

## Briefing Paper

### **The abolition of the default retirement age in the UK**

In partial response to the anti-discriminatory EU Employment Framework Directive, the Labour Government's 2006 Employment Equality (Age) legislation made it unlawful to discriminate in recruitment, terms and conditions, promotions, transfers, training or dismissals on grounds of age. It also set a default retirement age (DRA) allowing employers to compulsorily retire staff at 65 without it being deemed unfair dismissal or age discrimination provided they followed a set retirement procedure (giving employees six months' notice of retirement and the right to request to work longer, which employers had a duty to consider).

In introducing the legislation Labour promised to review this provision, a process completed by the Coalition Government which decided to abolish the DRA from October 2011 (with a transition period beginning in April). It based this choice on several grounds: the pressure of increasing life expectancy and the associated surge in state pension costs; its alignment with the rise in pension age; the potential economic, organisational and individual benefits of retaining older workers, and BIS and DWP research which revealed that the majority of entities operated without compulsory retirement ages and, where they existed, requests to stay on were largely accepted. Whilst most employees did not want to work beyond 65, about a third would do so for financial reasons and the 'softer' benefits of job/work satisfaction and keeping active.

This evidence, and the decision it supported, were welcomed by age campaigners and trade unionists who had argued that the DRA was an arbitrary expiry date undermining older workers' rights. Opposition came from a vocal minority of employers and employer groups who felt its abolition exposed them to greater risks and costs at a time when they were

being pressured to fuel the economic recovery. They maintained it would force revisions in all aspects of workforce management from recruitment to redundancy but expressed particular concern about performance reviews. Without a DRA, employees would largely choose when and how they retired; dismissal had to be based on performance and capability assessment, a process that was already complex. It assumed stringent appraisal procedures and well-trained assessors and even then could lead to lengthy tribunal cases, causing stress and cost to both parties. With unfair dismissal cases rising year-on-year, these employers calculated that abandoning a fixed retirement age would lead to an escalation in age-related claims.

Whether one's sympathies are with the abolitionists or their opponents, it does appear that the Coalition has given insufficient time to considering the implications of scrapping the DRA. Its decision opens the gates to increasing numbers staying on at work presenting employers with major new challenges not simply with regard to performance assessment, but also in managing a more diverse workforce, developing supportive policies for older workers and ensuring productive longevity.

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