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HEALTH AND SAFETY COMMISSION

The removal of age related conditions in Mining Legislation

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Cleared by DCE Jonathan Rees: on 13 June 2006

Issue

1. Minor amendments are required to two mining approved codes of practice to remove references to age related limits from UK mining legislation.

Timing

2. Amendments to be complete by October 2006.

Background

3. European Employment Directive 2000/78/EC requires Member States to remove any discriminatory laws, regulations and administrative provisions that discriminate against individuals on the grounds of age in the field of employment and vocational training. This will make any such provision in UK legislation (Acts, SI's and ACoPs) unlawful, unless it is objectively justified by reference to a legitimate aim, and the rule or practice is appropriate and necessary to achieve that aim. Article 16 of this Directive sets out the requirement for any laws contrary to the principle of equal treatment to be abolished, and Article 6.1 sets out terms for objective justification (See Annex 1).

4. HSE undertook a trawl of all health and safety legislation during 2004 and found that, with the exception of mining law, the requirements of this European Directive are met. Where present in health and safety legislation, HSE was able to objectively justify the retention of age-related criteria. The majority, if not all, related to the health and safety of young people and the implementation of the EC Directive (94/33/EEC) on the protection of young people. Mining law was therefore the only sector with examples that contravened this European Employment Directive.

5. The Department of Trade and Industry (DTI) has introduced new regulations (the Employment Equality (Age) Regulations) to implement this Directive, which come into force on 1st October 2006.

Argument

6. Mining law only has a few examples where age conditions are laid down. These mainly arise in law drafted several decades ago. We do not consider that we can argue for retaining these examples, as there are no grounds to objectively justify retaining them. All government departments were asked by DTI to trawl their legislation and prepare necessary amendments/repeals/revocations for either inclusion in the DTI regulations, or

for actioning themselves, so that all legislation conforms to Article 16 or is within the terms of Article 6.1. The Government would be at risk of infraction proceedings should this work not be done.

7. Since the introduction of the Management and Administration of Safety and Health at Mines Regulations 1993 (MASHAM) regulation 23 has enshrined the principle that only trained and competent persons shall work in mines; the only exception being a person under the instruction and supervision of some other person who is competent to give instruction in and to supervise the doing of that work for the purpose of training him. Additionally health and safety law already recognises that young people should be closely supervised in their work activities. Particular attention should be given to a young person when undertaking a risk assessment of their job (Regulation 19 of the Management of Health and Safety at Work Regulations 1999). This is a modern and common approach across all industries, which negates the need for the application of age-related statutory restrictions on employment.

Amendments to the Mines and Quarries Act 1954 and Mining Regulations

8. The DTI consultation document on the draft Employment Equality (Age) Regulations to outlaw age discrimination was published in July 2005. These draft regulations also set out the required amendments necessary for mining legislation. Annex 2 sets out these required amendments to mining legislation which will be brought into force on 1 October 2006 by the forthcoming Employment Equality (Age) Regulations 2006 (SI 2006/ 1031).

Amendments to ACoP and guidance

9. The Health and Safety Commission (HSC), under powers granted by HSWA s16 (4) is empowered to revise or approve the revision of ACoP material. The following two mining ACoP amendments attract consideration for action:

Escape and Rescue from Mines ACoP and Guidance L71

10. HSC is asked to delete certain wording in paragraph 101 of this ACoP to specify the selection of rescue workers to be from volunteers.

Required action: Delete the wording "less than 45 years old when initially selected" from paragraph 101.

Explosives at Coal and other Safety-Lamp Mines ACoP and Guidance L45

11. HSC is asked to delete the note in Appendix 1, part one, of this ACoP to reflect the fact that regulation 4 of the Coal and other Safety-lamp Mines (Explosives) Regulations 1993 has been amended to delete minimum age limit of 21years for appointment of a shotfirer.

Required action: Delete from ACoP Appendix 1, Part one" Note: Regulation 4 requires that a person must have attained the age of 21 years before they can be appointed as a shotfirer."

Consultation

12. The Mining Qualification Board (MQB) was presented with this information on the proposed changes needed to satisfy the requirements of the Directive in May 2004. The Board accepted the need for these changes. Candidates for the HSE examination in mining law post 2006 will be alerted to these minor legislative changes when issued with

the annual syllabus. The DTI consultation exercise has brought the regulation amendments to public attention. The Mining Industry Committee was presented with these changes in October 2005 and accepted them.

Presentation

13. Owing to the small scale nature of the changes required and the fact that MASHAM introduced the competency requirement over a decade ago, publicity about such changes will be confined to the HSE Mining webpage

Costs and Benefits

14. There are no costs or benefits to the mining industry as the acceptance of a fully trained and competent workforce means that job selection has not depended solely on age limits for over a decade.

Financial/Resource Implications for HSE

15. This exercise has been limited to administrative costs less than £10k incurred in searching for contravening legislation and preparing for its deletion.

Other Implications

16. None.

Action / Next Steps

17. The Commission is asked to approve the ACoP changes proposed in paragraphs 10 and 11 and note the new regulations set out in paragraph 8 coming into force on 1 October 2006.

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TEXT OF ARTICLE 16

“Member States shall take the necessary measures to ensure that:

- a) any laws, regulations and administrative provisions contrary to the principle of equal treatment are abolished;
- b) any provisions contrary to the principle of equal treatment which are included in contracts or collective agreements, internal rules of undertaking or rules governing the independent occupations and professions and workers’ and employers’ organisation are, or may be, declared null and void or are amended.”

TEXT OF ARTICLE 6.1

“Member States may provide that differences of treatment on grounds of age shall not constitute discrimination if within the context of national law, they are objectively justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives and if the means of achieving that aim are appropriate and necessary. Such differences of treatment may include, among others:

- a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older people and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;
- b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;
- c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period before retirement.”

MINING LEGISLATION AMENDMENTS (To be introduced by the Employment Equality (Age) Regulations 2006)

1 Mines and Quarries Act 1954

S42 Min age 22yrs for person in charge of winding or rope haulage apparatus carrying people.

S42 (1) delete wording “who has attained the age of twenty two years”.

S43 Min age 18yrs when mechanically or gravity operated rope haulage apparatus not carrying people.

S43 (2) delete wording” who has attained the age of eighteen years”.

S44 min age 18yrs for operating a conveyer along a longwall face.

S44 delete wording” who has attained the age of eighteen years”.

2 The Management and Administration of Safety and Health in Mines Regulations S.I. 1993/1897

Reg 17(2) Executive may specify a minimum age for applicants in respect of certain certificates of qualification.

The criteria used for coal mining qualifications do not now stipulate ages, but at the time 1993, criteria did. Regulation 17(2) of MASHAM can be revoked in its entirety.

3 Coal and other Safety-lamp Mines (Explosives) Regulations 1993 S.I. 1993/208

Reg 4 states min age limit of 21 yrs for shotfirers.

Regulation 4(4) delete wording ““he is a least 21 years of age and”

4 Miscellaneous Mines (Explosives) Regulations 1959 S.I. 1959/2258

Reg 6(2) states lower age limit of 21 yrs for shotfirers.

Regulation 6(2) to be revoked in its entirety.

(Note; Regulation 6 (1) already addresses competency)

Reg 8(2) states lower age limit of 18 for persons in charge of detonators.

Regulation 8(2) delete wording” has attained the age of eighteen years and “

5 Stratified Ironstone, Shale and Fireclay Mines (Explosives) Regulations 1956 S.I. 1956/1943.

Regulation 3(a) lower age limit of 21 yrs for shotfirers.

Regulation 3(a) to be revoked in its entirety.

6 Coal and Other Mines (Sidings) Regulations 1956

S.I. 1956/1773

Reg 21(1) sets min age limit of 18 yrs for locomotive drivers.

Regulation 21(1) to be revoked in its entirety.

Reg 21(2) sets lower age of 16 yrs for shunters.

Regulation 21(2) to be revoked in its entirety.

As a consequence of these revocations, in regulation 22, the definition of “locomotive” is revoked.

7 The Coal and Other Mines (Locomotives) Regulations 1956

S.I. 1956/1771(These are contained in Schedule 1 to the Coal and Other Mines (Locomotives) Orders 1956 SI 1956/1771 of which Article 1(2) states that the provisions of that schedule may be cited as The Coal and Other Mines (Locomotives) Regulations 1956)

Reg 17(1) sets min age of 18yrs to drive a locomotive hauling persons in vehicles in a mine of shale and 21 years in any other mine.

Regulation 17(1) delete wording “and no appointed driver shall operate a locomotive hauling persons in vehicles unless he has attained the age of:

- (a) in the case of a mine of shale, eighteen years;
- (b) in the case of any other mine, twenty-one years.”

(Note; Regulation 17(2) already addresses competency)

8 The South Crofty Mine (Locomotive) Special Regulations 1965 SI 1965/759

Special Regulation 11(2) states minimum 21 years of age for drivers.

Need to delete wording in regulation 11(2) “has attained the age of twenty-one years and”.

9 The Winsford Rock Salt Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1971 SI 1971/50

Special Reg14 (2) states minimum 21yrs of age for driver.

Need to delete wording in Regulation 14(2) “is under the age of twenty-one years and”.

10 The Glebe Mine (Locomotives and Diesel Vehicles)(Amendment) Special Regulations 1981 SI 1967/1335

Special Reg 15(2) states minimum 18years of age for driver.

Need to delete wording in Regulation 15(2) “has attained the age of eighteen years and”.

11 The Thoresby Mine (Cable Reel Load-Haul -Dump Vehicles) Regulations 1978 SI 1978/119

In regulation 17 after the words “Regulation 17” insert “as amended by the Employment Equality (Age) Regulations 2006.”

12 The Lynemouth Mine (Diesel Vehicles and Storage Battery Vehicles) Special Regulations 1961 SI 1961/2445

In regulation 15 after the words "Regulation 17" insert "as amended by the Employment Equality (Age) Regulations 2006".

The Harworth Mine (Cable Reel Load-Haul -Dump Vehicles) Regulations 1980 SI 1980/1474 also makes reference to Regulation 17 of the Coal and other Mines (Locomotives) Regulations 1956 SI 1956/1771. But as these special regulations were made after 01.01.1979, section 20(2) of the Interpretation Act 1978 ensures that the amended version of the Coal and other Mines (Locomotives) Regulations 1956 applies(see item 7 of this Annex).