes dating back to the reign of Queen Victoria are still held in the Achnacarry Estate archives.

The latest generation of the Camerons to work with Lindsays is Donald Andrew John Cameron, or to use his formal title, Donald Cameron, Younger of Lochiel. Donald manages the Achnacarry Estate together with his father Donald Angus Cameron of Lochiel, 27th clan chief of the Camerons. Middle names become important in a family where generation after generation of eldest sons are christened Donald.

The Camerons' estate around Fort William in Lochaber encompasses some of the most breathtaking land in the Highlands. The family seat is Achnacarry Castle, near Spean

Bridge. Donald's grandfather, Colonel Sir Donald Cameron, was described in his obituary in the Telegraph as having the "largest landholding in Britain of any commoner". Commoner because, says Donald, "the Camerons famously supported the losing side in every Scottish conflict with remarkable consistency, for approximately 500 years. We were never ennobled or given fancy titles!"

As well as helping his father to run the estate, Donald Cameron practises as an advocate in Edinburgh. Having grown up in England, studied history at Oxford and qualified as a barrister in London, he moved to Scotland in 2004 and qualified at the Scottish Bar in 2005. The move to Scotland felt very much like coming home.

"I wasn't born in Scotland, and hadn't lived or worked here full-time, but we visited my grandparents at the estate a lot – spent Christmas there, summer holidays, so we had a really strong connection with it. It was always in my plan to move here."

The management of the Achnacarry Estate today is very different to how it was in Donald's grandparents' day. Then, the main activities were crofting, agriculture, forestry and the sportings. Now the estate's main income streams include agricultural tenancies,

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“ *Achnacarry is a wonderful place to be. It's my home. It's where I feel happiest. I feel very lucky.* ”

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**1314**

Clan Cameron fought for Robert the Bruce at the Battle of Bannockburn

**1472**

Clan Cameron first officially recognised by that name in a crown charter

**1645**

The Camerons fought with the Marquis of Montrose and Alasdair MacColla in the rout of the Covenanters at the Battle of Inverlochy

**1745**

Cameron of Lochiel, Chief of Clan Cameron, supported Charles Edward Stuart when he landed in Scotland

**1942-45**

Achnacarry Castle used as training ground for the Commandos in WWII

**2004**

Donald's father, Donald Angus Cameron, became 27th Chief of Clan Cameron

**2010**

Donald stood as Conservative candidate in Ross, Skye and Lochaber in the general election

a fish farm tenancy, residential and holiday lets, and renewable energy, especially hydro schemes. Hydro schemes, in particular, are a huge opportunity for West Highlands estates given the abundance of water from both rain and snow melt.

One sign of how the management of the estates has changed is the outsourcing of the entire sporting operation to its ex-stalker, who runs a country sports business on the estate's land with a former stalking tenant. "My grandfather would probably be horrified that the estate no longer employs any deerstalkers, but times move on. It's another example of change."

Another change on the horizon for estates such as Achnacarry is land reform. Whilst Donald takes the view that some of the proposed land reforms in Scotland are "too radical and border on tokenism", he is fully prepared to engage with the land reform process generally. "At the estate we're quite realistic and progressive. There's no doubt there are challenges in front of us, but I think as a landowner you should be prepared for change – you can't preserve the estate in aspic for centuries, it's wrong."

On the other hand, you cannot be too cavalier with heritage. "One has to be alive to opportunities but marry that with the traditional nature of the estate. People come here because it's a wilderness, because of the history, because of wildlife. So you're slightly restricted, you couldn't develop something that would be inappropriate for the setting," Donald explains.

In that sense, Donald feels that he is a steward of the land, rather than its owner. This brings certain pressures in terms of managing the estate for future generations. "Sometimes, you sit and think, it was a shame that my great-grandfather sold that wood, wasn't it? But then you think, what will my own great-grandson be saying about the decisions I've made – about something that made sense in 2014. That's quite salutary, you know."

The Achnacarry Estate is part of a shrinking group in Scotland, in that the Camerons still own their historic clan lands. So, as well as running the Achnacarry Estate, the Camerons of Lochiel head the Cameron clan worldwide. There's a clan museum on the estate, near Achnacarry Castle, and vibrant clan associations across the UK, US, Canada, Australia and New Zealand.

This can create some interesting opportunities: Donald's grandparents were invited by film-maker James Cameron to the premiere of the film Titanic. Donald's own involvement with the clan worldwide includes attending a Highland Games in North Carolina and staying with Cameron kinsmen (whom he had never met before) on their farm in New Zealand when he was travelling after leaving school.

The clan responsibility is one his family takes seriously, and actively enjoy. "My grandfather was never happier than when going down to the museum to see which Camerons had come that day from wherever. It's very easy to take it for granted, but if someone has gone to the trouble of tracing their ancestry to the Highlands, finding out where they're from and are coming home after 200 years then that means a lot. And that is a responsibility."

Such responsibilities – not just the clan role but the management of the estate and stewardship of some of Scotland's most beautiful landscapes – are not the lot of your average 37-year-old. Especially one with a full-time law career and three children under five. Doesn't he sometimes find the estate, the castle and his future hereditary role a little overwhelming?

"It's a responsibility, but I've never seen it as a millstone. Achnacarry is a wonderful place to be. It's my home. It's where I feel happiest. I feel very lucky."

# Lindsays help to provide an *artistic* outlet for young patients

Lindsays was proud to sponsor the Postcards for Sick Kids 2014 'Small Pictures for Big Projects' event, which took place in November at the prestigious Lyon & Turnbull auction house in Edinburgh, to raise funds for the children's charity

The event is organised by the Sick Kids Friends Foundation (SKFF) and all proceeds from the event are donated to the Foundation's Artists in Residence programme at the Royal Hospital for Sick Children (RHSC) in Edinburgh.

Maureen Harrison, Chief Executive of SKFF, said: "Small Pictures for Big Projects is all about people buying an original work of art while helping us fund vital initiatives which help make thousands of sick children feel better."

This year's event saw an exhibition of over 100 works of art generously donated by more than 70 distinguished artists and painters from across Scotland and beyond. Each postcard sized masterpiece hung anonymously until purchased for just £500, then the artist's identity was revealed. The evening was a resounding success, guests were fascinated with the artwork and supportive of the cause resulting in £42,000 being raised.

Since its launch in 1999 Postcards for Sick Kids exhibitions have raised more than £250,000 in support of the Foundation's work at the RHSC.

The proceeds fund the Artists in Residence Programme which uses art to enrich the hospital environment and promote sick children's recovery. SKFF's fundraising supports the provision of art, music and drama therapy and art works around the hospital and has helped employ three long term art residencies with the RHSC, as well as short term creative writer and illustrator posts.

Alasdair Cummings, Lindsays Managing Partner, said: "As long term supporters of the SKFF, we're delighted to be involved in this event. Visitors to the exhibition had a wonderful time as they helped the Foundation continue to provide a vital artistic outlet for patients of the RHSC."

“ The proceeds fund the Artists in Residence Programme which uses art to enrich the hospital environment and promote sick children's recovery. ”



**The Sick Kids  
Friends Foundation**  
Helping sick kids & their families since 1992

# Scotland's *heraldic* tradition

Heraldry is the system by which coats of Arms and other armorial bearings are devised, described and regulated and in Scotland we have one of the richest armorial traditions in the modern world

Heraldry's most common modern manifestation is in the design, display, description and recording of coats of Arms and heraldic badges and in Scotland heraldry is all around us, on buildings, letterheads, school blazers, bank notes, company insignia and the crests of civic authorities, academic institutions and football clubs.

The use of heraldry is not restricted to corporate bodies; individuals are also entitled to matriculate Arms and anyone owning property in Scotland, domiciled in Scotland or of Scottish ancestry domiciled in most parts of the Commonwealth can petition the Lord Lyon King of Arms for a grant of Arms.

The grant of Arms is at the discretion of the Lord Lyon who is the monarch's representative in all heraldic matters in Scotland. A foreign owner of a Scottish barony can petition the Lord Lyon for a grant of Arms with additions as long as he or she is, in the eyes of the Lord Lyon, a virtuous and deserving person.

Arms are a form of intellectual property and the Lyon Court is in effect a heraldic patent office. The fee paid by the petitioner covers not only the cost of preparing the Letters Patent but also the permanent legal protection afforded by the recording of the Arms in the Public Register of All Arms and Bearings.



Reproduced with the kind permission of Dr Pier Felice degli Uberti



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## Help for *farming* succession planning

Historically, tenant farmers who have secure agricultural tenancies have been able to have the next generation of their family succeed to those tenancies on the death of a tenant. What is less well known is the right of “lifetime assignation” introduced under the Agricultural Holdings (Scotland) Act 2003

This right allows a secure tenant to assign his or her interest as tenant to a member of their family, during their lifetime, and can bypass many of the potential complications and pitfalls tenants can face in succession planning.

Examples of these potential pitfalls are where an intended successor already has another viable unit at their disposal, or where the subjects comprised in a lease are not themselves a viable unit.

If the lifetime assignation route is followed, then the fact that the assignee has another viable unit at their disposal, or where

the lease is of a small area of ground, is not necessarily grounds for the landlord to object to the assignation. Given the number of tenants who farm on more than one lease – or for whom a lease of the proverbial 10 acre glebe is an integral part of their operation, tenants are well advised to consider what leases of what areas they have, and whether there are going to be any problems with succession of those leases on the death of the tenant.



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# Planning can help minimise *heir* raising tax

Scottish inhabitants are subject to Inheritance Tax on the value of their entire, worldwide assets on their death, and their executors must lodge any return with HM Revenue & Customs (HMRC), and pay the required tax

Inheritance Tax (IHT), as the name would suggest, is mainly collected following death. The first £325,000 worth of a deceased person's estate is charged at 0% (the 'nil rate band'), and although there are a number of exemptions and reliefs, which can be of great assistance if planned for and claimed correctly, anything above the nil rate band is charged at 40%.

The nil rate band is changed from time to time, but has been at its present level since 2009 and it is proposed that it will not be increased until 2018. As asset prices have increased while the nil rate band has not, more people will find IHT may apply to their estates, in a way it might not have done previously.

Although "wealthy landed gentry" may have been the initial target of IHT (and its precursors, Capital Transfer Tax and Estate Duty), the tax has no respect for class boundaries. Registers of Scotland released figures in June 2014 that show average house prices in Scotland have risen by 5.9% in the past year, and in our experience many clients are unaware of the true value of their estates, when considered as a whole.

The amount of IHT collected by HMRC is estimated to increase from £3.4 billion in 2013/14 to £5.8 billion in the 2018/19 tax year, according to a recent forecast from the Office for Budget Responsibility (the fiscal watchdog for the Government).

Clearly, IHT is not the only consideration when planning your estate. However, given most people's wish to provide for their heirs, IHT planning is crucial in determining what can be passed on to them, and what assets may have to be realised to settle with the taxman.

It is possible to keep the IHT bill manageable by seeking advice, forward planning, using the available reliefs, and keeping your Will valid, up to date and tax-efficient. At the very least it will make you aware of what your estate's liability might be.

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“ *As asset prices have increased while the nil rate band has not, more people will find IHT may apply to their estates, in a way it might not have done previously.* ”

”

# Pension changes give *flexibility*

## The new pension rules which will take effect from 6 April 2015 represent a huge shake-up of UK pensions

They reflect the Government's vision for a more flexible regime giving individuals more choice, responsibility and control over how they and their family access their pension savings.

One of the biggest effects of the new rules is what happens to your pension fund when you die. The potential tax charge on death is reduced from 55% to zero. After

April 2015, if a Defined Contribution (DC) pension investor dies before reaching age 75, funds can be taken tax free at any time either by instalments, or in a one-off lump sum.

If death occurs after age 75 a DC pension fund can be taken in instalments and will be taxed at the beneficiary's marginal rate (broadly the highest rate at which income tax is paid). Alternatively a lump sum less tax at 45% (or their marginal tax rate from 2016/17) can be taken.

The new flexibility will also allow all DC pension investors aged 55 and over to choose how they want to take their pension income. They can convert the fund into an income, with the flexibility to

change the amount taken each year and leave the rest invested. Alternatively, they can elect to take the whole fund as a lump sum. In each case there will be a potential tax liability.

If the changes affect you, seek financial advice to explore your options. The free 'guidance guarantee' offered by the Government may be a good start, but it is not advice and is not tailored to your specific needs.



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# A *lifeline* for small businesses



During the heady years of the property boom many small businesses were encouraged or, in some cases, given no option but to take out what they believed were products offering them protection against interest rate rises

Businesses were approached by their banks either independently or whilst they were in the process of renewing or extending their lending facilities. Many people were sold products which they neither wished nor required.

What was not made clear was the complexity, cost and ultimate effect of these products. Subsequently, following the drop in interest rates these people

found themselves locked into products which required them to pay rates of interest far higher than those presently available. They were unable to find a way out of these agreements without incurring substantial costs.

The Financial Conduct Authority (FCA) has concluded that many of these agreements are likely to have been overly complex and inappropriate for many customers. The FCA has set up a scheme to allow customers to seek redress from the banks and many businesses are making claims.

If you are in a situation where you are subject to an interest rate swap product and feel you were or may have been mis-sold this product, we can help.



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# Maintaining *dignity*

If there comes a time when you can't communicate your wishes or no longer have the capacity to make a decision regarding your medical treatment, wouldn't you want a document clearly stating your feelings and wishes?

An Advance Medical Directive (AMD), also commonly called a Living Will, is such a document.

In Scotland, adults with capacity may choose to refuse a medical treatment. An AMD preserves that right if you lose capacity and are no longer able to tell others what you want. It is highly likely to be legally binding in Scotland if it is validly executed and applicable to your specific medical circumstances. Friends, family, and Welfare Attorneys can use AMDs as evidence of your wishes to ensure that you are not kept alive in a situation that you have decided would be intolerable for you.

You can use an AMD to refuse any treatment, including life-sustaining treatment such as resuscitation, artificial nutrition and hydration, or breathing machines. Your AMD gives you control over the end of your life. It can help to avoid disagreements about your care within your family or healthcare team.

However, AMDs cannot be used to ask for your life to be ended.

An AMD makes you think. It opens up dialogue. Discuss your end of life wishes with your GP and your family, and make sure they are aware that you have signed an AMD.

Once in place, review your AMD regularly. Your feelings may change. The more recent the AMD, the more weight it will carry as evidence of your current wishes. If no AMD is in place, and you have not appointed a Welfare Attorney, doctors will make the final decisions regarding your care.

If you would like to discuss an AMD please get in touch.

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Your AMD –  
a document clearly  
stating your feelings  
and wishes

# Additional *protection* for vulnerable children

## A legal row which will impact almost every family in Scotland is set to come to a head in the coming months

The Scottish Government's plans to assign a "named person" to every child under 18 will be subject to legal challenge after a campaign group lodged papers challenging the plan at the Court of Session.

The Children and Young People (Scotland) Act 2014 includes a provision assigning every young person under the age of 18 a Named Person, probably a teacher or health visitor, who will have a duty to promote, support or safeguard the child or young person. In doing so, they can:

- Advise, inform or support the child or young person, or a parent
- Help the child or young person, or a parent, to access a service or support; or
- Discuss or raise a matter about the child or young person with a service provider or relevant authority

Although parents are not required to accept help or advice from the Named Person, the Named Person can make their concerns known, with or without parental help, to other agencies or services if they believe that the child's wellbeing is at serious risk.

The Scottish Government maintains this will help vulnerable children and provide families in need with assistance. The Government has confirmed that the policy will be rolled out across the country in 2016.

However the campaign group No To Named Persons (NO2NP) believe the policy diminishes the role of parents, and constitutes a disproportionate and unjustified interference with an individual's rights under the European Convention on Human Rights (ECHR), which states:

- Everyone has the right to respect for his private and family life, his home and his correspondence
- There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

NO2NP have informed the Scottish Government that they are seeking a judicial review of the section of the controversial legislation that deals with Named Persons.

Whether the review will be successful remains to be seen, but certainly the consequences of the challenge, whatever the outcome, will have implications for every family in Scotland.

“ *No To Named Persons (NO2NP) believe the policy diminishes the role of parents.* ”



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# Reinforcing our *support* for sport

We are delighted to sponsor the Scottish Cross Country Season which started in October and will take in a series of six regional and Scottish National events

The three year agreement allows scottishathletics members and clubs to benefit from an exclusive package of legal services that will result in further investment in the club network.

Ian Beattie, the Chief Operating Officer at Lindsays, is Chairman of scottishathletics and an ultra-marathon runner. He said: 'This partnership reinforces Lindsays interest in the sport as our other sponsorships include the Borders Marathon and backing the three-times British champion and GB international, Eilish McColgan, in an individual sponsorship deal.'

The Lindsays Scottish Cross Country Season takes in six events each season with three having already been completed:

- **The National XC Relay Championships**  
Cumbernauld Park, 25 October 2014
- **The National XC Short Course Championships**  
Bellahouston Park, 9 November 2014
- **North District XC Championships**  
Inverness, 29 November 2014
- **East District XC Championships**  
Dundee, 6 December 2014
- **West District XC Championships**  
Linwood, 6 December 2014
- **The National XC Championships**  
Callendar Park, 22 February 2015

Runners will compete for a special Lindsays Trophy at the National XC in Falkirk on February 22nd.

Nigel Holl, Chief Executive of scottishathletics said: 'We are delighted to be working in partnership with Lindsays, particularly as our members and equally importantly, our clubs, have access to the benefits package available when they use Lindsays for their legal needs.'

"The cross country season is important to us because for so many of our athletes, young and old, it is the key way to build endurance through the winter. Ian himself has been a big supporter of the National Cross Country event – I know this because I raced him in it last year with some other members of the scottishathletics staff!"

Claire McCracken, a Corporate Partner at Lindsays who specialises in sports law and is a former Scottish Record Holder for the women's 3000 metre steeplechase added: "Lindsays has a longstanding relationship with scottishathletics and a commitment to investing and supporting sport in Scotland. I have competed in the National Cross Country on many occasions, and plan to run in Falkirk in February, so I recognise how important the season is to athletes and clubs throughout Scotland."

“ *Lindsays has a longstanding relationship with scottishathletics and a commitment to investing and supporting sport in Scotland.* ”

lindsays

**SCOTTISH  
CROSSCOUNTRY  
SEASON**



# A warm *welcome* to....



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