HOTSPOTS

June 2011

Fairness in Selection for Redundancy

The Employment Appeal Tribunal has recently given a decision which is authority for the proposition that, when assessing the fairness of selection for redundancy, the marks awarded in the selection exercise should only be investigated in exceptional circumstances such as bias or obvious mistake.

Rights of Agency Workers

The Department for Business, Innovation and Skills has published its guidance on the Agency Workers Regulations 2010, which come into force on 1st October this year.

The regulations provide that agency workers, or temps, will have the same rights to pay, benefits, rest periods and holidays as ordinary permanent workers, as long as the temp worker has been engaged for 12 consecutive weeks.

Liability of Partnerships - Possible Changes Afoot

A Scottish Law Commission discussion paper is seeking views on the criminal liability of partnerships. The consultation asks whether it should be made easier to prosecute individual partners for offences committed by a partnership.

The proposed reforms aim to avoid a repeat of the situation that occurred after the fatal fire at the Rosepark nursing home in Uddingston in 2004, when the dissolution of the partnership meant that neither it nor the individual partners could be prosecuted.

The proposal is that it will no longer be possible for a partnership to avoid prosecution by being dissolved. We will, of course, keep you posted as to developments on this topic.

Paid Volunteers and the Disability Discrimination Act

The Employment Appeal Tribunal has handed down judgment in a recent case which is authority for the proposition that a paid volunteer is not an 'employee' under the Disability Discrimination Act 1995 if there is no mutuality of obligation between the parties.

The EAT also found that mutuality of obligation is not necessarily established where a volunteer is required to provide services when at work or can expect to be paid for them.

Major Changes in Agricultural Leases

The Public Services Reform (Agricultural Holdings) (Scotland) Order 2011 has now come into force. This Order makes significant changes to the Agricultural Holdings (Scotland) Acts of both 1991 and 2003 (the "Acts"). These reforms were deemed necessary by the Tenant Farming Forum, which had been asked by the Cabinet Secretary for Rural Affairs to identify practical solutions to a number of perceived problems in the Acts which were restricting the amount of land coming on to the market for let.

The 2011 Order has resulted in the following amendments, amongst others, taking place for Secure Agricultural Tenancies:-

- the rules to succession to 1991 tenancies will change. It will no longer be possible for a landlord to take back a farm where it is not a two man unit or the succeeding tenant already occupies another two man unit;
- the 'two man unit' rule is being replaced by the 'viable unit' rule. The assessment is now not whether the unit or other farm occupied by the succeeding tenant can provide employment for two people, but whether the unit can provide full-time employment for one person and the means to pay for the rent and adequate maintenance of the holding; and
- the procedure for annulling a Post Lease Agreement is changing.

For Limited Duration Tenancies (LDTs), the minimum period of let has been reduced by the Order to 10 years.

Regarding Short Limited Duration Tenancies (SLDTs), if a tenant on a SLDT stays on a holding with the landlord's consent beyond the maximum 5 year period for a SLDT it will, as before, default into a LDT. However, instead of the LDT being for 15 years starting at the end of the 5 year SLDT it will be a 10 year LDT, the commencement of which is backdated to the start of the original SLDT.

The Order has also brought about substantial changes to the obligations imposed on landlords with regard to the provision of fixed equipment, particularly in relation to SLDTs. A landlord now only has to provide such fixed equipment as will enable the tenant to maintain efficient production in respect of the use of the land as specified in the lease. The fixed equipment to be provided and the condition into which it is to be put by the landlord are now to be specified in a schedule to the lease.

Should you require further information about the changes made by the 2011 Order, please get in touch and we will provide further details as necessary.

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For further information on these or other legal issues please contact either Alistair Duncan in our Dundee Office on (01382) 200000 or James Andrew in our Perth Office on (01738) 637311.

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