

UK Government Announces Proposals to “Retire” Default Retirement Age by October 2011

29 July 2010

The UK government has today announced proposals to abolish the UK’s Default Retirement Age (DRA) of 65. The proposals are subject to a consultation process; if implemented as set out in the consultation document, the DRA would be phased out from April 2011.

Currently, employers can force employees to retire at the age of 65 or above without that being deemed to be unfair dismissal or age discrimination, provided that they follow a set retirement procedure. That procedure involves employers giving employees at least six months’ notice of their intended retirement. After receiving notice, the employees have the right to request working longer and the employers have the duty to consider such requests. There is no obligation for employers to agree to the requests or indeed to provide any reasons for refusing such requests. As a result of the current measures, it is estimated that in 2009 alone, some 120,000 people were obliged to give up their jobs because they had reached the age of 65, and that up to 100,000 of these were retired against their will.

The government considers that older workers who wish to work beyond the age of 65 should be given the opportunity to do so. The proposals also tie in with the upcoming increases to the state pension age, which is set to rise to age 66 by 2026 and to age 68 by 2046, though the government may well accelerate the pace of these increases. Abolishing the current DRA alleviates the difficult position of employees who are forced to retire at 65 but who are not eligible to receive a state pension until they are 68, a situation that was simply not sustainable.

As well as scrapping the DRA, the consultation also seeks views on removing the current retirement process (as summarised above) to ease the administrative burden on employers in following this procedure.

The consultation document is open for response until 21 October 2010. Assuming the responses to the consultation do not alter the current proposals, a transitional arrangement will be effective from April 2011. After this date, employers will no longer be able to serve “retirement notices” to employees in advance of their 65th birthday. However, any notices that have been served prior to this date will still be effective.

Notwithstanding these proposals, employers will still be able to operate a contractual compulsory retirement age, provided they can objectively justify it. This means that employers will continue to be able to stipulate a normal retirement age for their employees, however if challenged on their retirement age policy, an employer would need to be able to show that setting the applicable retirement age was a

proportionate means of achieving a legitimate aim. An example of a legitimate aim might be ensuring the availability of career progression opportunities for younger workers, or encouraging staff to remain with a company for the possibility of future advancement. However if an employer was not able to persuade a Tribunal that there was sufficient objective justification for its retirement age, the employer could be liable to a claim of age discrimination.

In launching the consultation, Employment Relations Minister Edward Davey said “older workers bring with them a wealth of talent and experience as employees and entrepreneurs. They have a vital contribution to make to our economic recovery and long-term prosperity.” However, it would appear that the proposals are not being welcomed by all. John Cridland of the Confederation of British Industry has stated that “scrapping the DRA will leave a vacuum and raise a large number of complex legal and employment questions, which the government has not yet addressed. . . . This will create uncertainty among employers and staff, who do not know where they stand.”

For those wishing to participate in the consultation process, a copy of the consultation document can be found at <http://www.bis.gov.uk/retirement-age>.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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