



## Automatic Retirement at age 65 to end.....

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# 3HR focus

## Automatic Retirement at age 65 to end.....

In a surprise announcement, the Government outlined on 29<sup>th</sup> July 2010 details of how it will phase out the default retirement age (DRA) of 65.

It proposes to begin phasing out the DRA from April 2011 – less than a year away! The proposals are subject to a 6 months' transitional period, which will run from April 2011, ending with full abolition on October 2011.

The key proposals are:

- No new notices of intended retirement may be issued after 6 April 2011 and retirements under the DRA will cease completely on 1 October 2011
- Retirement dismissals will still be permissible after 1 October 2011, but only if the employer can objectively justify them
- Transitional arrangements will apply to retirements that have been notified before 6 April 2011 and which take effect before 1 October 2011. Retirements notified before 6 April, but intended to take effect after 1 October, will not be valid (unless objectively justified)
- The procedural requirements applicable to a retirement dismissal, currently set out in Schedule 6 to the *Employment Equality (Age) Regulations 2006 (an employer's duty to consider a request to continue working)*, will be abolished



The Government has published *Phasing out the Default Retirement Age*, [<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/p/10-1047-default-retirement-age-consultation>] a document that seeks views on its proposals. Views and comments are requested by 21<sup>st</sup> October 2010, and the Government plans to issue final guidelines some time in November 2010.

### Background to the Default Retirement Age

The Employment Equality (Age) Regulations, which came into force on 1 October 2006, provide for a default retirement age of 65. These regulations make a normal company retirement age earlier than 65 unlawful unless employers can objectively justify it. The current 2006 regulations also introduced a statutory right for individuals to request postponement of retirement beyond the age of 65. Such requests must currently be considered and discussed in a meeting with the employee. Figures produced by the Chamber of Commerce suggest that currently 1.3 million people work beyond state pension age.

The Government proposals have provoked a mixed reaction. Those in favour of total age equality welcome the decision. Against a backdrop of greater life expectancy and generally healthier lives, the Government's proposals are designed to assist people to work for longer, if they wish to, and to make the most of an age-diverse workforce. The impact that these changes will have in the workplace will inevitably mean that employers will have to:

- amend contracts and staff handbooks
- adjust work practices
- provide further opportunities to train or retrain staff
- introduce more flexible working
- potentially recruit more people in their 50s and 60s where they may not have done so in the past
- actively review pension and group insured benefits such as life, medical and income protection insurance schemes

The Institute of Directors has warned the removal of a default retirement age could make workforce planning more difficult at a time when employers are already faced with a number of major changes in employment legislation, timetabled to be introduced in 2011. These include: the proposed Agency Workers' Regulations; extended paternity pay and leave provisions; the extension of the right to request time-off for training; and the Equality Act.

In most other European countries workers retire at age 65, although,

- in France the normal retirement age is 60
- in Russia women retire at 55 and men at 60
- in the USA the normal retirement age is 66 (although many choose to work beyond this)
- in Japan the normal retirement age is 60

In addition to abolishing the DRA, the Government have pledged to bring forward a rise in the state pension age to 66 by 2016.



## Summary

Employers have real concerns about the abolition of the default retirement age -especially within such a short timescale. Most would prefer leaving the rules surrounding compulsory retirement unchanged. However, fears about increased sickness levels and declining performance due to age do not seem to be wholly justified. If older workers cannot be retired at a set age, Employers will be forced to adopt a more flexible mindset in relation to older employees. A change in attitude towards older employees may have the effect, over the longer term, of increasing the pool of potential candidates for jobs. Opening up competition in this way could ultimately raise standards in terms of experience and skills retention, raising the profile of the older workforce and forcing Employers to think about their dismissal decisions more carefully.

Many pension and group insured schemes rely upon a fixed retirement age. It is far from clear, at this stage, how insurance companies, in particular, will cope with the underwriting issues. It looks certain that all of these schemes will need to be reviewed, later this year. Certain share-option schemes also rely upon set retirement ages and there may well be tax consequences arising from the Government's proposals.

3HR recommends that no changes be made to contracts, handbooks or employee benefit arrangements before November, after which date we should be clearer about the precise details of the Government's changes.