

SUMMER 2016



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SUMMER LEGAL REVIEW

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NEW IHT RELIEF ON FAMILY RESIDENCES

From 6 April 2017, a new Inheritance Tax (IHT) relief is being introduced that will benefit homeowners in the UK. With house prices having risen rapidly over the years, the family home is a substantial asset for many families – and a potential IHT liability.

The relief will add an extra 'tax-free' band in addition to the current nil-rate band of IHT of £325,000. The relief will start at £100,000 and rise in stages to £175,000 by April 2020. It is important to note that the relief will only be able to be transferred between spouses and civil partners, not between couples who live together. It will apply in respect of the 'family home' only.

In order to obtain the relief, the family home will have to pass to a direct descendant of the deceased person. The relief will be

restricted for those whose estates exceed £2 million.

The relief will also not apply to couples with no children, as they have no direct descendants. The term does, however, include the spouse or civil partner, or the surviving spouse or civil partner who has not remarried, of a direct descendant.

The change will be welcomed by many people whose wealth is tied up in their home. The requirement that IHT is paid on account before probate is granted is an onerous one for many, and this new relief will provide a measure of mitigation.

For advice on all aspects of family wealth preservation and estate planning, contact us.

PENSION ISAS

A significant announcement in the 2016 Budget Statement was the introduction of a variant of the Individual Savings Account (ISA) which some commentators are suggesting could, in the long term, replace pensions as the principal means of saving for retirement.

David Wright, Director of Woodgate Financial Planning, an associated business of Moss Solicitors, said "The 'Lifetime ISA' (LISA) will be available from 6 April 2017 to people aged between 18 and 40 and will include a savings incentive which is not provided by standard ISAs".

In contrast to pensions, to which contributions can be made regardless of age, contributions can only be made to LISAs up to age 50. The maximum permitted contribution will be £4,000 a year, and the Government will add a 25% bonus, so that

those investing the full £4,000 will receive a top-up of £1,000.

Apart from providing a source of retirement income after age

60, the LISA is also designed to assist first time buyers to purchase a home.

Withdrawals will be permitted at any time, but if made before age 60, other than for paying a deposit on a home purchase, the Government bonus and any growth in its value will be lost and a 5% penalty imposed.



David Wright, Director of Woodgate Financial Planning

NEW LEASE, NEW COMPLIANCE BURDEN



After 1 February 2016, landlords entering into residential leases, having new lodgers or allowing anyone to occupy a property they own for residential purposes are required to undertake checks to ensure the tenant and any other adults who will be living there have the right to reside in the UK.

The rules have applied in Birmingham, Walsall, Sandwell, Dudley and Wolverhampton since 1 December 2014.

British citizens, citizens of the European Economic Area and Swiss nationals have an automatic right to rent, as do those granted indefinite right to remain in the UK. The four steps necessary to establish the right to rent and prove compliance are:

- Identifying the adults who will live in the property as their only or main home;
- Obtaining original versions of one or more of the 'acceptable documents' for adult occupiers;
- Checking the documents in the presence of the holder of the documents; and

- Making copies of the documents and retaining them with a record of the date on which the check was made. This copy must be retained for at least one year after the date of the check.

The relevant regulations are contained in Section 22 of the Immigration Act 2014, and the Government has published guidance which shows a list of acceptable documents which can be used as evidence of the right to rent.

There are also regulations which apply in respect of tenancies which commenced prior to 1 February 2016, and numerous exemptions, such as student halls of residence and residence rights in hostels and refuges operated by social landlords.

PATIENT'S WISHES DETERMINE CARE

The much publicised case in which the Court of Protection ruled that clinically assisted nutrition and hydration (CANH) could lawfully be withdrawn from a patient with Multiple Sclerosis who was in a 'minimally conscious state' has been hailed as a landmark ruling.

In reaching its decision that withdrawal of CANH would be in the patient's best interests, the Court

relied heavily on evidence that she would not want the treatment were she able to speak for herself.

The clear message is that if you have strong views on what would or would not be acceptable as treatment for yourself in similar circumstances, you should ensure you communicate these clearly to your family.

IMPROPER DISCLOSURE OF WEALTH IN DIVORCE PROCEEDINGS

When the ex-wives of two very wealthy men discovered that their divorce settlements had been concluded on the basis of information supplied by their husbands which was clearly wrong, a series of legal battles culminated in a decision by the Supreme Court which shows that the courts may be expected to clamp down hard on those who give misleading evidence in such cases.

The two women claimed that their husbands had deliberately misled them by hiding their true wealth throughout legal proceedings to divide their respective family assets. The result was that they had accepted smaller settlements than they were rightfully due. They asked the Court to set aside the earlier divorce settlements that had been agreed.



In one case, the Court of Appeal agreed that the husband's valuation of his business had been fraudulent, but would not overturn the settlement, holding that the outcome would not have been significantly different.

In the second case, it was discovered that the husband had failed to disclose the existence of significant assets. He was later convicted of fraud. However, the

Court of Appeal refused to reopen the divorce settlement.

The Supreme Court has now overturned both decisions, which may have a significant impact on divorces throughout the land as it clearly demonstrates that where there is material deception in disclosing the true value of assets during divorce proceedings, the courts are likely to order the settlements to be reconsidered.

If you are concerned that your spouse is attempting to present themselves as having fewer assets than they really do, contact us. We are experienced in ensuring full disclosure of assets is achieved.

We can advise on all aspects of family break-up and financial provision on divorce.

NEW COMPANY CONTROL DISCLOSURE DEADLINE LOOMS

In April, new disclosure requirements came into force that affect any UK company which has non-directors who exert significant control over it, termed 'persons with significant control' (PSCs). The control referred to can be by shareholding (e.g. where a PSC has 25% of the direct or indirect voting rights of a company) or other relationship that means he or she is a PSC.

The information required to be disclosed includes the name, address, date of birth and nationality of each PSC. Such information is already required of company directors.

It should be noted that a PSC is obliged to provide the company with the required details. Failure to do so is a criminal offence.

From 30 June 2016, companies will be required to provide this information to Companies House on an annual basis and it will be available for public scrutiny. Companies will need to



set up and maintain a register of PSCs as part of their statutory records.

For advice on complying with your legal responsibilities as a company, contact us.

MAKING A WILL? TAKE LEGAL ADVICE TO AVOID FAMILY CONFLICT

In a case which underlines the reasons why you should always get a solicitor to help you make your Will, the opinion of an experienced lawyer as to the mental capacity of an elderly dementia sufferer who sought his advice was the decisive factor in establishing that she knew her own mind.

The woman was aged 85 when she made a new Will in which she left her Estate to her two sons in equal parts. In challenging the document's validity following her death, one of her sons argued that she lacked the mental capacity to execute a valid Will and had neither known nor approved its contents. He submitted that a previous Will, under which he would have inherited a greater proportion of his mother's home, was her last valid Will and should be admitted to probate.

The son died before the dispute with his brother was resolved, but his children pursued the case as his heirs. It was submitted that the woman had exhibited clear signs of confusion and moderate to severe dementia around the time when the new Will was signed. She was alleged to have been unable to write a sentence or to remember what day, or even what year, it was.

The children's arguments, however, failed to convince a Judge, who upheld the validity of the new Will. In ruling on their challenge to that decision, the Court of Appeal acknowledged that the woman had displayed some traits of mental impairment. However, there was evidence that her sons were equally loving and caring towards her and the contents of the Will were rational.

The terms of the document could hardly have been simpler and the Court was satisfied that she had the mental capacity to understand them. The factor which tipped the balance, however, was that she had had a one-to-one meeting with and was advised by an expert solicitor before she signed the Will, and he was clearly of the view that she had both understood and approved the bequests that she was making. The appeal was dismissed.

Challenges to Wills by disgruntled family members are surprisingly common.

We can assist you to ensure that the likelihood of a challenge is minimised and your wishes for the distribution of your estate are followed.

SHARED PARENTAL LEAVE ANNOUNCEMENT



Recognising that many grandparents take on responsibility for part of the care of their grandchildren, the Chancellor has announced that the Shared Parental Leave Regulations 2014 are to be broadened to include working grandparents.

The change follows the disclosure that up to two million grandparents have made amendments to their patterns of work in order to help out their families who cannot afford childcare.

The proposal reflects the way society is changing, with many couples having to work when their children are very young and their parents working to a later age because they cannot afford to retire. In addition, there is a trend for couples to have children later in life.

EMPLOYMENT LAW CHANGES – APRIL 2016

Changes to employment law and practice are normally implemented in either April or October each year in order to make life easier for employers, who must ensure that their policies and procedures are updated accordingly.

The main employment law changes introduced this April were as follows:

The National Living Wage

Employers are reminded that a new statutory minimum rate of pay, the National Living Wage (NLW), applies to workers aged 25 and over from 1 April 2016. The NLW replaces the National Minimum Wage (NMW) rate for these workers and is set at an initial rate of £7.20 per hour.

Penalties for non-payment of the NMW

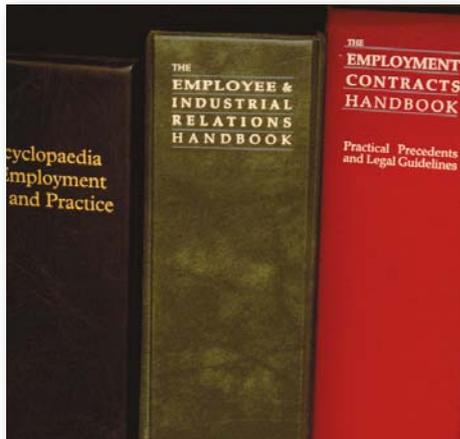
From 1 April 2016, penalties for non-payment of the NMW were doubled from 100% of the arrears to 200%, reduced by half if the employer pays the sum owing within 14 days. The maximum penalty remains at £20,000 per worker. In addition, anyone found guilty of the offence will be considered for disqualification from being a company director for up to 15 years. The enforcement rules apply equally to non-payment of the NLW.

Abolition of employer NICs for apprentices under 25

From 6 April 2016, employers of apprentices under the age of 25 are no longer required to pay secondary Class 1 (employer) National Insurance Contributions (NICs) on earnings up to the Upper Earnings Limit for those employees.

The repayment of public sector exit payments

Regulations came into force on 1 April



2016 that will require high earning public sector employees or office holders to repay exit payments – on a pro rata basis – should they return to the public sector within 12 months. Individuals will be required to repay the full amount if they return before 28 days, and a pro rata amount should they return between 28 days and 12 months.

Penalties for non-payment of Employment Tribunal awards

From 6 April 2016, the Small Business, Enterprise and Employment Act 2015 introduced a new penalty for employers that fail to pay Employment Tribunal awards or settlements reached through the Advisory, Conciliation and Arbitration Service in the hope that this will improve compliance. Where the amount due remains unpaid, an enforcement officer will issue a 'warning notice'. If the employer fails to pay by a specified date, a penalty of 50% of the relevant amount will be imposed, subject to a minimum of £100 and a maximum of £5,000. The penalty will be reduced if payment is made promptly. The penalty is payable to the Secretary of State, not the claimant employee. Employers who are fined also face the prospect of being publicly 'named and shamed'.

Annual inflation-linked changes in Tribunal Awards

The Employment Rights (Increase of Limits) Order 2016, which details the annual inflation-linked changes in limits on the compensation amounts which can be awarded by Employment Tribunals, applies where the appropriate date falls on or after 6 April 2016.

The main changes are:

- The maximum amount of a week's pay for the purpose of calculating a redundancy payment, or for various awards including the basic or additional award of compensation for unfair dismissal, increases from £475 to £479;
- The minimum amount of compensation where an individual is found to have been unlawfully excluded or expelled from a trade union increases from £8,868 to £8,939; and
- The statutory maximum compensatory award for unfair dismissal increases from £78,335 to £78,962.

There is no statutory cap on the amount a tribunal can award in discrimination cases.

Statutory payment rates for 2016/2017

The standard weekly rate of statutory maternity pay, statutory paternity pay, statutory adoption pay and statutory shared parental pay for the year 2016/2017 remains at £139.58 or 90% of the employee's average weekly earnings, whichever is lower.

The weekly statutory sick pay rate for days of sickness absence remains at £88.45.

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