

BBS briefing note

Abolition of the Default Retirement Age

In January 2011, the Government confirmed its intention to abolish the national Default Retirement Age (“DRA”) of 65, the age from which employers have been able to compulsorily retire their employees.

This BBS briefing note summarises the changes introduced and the potential impact on occupational pension schemes.

OVERVIEW

Since 2006, employers have been able to retire members of their workforce, regardless of their ability or desire to continue working, once they reached age 65. A statutory procedure had to be followed, the main conditions of which were that the employee needed to be given at least 6 months’ notice of retirement and that any request by the employee to continue working had to be given genuine consideration.

Effectively, it was lawful for employers to discriminate on the grounds of age in relation to retirements from age 65, with the Government confirming that a national DRA could be objectively justified.

WHY REMOVE THE DRA?

The Government wishes to encourage and enable individuals to continue working, recognising that people are living longer and healthier lives but are often under-saving for their retirement years.

The Government has separately legislated to increase State Pension Age above age 65.

The abolition of the DRA will mean that individuals who need or wish to continue working, and are able to do so, are not deprived of the opportunity simply because they have reached a particular age.

THE NEW PROVISIONS

Following a consultation process in 2010, the Government passed the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011, which phase out the DRA from 6 April 2011. In addition, the Government has removed the associated statutory retirement procedures, on the grounds that they are no longer necessary following the removal of the DRA and that the existing legal framework is sufficient.

Transitional provisions catered for notices of intended retirements that were issued on or before 5 April 2011. These retirements can continue, provided that the employee reached their DRA by 30 September 2011 and the previous statutory DRA procedures were followed.

From 1 October 2011, employers will still be able to retire an employee at a set retirement age, but only if they can provide an objective justification for that age, such as physical capability or workforce planning requirements.

Whilst the statutory DRA procedures will no longer apply to retirements going forward, employers will still need to follow a “fair” retirement process under the existing legal framework. An employer wishing to dismiss (or retire) an older worker in future would have to rely on one of the reasons set out in legislation, e.g. capability, conduct, redundancy, illegality etc.



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Claims of age discrimination against employers are expected to increase following the removal of the DRA. It is therefore important that employers are able to demonstrate that retiring employees at a particular age is a proportionate means of achieving a legitimate aim, and that they have sufficient evidence to support this view.

ISSUES FOR DB PENSION SCHEMES

Trustees and employers will need to start considering how DB benefits will be treated as more members continue working beyond their scheme's normal retirement age. The options available will depend on the particular scheme's Trust Deed and Rules.

Members may be able to continue accruing benefits, either in the DB scheme or in a separate DC arrangement. Alternatively, the benefits accrued as at the normal retirement date may be increased by a factor to take into account the postponement of retirement. Scheme Rules may also permit "flexible retirement", whereby members can take their benefits at normal retirement date whilst continuing in employment, to help "phase in" their retirement.

With any of these options, schemes are unlikely to see a significant impact on the cost of providing benefits, as these options are typically designed on a cost-neutral basis.

ISSUES FOR DC PENSION SCHEMES

The removal of the DRA will allow members to work for longer and potentially build up larger pension pots, with no significant impact on costs for the employer, other than the requirement to maintain contributions at the rate in force prior to age 65.

However, employers and trustees will need to consider whether the existing default investment funds and any life-styling options remain appropriate.

OTHER EMPLOYMENT BENEFIT ISSUES

A major concern raised during the consultation process was the cost of continuing to provide group risk benefits, including life assurance, for employees over the age of 65, as premiums tend to rise steeply from this age. As a result, the Government has introduced an exemption from the principle of equal treatment on the grounds of age, to allow employers to withdraw access to employer-provided insurance arrangements when employees reach age 65, or State Pension Age if later.

There is no comparable exemption for other employee benefits, such as employee share schemes or enhanced redundancy schemes.

BBS VIEW

The removal of the DRA and the statutory retirement procedures will no doubt impact on employers' retirement practices, which may need to be redesigned to accommodate the new legislation.

The removal of the DRA will also need to be considered in relation to any pension arrangements offered by employers to ensure that retirement practices are consistent.

BBS will continue to work with its clients to ensure that scheme benefit design accommodates the new legislation.

This BBS briefing note is based on BBS's understanding of the law and is provided for information only. It should not be relied upon as a definitive statement of the law and detailed legal and financial advice should be obtained on the specific circumstances before proceeding.

