# Technical CONNECTION

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## THE ELECTRONIC EXECUTION OF DOCUMENTS

As part of the programme of Law Reform in England and Wales, the Law Commission (LC) has been looking into certain areas of contract law, considering especially the so-called "smart contracts" and the use of technology. This included two aspects of the electronic execution of documents:

1. The use of electronic signatures to execute documents where there is a statutory requirement that a document must be “signed”.

2. The electronic execution of deeds, including the requirements of witnessing and attestation, and delivery.

Despite the various statutory provisions relating to electronic signatures, it seems that there is a lot of uncertainty about what is and what is not valid. By publishing its early findings the LC aims to remove the current uncertainty.

Unsurprisingly, the LC has confirmed that electronic signatures can be used to sign formal legal contracts under English law.

The LC then goes on to propose various steps to improve and simplify the law in this area (as well as bringing it into the 21st century) - this is the subject of the consultation launched on 21 August. The aim is to make signing formal documents more convenient, speed up transactions and get business booming, according to the statement from the LC.

The LC's proposals include the following:

(i) that electronic signatures could be witnessed via a webcam or video link instead of having someone physically present to witness a signature;

(ii) that there should be a move away from traditional witnessing in person to:

- a signing platform alone, where the signatory and witness are logged on to the same programme from different locations; or
- the ability of a person to "acknowledge" that they applied an electronic signature as a witness after the event;

(iii) there should be a further project on whether the concept of deeds is fit for purpose in the 21st century; and

(iv) the formation of a Government-backed industry working group to consider the ongoing practical issues around the use of electronic signatures and how these can be improved.

***COMMENT***

*Given that some of the law on the execution of documents goes back to the seventeenth century it is high time that reform should take place.*

*Those who are involved in the setting up of trusts for their clients will be especially aware of some of the difficulties involved in ensuring that a trust deed is validly executed and the problems arising when the requirements for a valid deed have not been complied with. The proposals to look at the law of deeds is therefore particularly welcome.*

*The deadline for responses to The Electronic Execution of Documents consultation is 23 November 2018.*

## THE FTT ALLOWS EXTRA-STATUTORY CONCESSION IN CGT MAIN RESIDENCE RELIEF CASE

In the recent case of McHugh v HMRC (2018 UKFTT 403 TC), the First-tier Tribunal were asked to consider the question of whether principal private residence relief from capital gains tax (CGT) should be given in respect of any part of a three-year period of ownership that preceded the taxpayer's occupation of the property.

Gains made on the sale of a taxpayer's main residence are usually exempt from CGT by virtue of principal private residence (PPR) relief. If, however, the taxpayer has not occupied the property as their main residence for the entire period of ownership, part of the gain may be subject to tax. In such cases, the gain is apportioned between periods of occupation and periods of non-occupation to determine how much of the gain should be relieved and what proportion should be chargeable. In this respect, certain periods of absence will qualify as 'deemed' periods of occupation despite the fact that the taxpayer may have lived elsewhere during that time. These deemed periods of occupation include (inter alia) the final 18 months of ownership.

In addition, there is an extra-statutory concession (ESC D49) which allows relief where there is a delay in taking up occupation after acquisition of the property/land either because a house is to be built on the acquired land, or the purchaser was either unable to sell their old home immediately or they needed to carry out renovation or refurbishment works to the new property before they could move in. The concession allows relief for a period of up to 12 months, although where there are good reasons for the period exceeding 12 months which are outside the individual's control the period may be extended to 24 months. If the build or renovation period exceeds 24 months, so that the taxpayer does not move into the property for more than 24 months after acquiring it, HMRC's CGT Manual states that no part of the extra-statutory concessionary period will be available to the taxpayer.

In the McHugh case, the taxpayers had acquired the land in 2004 to build themselves a new house. They occupied the new build as their principal private residence from the end of 2007 until they sold it in September 2010. As the period between their acquisition and their occupation of the property was more than 24 months, Mr and Mrs McHugh did not meet the published terms of the concession and HMRC determined that the part of the gain corresponding to the three-year period of non-occupation was therefore chargeable to CGT.

Mr and Mrs McHugh appealed to the First-tier Tribunal who ruled that HMRC's interpretation of ESC D49 was 'absurd and unfair', and although the tax officer had followed an example set out in its CGT Manual, this example was incorrect 'and should not be applied or followed'. Instead, in cases where a build or renovation takes longer than the 12 or 24-month period, as appropriate, the concessionary period should be limited to a maximum of 24 months – not disallowed altogether. Accordingly, the taxpayer's appeal was allowed and the chargeable period was reduced by 24 months.

*The FTT decision is surprising – not least because it has no jurisdiction to consider the application of extra-statutory concessions! If a taxpayer wishes to challenge HMRC's refusal to apply an extra-statutory concession, this must usually be done by way of judicial review proceedings. It will therefore be interesting to see whether HMRC amends its guidance on the application of the concession or appeal against the FTT decision.*

## INTEREST RATES - NS&I

NS&I have announced increases to some of their variable interest rate products.

The 0.25% Bank of England base rate increase on 2 August has provoked a disappointing response for savers from the banks and building societies. While announcements about increased variable mortgage rates came quickly, a press report suggested 75% of institutions had yet to make any announcement about savers' rates. Those that have posted increases have made sure to widen their margins by limiting the rises to under the full quarter per cent.

On 30 August National Savings & Investments (NS&I) announced it would be joining the meanies by only marginally increasing rates on three of its variable rate products from 1 October:

| Product | Current rate | New rate | Increase |
|---|---|---|---|
| Direct Saver | 0.95% gross/AER | 1.00% gross/AER | 0.05% |
| Investment Account | 0.70% gross/AER | 0.80% gross/AER | 0.10% |
| Income Bonds | 1.00% gross/AER | 1.15% gross/AER | 0.15% |

There are three interesting variable rate absentees from any change at NS&I:

- ***Premium Bonds*** The prize interest rate sticks at 1.40% and the winning monthly odds of 24,500:1 are also unchanged.

- ***Junior ISA*** The JISA's rate stays at 2.50%, the increased rate announced back in March.

- ***Direct ISA*** A 0.25% rate *cut* (to 0.75%), announced shortly before the Bank of England's hike and effective from 24 September, remains in place.

***COMMENT***

*We have remarked before that NS&I had their funding target cut for this year and these rate changes show they are keeping to target. The best instant access rates now in the market are around 1.3%.*

## PENSIONS OMBUDSMAN PUBLISHES CORPORATE PLAN FOR 2018-21

The Pensions Ombudsman Service has published its Corporate Plan for the years 2018 to 2021. The document sets out high level strategic aims and underlying key deliverables. The strategic aims are:

- Providing one centre for the resolution of workplace and personal pension complaints

- Supporting and influencing the pensions industry and the wider alternative dispute resolution sector to deliver effective dispute resolution

- Transforming and improving services and processes

Each of these is then broken down into commitments for the next three years and key deliverables needed to achieve this.

The plan also looks back at the current case load as well as the finances of the Ombudsman.

## COMMON TRAGEDY CLAUSE IN A WILL / CHARITABLE LEGACIES

The death of Richard Cousins, a 58-year-old widower who perished in a tragic seaplane accident on New Year's Eve 2017 along with his two sons, his fiancé and her young daughter, has brought the subject of wills and charitable legacies to the forefront of media and public attention.

Richard Cousins was head of the catering company, Compass, and during his lifetime accumulated a multi-million-pound fortune. It has been reported that he had intended to leave most of his wealth in trust for his two sons but, given they sadly died with him, the 'common tragedy clause' in his will came into play.

Under the terms of Mr Cousin's will, given he and his beneficiaries died at the same time or within close proximity of his death, his chosen charity, Oxfam, is to be the principal beneficiary of his estate. Without such a clause, in the event that all his intended beneficiaries died, his wealth would have been distributed in accordance with the intestacy rules.

It has been reported that Oxfam will receive a legacy of approximately £41m although the exact figure will not be known until probate has been obtained. Two brothers of Mr Cousins will each receive £1m.

It is clear Mr Cousins received sound professional advice at the time he made his will and whilst such unfortunate tragedies are rare, it is nevertheless important for people to consider all eventualities when deciding what they want to happen when they die.

A "common tragedy clause" is precisely that: it provides who should benefit from the estate if there is a common tragedy, i.e. should all the intended beneficiaries die with the testator or within a short time of each other. Given that family holidays are quite common, while such an occurrence is still very rare, these tragedies happen. It would be usual for such a clause to name the ultimate beneficiary as a charity or a number of charities.

***COMMENT***

*It is astonishing just how many people still die without having made a will or leaving a will that is years out of date (evidenced by the growing number of challenges under the Inheritance (Provision for Family and Dependants) Act 1975.*

*It is also rather sad that relatively few people leave charitable legacies in their wills. According to "Legacy Trends 2018", published by Smee & Ford, only 6.1% of the population leave a charitable gift in their will.*

*The publicity given to this case should offer an opportunity to discuss will provisions/will reviews with clients. It is unfortunately a fact of life that many people still prefer not to think about what would happen if they were to die tomorrow. Remember therefore that it is preferable to ask people to imagine that they had died yesterday - they know they did not die yesterday so the thought process is less frightening. A little psychology may go a long way.*

## MEETING THE COSTS OF CARE USING ISAs

It is estimated that in 2020/21 there will be a £5.5 billion funding gap in the costs of social care. This is set to rise to £12 billion by 2030. Meeting the potential huge future costs of care is therefore a massive headache for the Government.  Originally, they were planning to release their proposals on dealing with this problem in the Summer, but this has been delayed to the Autumn.

It has been reported in the Sunday Telegraph that in its upcoming Social Care Green Paper the Government is planning to introduce a “Care ISA” as a means of dealing with the problem.

An investor could make encashments from a Care ISA to meet their care costs. Any residual value in the ISA would be free of inheritance tax on death.

Currently, the value of an ISA on death counts as part of the deceased investor’s estate and could be subject to inheritance tax if the estate:

- passes to somebody other than the surviving spouse/civil partner or a charity; and
- exceeds £325,000 in value.

Of course, ISAs that invest in AIM securities may qualify for 100% IHT business relief once they have been held for two years.

A surviving spouse/civil partner benefits from an extra ISA allowance equal to the value of the deceased partner's ISA on death.

***COMMENT***

*The introduction of a Care ISA is just one of the possible solutions available to the Government. Another would be to grant tax freedom on funds withdrawn from pension funds that are used to meet the cost of an individual's care.*

*The introduction of the Care ISA would nonetheless be a good way of encouraging people to make investments that would cover the costs of their care. It would also mean that the Government could reduce the need to raise taxes to meet the costs of care.*

*However, care costs are largely an unknown quantity and it may therefore be difficult for savers to estimate how much to set aside. Restrictions would also be needed to prevent people using the Care ISA as a form of last-minute IHT planning.*

*All will be revealed when the Green Paper is published.*

## TPR AND FCA LAUNCH A CAMPAIGN TO COMBAT PENSION SCAMS

Following a poll run by YouGov Plc a campaign has been launched by TPR and the FCA targeting those aged 45 to 65. This age group is deemed the most at risk from pension scams. The advertising campaign is called SmartScam and shows the contrast between the impact on the victims of pension scams and the lifestyles enjoyed at their expense by the criminals.

The poll revealed:

- Almost a third (32%) of pension holders aged 45 to 65 would not know how to check whether they are speaking with a legitimate pensions adviser or provider.

- Victims of pension scammers lost an average of £91,000 each in 2017.

- One in eight 45-65-year-olds surveyed (12%) said they would trust an offer of a 'free pension review' from someone claiming to be a pension adviser.

The TPR and FCA are urging the public to be ScamSmart with their pension and always check who they are dealing with. The regulators recommend four simple steps to protect against pension scams:

1. Reject unexpected pension offers whether made online, on social media or over the phone.

2. Check who you're dealing with before changing your pension arrangements. Check the FCA Register or call the FCA contact centre on 0800 111 6768 to see if the firm you are dealing with is authorised by the FCA.

3. Don't be rushed or pressured into making any decision about your pension.

4. Consider getting impartial information and advice.

## INHERITANCE TAX INTEREST RATES

HMRC has published updated interest rates for inheritance tax. As of 21 August 2018, the interest rate on late payments of inheritance tax has increased from 3% to 3.25%, and the interest rate on inheritance tax overpayments has increased from 0.5% to 0.75%.

Where inheritance tax is paid in instalments, interest will not be charged on the first instalment unless it is paid late. On each later instalment interest must be paid on both of the following:

- the full outstanding tax balance;
- the instalment itself, from the date it's due to the date of payment (if it's paid late).

The first instalment is due at the end of the sixth month after the date of death (for example if the deceased died on 12 January, the first instalment would be due by 31 July). This is the due date and payments are then due every year on that date.

***COMMENT***

*HMRC also previously announced that it was raising interest rates by 0.25% for late payments of income tax, National Insurance, capital gain tax, stamp duty land tax, stamp duty and stamp duty reserve tax, but not increasing repayment interest rates for these taxes.*

## NEW FUEL RATES FOR COMPANY CARS

HMRC has announced the new fuel rates for company cars applicable to all journeys from 1 September 2018 until further notice.

The rates per mile are based on fuel prices and adjusted miles per gallon figures.

For one month from the date of the change, employers may use either the previous or the latest rates. They may make or require supplementary payments, but are under no obligation to do either. Hybrid cars are treated as either petrol or diesel cars for this purpose.

**Rates from 1 September 2018:**

| **Engine size** | **Petrol** | **LPG** | **Engine size** | **Diesel** |
|---|---|---|---|---|
| 1,400 cc or less | 12p | 7p | 1,600 or less | 10p |
| 1,401cc to 2,000cc | 15p | 9p | 1,601cc to 2,000cc | 12p |
| Over 2,000cc | 22p | 13p | Over 2,000cc | 13p |

## NEW VENTURE CAPITAL RELIEFS BECOME LAW

A number of changes were announced in the 2017 Autumn Budget in relation to three venture capital reliefs - Enterprise Investment (EIS), Venture Capital Trust (VCT) and Seed Enterprise Investment (SEIS) schemes. The required regulations have now been made, officially bringing the following changes into force:

- **Risk to capital** - new rules intended to ensure that tax reliefs for EIS, VCT and SEIS businesses flow to risk-taking businesses and not those focused on delivering predominantly tax-motivated returns, apply to shares or securities issued on or after 15 March 2018.

  These rules apply a new condition to the EIS, VCT and SEIS rules to exclude investments where the tax relief provides most of the return for an investor with limited risk to the original investment (that is, preserving an investor's capital).

- **Knowledge-intensive companies (KICs)** – enhanced relief limits for KICs apply for shares issued, and investments made, on or after 6 April 2018, including:

  – the doubling of the amount that can be invested by individuals through EIS, from £1 million to £2 million; and

  – an increase in the amount that can be invested in total in KICs, through EIS or VCT, from £5 million to £10 million.

  The enhanced £2 million investment limit applies where the amount, or the sum of the amounts, subscribed for qualifying shares that are KIC shares is £1 million or more. Otherwise, it is £1 million plus the amount, or the sum of the amounts, subscribed for qualifying shares that are KIC shares.

- **Various provisions in relation to VCTs, including where a VCT makes a further issue of shares after its first issue** – a VCT must invest at least 30% of the money raised by the further issue within 12 months of the end of the accounting period in which the further issue was made. This applies in relation to such a share issue made in an accounting period beginning on or after 6 April 2018.

## INCOME WITHDRAWAL RATE FOR SEPTEMBER 2018

The appropriate gilt yield, used to determine the 'relevant annuity rate' from HMRC's tables for an adult member commencing income withdrawals (or reaching an income withdrawal review date), in September 2018 is 1.5%.