

Winter 2022


GULLANDS
SOLICITORS

InBrief

The Magazine of Gullands Solicitors



Inheritance
Tax changes



The
Environment
Act 2021



P9
Wine
Weekend

Welcome to InBrief

The start of a New Year is always a great time to take stock of both your personal and business affairs to ensure everything is in order and up to date, and this year there are changes in the law which may affect you in different ways.

On page 4, Alex Astley looks at the change in rules for probate reporting for non-tax paying estates which came into force on 1 January 2022. It is important make time to review and update your Will every few years, or when there are changes to your circumstances such as getting married, divorced, having a child, or buying a property and it is never too late to make your first Will.

On pages 6 and 7, Sarah Astley looks at the various ways the law can help your business to get ahead this year, as well as some of the key factors which will increasingly impact your day to day business operations.

On page 8, Paul Burbidge reviews The Environment Act 2021 which came into force in November and the key points for farmers, landowners, and the rural economy.

Exciting news for English wine fans, as the very first Wine Weekend is being held in Maidstone on Saturday 16th July and we are delighted to be supporting this event. Viticulture is a valuable and growing sector of the Kent economy and we look forward to supporting the growers and wine makers and of course tasting their many delicious wines.

And on page 12, find out more about one of our recent new starters, Associate Solicitor Krishna Patel who has joined our private client team and brings with her a wealth of experience.

As always if you would like any more information about any of these or other legal issues, please get in touch with our team today.



John Roberts
Managing Partner

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Christmas charities

Every year in lieu of sending out Christmas cards we make a donation to two local charities and this year we will be donating £750 each to Ellenor and Gravesham Sanctuary. In their own words information about each organisation and details of how you can also support them.

"Since 1985, Ellenor has been providing compassionate hospice care to those that need it most. Our vision is simple: those facing the end of life should have the best care possible wherever they choose.

Our care encompasses support that is tailored to an individual's need in a way that will offer support to their carers and family as well. For those requiring a tranquil place for their end of life hospice care, our Inpatient Ward can provide this gently and efficiently. We also offer Adult Hospice at Home for individuals who would like to receive end of life care within their own comforting space.

Beyond the end of life care you might expect from a hospice, our care includes a variety of holistic approaches to enrich the lives of our patients and their families, as much as we can. From day therapy options where we aim to improve the quality of patients to our wellbeing bereavement services and counselling which offers support to individuals and their families through treatment and complementary therapies. We also offer financial advice to assist families in seeking financial benefits they may be entitled to. We constantly work to offer a rounded approach to hospice care for our patients and those that love them." www.ellenor.org

"Gravesham Sanctuary is a registered Charity and supported by Churches Together in Gravesham, to provide an overnight shelter during the coldest months of the year (October – April) for the homeless community living in the town. We do this by:

- **Taking care of their needs through direct help in providing:**
 - A safe, place to sleep during the winter months
 - Hot food and drinks
 - Showers
 - Help in getting paperwork ID
- **Signposting them to agencies and local groups who can help with:**
 - Clothing and Laundry
 - Accommodation
 - Employment
 - Physical and mental health
 - Repatriation to their home country
- **Helping them to make something of their life as a disciple of Jesus Christ.**

We are a Christian organisation and as such believe that fullness in life is experienced when someone enters into a personal relationship with God. However, we do not believe in ramming home our beliefs and welcome anyone of any race or belief. It is through our actions and love for mankind that we demonstrate the lifestyle we would like others to adopt.

As with any project involving funds raised from the public, the project is run and managed according to a strict code of governance. Gravesham Sanctuary CIO is an independent charity with its own bank account and a steering group made up of people from a number of Gravesham Churches." www.graveshamsanctuary.uk

HMRC changes Inheritance Tax regulations for excepted estates

The rules for probate reporting around non-tax paying estates are changing and for deaths occurring from 1 January 2022, executors will be exempt from having to submit a detailed return to obtain probate.

The changes now reduce the level of reporting required for Excepted Estates as well as widening their definition and includes:

- The gross threshold of excepted estates has changed rising from £1million to £3million.
- The limit of specified lifetime transfers and trust property has increased from £150k to £250k.
- Where some of the available IHT threshold has been used when the first of a married or civil partnership has died and a claim is being made for the second unused percentage to be used against the current estate.

- The removal of excepted status from a foreign persons' estate who owned interests in UK residential property or had made lifetime gifts of UK assets over £3k in the seven years prior to their death (excluding estates not liable for IHT).
- An extension to the time period which HMRC has to ask for additional information to prove the estate is excepted increases to 60 days.
- The inclusion in the grant application of the gross and net values for IHT and the net qualifying value of the estate for IHT.

These changes will no doubt help to make the process of estate administration faster and more straight-forward. It is still important that good record keeping of lifetime gifts and formal valuations of property, shares and high value personal chattels are kept for use on the death of the first spouse or civil partner which will help to make the probate process smoother on the second death.

If you would like help and support during probate or would like to discuss any issues around Wills and estate planning, please get in touch with our team today.

Alex Astley can be contacted at a.astley@gullands.com





Performance based commercial leases

The ups and downs of the pandemic are still affecting many business sectors, with retail and hospitality again hit hard, especially over what should have been their busy Christmas period.

Some commercial landlords and their tenants have already agreed measures to help during these ongoing, difficult periods and performance based or turnover rents as they are better known is one option. Are turnover rents something we are likely to see more of in the future and what role do they have for commercial landlords and their portfolios?

The simple answer is yes we are likely to see more turnover rents in the future. They will encourage new businesses onto the high street and help to reduce risk for established, but struggling businesses, who would otherwise trade profitably with no covid restrictions in place and higher consumer confidence.

Turnover rents are calculated based on the turnover of the business, but this could be as a

simple percentage of turnover, or a guaranteed base rent plus a premium if a certain turnover threshold is reached. Clearly the better the tenant's business, the more rent is paid to the landlord.

Percentages of turnover can vary significantly with some agents reporting a rate of anywhere between 1%-15% and an average being 7%. If you are considering offering a tenant a turnover rent, what should you consider?

The first thing to consider is the business model, its viability and whether other costs payable under the lease should be kept separate from the turnover provision, how long the provision should last if temporary and what happens if the tenant wishes to assign the lease.

Secondly, the calculation of turnover itself. For example, if a customer is shopping online and having their goods delivered which could be from a separate distribution centre, should this type of turnover be excluded, especially if the customer doesn't enter the physical premises at all? And for restaurant operators, how do they factor in takeaway sales not consumed on the premises and how can they make sure staff tips are not included in overall turnover calculations?

Whilst landlords might want a fixed income for the natural security that gives, the changing, post pandemic high street and the business models of the remaining businesses that occupy it will naturally alter overtime and therefore we are likely to see more turnover rents demanded in the future.

This element of shared risk also means there is more incentive for the commercial property owner to help ensure the property is in a safe, convenient, and welcoming area, a place where people want to visit and spend time. Improving footfall will help to increase turnover and landlords that work together will have greater success.

For turnover rents to work there needs to be full disclosure of financial information and landlords need to consider issues that lenders might have. The devil will be in the detail to ensure the success of these types of arrangement and having a well-drafted lease will go a long way to preventing issues in the future.

If you would like to discuss a commercial lease, get in touch with our team today.

Marianne Webb can be contacted at m.webb@gullands.com

Looking ahead to 2022 and beyond



Looking ahead to some of the continuing commercial issues which many business owners will have been dealing with over the last couple of years, it is important to remain prepared and also consider how the law can help to protect your business interests going forwards.

Some of the basics include managing your supply chain. There are few businesses that won't have been affected by supply chain issues and whether that is through shortages of and rising fuel and energy prices, shortages of raw materials, machinery, equipment, or staff shortages, import and export red-tape and delays, or ever-changing requirements from customers. Many of these issues will continue into the first half of 2022 and beyond, so it is important to protect your business in any contracts and supplier agreements. Take time to review some of the common pinch points such as:

Your payment terms – Asking for payment up front before anything is supplied will ultimately protect your business, but it is also worth considering if your customer can't pay, what happens to the goods, where are they stored and will they lose value if delivery is delayed. Other options could include shortening your

payment terms or asking for a percentage up front. Having a finance team who is on the ball and managing debtors is critical to ensuring the cash flow and survival of your business.

Shortening your supply chain – Can you remove uncertainty and delay by seeking alternative suppliers, especially those who might be more local to you? Not only is this move better for the environment by removing unnecessary transport and travel, it could also help to secure local jobs and put money back into the local economy. As part of The Environment Act 2021, the Government is looking to create a more local, circular economy and all businesses will be required to play their role in helping to achieve significant climate change measures.

Exiting restrictive contracts – Is it time to review and exit those contracts that are too restrictive, difficult, or unprofitable to fulfil, can you use Force Majeure clauses if you are struggling to meet obligations due to circumstances beyond your control, such as staffing shortages. Don't be a busy fool, if it is no longer right for your long term business planning then look to move on.

Managing your workforce - Amongst many changes from 1 April 2022, The National Living Wage rises to £9.50. The Government now publishes details of organisations who don't meet this obligation and the organisation will also be fined and required to make the outstanding payment. If you haven't recently reviewed your compliance with HR issues such

as ensuring you are paying the minimum wage to all employees, along with compliance with other obligations such as The Modern Slavery Bill then you should review this now. Many businesses are placing a greater emphasis on transparency and compliance towards social responsibility and want from their suppliers a minimum standard of transparency.

Technology – There is no doubt that many business operations and the traditional working day have been transformed during the pandemic. The increasing role that technology plays in the workplace brings many numerous opportunities, but also with it increased risks. You should review with your IT team or supplier ways that you can reduce the risk of cybercrime and fraud and to protect data and digital assets. You must also ensure you are following all of the rules of GDPR and data protection. As many people are likely to continue remote working into the new year, make sure your business is fully protected and not breaching any rules and if necessary, review and update employee guidance.

Finally for many businesses **Environment, Social and Governance** (ESG) are going to become increasingly important factors in their everyday business operations in 2022 and beyond and customers and investors are increasingly applying these factors to help identify both material risks and growth opportunities. Some of these factors have been touched on already, but to summarise this means looking at:



Is your driving licence at risk?

Recent research by the charity Cycling UK says there are 142,275 drivers who were banned from driving between 2017-2021 for exceeding 12 points on their licence. It also claims a further 35,569 were able to keep their licence during the same five year period as they were successful in Court in arguing that they would face exceptional hardship if they were unable to continue driving.

According to Section 35 of the Road Traffic Offenders Act 1988, drivers who incur 12 or more points for any motoring offences within 3 years should by law receive a disqualification for at least six months unless 'the court is satisfied having regard to all the circumstances that there are grounds for mitigating the normal consequences of the conviction and thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified.' This means the courts do have the discretion to enable drivers to hold onto their licence and continue driving if they are able to provide satisfactory evidence of this or other 'extenuating circumstances' including, for example, if the ban will result in them losing their jobs and result in them suffering exceptional financial hardship.

Clearly no-one should break the law but it does happen and, if you accumulate 12 points on your licence, it could threaten your job, your longer term career and cause great hardship for many years.

It is really important to take the accumulation of points on your licence seriously and to get legal advice at an early stage if you receive 12 points and are at risk of losing your licence.

To discuss any motoring legal issue contact [John Roberts j.roberts@gullands.com](mailto:j.roberts@gullands.com)

Environmental

Climate change
Resource depletion
Waste and pollution
Deforestation

Social

Working conditions, including use of child labour
Local communities
Health and safety
Employee relations and diversity

Governance

Executive pay
Corruption
Political affiliations and donations
Board composition, diversity, and structure
Tax strategy

If you haven't started to consider these factors and their increasing financial relevance then 2022 is definitely the time. No matter what size your business, your customers and clients are increasingly making decisions based on one or more of the above and it is important to be one step ahead.

If you would like to discuss any corporate or commercial legal issues for your business, please get in touch with our team.

Sarah Astley can be contacted at s.astley@gullands.com



The Environment Act 2021

The Environment Act 2021 received Royal Assent in November and it aims to ensure a range of environmental protection measures in England are adhered to. This includes a range of opportunities for farmers and land owners, but potentially a whole raft of new legislation and third party agreements to navigate.

Developers will also have to ensure amongst other things that all new developments deliver a 10% increase in biodiversity to be managed for at least 30 years along with a biodiversity Gain Site Register to be implemented and maintained after each site has been completed for a 30 year period.

Other new measures include a new Species Conservation Strategy which Local Planning Authorities will need to safeguard, along with organisations such as Natural England and other LPAs.

There will also be the introduction of five principles which all organisations must have regard which are:

- Integration (of environment protection in policy making)
- Prevention (to avert environment damage)
- Precautionary (to the possibility of environmental harm)
- Reification at source where possible
- Polluter pays (both in mitigation and compensation)

There will also be legally binding and long term targets on air quality, biodiversity, water, resource efficiency and waste reduction.

The Act is certainly wide ranging and overtime will affect all businesses, so it is important to understand how it could impact and influence your business activities in the future, to ensure you don't fall foul of any new laws.

It is sensible now as a starting point to review any long standing contractual arrangements you have in place to ensure you can still meet your future obligations and to determine if this new legislation will affect them in any way.

Paul Burbidge can be contacted at p.burbidge@gullands.com

The National Fruit Show

We were delighted to attend the 88th National Fruit Show which is organised by The Marden Fruit Show Society at the Kent Event Centre Detling each Autumn.

For anyone not familiar the event, it showcases the apples and pears grown locally and nationally. It's a key date in the top fruit farming year, a chance to compare notes with other growers and industry experts and to see what new innovations, machinery and equipment can help the growing season ahead.

Many growers will have had a tough year in 2021, with growing conditions difficult due to the wet, cold spring, late frosts and fruit yields were lower than expected. Many have also again had difficulty with recruiting seasonal workers. We wish them all a successful 2022 growing season and look forward to blossom filling the orchards across Kent later this spring.

The Wine Weekend

Whilst you might currently be enjoying a dry January after the excesses of the festive period, something to look forward to is a brand new wine event for the public which is being held in Maidstone on Saturday 16th July 2022.

The Wine Weekend is a new event to celebrate and showcase viticulture here in the heart of Kent's wine region. We are delighted to have been involved in helping to set up this initiative along with Ulric Allsebrook of Frederic Bistro, the Maidstone Business Improvement District and Kent County Council.

On offer will be a delicious range of wines from local producers to taste and buy along with food and other refreshments.

Blair Gulland who has been instrumental in setting the event up comments: "What better way to enjoy the wines of our many producers here in the Garden of England on a sunny, summer day, which will also bring people into Maidstone for the weekend and to enjoy the hospitality of the town centre. Initiatives such as this are important for our high street and local businesses as it provides an opportunity to showcase some exciting and very delicious wines from our fantastic local producers. The setting of Sessions House will be a stunning backdrop to what we hope will become an annual event."

Tickets will cost £15 each and The Wine Weekend will be held in the beautiful courtyard of Sessions House, the buildings of Kent County Council. Further details for the public and exhibitors is available at www.thewineweekend.co.uk



Later life divorce and mental capacity

Divorce rates for the over 65's have tripled since 1990 and a question which sometimes arises is do both parties have the mental capacity to divorce? Therefore, if one party lacks mental capacity, do they need someone – a friend, relative or professional advocate who can make decisions for them during the divorce process?

You can already appoint someone to act to make decisions for a person lacking mental capacity through a Lasting Power of Attorney, but in the absence of one there could be a court appointed deputy who can take on this role.

The person must consent to act and be able to fairly and competently conduct the proceedings on behalf of the protected party. They must also have no interest adverse to the person without capacity and they must also agree to pay any costs which the protected person might be required to pay.

When considering a financial settlement where a person lacks capacity then there will be additional considerations such as the need for increased income and capital to help cover carers' or residential care home fees.

The courts will look at what each individual has put into the marital pot and the length of the marriage as well as the needs of any dependants, but this typically means a 50/50 division of assets and wealth.

If the person with capacity doesn't want to end the marriage but simply wants to protect their assets then they could choose to apply for a judicial separation, which means a financial settlement can be achieved without the marriage ending in divorce. This does however mean that a complete clean break or financial deal which involves pensions cannot be achieved as only a divorce can do that.

Clearly a divorce at any age is difficult and issues around mental capacity which could begin before or during the process for one of the parties is beyond everyone's control. Finding a solution which sensitively takes each parties needs into account is important.

If you would like to discuss any aspect of separation, divorce or financial agreements please get in touch with our team.

For further information contact Sunita Chauhan
s.chauhan@gullands.com





Pictured left to right Catherine Lloyd, Pat Burke, and Blair Gulland.

Weald of Kent Prize Giving

One of the final highlights in the farming calendar each year here in Kent is the prize giving for the Weald of Kent Ploughing Match and Kent Hop and Beer competitions, which all takes place in November at Marden Cricket and Hockey Club.

Hops are particularly synonymous with Kent and Sussex and the 2021 competition saw around 80 hop samples from growers across the county, which filled the room with their incredible and very distinctive aroma.

Gullands' Partner Catherine Lloyd commented: "We were delighted to support the Weald of Kent Ploughing Match Association both in our attendance at the ploughing match last September and again in November; when the winners received their well-deserved trophies. It is always a very hospitable evening and the chance to chat to our friends in the farming community. We are looking forward to the 2022 match and again supporting the rural community."

All profits raised by the Weald of Kent Ploughing Match Association goes to charities in the Weald of Kent, which support the rural community. More details about the event and competitions can be found at www.wkpm.co.uk

Maidstone Monopoly



Maidstone Town Centre and a number of surrounding local landmarks have been immortalised in a special edition of the board game Monopoly and in December, we ran a special competition to give away three of the game sets to celebrate.

Whether stopping to buy the exclusive Leeds Castle or landing on more familiar landmarks such as the Archbishop's Palace, Maidstone

Museum, the Hazlitt Theatre, Gallagher Stadium, or the Maidstone Distillery, it is a fantastic way to introduce Monopoly fans to what Maidstone has to offer.

John Roberts comments: "There are many of us here at Gullands who will be enjoying playing this special edition game with our family and friends over the Christmas period and what a fantastic way to support our town centre landmarks and businesses and put Maidstone firmly back on the map as the county town of Kent. Congratulations to our competition winners and we hope you enjoy playing!"

Staff profile: Krishna Patel

Position: Associate Solicitor in the Private Client Department

Time at Gullands:

I began my journey with Gullands in August 2021.

Main responsibilities and duties:

Working with individuals and families, providing legal advice on a variety of matters such as investments, taxation, estate management, wills, and testamentary issues. My main objective is to provide advice, which will help preserve, build and maintain wealth and establish trusts.

Why did you decide to pursue a career in the legal sector:

Law is a field of study that profoundly impacts and pervades society and humanity. It has always captivated me to see the apparent relation law has to people and the world. Reading Law at University only reaffirmed my interest in a legal career. I find I thrive being in a position to help individuals. To me, the law is much wider than the principles and rules in a country; rather it is about morality and humanity. By pursuing a career in law I can pursue my ambition of assisting individuals in potentially some of the most difficult times of their lives.

What is the best part of the job:

The intellectual challenge is the most enjoyable aspect for me. Private client is a sector where both the law and the client's circumstances can be complex. The clients have a range of concerns and priorities and the key is in recognising that one size doesn't fit all. I find it gratifying to work closely with individuals to achieve an outcome that is tailored to suit their and their family's needs.

If you were not in this job, what would you be doing:

I would consider Journalism. Journalism again combines interview and investigatory skills through speaking with individuals but also keeps my real interest in being able to communicate people's stories and create meaningful impact and change.

What changes would you like to see happen in the law in the next 10-20 years:

As people are living longer but not always healthier, demand for private client services is increasing. The COVID-19 surge has focused clients' minds on the need to get their personal affairs in order concerning their wills, powers of attorney, and even succession planning. However, this also means that fee earners



like myself have had to resort to seeking instructions via online platforms (which is a welcomed and needed change) but it could lead to a rise in claims in the future where there is a concern instructions were not provided independently. I would like to see guidelines set in place to avoid any potential issue for this and I believe that the legal sector as a whole will need to consider robust IT systems to be implemented to avoid any cyber challenges.

What do you like doing in your spare time:

I love trying new foods and tasting diverse cuisines with my family and friends. So, most of my weekends are spent exploring new restaurants and socialising. Eventually, I hope to have tried every restaurant in London.

Charity football match



Congratulations to the Street Soccer Foundation on their charity football match which took place at the Gallagher Stadium Maidstone on Friday 17 December which we were delighted to support.

A number of players teamed up with celebrities including the former EastEnders actor Dean Gaffney and singer James Arthur who all played to raise funds for the Street Soccer Foundation.

The Street Soccer Foundation's mission is to help end youth homelessness through the power of football. It runs the Street Soccer Academy which provides a 10-week learning and personal development programme for 18-25 year olds, giving them professional football coaching, growth/positive mindset training and skills and employability workshops to help them move into work, education or further training.

www.streetsoccerfoundation.org.uk