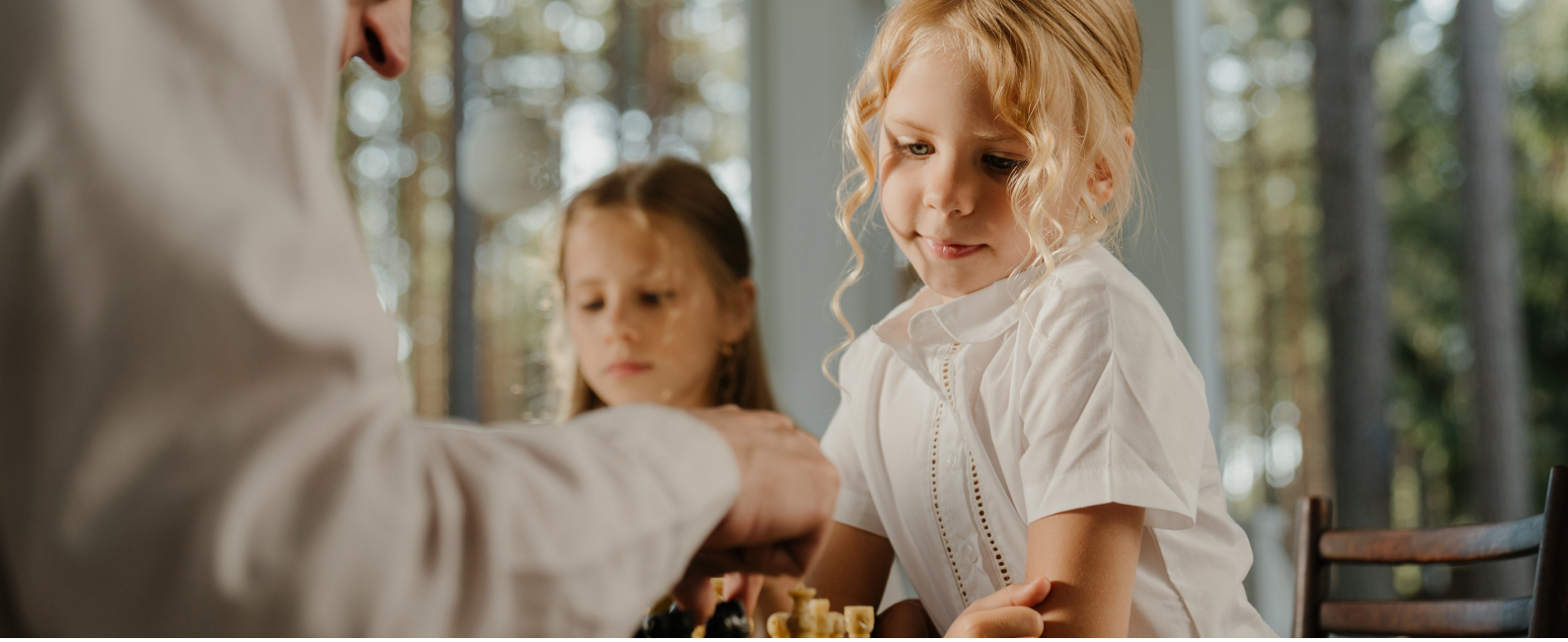
Estate Preservation Guide

THOMAS BRADLEY&CO



Here at Thomas Bradley, we understand that planning for a future without you in it is difficult to do and something that most people would just rather put off until they feel they need to prepare. We have put together this useful guide to assist you in estate preservation and hopefully ease your mind in the process. We believe that Estate Planning and Preservation should be accessible to everyone and that is why we have also compiled a glossary of common terms used in Estate Preservation which can be found on the final page.

If you have any questions regarding the advice in this guide, please do not hesitate to contact us on 0330 390 9200 or email us at info@thomasbradleylegal.co.uk

Inheritance Tax (IHT)

Inheritance Tax is the tax which is payable on your whole estate once you pass. Failure to make adequate provisions for this, could result in a considerable tax sum being deducted from the estate, however with the correct advice and careful planning, you could reduce or even eliminate the inheritance tax payable.

Nil-Rate Band & Residential Nil-Rate Band

The Nil-Rate Band (NRB) is the value in which your estate is not taxed on and at the time of writing (2022/23) the NRB is £325,000 – meaning that if your estate is less than this, then there is no IHT liability to be paid. In addition to the NRB there is also the Residential Nil-Rate Band (RNRB), which from its introduction in 2017 is available if you are to leave your interest in your residential property (i.e., the home that you live in) to any direct descendant (children, grandchildren etc).

At the time of writing, the RNRB is £175,000, which increases the Inheritance Tax allowance to £500,00 for a single person or £1,000,000 for a couple. If your estate is over the threshold of IHT, then the difference is taxable at the rate of 40%.

Limiting Inheritance Tax Liability

There are ways in which you can distribute your estate in order to attempt to limit your IHT liability, for example you could make use of Potentially Exempt Transfers (PET) which are gifts with no IHT liability if you were to survive for 7 years after the gift has been given.

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It is important to note that should you not survive for the 7 years after the gift, then IHT liability is payable by the recipient of the gift. The longer you survive after giving the gift, the less the IHT is.

-If you are to survive between 3-4 years after giving the gift, the IHT liability is reduced by 20%.

-If you survive for 4-5 years IHT liability is reduced by 40%.

-If you survive 5-6 years IHT liability is reduced by 60%.

-If you survive 6-7 years IHT lliability is reduced by 80%.

-If you survive 7 years + then there is no IHT liability payable.

Another way in which you can limit Inheritance Tax liability is through generous charitable gifts which are exempt from IHT.

If you are to leave a minimum of 10% of your estate to your chosen charity or charities, then the remainder of your estate, if over the threshold, will only be taxable at the 36% rate instead of the standard 40%.

Wills

Thinking of your own mortality is never easy and let's be honest, quite morbid, which is why many of us don't consider what will happen to our assets after we're gone. This can result in passing without a Will, potentially without knowing or ignoring the consequences of this decision. Instructing a firm such as Thomas Bradley & Co helps you get the peace of mind you need when considering what will happen to your assets once you have gone.

Importance of Wills in Estate Preservation

It would be naïve to assume that a person's circumstances will never change from the moment that they undertake a Will service. Modern life can be especially fickle and families grow and change in ways that they never used to before, for this reason we have detailed some of the most important reasons to have an up-to-date Will.

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Changes in Circumstances

Not only are Wills the cornerstone for Inheritance Tax and Estate Preservation Planning, Wills are also vital in ensuring that the people or organisations that you want to benefit from your estate are able to. Otherwise, the rules of intestacy will come into force which may result in your estate being distributed differently than you would have liked. For example, loved ones may get less than you would have liked or those you did not want to inherit end up inheriting. One particular reason you should amend your Will is should you separate from your spouse or partner without proceeding with a divorce or dissolution, then your spouse or partner is still legally entitled to a share of your estate.

"Unmarried couples do not have the luxury of automatic inheritance from their spouses or partners estate..."

Modern Families

It's no secret that in our modern times, marriages and civil partnerships are becoming less of a priority for modern couples. However, marriages and civil partnerships offer legal security for spouses and partners in the event of one passing before the other. Unmarried couples do not have the luxury of automatic inheritance from their spouses or partners estate, meaning that if you die without a Will, you are potentially leaving your spouse or partner with nothing but the stress of having to make a claim on your estate through the court.

Another important thing to note is that stepchildren have no legal rights claim against your estate, meaning that you could have a child in your family for ten to fifteen years but because they are not legally related to you, they have no entitlement to your estate, unless you make provisions for them in your Will.

We know that families and relationships can change throughout the years, which is why we recommend reviewing your Will at least every five years, as well as after all major life events such as marriages, divorces, births, or deaths to ensure that no matter the circumstances, your wishes are met.

How to Get a Will

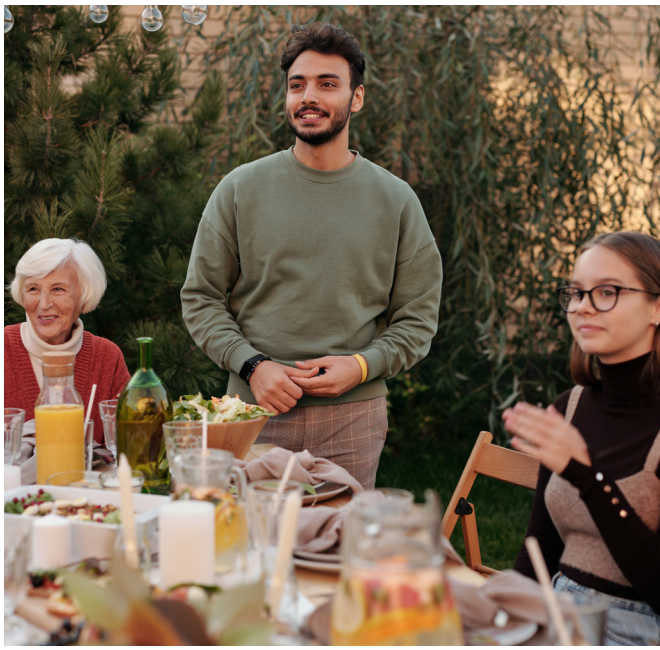
The first step towards getting a Will is giving considerable thought to who you trust to act out your wishes when you're no longer able to do so, generally speaking, a persons' spouse/ partner tends to be the first person they think of, then if they have any children. We suggest that you do not nominate a person without their knowledge as this can be a stressful role to play and the nominated person should be aware of their role and responsibilities when agreeing to act as your executor.

The second step is thinking who you would like to benefit from your estate and how (i.e., are they inheriting from the residue or are they receiving gift of money,property,personal effects?) This is where you would also consider any charitable gifts that you may want to leave charities close to your heart.

The third step is if you have children or are the legal guardian of children under the age of 16-18, then who you trust to take care of them until they reach adulthood when you pass away. Generally, this is kept within the family circle, but this can extend to close friends. Again, it is important that your nominated person(s) is aware of this decision and should be part of the discussion to ensure that they are fully aware of what being your child's guardian will entail.

The fourth optional step is putting your funeral instructions within your Will so that your family and executors are fully aware of how you would like your life to be celebrated.

Once you have all of this information, the final step is finding the right firm for you. It is important that you enlist the services of a firm who fully understand your circumstances and wishes in order to give you a Will which is as close to your wishes as can be.

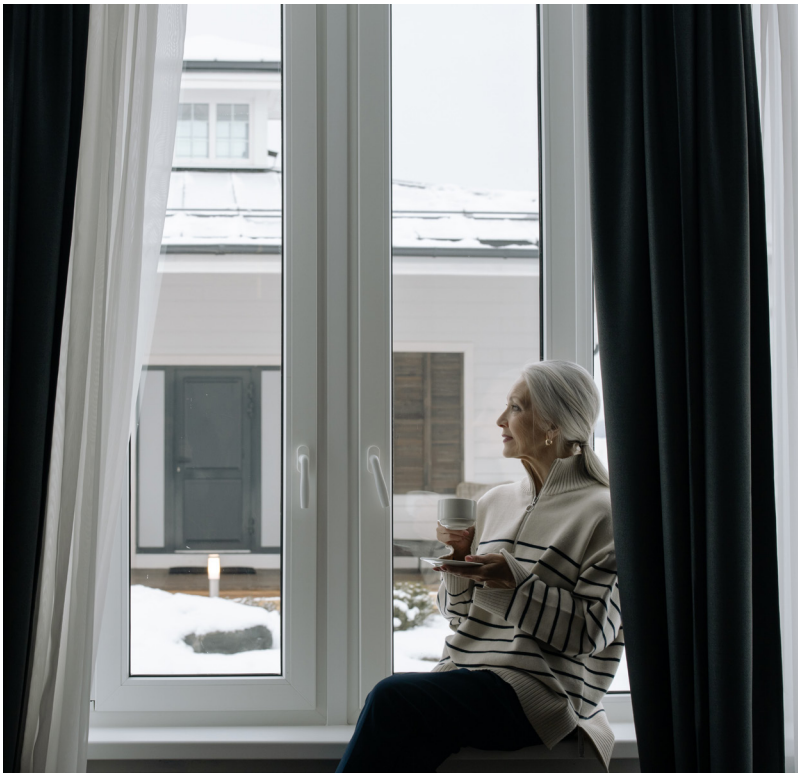


"It would be naïve to assume that a person's circumstances will never change from the moment that they undertake a Will service."

Power of Attorney/Lasting Powers of Attorney

A Power of Attorney (in Scotland) and Lasting Powers of Attorney (in England and Wales) are documents in which you grant a person(s) who you trust to make decisions on your behalf as if they were you in the event that you lose capacity or no longer wish to do so.

"The Scottish Power of Attorney also has a Schedule 1 document which is required to be signed by a practising doctor or solicitor."



Power of Attorney in Scotland

In Scotland, a Power of Attorney is generally one document in which you would grant your nominated person(s) the authority to make welfare decisions as well as granting them 'continuing' powers to deal with your finances. However, it is possible to submit two different Power of Attorneys if you want a specific for health decisions and another for financial/ 'continuing' decisions.

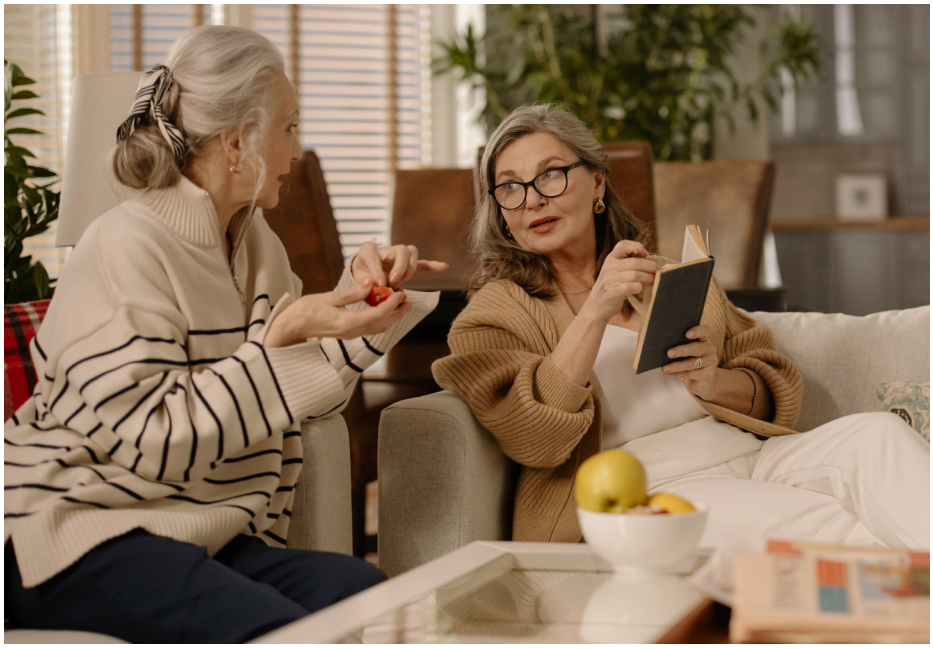
The Scottish Power of Attorney also has a Schedule 1/Regulation 2 document which is *required* to be signed by a practising doctor or solicitor – this document confirms that at the time of signing, you have the mental capacity to understand the powers that you are giving to your trusted person. If you are submitting two different Power of Attorneys for each type of power, then you will need to have two different Schedule 1/Regulation 2's to be completed by your practising doctor or solicitor.

The Office of the Public Guardian (Scotland) requires both of these documents to be submitted together at the time of registration. At the time of writing the fee of registration of a single Power of Attorney document is £83 payable wholly to the Office of the Public Guardian – if you decide to grant two Power of Attorneys you will have to pay this twice.

Lasting Power of Attorney in England & Wales

In England and Wales, Lasting Powers of Attorney are two separate documents, one for Health and Welfare and the other for Property and Financial Affairs. Unlike in Scotland, there is no option to submit one document to cover both sets of powers, it will always be two separate documents. This means that for a couple there will be a total of four documents required.

One major difference between the Scottish POA and the English/Welsh LPA for health and welfare, is that you must clearly sign whether you give your Attorney(s) the authority to make decision on life-sustaining treatment. Whether you choose to grant your Attorney the authority to do this or not, it is important to have an Advance Directive (also known as a Living Will) to ensure that your wishes are recorded and have a copy given to your medical professionals.



Another difference is that in England and Wales is there is no Schedule 1/Regulation 2 and no requirement to have a practising doctor or solicitor to sign off on your capacity. The closest you will get to this in England & Wales is the Certificate Provider, which is a person who either has to have known the granter for at least two years and not be a relative of them *or* be a practising doctor or solicitor.

At the time of writing, The Office of the Public Guardian (England & Wales) fee for registration is £82 per document – meaning that for both Health and Financial documents it is a total of £166 for a single person or £328 for a couple – payable wholly to the Office of the Public Guardian.

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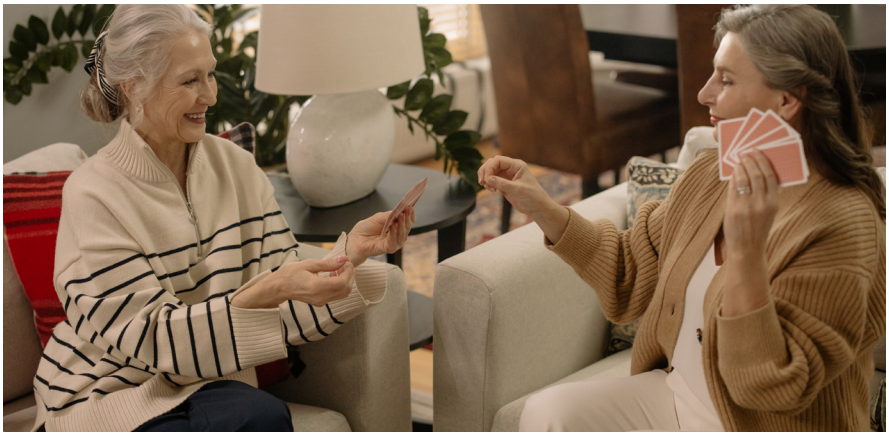
“The first step is to determine who you would trust to make decisions on your behalf if you were to lose capacity.”

Importance of POA/LPA in Estate Preservation

Power of Attorneys and Lasting Powers of Attorney are vital when it comes to Estate Preservation due to the nature of the documents and the relationship between the granter and the Attorney. These documents give the Attorney the power to make decisions for you, the granter, as if you and the Attorney were the same person.
There is a high level of trust and understanding involved, so it is imperative that the Attorney should know how you, the granter, would make decisions on a variety of different topics such as where to live, or how you would invest their money. Trust is the single most important aspect of undertaking a POA/LPA in estate preservation. This is because you must ensure that you fully trust the person you are granting the power to take into consideration how you would have made the decision if you had the mental capacity to make the decision on your own.



How to Get a POA/LPA

The first step is to determine who you trust wholeheartedly trust to make decisions on your behalf if you were to lose capacity or no longer wish to make decisions for yourself.

The next step is to determine if you trust different people for different types of decisions (i.e., one person for health decisions and one for financial decisions). Once you have determined this, you must then speak with them and determine if they are comfortable being your Attorneys.

The third step is then beginning the process of having the documents drawn up on your behalf – you are able to do these on your own, however, to ensure that they have been completed correctly, it is always best to enlist the services of an experienced firm to assist you in these matters.

Once the documents have been signed and checked over, it is then up to you if you would like to register your documents. As mentioned earlier there are separate fees depending on whether you require a Power of Attorney or a Lasting Power of Attorney.

Trusts

Trusts, including but not limited to Family Protection Trusts, Property Protection Trusts and Testamentary Trust Plans are useful in reducing your Inheritance Tax liability as well as making provisions for your spouse, children and potentially protecting family businesses. Trusts allows you to grant a trusted person a way of managing your wealth, investments, or property etc. for you and your loved ones. Trusts used in Inheritance Tax planning are either on an 'absolute' or 'discretionary' basis, the tax implications for each are different.

'Absolute' Trusts

In 'absolute' Trusts, the beneficiaries are named on the Trust Deed and cannot be changed in the future should your circumstances change. Gifts made into an 'absolute' Trust are treated as a Potentially Exempt Transfer (PET), this means that there is no immediate IHT liability payable, with the possibility of complete exemption should you (the settlor) survive the gift by 7 years.

When it comes to joint settlors (couples who are looking to protect their estate), each individual is assumed to have made a PET amounting to the value of their individual estate. If the settlors are providing a gift from a jointly owned asset, the value of the PET is split equally between both settlors.

"Trusts are useful in reducing your Inheritance Tax liability as well as making provisions for children or a spouse..."

'Discretionary' Trusts

'Discretionary' Trusts are used when you (the settlor) wish to grant maximum control to the Trustees over who is to benefit from the Trust and when beneficiaries in a 'discretionary' trust are not expressly named, but the class of beneficiary is (i.e., children, grandchildren etc). The settlor (you) is generally the lead Trustee in the Trust deed. However, in order to ensure that your Trustees know exactly how to exercise their discretionary powers in line with your wishes after you have lost the capacity to make these decisions for yourself, it is in good practice to provide your Trustees with a Statement of Wishes*.

**Please note: a Statement of Wishes is not a legally binding document and is used for guidance only.*

Gifts into 'discretionary' Trusts are known as Chargeable Lifetime Transfers (CLT) and IHT will be charged at the lifetime rate of 20% on the value above the settlor's Nil-Rate Band – however, this is not payable on Will based 'discretionary' Trusts. The estate will pay the IHT upon death at the 40% rate on the value above the Nil-Rate Band. If the settlor dies within seven years of creating the Trust, then the Trust will face IHT liability of the death rate 40%.

Importance of Trusts in Estate Preservation

When you transfer money or property into a Trust, you no longer personally own the money or property, it now belongs to the Trust. This means that it is not part of your estate when you die and should not count towards the IHT payable on your death. IHT can also be charged at two other points in the Trust timeline, the first being 'periodic charges' which are payable every ten years on the anniversary of the Trusts creation, the other being 'exit charges' which can apply when funds are transferred out of the Trust.

"Once you have determined who the Trustees are, you will need to consider who the beneficiaries are going to be and when you want them to inherit from your Trust."

How to Get a Trust

The first step to setting up a Trust is determining what assets you would like to protect in your Trust, is it money, property, or both. You must then determine who other than yourself are going to act as Trustees to maintain the Trust and carry out your wishes if you are no longer there to do so.

Once you have determined who the Trustees are, you will need to consider who the beneficiaries are going to be and when you want them to inherit from the Trust. Finally, you will then need to consider when you want the Trust to become active. If you are looking for protection when you are alive, the Trust should be registered whilst you are alive, alternatively you can register certain types of Trusts after death.

*Please note: In order to ensure that your Trust is set up in accordance with the law and meets all the necessary legal requirements, we recommend that you reach out to a professional to undertake this service for you.

Estate Preservation has far more benefits which drastically outweigh the taboo nature of our own mortality. In an ideal world, you would of course be able to pass our wealth or property to whomever you wish. Unfortunately to gain even the slightest control over what happens to your estate once you are gone, you must fully consider the aspects of estate perseveration set out in this guide. Well thought out and carefully planned estate preservation is vital in ensuring that your loved ones will receive the maximum benefit from your estate once you have passed.

If you would like to take the first step in estate preservation, get in touch with us today to set up an appointment with one of our highly trained Estate Planning Consultants who will take the time to talk you through the estate preservation solutions specific to your circumstances.

Call us today on: 0330 390 9200 or email at: info@thomasbradleylegal.co.uk

GLOSSARY

Advance Directive – Used to record your wishes with regards to any medical treatment you may or may not require if the time arises. Also known as a Living Will.

Attorney – Title given to the person you trust to act on your behalf should you lose capacity or not wish to make decisions for yourself.

Beneficiary/Beneficiaries – The person(s) who the Testator determines is to benefit from their Will.

Chargeable Lifetime Transfers – A gift made during your lifetime which is immediately chargeable to IHT.

Dissolution – The name of the process used to end (dissolve) a registered Civil Partnership.

Estate Preservation – The process of taking steps to ensure that your estate is taken care of should you pass away or lose capacity.

Executor – Title given to the person you trust to carry out the wishes set out in your Will.

Granter – The person who is taking out the Power of Attorney and granting the powers to their nominated person.

Guardian – Title given to the person you deem fit to take care of your children should you pass away before they are legally an adult.

Inheritance Tax – The tax chargeable on the estate of someone who has died – the current rate is 40% on death, only on the value of your estate above the tax-free threshold of £325,000.

Mental Capacity – The ability to understand information and make informed decisions based on the information on your own.

Nil-Rate Band (NRB) – Term used for the value of your estate which is not taxable. Currently £325,000 for a single person/ £650,000 for a couple.

Office of the Public Guardian – The government body in the UK who authorises Power of Attorneys in Scotland and Lasting Powers of Attorney in England and Wales.

Potentially Exempt Transfers – Gifts of an unlimited value which will only become exempt from IHT if you survive for 7 years after gifting.

Residential Nil-Rate Band (RNRB) – Term used for the value of your residential property which is not taxable. Currently £175,000 for a single person/ £350,000 for a couple.

Schedule 1/Regulation 2 – This is the part of a Scottish Power of Attorney which must be completed by a practising doctor or solicitor.

Settlor – The person who is taking out the Trust.

Testator – The person who is creating the Will.

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