

Too Old or Too Young?

The Regulations (Employment Equality (Age) Regulations 2006) came into force on 1 October 2006 and make it unlawful to discriminate against employees or business partners on the grounds of age. Both old and young will be entitled to bring a claim for breach of the new regulations.

Employers should review their recruitment procedures as it will be unlawful for them to discriminate in the arrangements they make for determining who should be offered a job.

Advertisements will also need careful vetting to avoid creating the impression that only persons above or below a certain age should apply – words like “mature”, “senior” or “junior” or “aged 25-30” should be avoided. Criteria for promotion – such as the need for a certain length of experience – will also need to be objectively justified.



From the employer’s perspective the most important part of the Regulations will undoubtedly be the provisions relating to retirement. The Regulations provide for a default retirement age of 65 years and this will apply unless the employer is able to objectively justify an earlier normal retirement age for its staff.

In order to fairly retire the employee the employer will have to give the employee at least 6 months notice of its intention to retire them. There is then a procedure whereby the employee can request to work beyond their intended retirement date.

Whilst the employer is not obliged to accede to the employee’s request to work beyond the retirement date the principal danger lies in failure to comply with the procedure which could render the retirement automatically unfair and subject the employer to a claim in the Employment Tribunal.

Providing the employer complies with the procedure then it will be exempted from any claim for age discrimination in relation to the retirement. The same cannot be said in relation to partners in a

business where there is no default retirement age. Provisions in existing partnership agreements relating to retirement at a specific age or the rights to a greater profit share linked directly or indirectly to age should be reviewed as they may well be discriminatory unless they can be objectively justified.

Employers and partners should now begin to review their employment contracts and partnership agreements respectively together with their recruitment, promotion, reward and appraisal procedures.

If you would like any assistance either carrying out a review or in relation to employment matters generally please contact Glyn Evans on **01934 637911** or email **evans@powellslaw.com**.



Trusts – What Now?

Controversial proposals to levy additional taxes on family Trusts have now been enacted into Law. Whilst the new rules do not affect anyone setting up Trusts below the Inheritance Tax Nil Rate Band (currently £285,000), people with substantial estates could be adversely affected.

Trusts could now face an initial tax charge on their creation plus a further 6% levy every ten years on the value of the assets they hold. Those trusts at risk, are Interest In Possession Trusts – that is to say Trusts with a beneficiary or beneficiaries absolutely entitled to enjoy the income (or a definite share of it) generated by the Trust investments, or to enjoy the exclusive use of some or all of the Trust assets. The new rules affect all Interest In Possession Trusts created on or after 22nd March 2006. Also at risk are Accumulation and Maintenance Trusts, which have tended to be used traditionally to provide for the payment of school and further education fees, and are commonly set up by grandparents to provide for their grandchildren’s education. In the case of Accumulation and Maintenance Trusts there are significant transitional rules where the Trust was established before 22nd March 2006, but these come to an end on 6th April 2008. The tax treatment of Discretionary Trusts is unaltered.

The Finance Act 2006 also introduces a new regime for Trusts set up by a Will, and in particular affects Trusts for children, where the minors do not become entitled to the funds until an age beyond eighteen years. To check whether you may be affected, or to review your Will to determine how you may best circumvent the new rules, you need to take expert advice.

Please contact Ian Shipton on **01934 637914** or email **shipton@powellslaw.com** if you would like further advice.

we keep you informed

Minimum Wage increase

The minimum wage is a legal right which covers almost all workers above compulsory school leaving age.

The different minimum wage rates for different groups of workers increased on 1st October 2006 as follows:

- The main rate for workers aged 22 and over was £5.05 an hour. This has increased to £5.35.

- The development rate for 18-21 year olds was £4.25 an hour. This is now £4.45.
- The development rate for 16-17 year olds was £3.00 an hour. This has increased to £3.30 an hour.
- The rate of the accommodation offset increased to £29.05 per week (£4.15 per day). The rate was previously £27.30 per week (£3.90 per day).

It is important to note that these new rates only apply to pay reference periods beginning on or after the date they came into law.

From 1 October 2006, the Employment Equality (Age) regulations abolished the Older Workers Development Rate and removed the age limit on the apprenticeship exemption.

HMR&C Seeking New Powers

HM Revenue and Customs (HMRC) is seeking new powers to track down suspected fraudsters without police assistance. If they get the new powers, tax inspectors will be able to take fingerprints, search people and business premises and arrest suspects without recourse to the police. The tax division of HMRC wants to bring its powers in line with the customs department, in an effort to get rid of tax evaders.

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This newsletter is a service provided by Powells Solicitors. All information is correct at time of going to press.

Company Law – a major reform

The Companies Bill (“the Bill”) will be the biggest shake up in company law since 1948. The Bill runs to over 500 pages with 16 schedules and contains 1,264 clauses, the largest bill on record. It is expected to become law during 2006 with most provisions becoming effective in October 2007.

Future newsletters will address specific aspects of the Bill, but the provisions which have occupied the greatest part of Parliament’s time are those codifying directors duties bringing all the previous case law and principles into one place.

The Bill sets out the following duties whereby a director must:-

1. “act in accordance with the company’s constitution and also exercise powers for the purposes for which they are conferred”
2. “act in a way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole...”
3. “exercise independent judgment”
4. “exercise reasonable care skill and diligence”
5. “avoid a situation in which he has, or can have, a direct or indirect interest, that conflicts, or possibly may conflict, with the interests of the company”
6. “not accept a benefit from a third party conferred by reason of his being a director or his doing or not doing anything as a director”
7. “if a director is in any way, directly or indirectly, interested in a proposed transaction or arrangement

with the company declare the nature and extent of the interest to the other directors”.

A number of these duties are simply restatements of the existing law. However, in relation to duty 2 there is uncertainty about the meaning of the word “success” which introduces the “enlightened shareholder value” principle. This requires consideration to be given to factors such as “the likely consequences of any decision in the long term,” “the interest of company employees,” “the need to foster the company’s business relationships...,” “the impact of the company’s operations on the community and the environment,” “the desirability of the company maintaining a reputation for high standards of business conduct” and “the need to act fairly as between members of the company.” The effect of these provisions may be to substantially extend the responsibility of directors and there is a fear that it may deter new directors coming forward.

The new provisions relating to conflicts of interest (duty 7) are also very complicated requiring a director to declare not only interests in an existing transaction but also proposed transactions. Further, the other directors are required to approve every potential conflict situation and there will undoubtedly be problems identifying the extent of this duty particularly where a director holds directorships of more than one company.

We will keep you informed as the Bill makes its progress towards Royal Assent and if you would like any advice regarding the implications of the proposed new law please contact Glyn Evans on **01934 637911** or email **evans@powellslaw.com**.

Business Premises

Working for you?

Although Powells are not financial advisors and cannot offer specific financial advice, we occasionally draw to our clients’ attention recent developments which may benefit them.

On 6th April 2006 (known as A-Day in the financial services industry) new pension rules came into effect which highlighted the potential benefits of holding property in a Self Invested Personal Pension scheme (otherwise known as a SIPP). This is a complex area and should not be entered into without expert advice. However, in essence if you are in a business and have an existing pension fund you can use that fund to purchase, among other things, the premises from which the business operates.

It is also possible to raise a loan (within prescribed limits calculated on the fund value) which can be secured on property. Once purchased, the premises can then be leased back to the business to produce a rental yield to help service any borrowing.

Such arrangements are attractive because pension funds pay no income or capital gains tax so any capital growth in property should be free of tax. Furthermore, once any mortgage has been paid off then any rents received thereafter boost the overall fund value which could fund retirement income or be used for further property acquisitions. In addition to expert financial advice, such arrangements need expert legal advice relating to the property transfer and leaseback aspects, Stamp Duty Land Tax implications and pension fund requirements..

Please contact Glyn Evans on **01934 637911** or email **evans@powellslaw.com** and Stephen Soper on **01934 637915** or email **soper@powellslaw.com** if you would like further advice.

Staff Focus

Jenny Brading



Jenny joined Powells in 2006. She is an extremely experienced Solicitor who specialises in Wills, Trusts

and Estate Planning. She is also a Committee member of the Solicitors for the Elderly Somerset Region.

Jenny has always lived and predominantly practised in Somerset. Outside of work she spends most of her time ferrying around her two young children and is a keen runner.

Powells Website

Have you seen our website yet? Please do visit it at **www.powellslaw.com** and email Becky Sage with your comments, we’d love to know what you think!
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