

ABOLITION OF THE DEFAULT RETIREMENT AGE

JUNE 2011

Until recently it was permissible for an employer to retire staff at age 65 under the Default Retirement Age (DRA) exemption in the Employment Equality (Age) Regulations (Northern Ireland) 2006 provided that they followed the proper statutory retirement process. However, the Employment Equality (Repeal of Retirement Age Provisions) Regulations (Northern Ireland) 2011 abolished the default retirement age exemption from 6 April 2011 subject to transitional arrangements which provide that certain employees may be lawfully retired under the old rules after that date.



What are the implications for employers?

The key changes for employers are as follows:-

All retirement dismissals must be objectively justified.

Whether employers decide to keep a fixed retirement age or retire employees on a case by case basis they will have to objectively justify their decision. Employers must identify a legitimate aim and show that the retention of the retirement age is a proportionate means of achieving that aim.

The duty to consider framework has been abolished.

The 2006 Regulations provided that an employee who wished to continue working beyond retirement could submit a request 3-6 months before the intended date of retirement. Retirements notified to employees before 6 April 2011 will continue to be subject to the duty to consider procedure where the employee reaches age 65 before 30 September 2011.

Retirement is no longer a statutory reason for dismissal.

Prior to 6 April 2011, Section 130 of the Employment Rights (Northern Ireland) Order 1996 provided that retirement was a potentially fair reason for dismissal. Employers must now rely on one of the other potentially fair reasons for dismissal (i.e. capability, conduct, redundancy, contravention of a statutory provision or some other substantial reason).

Key dates for employers

- **5 April 2011** – The final date on which employers could issue between 6 and 12 months notice of retirement under the statutory retirement procedure;
- **6 April 2011** – Retirements notified on or after this date must be objectively justified;
- **30 September 2011** – Employees who are to be retired under the statutory retirement procedure must have reached age 65 on or before this date;
- **4 January 2012** – The last date on which an employee who has been given the maximum 12 months notice on 5 April 2011 can make a statutory request to continue working;
- **5 April 2012** – The last date on which a retirement can take place under the default retirement age provisions unless the employer has agreed to extend the employee's employment;
- **5 October 2012** – The last date on which a retirement can take place under the 2006 Regulations where the employer has given the requisite notice and then agreed to an employee's request to extend his or her employment past the proposed retirement date (this is where an employer has agreed to an extension of 6 months which is the maximum extension allowed without the employer having to repeat the statutory retirement procedure).

What the papers say?

In 2010 the Daily Mail quoted the CBI Deputy Director General, John Cridland, as saying that:-

“Scrapping the default retirement age will leave a vacuum and raise a large number of complex legal and employment questions, which the government has not yet addressed.”

In January 2011, the Telegraph reported that the Institute of Directors has criticised the removal of the default retirement age *“for reducing flexibility for employers”*.

BBC News quoted Age UK as being *“absolutely delighted”* that the government was abolishing the default retirement age and Age UK commented that:-

“Everybody stands to win from scrapping forced retirement. People over 65 will have full employment rights for the first time. The economy will benefit from older workers' precious skills and experience and their increased buying power.”

Action points for employers

- Where an employer decides not to retain a default retirement age of 65 or a retirement age altogether it will need to make changes to contractual documentation. If an employer wishes to retain a retirement age it must be able to demonstrate that the retirement age is objectively justified
- Recruitment of older workers will also be affected. Previously, the 2006 Regulations provided that it was lawful for an employer not to recruit someone who was within 6 months of 65 or the normal retirement age if higher. That provision has now been repealed with the result that an employer who decides not to employ someone in that age bracket will have to justify its refusal.