GUIDE

THE COMPLETE GUIDE TO ESTATE PLANNING

Helping you to control what happens to your estate after you pass away.

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TOO IMPORTANT TO PUT ON HOLD

It's understandable to want to postpone estate planning until later in life. It requires you to consider what will happen when you pass away, rather than planning for the here and now.

Estate planning is often put off or even forgotten about, but leaving things too late can result in surprising or unwanted consequences for your loved ones. This guide will help you to prepare an effective plan to control what happens to your estate when you are no longer here.

Please note that all examples included in this guide are fictitious.

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THE BENEFITS OF PLANNING EARLY

Think what can be achieved by arranging your estate planning now.

There are many advantages to starting your estate planning as early as possible. This is what you can accomplish by choosing to manage your estate planning now:

- **You decide on your beneficiaries**
  If you do not set out in a Will whom you wish to benefit from your estate, then the state will do it for you. The results are not always what you would expect and can create unnecessary tax liabilities.
- **You decide what goes to whom**
  You might want to be more particular about who receives what from your estate. Without estate planning, those wishes are not always carried out.
- **You decide the structure**
  If you leave it to the state to distribute your wealth, normally anyone aged 18 or over will receive their inheritance outright. In some families that will not be an issue, but in others placing some constraints on how an inheritance is handled could be essential.

Organising all of the above can give you peace of mind that your estate will fall into the right hands when you pass away. Like all other aspects of financial planning, regular reviews with a legal professional are essential to ensure everything is up to date as circumstances can change.

YOUR WILL

Failure to prepare a Will means your estate will fall under the rules of intestacy. This default can produce some surprising and unwelcome results.

It is vital to keep your Will up to date. Family circumstances can constantly shift and the plans you had for your estate a decade ago may no longer be relevant in regards to your present family structure. Tax legislation is also a changeable area which needs routine review. It's important to remember that if you get married, you'll experience the automatic revocation of any existing Will.

Divorce on the other hand, does not have the same effect. It does however mean that the former spouse or civil partner is treated as having died when your marriage or civil partnership was dissolved, so if they receive all or part of your estate under your Will, they will no longer do so.

What should be included in your Will?
Here we outline the three principal parts:

1. **Executors and funeral wishes**
   You will need to appoint executors of your Will. We recommend at least two, as this may not be an ideal responsibility for a spouse or partner to handle alone considering bereavement and how this might affect their ability to execute your estate accordingly. The role of an executor is fundamental in your estate planning and certainly not a choice you should rush.

   You can also include funeral arrangements such as whether you want to be buried or cremated, and perhaps where your ashes should be scattered for example. This is something you may feel appropriate to discuss with your executors in addition to written wishes for your funeral arrangements.

2. **Distribution**
   This central part of the Will sets out the 'who, what, when and how' of the overall inheritance and includes specific legacies of cash and/or particular assets to named individuals or charities.

Outstanding liabilities, funeral costs and other debts will usually be met from the remainder of your estate after the payment of any cash or specific legacies. What is left (the 'residue') will ordinarily form the weight of your estate. You may want to leave this all to one particular beneficiary, or share parts amongst your loved ones, divided however you see fit.

The residue

Dealing with the residue will usually be where the questions of 'when' and 'how' are addressed:

- We would always recommend a trust for any beneficiaries who are children or young adults - seeking professional advice around this is wise. It may be irresponsible to provide an 18-year old with a substantial fortune with no restrictions for example, so some forward planning here is advised.

- You may want a surviving husband/wife or civil partner to receive the income from your estate, but on their death, you may prefer any capital to pass to your children. Again, a Trust can achieve this.

- In some instances, it may be best to leave the decision on the distribution of the residue to your immediate family or close friends who can act as trustees. Your Will would name the potential beneficiaries and a letter of wishes would provide guidance to them as to how you would like your estate to be distributed.

As your trustees have the final decision, they will be able to take account of the circumstances upon your death, such as the tax rules and the personal circumstances of the beneficiaries.

3. **Executor/trustee powers**
   In the final part of your Will you should identify the powers of your executors and trustees. You can provide further details on their flexibility of operation.

Your Will is unique to you and can be as simple or as complex as you wish. Some DIY Wills are available and many people utilise templates and forms and online Will writing services. It is always advisable to have your Will prepared or reviewed by a solicitor.

An error in a poorly drafted Will may only emerge after it is too late for you to make any changes and could result in your estate being distributed contrary to your wishes.

If you have an existing Will, it is essential to review this regularly. Consider whether your Will reflects your current wishes and circumstances.

A word about probate

In many instances, a grant of representation (most commonly, a grant of probate) needs to be obtained before any of your executors can collect in the assets and distribute your estate in accordance with your Will.

This typically involves collating information about the assets and liabilities of the estate, calculating any Inheritance Tax which may be due and preparing an Inheritance Tax return and probate application.

Regulations that took effect on 1 January 2022 have substantially reduced estate reporting requirements where no Inheritance Tax is payable on an estate, for example when everything passes to a surviving spouse on first death. The exempt excepted estates category limit was increased from £1 million to £3 million.

Regardless of this, the Inheritance Tax and probate rules are complex and there can be a considerable amount of work involved whether the estate is taxable or not. A solicitor can help ease the burden of this at what is likely to be a difficult time. There are different legal processes in England and Wales, Scotland and Northern Ireland and in addition to any legal fees there is usually a government probate fee. In England and Wales, the probate fee for estates of £5,000 and over is £300.

In Scotland, you need to apply for letters of confirmation in the Sheriff's court and submit an inventory to release money and property. There is a scale of charges based on the value of the estate.

In Northern Ireland, you need to apply for a grant of probate or where there is no will, letters of administration from the Probate Registry. The cost for estates worth over £10,000 is £284 with an additional £71 fee for a personal application.

Probate without a Will

Anything you jointly own with someone else, regardless of a having Will in place, will pass onto the other joint owner(s) upon your death. There is an exception to this when you own property as tenants in common.

Example – The unwelcome intestacy surprise

Stanley and Anna had been married for over 30 years when Stanley died in a fishing accident in Scotland in late July 2023. He had made no Will, but both he and Anna assumed everything would be left to her, as a childless widow. The family home does indeed pass to Anna because it was owned jointly (as joint tenants), but Stanley's £900,000 personal estate (plus personal chattels) are being dealt with under intestacy.

Although he died in Scotland, the English intestacy laws applied as his home and roots were in Kent rather than Kirkcudbrightshire. As such:

- Anna will receive £322,000 outright and Stanley's personal chattels.
- Anna is also entitled to half of the remaining estate (i.e. £289,000).
- The other £289,000 will pass to Jamie, the 37-year-old 'permanent student' son from Stanley's first brief marriage in the mid-1980s.

If you die without having a valid Will, the laws of intestacy apply. These differ depending on the part of the UK in which you are domiciled – which may not necessarily be the same as the country where you are living when you die.

Intestacy rules often produce unexpected results. For example, the surviving husband/wife or civil partner will not necessarily receive everything, as the example above shows. Unscrambling the unfortunate effects of intestacy may be possible using a legal document called a deed of variation, but it requires the agreement of some parties to give up all or part of their benefits. They may be legally unable to do so because they are minors, or they may be adults who are unwilling to do so – like Jamie in the example above. There could be similar difficulties with attempts to rectify Wills after a death; unfortunately, family ties may not count for much when money is involved.

POWERS OF ATTORNEY

Whenever you make or amend your Will, it's sensible to put in place a Power of Attorney. In England and Wales there are two types of lasting Power of Attorney (LPA), both of which let you appoint one or more people to make decisions on your behalf.

- **Health and welfare LPA.** This covers decisions about areas such as:
  - your daily routine (e.g. eating, washing, dressing);
  - the provision of medical care;
  - if you should move into residential or nursing care;
  - whether life-sustaining treatment should be refused.

  This LPA can only be used in the event that you lack capacity to make decisions for yourself.

- **Property and financial affairs LPA.** This covers your finances, handling areas such as:
  - paying your bills;
  - collecting your benefits;
  - sorting out your tax affairs;
  - managing your bank accounts and investments;
  - selling your home.

You can opt for this LPA to be used both whilst you have capacity and in the event that you lose capacity. If you opt for the document to be used whilst you have capacity this enables your attorneys to act on your behalf in situations where you are still mentally capable but unable to physically sign documents (for example if you are out of the country or in hospital). Whilst you have capacity, the LPA cannot be used freely – it should only be used by your attorneys on your specific instruction. Property and finance LPAs replaced the old enduring Power of Attorney (EPA) in October 2007. EPAs established before the changeover are still valid, regardless of whether they have been registered, however it is always sensible to review these with a lawyer to ensure they are valid and accurately reflect your wishes, as there are some circumstances where it might be beneficial to replace an EPA with an LPA.

In Scotland, there are three types of Power of Attorney (PoA) which must be registered with the Scottish Office of the Public Guardian:

- A continuing PoA covers your financial and or property affairs.
- A welfare PoA for decisions around your health and welfare which can only be used once you have lost capacity to make those decisions.
- A combined PoA which includes provisions of both other types and is the most common.

In Northern Ireland, you can set up two types of PoA:

- An **ordinary** or **general** PoA to look after your financial affairs if you are temporarily ill, in an accident or going abroad for a long period of time. This is rendered void if you become mentally incapacitated.
- An **enduring** Power of Attorney (EPA) allows your appointed representative to act on your behalf should you become incapable when your attorney(s) must apply to register the EPA with the High Court (Office of Care and Protection) for it to become effective. This can cover both financial and welfare issues or come into effect in specific instances, for example if you become physically disabled but remain mentally capable.

Arranging a Power of Attorney is an essential part of estate planning and is peace of mind for you and your loved ones that your affairs can be handled efficiently if you are unable to make decisions for yourself later in life.

If you lose capacity without a Lasting or Enduring Power of Attorney in place, someone will need to apply to the Court of Protection to be appointed as your deputy. You will lose control over who is chosen to manage your affairs and the process is expensive and time-consuming and can result in delays in accessing funds to pay bills or care fees.

A deputy is required to submit annual reports and pay an annual supervision an insurance fee.

HOW INHERITANCE TAX WORKS

You should consider the impact of Inheritance Tax (IHT). Very broadly speaking, IHT is levied on your estate at death and on certain gifts made during your lifetime.

Currently the tax rate at death is normally 40%. However, everyone has a nil rate band (frozen at £325,000 until at least April 2030) and, to the extent that this has not been set against the total value of lifetime gifts in the preceding seven years, it is available on death.

The table below shows the effective rate of tax on an estate of a single person, assuming no reliefs and exemptions are available, but they qualify for a full nil rate band at death:

- **Making an outright lifetime gift –** no matter the size, there is no IHT to pay initially unless you were to die within the seven-year period after gifting. If that did happen the value of that gift is brought back into your overall estate. This is often known as the seven-year rule.
- **Other lifetime gifts that you do not make outright –** notably gifts into most types of Trust may attract lifetime IHT. This is at a lifetime rate of 20% - only on exceeding your available nil rate band and any of the exemptions.

The IHT burden

Total estate	Inheritance Tax payable	Effective rate on estate
£400,000	£30,000	7.5%
£500,000	£70,000	14.0%
£600,000	£110,000	18.3%
£750,000	£170,000	22.7%
£1,000,000	£270,000	27.0%
£1,500,000	£470,000	31.3%
£2,500,000	£870,000	34.8%

The Inheritance Tax regime

This brief description is an extreme simplification of the current IHT regime. The rules include:

Transfers

Transfers between spouses and civil partners
These are exempt from IHT, provided the recipient is domiciled in the UK. Non-domiciled aspects are beyond the scope of this guide.

The transferable nil rate band
To the extent that one spouse or civil partner does not use their full nil rate band at death, it is transferable to the survivor's estate. The precise rules are complex, but the effective result is that a couple currently has a combined nil rate band of up to £650,000 (£325,000 x 2). The transferability means that there is no need to ensure that the first of a couple to die uses their nil rate band, as was once the case. However, the transfer must be claimed in the estate IHT return – it is not given automatically.

Residence nil rate band
An additional nil rate band can be set against the value of your home where it is left to a direct descendant. The band is £175,000 for 2024/25 and will remain at that level until at least the end of 2029/30. Like the nil rate band, any unused portion is transferable between spouses and civil partners (on claim), but unlike the nil rate band it is subject to a 50% taper if your estate is worth more than £2 million (also frozen until the end of 2029/30).

As a consequence there is no RNRB available if the deceased holds assets of more than £2.35 million at the date of death (£2.70 million where a full RNRB is transferred from a deceased spouse). Special rules deal with downsizing or selling up completely (e.g. on moving into a care home).

Example – The residence nil rate band in practice

James and Jennifer each had an estate of £1.2 million when James died in November 2024. His will left everything to Jennifer, who died four months later. Thus, she inherited 100% of James' nil rate band and, as his estate was under £2 million, 100% of his residence nil rate band (of £175,000).

However, on Jennifer's death her estate was worth £2.4 million, which brought the tapering rule into play. Instead of having a total residence nil rate band of £350,000 (2 x £175,000), the amount available to her estate was reduced by £200,000 (£400,000/2) to just £150,000.

If James had used his £325,000 nil rate band on first death to make gifts to beneficiaries other than Jennifer, there would still have been no IHT on his death, but Jennifer's estate would have been correspondingly smaller after her death. As a result, the available residence nil rate band would have been £312,500 (£350,000 – £75,000/2).

Gifts

The three exemptions work on a tax-year basis:

- The most widely known is the £3,000 annual exemption, which can cover any type of lifetime gift, in whole or in part.
- The small gifts exemption covers any number of outright gifts of up to £250 per person – useful if you have plenty of grandchildren.
- The least well-known is the normal expenditure gift. Regular gifts are exempt from IHT if you make them out of your income and they do not reduce your standard of living.

Charities, etc. Gifts and bequests to UK charities, political parties and for the public benefit are exempt from IHT. There is an extra benefit of charitable bequests whereby they can reduce the IHT tax rate on your estate to 36%, provided that at least 10% of your net estate is left to charity on your death.

Wedding gifts Wedding gifts are exempt, but subject to very modest limits (no more than £5,000) based on the relationship between the donor and the bride/groom.

Pensions

Pensions are currently usually excluded from the estate value for IHT purposes.

Upcoming changes to these rules were announced in the 2024 Autumn Budget and it is anticipated that unused pension funds and death benefits payable from a pension will be brought into a person's estate for IHT purposes from 6 April 2027.

Example – Using the normal expenditure rules

Joanne inherited her late husband Henry's investment portfolio, but not his fondness for fast cars and fine wine. She was saving, on average, £2,500 a month from her income. In addition, £6,000 a year was rolling up in the ISAs that she had inherited from Henry. She did not need this surplus income but was reluctant to give away the underlying capital in case it was needed to cover nursing home fees. She therefore chose to give her three children £12,000 a year each as birthday presents. The total annual gift of £36,000 matched her excess income and the gifts were therefore exempt from Inheritance Tax. To help her executors, Joanne made sure she kept note of her income and expenditure, providing proof that she did not need the cash she was gifting.

Reliefs

Business and agricultural reliefs

Businesses and agricultural property can benefit from generous IHT reliefs, provided certain conditions are met:

- 100% relief is currently given for shares in unlisted trading companies (including some of those listed on the Alternative Investment Market (AIM)), sole trader or partnership business interests, owner-occupied farms and tenanted farms where the lease started after 31 August 1995. However, from April 2026:
  - Only the first £1 million of combined agricultural and business property will be eligible for 100%, with the balance attracting 50% relief
  - 50% relief will apply to AIM shares
- 50% relief applies to property and other assets owned by an individual and used by a trading company that they control, or by a partnership in which they are a partner. The 50% relief also applies to tenanted farmland where the lease started before 1 September 1995. This relief will continue unaffected by the introduction of the £1 million allowance for 100% relief.

Taper relief – the seven-year rule was mentioned previously in this guide, this is the amount of tax payable at death on a gift that was made within the previous seven years and is subject to a sliding scale.

Years between gift and death	Rate of tax on the gift
3 to 4 years	32%
4 to 5 years	24%
5 to 6 years	16%
6 to 7 years	8%
7 or more	0%

Source: gov.uk

To clarify, the taper applies to the amount of tax, not the value of the gift. Therefore, a gift that attracts no tax cannot benefit from taper relief but is treated as part of your estate at death.

It is a common misconception that taper relief applies to all gifts, but it is only available on gifts that exceed the nil-rate band. For example, if a gift of £425,000 was made in the 5-6 years before death, only £100,000 of this gift would come back into charge as the nil-rate band would first be offset against the gift. The rate of IHT applying taper relief would be 16% on the £100,000. Nonetheless, taper relief can be a very valuable relief, particularly on large gifts.

Giving away the family home

You may have considered giving away your home to your children or other loved ones to reduce the value of your estate but this is not usually advisable or effective for IHT planning. Tax avoidance legislation has steadily increased over the years and the 'gift with reservation' rules would prevent you making any IHT savings by putting your home in your children's names and then continuing to live there rent-free.

MAKING YOUR PLAN

Achieving your estate planning goals and minimising the impact of IHT will involve a range of actions, starting with making the all-important Will and also potentially including:

- **The use of lifetime trusts**
  Trusts can be set up during your lifetime for estate planning purposes and to reduce the value of your estate for IHT purposes. For example, a lifetime trust could be used to set aside funds to meet the costs of educating grandchildren.

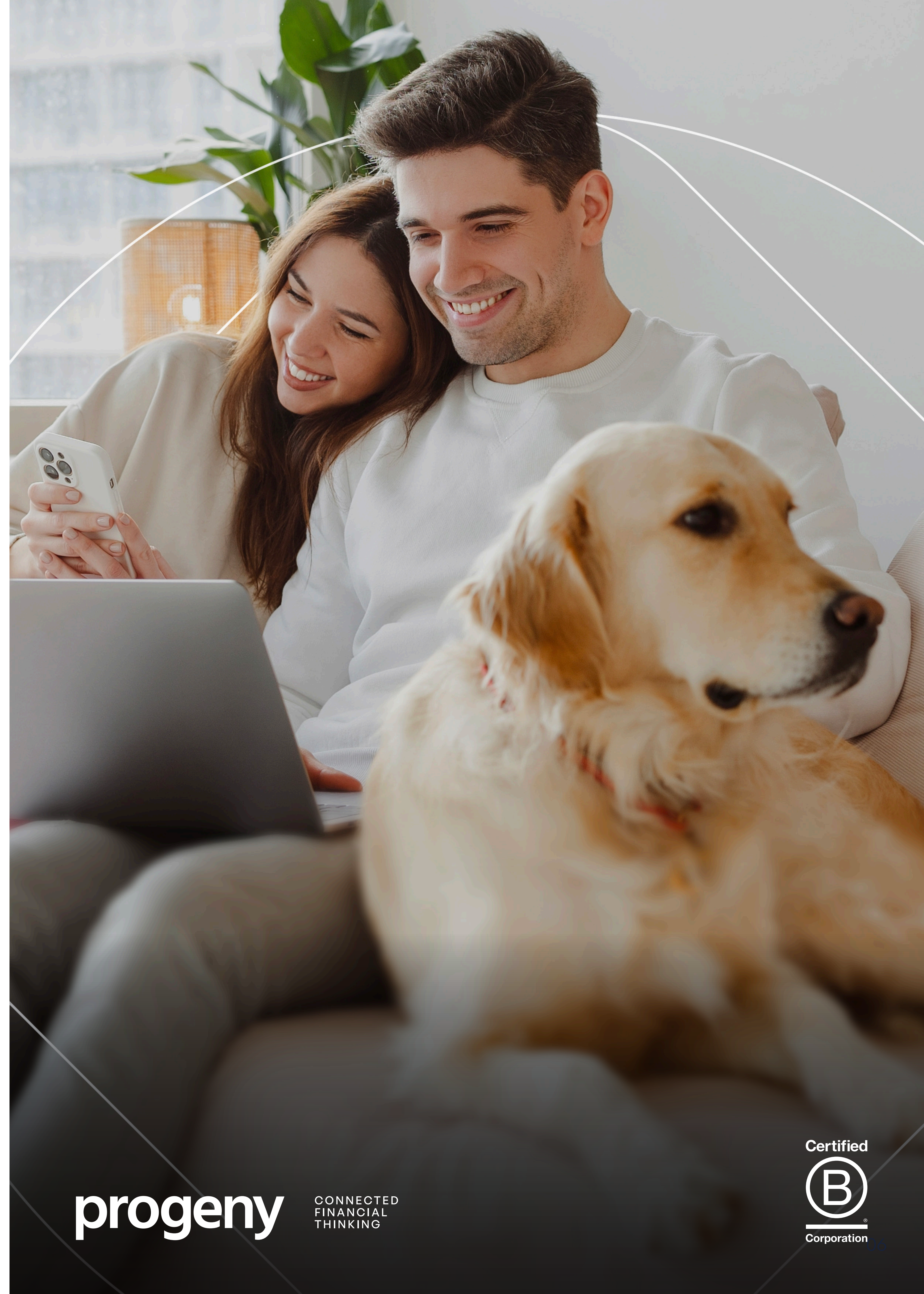
- **Lifetime gifts**
  Gifts made outright that are not included in any other exemptions and more than seven years before death. You may be reluctant to utilise this valuable form of IHT planning in case of possible financial struggles in the future, however, the tools of financial planning can help alleviate these concerns.

- **Maximising allowances, reliefs and exemptions**
  Always utilise the IHT exemptions, particularly the normal expenditure gift rule if you have (or can generate) surplus income. Business owners and farm owners should take advantage of their IHT reliefs also. You can also utilise reliefs by holding certain types of investment for at least two years; these include some (but not all) AIM shares, which can be held within ISAs.

- **Pension planning**
  This should be brought into the fold of your IHT planning and will be particularly important for many individuals in light of the proposed IHT changes to pensions in 2027.

- **Life assurance**
  For bigger estates, IHT will be due on the estate at death. For married couples and civil partners, that IHT bill usually arises on second death, as it isn't conducive to incur an IHT charge any earlier. Life assurance can provide for this in a way that does not increase the size of your estate and will take advantage of your annual exemptions.

Your beneficiaries may be able to redirect your estates after your death by putting in place a Deed of Variation. This can be a valuable planning tool in minimising IHT, however there is no guarantee that the law will continue to allow deeds of variation indefinitely. Effective estate planning during your lifetime can not only minimise IHT but also alleviate the burden of administrating your estate for your loved ones.



HOW WE CAN HELP

We can help with your estate planning and IHT planning in several ways:

- Assisting you in putting in place Wills to best suit your circumstances, protect your loved ones and minimise IHT.
- Assisting you in putting in place Lasting Powers of Attorney to ensure the right people are managing your affairs if you are unable to.
- Advising you on your current IHT position.
- Advising on the various tax implications involved in lifetime gifts.
- Reviewing your pension provision and suggesting ways to improve its role in your estate planning.
- Arranging investments and life assurance to help reduce or fund IHT.
- Keeping you updated on any Budget changes.
- Helping you understand how trusts work.
- Keeping you advised on how any new legislation could affect your estate planning.

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The Alternative Investment Market (AIM) invests in assets that are high risk and can be difficult to sell.

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