

A Retiring State of Mind

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Following consultation, the Government has confirmed that it will definitely phase out the Default Retirement Age (DRA) of 65 this year – see Page 2. While the announcement was expected, it has nevertheless generated a significant difference of opinion amongst the UK's social partners and a warning from the CIPD that the decision must now spark a change in the attitude to older workers.

As proposed in the Government's consultation, from 6 April 2011 employers will no longer be able to issue compulsory retirement notifications using the DRA procedure and the DRA will be abolished on 1 October 2011.

The CBI has commented that the guidance being provided for employers on working without the DRA is "too little too late" and there is not enough clarity for employers on how to deal with difficult questions on performance. The CBI predicts that the outcome will be more unpleasant and costly legal action.

Welcoming the abolition of the DRA, TUC General Secretary Brendan Barber said that it will stop employers from dismissing people on an arbitrary basis just because they have reached 65 and supports the TUC's position that employees should be judged on their ability to do the job, not their age.

The CIPD commented that the decision must mark a step-change in the attitudes of some employers and managers towards older workers. In its view, the date of someone's birthday should not come into such decisions and the existence of the DRA has acted as a smokescreen and an easy get-out clause for poor management for far too long. Poor performers can and should be tackled by managers regardless of their age and with proper performance management procedures in place employers should have nothing to fear.

From a practical point of view, the CIPD appear to have hit the proverbial nail right on the head.

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Government Confirms Abolition of Default Retirement Age

The Government has confirmed that it will definitely phase out the Default Retirement Age (DRA) later this year. The confirmation accompanies the Government's [Written Response](#) to its recent consultation on its proposal to abolish the DRA of 65 years of age. New guidance from Acas has been published to help businesses adapt to the removal of the DRA.

Following consultation, the Government has confirmed that the Default Retirement Age is to be phased out between 6 April and 1 October 2011. The change means that: (i) from 6 April 2011, employers will not be able to issue any notifications for compulsory retirement using the DRA procedure; (ii) between 6 April and 30 September 2011, only people who were notified before 6 April, and whose retirement date is before 1 October can be compulsorily retired using the DRA; and (iii) from 1 October, employers will not be able to use the DRA to compulsorily retire employees.

The Government has confirmed that although it is removing the DRA, it will still be possible for individual employers to operate a compulsory retirement age, provided that they can avoid a claim of direct age discrimination by objectively justifying the specific age in question as being a proportionate means of achieving a legitimate aim.

To help employers adapt to the change, the Government has worked with Acas to develop new comprehensive [Guidance](#) and has provided further background information and research together with updated DWP information for employers on workforce management without a fixed retirement age, which is available at [Business Link - Managing without a fixed retirement age](#).



Government publishes guidance on new positive action provisions

The Government has published guidance on exactly how the Equality Act's positive action in recruitment and promotion provisions will work when they come into force on 6 April 2011.

Section 159 of the Equality Act 2010 allows for positive action in recruitment and promotion. Where there are two or more candidates of equal merit, the employer can select one with a particular protected characteristic where the employer reasonably believes that people who share that protected characteristic are disadvantaged or the numbers doing the job are disproportionately low, as long as it is a proportionate means of achieving a legitimate aim.

S.159 did not come into force on 1 October 2010, when most of the employment provisions in the Equality Act were enacted. The provision remained under review by the Coalition Government, but on 2 December 2010 the Government announced that S.159 would be introduced on 6 April 2011 and that it would publish guidance to help employers understand how they can use the positive action provisions to improve diversity in their workforce when recruiting and promoting candidates. The guidance, [A Quick Start Guide To Using Positive Action In Recruitment And Promotion](#), is now available on the Equalities Office website.



NIESR publishes report on caste discrimination

The National Institute of Economic and Social Research (NIESR) has published a report, commissioned by the previous Labour Government, on caste discrimination and harassment in Great Britain, which shows evidence of discrimination in employment by higher castes against lower castes.

The Equality Act 2010 gives the Government the power to provide specifically that "caste" is an aspect of "race" for the purposes of the Act, which would ensure that caste discrimination and harassment in employment are unlawful. The previous Labour Government commissioned the NIESR to conduct research into caste discrimination to determine whether this power would be used and the Government Equalities Office has now published its report, *Caste discrimination and harassment in Great Britain*, together with a summary of the findings.

Government
Equalities Office

The report states that caste awareness in Britain is concentrated among people with roots in the Indian sub-continent (around 5% of the population). There is evidence of caste discrimination and harassment in the workplace (bullying, recruitment, promotion, task allocation) by higher castes against lowest castes and the NIESR are of the view that specific anti-caste discrimination measures are required to tackle the problem. The Government will now examine the report before deciding whether to use its power to outlaw caste discrimination.

No religious discrimination or unfair dismissal

In *Amachree v Wandsworth Borough Council*, an employment tribunal held that a Christian housing officer who told a terminally ill service user that she should "put her faith in God" and sought publicity when disciplinary action was taken was fairly dismissed and not discriminated against because of his religion.



Mr Amachree, a Christian, believes that when people are ill and doctors cannot provide medical help they should "look to God". A service user with an incurable disease complained about Mr Amachree. She said that during an interview he told her that her illness was a result of her lack of faith in God and that she needed to "find God". He accepted that it was not his role to discuss the faith of service users, but a few weeks later, a local Christian organisation issued a press release, with Mr Amachree's authority, with the headline "London homelessness prevention officer told 'say God bless' and we'll sack you". After a full investigation, he was dismissed for making offensive and inappropriate comments to a service user during an interview and releasing her personal details to the media, both of which could have a damaging effect on the Council's reputation.

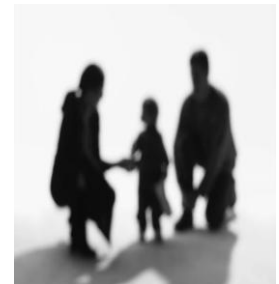
The employment tribunal dismissed Mr Amachree's claims. He had not been unfairly dismissed because the Council had a genuine belief formed on ample grounds that the remarks had been inappropriate and might have had a serious impact on its reputation. Nor had Mr Amachree been discriminated against on the ground of his religion. The dismissal came out of Mr Amachree's misconduct and not the fact that he is a Christian. In any event, a comparator, i.e. a person in contact with service users who inappropriately promotes religious beliefs or any other strong personal views, would not have been treated any differently.

Flexible working for carers of children under 18

The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2010 were laid before Parliament on 16 December 2010 and will come into force on 6 April 2011. From that date, an eligible employee will be able to request flexible working to care for any child under 18 years of age.

Currently, the right to request flexible working is available in respect of a child under 17 (or under 18 if the child is disabled). When it came to power, the Coalition Government stated its intention to extend the right to request flexible working to those wanting to care for any child under 18 and then, at a later date, to all employees (a consultation on how to do this and on the creation of a new system of flexible parental leave is awaited).

The Amendment Regulations amend the Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002. The amendment widens one of the conditions under which employees (under section 80F of the Employment Rights Act 1996) may request a contract variation. The condition which is amended relates to the purpose for which the request is made. Before the coming into force of these Regulations the condition requires the purpose of the request to be for the employee to care for a child under 17 or, if disabled, under 18. Following the coming into force of these Regulations this is changed to the child being under 18.



Public Sector Equality Duty Regulations Published

Following consultation on its proposals for specific duties to comply with the general equality duty, the Government has laid The Equality Act 2010 (Statutory Duties) Regulations 2011 before Parliament setting out the duties that public bodies must comply with when the new single equality duty comes into force.

Public bodies covered by the specific duties must publish sufficient information to show that they have considered the three aims of the general duty across their functions. The information must include information on the effect that the public body's policies have on equality for service users and their employees (for those with 150 or more staff). Public bodies must also publish evidence of the equality analysis undertaken to establish whether their policies and practices would further, or have furthered, the three aims of the general duty. They must also publish details of the information they considered in conducting that analysis and details about engagement that has been undertaken with people who have an interest in furthering the three aims of the general duty. Public bodies other than schools must publish this information by 31 July 2011. Schools must publish it by 31 December 2011. Subsequent information must be published at least annually.



Public bodies covered by the specific duties must publish equality objectives that will help them to further the aims of the general duty. These must be based on published equality evidence and analysis, and be specific and measurable. Public bodies must also publish how they will measure progress towards their equality objectives and details of engagement they have undertaken with people affected by the equality duty in developing equality objectives. Public bodies must publish their equality objectives and how they will measure progress by 6 April 2012. Subsequent objectives and accompanying information must be prepared and published at least every four years.