

Farewell to the default retirement age (Part 2)

The Government has recently confirmed that the statutory default retirement age (“**DRA**”) is to be abolished from 6 April 2011. However, as our last Legal Update pointed out, the wording of the draft regulations was very unclear. The transitional provisions, which apply up until 6 April 2012, appeared to overlook a significant issue.

The facts

The original draft regulations provided that transitional provisions would apply during the period 6 April 2011 to 6 April 2012. Under the previous draft regulations, employers had to issue notices to employees informing them of their retirement date on or before 5 April 2011 and the retirement date had to fall no later than 5 April 2012. The transitional provisions were restricted to employees who turn 65 between 6 April 2011 and 30 September 2011. We suggested in our previous Legal Update that we anticipated the intention had been to apply the transitional provisions to employees who were at least aged 65 by 30 September 2011. Thus older employees, who had been kept on, but who had now been issued with notices of retirement, would continue to be covered by the transitional provisions. However, the clear wording of the draft regulations contradicted this.

We are pleased to say that yesterday the Government issued amended draft regulations, which addressed this point. Instead of applying the transitional provisions only to employees who turn 65 between 6 April and 30 September 2011, the transitional provisions will now apply to any individual who has attained the relevant age limit or will attain it before 1 October 2011. The relevant age limit is either 65 or the normal retirement age for the employment in question if higher than 65. Since, in practice, it is now relatively rare to find a normal retirement age above age 65, in practice this means that the transitional provisions will apply to employees who are 65 or older before 1 October 2011.

Impact

Clarification is to be welcomed. Although it is in line with what we anticipated was the underlying intention, the revised wording will remove any scope for argument. It is important to note that the cut-off date of 5 April 2011 for giving notice of retirement remains unchanged and the retirement must take effect no later than 5 April 2012.

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