

A warm welcome from us all at Mackinnons to our latest offering of the Highlight magazine.

On this occasion, the issue coincides with the 2015 Skipper Expo in Aberdeen and focuses very much on issues which we hope will be of interest to our broad range of Fishing Industry clients.

As always given that broad range, the mood in the Industry is not universally positive but by in large the opening of the 2015 Expo will see most in good heart – as evidenced by the bulging order books of Shipyards here and abroad not seen since the last building boom of the late 1990s.

Undoubtedly this will add a considerable “buzz” to the Expo and we are all looking forward to meeting old friends and new.

Best Wishes

Graham Jones, Partner
graham@mackinnons.com



We will be at
the Skipper Expo
on 29th – 30th
May 2015.

Please come and visit us at
– STAND 98 –

In this issue...

Ordering a New Build?

Enforcement of the Landing Obligation

Reform of Civil Justice

Shared Parental Leave

Local Property Review

ISSUE
07

Ordering a New Build?

The ordering of a new build vessel is an aspiration for many fishermen and can represent the most expensive purchase they will ever make. It is therefore important that like the ship, the contract entered into for the transaction is absolutely watertight.

Important issues have to be addressed. For example, what will happen if the builder gets into financial difficulty and cannot complete the vessel? Will the buyer's instalments be secured by a refund guarantee issued by the builder's bank so that these are repaid on demand in such an event? Will the buyer have an ownership right to the partly constructed hull? And what happens to materials approved by the buyer for the ship but not yet incorporated into it?

Angus Easton - Solicitor

The contract documentation must deal with these matters and clearly set out the intention of the buyer and builder. For instance, if ownership of materials is to pass to the buyer before completion, unambiguous language should be used, specifically stating the stages and requirements of appropriation.

Other issues also arise. The builder may wish price escalation clauses to be included in the contract, by which any extra expenses incurred by the builder as a result of increases in the cost of labour and materials or changes to the vessel specification requested by the buyer are passed on. For those representing the buyer's interest, careful drafting of such clauses is necessary. Their width must be restricted with clear words designating cut-off points.

In the course of the build, events beyond the builder's control may occur causing a delay in the delivery of the vessel, for example fire, extraordinary weather conditions and energy

shortages. Consequently, the builder will wish to limit his liability for any such delay by virtue of an exclusion clause in the contract. This is understandable, but a prudent buyer will have the right to elect to cancel the contract if the delay exceeds a certain period.

Other matters which the contract should agree are the scope of sea trials, responsibility for the rectification of defects and the buyer's right to request particular sub-contractors for the design, manufacture or supply of any equipment or services for the vessel / build.

These are just some of the considerations which have to be borne in mind when entering into a shipbuilding contract. If you have any queries in this regard and wish to take advice, please contact either Graham Jones or Angus Easton.

The Enforcement of the Landing Obligation Under the Common Fisheries Policy

When the Common Fisheries Policy (CFP) was being debated prior to its coming into force on 1st January 2014, discards were a hot topic. The gradual adoption of the landing obligation (or discard ban as it is also known) into the European fishing fleet under the CFP commenced with the pelagic fisheries on 1 January 2015 and shall continue with the demersal fisheries in 2016.

Under these new rules, it is illegal, subject to specific exemptions and catch limits, for commercial fishing vessels to discard catches of any quota species. All catches of quota species must be 'recorded, landed and counted' against quota and any evidence of illegal discarding shall be treated as a breach of fisheries legislation.

Although the landing obligation does not apply to non-quota species and they can be returned to the sea, minimum landing sizes are being abolished. Any quota species caught that fall below the minimum size must still be landed and counted against quota. Due to their size however, these fish cannot be used for direct human consumption and must instead be used for bait, fish meal, pet food, pharmaceuticals or cosmetics, which is a more restricted market.

The obligation is far reaching in a geographical sense. The obligation applies to fish caught in EU waters or by an EU fishing vessel out with EU waters which is not subject to another country's jurisdiction.

There are of course exemptions from the landing obligation; (i) any species for which there is scientific evidence indicating a high survivability rate when returned to the sea; (ii) catches falling under the de minimus exemptions; and (iii) interspecies flexibility, which may permit quota from one species to be converted into

another. Marine Scotland guidance provided for the pelagic fisheries indicates there can also be force majeure events that are beyond the control of the skipper and vessel which could prevent compliance with the landing obligation. Regardless of the exemption or force majeure event, this should be recorded appropriately and evidence maintained for inspection when the vessel returns to port.

It is inevitable that there will be changes to the quota management system, for example buying, selling and leasing of quota units to ensure that vessels and Producer Organisations secure enough quota to cover over catches which have resulted from the implementation of the landing obligation.

As with any new rules in the fishing industry, it will take time for skippers and vessels to gain more experience and knowledge of the practicalities and effects of the landing obligation. Since its introduction, there have already been discussions about the landing obligation from an economic and practical point of view. In the last month there have been amendments proposed in a bid to overcome some of the concerns. For example, sanctions for non-compliance shall be delayed for a period of two years to enable fishermen to fully understand and implement the obligation on a practical level and smaller fishermen shall not be obliged to record catches in their logbook unless

such catches exceed 50kg. Although informally approved among MEP's, these proposed amendments are still to be formally approved.

Kirstin Ejsmont - Solicitor

Single Most Important Reform of Civil Justice for a Century

The Courts Reform (Scotland) Act 2004 comes into effect in September 2015. The Lord President has described the legislation as “bringing the modern world into the court system”.

Key reforms include:-

- An exclusive jurisdiction for Sheriff Courts to deal with claims of £100,000 or below.
- A new simplified procedure for claims below £5,000.
- A personal injury court in Edinburgh.
- The creation of a new breed of Summary Sheriff.
- A new Sheriff Appeal Court.
- The allowance of judicial review proceedings in the Sheriff Court.

For those who have been involved in civil litigation within recent years, the imbalance of claims proceeding through the Court of Session, rather than the Sheriff Court has been striking. The cost of litigation in the Court of Session, as the highest court in the land, has often been a factor utilised by claimants to bring Defenders to settlement.

Low value personal injury claims will no longer automatically qualify for the employment of Advocates to conduct such claims.

Increasing the exclusive jurisdiction of Sheriffs to hear cases valid at up to £100,000 is to be welcomed by both practitioners and the judiciary alike since it should result in a considerable shift of cases from the Court of Session back to local Sheriff Courts once again.

To mitigate the effect of such transfer, personal injury claims will be capable of being heard in a new specialised court in Edinburgh and new Summary Sheriffs will be appointed to hear lower valued claims which have previously taken up a large proportion of a Sheriff's workload. These Summary Sheriffs will be flexible in response to demand by being available to firefight delays and travel to various courts possibly even in the same day.

Cumulatively, these changes are aimed to create a more efficient and flexible justice system.

Challenges against administrative decisions (Judicial Review), previously exclusive to the Court of Session will now be relaxed and extended to the Sheriff Court and subject to tighter time limits.

Similarly, the previous automatic right of appeal from the Sheriff Court to the Court of Session will be removed by the creation of a Sheriff Appeal Court.

Some critics will point to the closure of various rural courts as a basis for placing undue pressure on the Sheriff Court system, but the availability of more local access to justice is to be welcomed.

Whilst the introduction of these various changes will be staged, there is no doubt that they represent exciting times and it is to be hoped that the public will see benefits both in time and cost when now proceeding with civil litigation.



Martin Sinclair - Partner

April bid a full welcome to “Shared Parental Leave”, but will it make a splash?

The long awaited Shared Parental Leave scheme is now in operation, applying to all children born, or placed for adoption, on or after 5th April 2015. The aim of the scheme is to encourage parents to share the initial child care responsibilities of new children. The scheme replaces additional paternity leave, which will cease to operate from April 2016 as it now only applies to children born or adopted on or before 4th April 2015.

Opting in to Shared Parental Leave allows mothers to end their maternity leave, and maternity pay, early and convert the remaining part(s) to shared parental leave/pay. Eligible employees will still be able to take 2 weeks paternity leave following the birth/placement of a child and there will remain 2 weeks of compulsory maternity leave, but the remaining 50 weeks of maternity leave and 37 weeks of maternity pay may be converted to shared parental leave/pay and will be available for both parents to share, either concurrently or consecutively, subject to eligibility requirements.

The eligibility requirements for shared parental leave and shared parental pay differ. However, each statutory entitlement is subject to a “continuity of employment” test and requires the partner of the individual claiming the entitlement to satisfy an “employment and earnings” test to ensure that both parents were “economically active” prior to the birth/placement of the child. It is not, however, necessary for both parents to be employees at the time of the leave/pay.

A particular concern highlighted by employers with workforces of mainly rotational crew is how the

employees may choose to use their shared parental leave given that it may be taken in either a continuous block or broken periods, therefore allowing parents to arrange a pattern of leave, under condition that they satisfy the notification requirements set out in the Shared Parental Leave Regulations 2014. However, where the employee requests to take broken blocks of shared parental leave, the employer will have fourteen days from receipt of the employee's notice to take shared parental leave to negotiate an alternative leave pattern with the employee. If, at the end of the negotiation period, an agreement has not been reached regarding an alternative leave pattern, the employee will be automatically entitled to take the entire period of requested leave but in one continuous block, unless they withdraw their notice to take shared parental leave within fifteen days of submission to the employer.

Employers should familiarise themselves with the shared parental leave/pay scheme and the notification arrangements parents are now required to comply with. ACAS have published a helpful practice guide which explains the shared parental leave/scheme and how it may be operated in practice.

In addition, employers should consider whether their employee handbook adequately deals with these recent amendments to parental rights.



Nicola Gray - Associate

Local Property Review

As we are fast approaching summer, the Property Team thought we would like to share our thoughts on the local property market.



Pat Gray - Partner

There have been a number of factors which, over the past few months, have had, and are having, an influence on people's perception of the market. The first is the well publicised change in the property tax, unveiled at the end of 2014. Effective from the 1st April 2015 properties being purchased in Scotland now attract Land and Buildings Transaction Tax (LBTT) rather than Stamp Duty Land Tax (SDLT). Much was made in the public forum of how the new tax would adversely affect the property market and in early 2015 there was a definite increase in the number of high end properties which flooded the market as sellers tried to attract buyers before the changeover.

Did you know?

Over 80% of the transactions in our area are below the cut-off point where LBTT costs more than would have been payable in Stamp Duty.

The second factor which has been linked to the property market locally is the drop in the oil price. The industry has been here before and there is some expectation that the oil price fluctuation and its consequences will be managed. If that is so, then there is reasonable optimism that the effect of the oil price will not be as manifest as contemplated.

Did you know?

In the first quarter of 2015 house prices in Aberdeen City and suburbs increased by 0.5% compared to the rest of Scotland which decreased by 2.9%.

The third major factor has been the General Election. This was widely publicised and a variety of possible outcomes predicted, causing uncertainty and affecting general overall confidence. Thankfully this has now passed and hopefully lives will return to some form of normality without much in the way of change, for the moment.

It is very easy to become depressed by the local press headlines when the reality is that there are still many positive elements to consider, none more so than that the property market in Aberdeen/shire is consistently in better shape than Scotland as a whole and the rest of the UK. Mortgages have never been cheaper and there is increasing competition to provide attractive fixed rate term rates from the main lenders. Provided that the starter home and first time buyer markets remains strong, this will, in time, filter through and boost the rest of the market.

What makes Mackinnons different?

We provide all of our clients with a personal service based on sound local knowledge. From the outset our service is more than just marketing. We offer a complete professional property package.

Not only do our clients receive a personal service from our property executives who will advise and guide you throughout the marketing process but our team of expert lawyers are also involved from the beginning to carry out preliminary title deed checks. If there are any complexities which require verification or rectification, our lawyers are on hand to visit your property to offer advice as necessary. This will ensure that once a buyer is found, the process of conveying legal title should be as stress free as possible.

If you have any questions about current market trends, are considering selling your property, or perhaps contemplating investing in property for the future, please feel free to contact one of our property team or one of our lawyers who will be happy to discuss your specific needs.

Employment Seminars

How to handle... Disciplinary meetings

Come and hear from our employment team in Aboyne or Aberdeen.

Tuesday 2nd June 2015

Mackinnons
Ballater Road, Aboyne,
Aberdeenshire AB34 5HN
6.00pm - 7.30pm

**Please RSVP by 29th May 2015
to: Fiona Stevenson
013398 87665
Email: fionas@mackinnons.com**

Thursday 4th June 2015

Mackinnons
14 Carden Place,
Aberdeen AB10 1UR
6.00pm - 7.30pm

**Please RSVP by 1st June 2015
to: Nicola Elder
01224 632 464
Email: nicola@mackinnons.com**

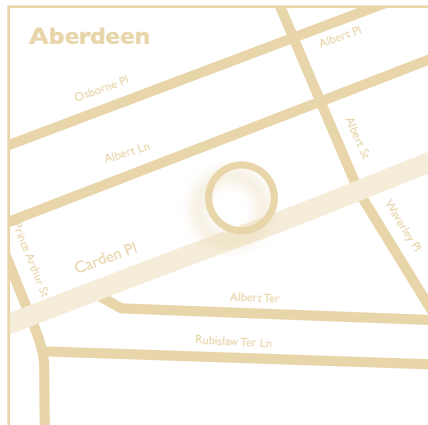


Staff News

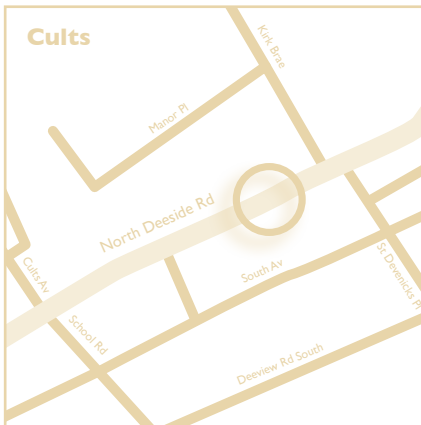
We are delighted to announce the appointment of Caroline E. Cumming as a Partner to our Commercial department.

Heading up the Commercial department alongside Partners Charles Scott and Graham Jones, Caroline will bring to the firm many years experience of corporate real estate transactions.

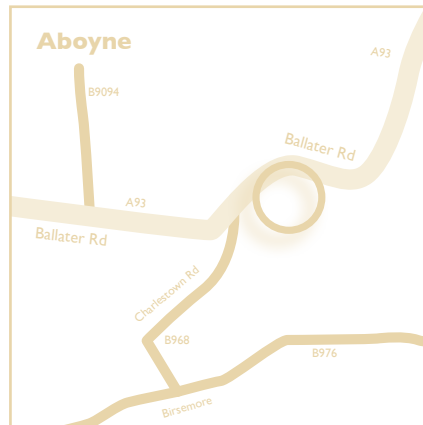
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