

Bulletin 196

February 2011

DRAFT REGULATIONS PUBLISHED – REPEAL OF DEFAULT RETIREMENT AGE

In January 2011 we issued a “Stop Press” bulletin regarding the government’s plan to remove the national Default Retirement Age (DRA) – and promised to keep you posted.

On Thursday 17 February 2011, the Department for Business, Innovation and Skills published the draft Employment Equality (Repeal of Retirement Age) Regulations 2011, which will abolish the DRA from 6 April 2011. As such, the new law, which makes it unlawful to dismiss someone on grounds of age unless there is objective justification, will take effect on 6 April 2011, subject to transitional provisions.

To fall within the transitional provisions, the draft Regulations provide that an employee can still be compulsorily retired as long as the following conditions are met:

- The notice of intended retirement must have been issued to the employee on or before 5 April 2011
- The employee “will attain” the age of 65 (or, if higher, the employer’s normal retirement age) between 6 April 2011 and 30 September 2011
- All requirements of the statutory retirement procedure have been met.

There does appear to be a drafting error in the Regulations as they suggest that employers will not be able to retire those employees who have already reached the age of 65 before the 6 April 2011 without facing an unfair dismissal and age discrimination claim. It seems unlikely that this was intended and it is hoped that this will be addressed in due course.

Many employers have expressed concern that the removal of the DRA could lead to substantial costs for providing insured benefits for the over 65s. Regulation 2 of the draft Regulations helpfully provides that it will not be an age contravention for employers to cease to provide group risk insurance benefits to the over 65’s (or those over the state pension age, whichever is higher) such as income protection, life assurance, sickness and accident insurance and private medical insurance.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to kimberley.malcolm@brabnerscs.com

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