

**Below is an example of a piece of work using the OSCOLA referencing style:**

This essay is an assessment of the new retirement unfair dismissal regime, introduced by the Employment Equality (Age) Regulations 2006 in October 2006,<sup>1</sup> to implement the UK's obligations under the age strand of the EU Framework Equal Treatment Directive.<sup>2</sup> Already, variations of the contractual retiring age following a transfer of undertakings have been challenged in *Power v Regent Security Services Ltd*.<sup>3</sup> In the old regime the Normal Retirement Age (NRA) and the State Retirement Age (SRA), which was 65, ruled out a finding of unfair dismissal, by making access to a tribunal dependent on being dismissed before the NRA or, in its absence, the SRA.<sup>4</sup>

The right to request flexible working was introduced under sections 80 and 81 of the Employment Rights Act 1996<sup>5</sup> and regulations 2-5 of the Flexible Working (Procedural Requirements) Regulations 2002.<sup>6</sup> Parents of children under six (or eighteen for disabled children) were given the right to request flexible working arrangements.<sup>7</sup> Statutory Dispute Resolution procedures were formalised under the Employment Act 2002 (Dispute Resolution) Regulations 2004.<sup>8</sup>

The new legislation could be criticised as unnecessary in the light of the Gibbons Review which spectacularly recommended the complete repeal of Statutory Dispute Resolution procedures stating 'complexity drives users to seek legal advice earlier with associated increased costs'.<sup>9</sup> This advice was reinforced by a government consultation.<sup>10</sup> Reinforcing this criticism in terms of the impact of the new retirement regime we can turn to a survey of 2000 plus establishments' policies, practices and preferences relating to age between November 2004 and May 2005. Of these establishments, 37% employing over half of the total number of employees had formal compulsory retirement ages for at least some of their staff.<sup>11</sup> Those more likely to have compulsory retirement ages were larger private sector organisations and the public sector. Assuming that these formal compulsory retirement ages are found to be contractually agreed, as discussed above,<sup>12</sup> it is likely that they will constitute the NRA for the employees they cover.<sup>13</sup>

Essay adapted from C Kilpatrick, 'The New UK Retirement Regime, Employment Law and Pensions' [2008] ILJ 1.

<sup>1</sup> Employment Equality (Age) Regulations 2006, SI200/1031, reg 2.

<sup>2</sup> Council Directive (EC) 2000/78 establishing a general framework for equal treatment in employment and occupation (EU Framework Equal Treatment Directive) [2000] OJ L303/16 art 3.

<sup>3</sup> *Power v Regent Security Services Ltd* [2007] EWCA Civ 1188, [2008] 2 All ER 977, 987.

<sup>4</sup> Claire Kilpatrick, 'Age, Retirement and the Employment Contract' [2007] ILJ 119, 121.

<sup>5</sup> Employment Rights Act 1996, ss 80-81.

<sup>6</sup> Flexible Working (Procedural Requirements) Regulations 2002, SI 2002/3207, regs 2-5.

<sup>7</sup> J Stredwick, *Flexible Working* (2nd edn Chartered Institute of Personnel and Development 2005) 20.

<sup>8</sup> Employment Act 2002 (Dispute Resolution) Regulations 2004, SI 2004/752.

<sup>9</sup> M Gibbons, *Better Dispute Resolution: A Review of Employment Dispute Resolution in Great Britain* (Department of Trade and Industry 2007) 60.

<sup>10</sup> Department of Trade and Industry, *Success at Work: Resolving Disputes in the Workplace: A Consultation* (Department of Trade and Industry 2007).

<sup>11</sup> H Metcalf and P Meadows, *Survey of Employers' Policies, Practices and Preferences relating to Age* (Department of Trade and Industry 2006) Table 4.2.

<sup>12</sup> *Ibid* 240.

<sup>13</sup> Kilpatrick (n 4) 120.

## **Bibliography**

### **Cases**

Power v Regent Security Services Ltd [2007] EWCA Civ 1188, [2008] 2 All ER 977

### **Legislation**

#### **UK**

##### **Statutes**

Employment Rights Act 1996

Work and Families Act 2006

##### **Statutory Instruments**

Employment Act 2002 (Dispute Resolution) Regulations 2004, SI 2004/752

Employment Equality (Age) Regulations 2006, SI 2006/1031

Flexible Working (Procedural Requirements) Regulations 2002, SI 2002/3207

#### **EU**

Council Directive (EC) 2000/78 establishing a general framework for equal treatment in employment and occupation (EU Framework Equal Treatment Directive) [2000] OJ L303/16

##### **Secondary Sources**

Department of Trade and Industry, *Success at Work: Resolving Disputes in the Workplace: A Consultation* (Department of Trade and Industry 2007)

Gibbons M, *Better Dispute Resolution: A Review of Employment Dispute Resolution in Great Britain* (Department of Trade and Industry 2007)

Kilpatrick C, 'Age, Retirement and the Employment Contract' [2007] ILJ 119

Metcalf H and Meadows P, *Survey of Employers' Policies, Practices and Preferences relating to Age* (Department of Trade and Industry 2006)

Stredwick J, *Flexible Working* (2nd edn Chartered Institute of Personnel and Development 2005)