

Checklist: Default Retirement Age

This checklist sets out the steps your business should take before the default retirement age (DRA) is abolished.

Why is the DRA being abolished?

- The DRA of 65 was introduced in 2006. Removing it is seen as a way of encouraging people to work longer and save for retirement.
- The abolition of the DRA will not mean individuals can never be forced to retire. Businesses can compulsorily retire employees if they can objectively justify the decision, although this is likely to be the exception.

When is the DRA being abolished?

The Employment Equality (Age) Regulations 2006 are being abolished on **1 October 2011**. A transitional period, commencing on 6 April 2011, is being introduced so any retirements your business has already planned can continue through to completion. This is provided that:

- Notice of retirement has been issued by **5 April 2011** (giving a minimum of six and maximum of twelve months' notice of the intended retirement date);
- The employee has attained or will attain, the age of 65 by **30 September 2011**; and
- All requirements of the DRA procedure have been met.

You should identify any imminent retirements within your business and check whether they are covered by the transitional arrangements. If you have already set in motion a retirement, it may be necessary to revisit those arrangements. This could mean retracting a letter of dismissal and then following the DRA procedure.

Even once notice has been given, it is possible for an employee to request and be given a 6 month extension to their retirement and still fall within these transitional arrangements.

Key dates for your diary

- **5 April 2011** - The last day your business can issue notice of dismissal for retirement under the DRA procedure.
- **30 September 2011** - The employee being retired must have reached the age of 65 (or the normal retirement age if this is higher) on or before this date.
- **4 January 2012** - The last possible date an employee being retired under the existing law can make a request to work beyond retirement. This date is dependent on the day notice to retire was given by the employer and the length of such notice.

- **3 October 2012** - Where an employer has agreed to a six month extension, the last possible date on which this would expire is on 3 October 2012. This date is dependent on the day notice to extend was given by the employee and the length of such notice.

Retirement age in contractual documents

Abandoning a fixed retirement age

- If your business decides to abandon a fixed retirement age, you should remove it from your contracts of employment and notify your staff of the change.
- Where the contract of employment is stated to terminate automatically on the person reaching the fixed retirement age, you should seek to vary the contract so your employees will have to provide the usual notice if they are resigning for retirement. Otherwise, your business will be unable to make appropriate preparations for that employee's departure.

Retaining or revising a fixed retirement age

If your business decides to retain a fixed retirement age, you should be able to demonstrate that, before making your decision you:

- Identified the business needs that are met by having a fixed retirement age.
- Considered whether there were other ways of meeting this aim.

Share schemes and associated documents

Review share scheme and any associated documents and consider whether the "good leaver" and "bad leaver" provisions need amending, in particular, whether retirement is defined flexibly enough to include retirement in the absence of the DRA or retirement through choice.

Recruitment

If age is currently a factor in your business's recruitment decisions, this must change. For businesses where there is no fixed retirement age, you will no longer be able to refuse to consider candidates on the basis they are almost 65 or over.

Benefits

Your business will be allowed to withdraw or withhold certain benefits to employees aged 65 or over. For example:

- Life assurance.
- Medical insurance.
- Permanent health insurance.

Appraisals and performance management

Make sure appraisal and performance management processes are tightened up so older workers do not receive greater scrutiny than other employees. Deal with any performance issues as soon as they arise to protect your business from allegations that older workers are being singled out.

Workforce planning

- Ensure conversations about employees' future plans are built in to your appraisal process. Only asking older workers about their plans could be seen as discriminatory.
- Adjust the promotion expectations of younger workers if the retirement age in your business is raised or removed altogether.
- Even if an employee has indicated they want to retire in the future, they are free to change their mind up until the point they have given notice to terminate their contract.

Checklist

You need to check whether you have

Any employees to whom you may already have sent notices of retirement	
Employees who will be age 65 years or over as at 30 September 2011 who you wish to retire	
Considered whether there is a business case for retaining a fixed retirement age in your business	
Changed your employment contracts to accommodate abandoning a fixed retirement age (which will be the default position)	
Shares schemes or other benefits which include retirement as one of the factors which affect the status of a good or bad leaver	
Provision to withdraw or amend life insurance, medical insurance or permanent health schemes once employees reach age 65	
Appraisal forms which are generic to all age groups – if future plans are an issue for discussion, then this must be the same for all employees	

In most cases your current documents and policies will need to be updated to accommodate these changes

More information

If you have any queries about the content of this checklist, please contact Caroline Leaver on 020 3159 5172 or c.leaver@goldenleaver.co.uk