

## UK Government Announces that the Default Retirement Age Will Be Phased Out

13 January 2011

The UK Government has today announced that the default retirement age (DRA) will be removed with effect from 1 October 2011. Transitional measures will be put in place between 6 April and 1 October 2011 to phase out the DRA.

This decision, part of the government's written response to the recent consultation on the change of law, was issued today together with the publication of new guidance from the Advisory, Conciliation, and Arbitration Service (ACAS) to **assist employers in managing both the transition stages and new procedures**. Full details on the phasing out of the DRA will be set out in regulations coming into force on 6 April 2011.

From 1 October 2011, employers will not be able to use the DRA to retire employees.

Employers should review the status of their employees and take into consideration the following:

- **Where notification of retirement is given before 6 April 2011 and the intended date of retirement is prior to 1 October 2011:**

The last day that employees can be retired using the DRA is **30 September 2011**; therefore, the last day to provide six months' notice under the DRA provisions using the statutory procedure is **30 March 2011**.

It will still be possible to use the DRA after 30 March 2011 and before 6 April 2011, provided that the short-notice provisions are used. However, if an employer decides to do this, the employee could claim compensation of up to a maximum of eight weeks' wages. **It is therefore recommended that employers review their workforce now to identify any employees who will reach the age of 65 on or prior to 30 September 2011 to ensure that notification is given as soon as possible.**

The employer will also have to adhere to the statutory retirement procedure to retire an employee on or before 30 September 2011.

- **Where notification of retirement is given before or after 6 April 2011 and the intended date of retirement is after 1 October 2011:**

From 6 April 2011, employers will not be able to issue new notifications of retirement using the DRA provisions, and retirement on the basis of the DRA will be unlawful.

If an employer wishes to retire an employee pursuant to a compulsory retirement age, it will have to objectively justify the retirement age. Alternatively, the employee will have to use a different “fair” reason for dismissal such as capability or redundancy in order to terminate the employment of the employee.

In addition, the employer will have to ensure that it adheres to a fair dismissal process in dismissing the employee.

### **Employer-Justified Retirement Age**

The ACAS guidance recognises that case law will be developed for employer-justified retirement ages following the abolition of the DRA. In the meantime, the guidance gives two examples of legitimate aims that may justify the use of a retirement age: (1) workforce planning (the need for businesses to recruit and retain employees, provide promotion opportunities, and effectively manage succession); and (2) the health and safety of individual employees, their colleagues, and the general public.

The guidance makes it clear that cogent evidence will need to be provided to support any objective justification defence. Mere assertions will not be acceptable.

### **Insurance Benefits**

The government has confirmed that group risk insured benefits (such as private medical care, accident insurance, and income protection) will be exempt from the principle of equal treatment on the grounds of age. This means that employers will be able to cease to provide or offer these benefits to employees who reach the age of 65 or the state pension age for men and continue to work beyond that age. The age at which the exemption will apply will increase in line with state pension age increases.

### **Workplace Discussion and Managing Performance**

The guidance recommends that employers manage their workforce by engaging in an open dialogue with employees to ascertain an employee’s future plans and aspirations. Such conversations need, however, to be handled carefully to avoid discriminatory questions and putting the employee under pressure to retire.

The guidance also recommends that employers focus more heavily on managing performance. With the removal of the DRA, there is likely to be more pressure on older employees to perform to the standards required and employers will likely need to manage poor performance more rigorously.

For further information, visit the Department of Business Innovation and Skills (BIS) website (<http://www.bis.gov.uk/retirement-age>) or read the ACAS guidance for employers, “Working without the Default Retirement Age” (<http://www.acas.org.uk/CHttpHandler.ashx?id=2976&p=0>).

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