



## IMPORTANT INFORMATION FOR EMPLOYERS

### PROPOSAL TO SCRAP THE DEFAULT RETIREMENT AGE

The Default Retirement Age of 65 was introduced in the Employment Equality (Age) Regulations 2006. Generally speaking, it allows employers to compulsorily retire employees age 65 or over without risking unfair dismissal or age discrimination claims provided a specified procedure is carefully followed.

The Government is proposing that, subject to the outcome of the consultation:

- **From 6th April 2011**, employers will not be able to issue any notifications for compulsory retirement using the DRA (Default Retirement Age) procedure
- **Between 6th April 2011 and 1st October 2011**, only people who were notified before 6th April 2011, and whose retirement date is before 1st October 2011 can be compulsorily retired using DRA
- **From 1st October 2011**, employers will not be able to use the DRA to compulsorily retire employees; if an individual employer wishes to use compulsory retirement (at any age) the individual employer will have to be able to demonstrate that it is objectively justified. Examples could include traffic controllers and police officers.

It is important to note that employers would not be able to compulsorily retire employees whose 65th birthday falls on or after 1st October 2011, even if they gave proper notice under the current statutory retirement procedure before 6th April 2011 (such retirements would have to be objectively justified or rescinded). Furthermore, employers would not be able to give 'short notice' after 6th April 2011 to an employee whose 65th birthday falls before 1st October 2011 under the current 'continuing duty' arrangements because these would be repealed with effect from 6th April 2011.

This measure is one of the steps the Government is taking to encourage people to work for longer against the backdrop of demographic change. Others include reviewing whether the state pension age should increase to 66 and re-establishing the link between earnings and the basic state pension.

The consultation document indicated the proposals will 'help' employers by removing the administrative burden of statutory retirement procedures. If the DRA goes, then so will the employees' 'right to request' working beyond retirement and the requirement for employers to give a minimum of 6 months notice of the intended date of retirement.

We consider this to be misguided as the burden of establishing objective justification (should this even be possible) or going through other formal procedures, such as capability or redundancy, prior to dismissal will be just as if not more onerous.

The consultation document itself acknowledges that employees would still be able to request to stay on after an employer's objectively justified retirement age and the employer, in following fair procedure, would need to properly consider such requests.

Whilst recent case law indicates that it is possible for an individual employer to succeed in establishing objective justification or a compulsory retirement age, it is not yet possible to say that this would be safely relied upon by a wider range of employers. The removal of the DRA will also make workforce planning more difficult and increase the number of tribunal claims, particularly in light of the incredibly short timescale proposed.

Although the consultation document does not specifically mention it, another effect of these proposals would presumably be the removal or restriction of the current exception allowing employers to reject applications for employment on the basis that they are within 6 months of reaching DRA. This would mean that employers could be at greater risk of tribunal claims for age discrimination at the recruitment stage as well as when ending employment.

Effective performance management for employees of all ages will become increasingly important. Employers should also consider brushing up on their knowledge of disability issues and their duty to make reasonable adjustments.

Whilst the proposed removal of the DRA may be good news to those approaching retirement who wish to stay in employment, it may have a detrimental effect on younger workers with families to support who would otherwise be filling their shoes. It seems obvious that there is only so much work to go round. Either there will be fewer jobs available for younger people, or there will be shorter hours or lower pay for more.

Most commentators are prepared to accept that, for economic and demographic reasons, a change to the DRA is unavoidable. However, raising the DRA in line with state pension age would seem to be a more coherent option and would give employers the time required to prepare and adjust their policies and practices.

There will also be implications on benefit provision to older employees, particularly where there are insurance backed benefits involved. The Government is also seeking views on whether removal of the DRA could have unintended consequences on benefit provision.

## CONTACTS

Should you have any questions relating to any of the content of this review or how you may be affected then please contact us on 0845 357 8910 or by email at [employeebenefits@lucasfettes.co.uk](mailto:employeebenefits@lucasfettes.co.uk).