



Removal of the Default Retirement Age (DRA)

Good news for group risk

The government has confirmed its intention to remove the DRA completely. This begins on 6 April 2011 and the DRA will be fully abolished on 1 October 2011.

The good news for the group risk industry is that insured group risk benefits have an important exemption from the principle of equal treatment on the grounds of age and can still use an upper age limit, which has been lobbied for by Group Risk Development (GRiD) on behalf of the industry. Without this exemption, there was a significant danger that with potentially increased costs for employers if they had to provide benefits for employees of any age, these important benefits could be withdrawn or watered down significantly.

Why is the Government removing the DRA?

The removal of the DRA is one of the steps the government is taking to help encourage people to work for longer against the backdrop of demographic change:

- It will be good for the economy, society and for individuals, as evidence shows that keeping more people in work helps the economy grow.
- For most types of work, people's capabilities are not linked to age.
- Over 60% of employers operate without a compulsory retirement age. Retirement ages are more commonly used in the public sector than the private sector.
- Most employees do not want to work beyond age 65. Only around a third of people want to work beyond age 65.
- The administrative burden of statutory retirement procedures will be removed.

How will employers be affected?

There are transitional arrangements for phasing out the DRA that apply from 6 April 2011 to 30 September 2011.

Any retirements notified using the DRA where the retirement at age 65 falls before 1 October 2011 will still be allowed, provided the procedures set out in the Employment Equality (Age) Regulations 2006 are correctly followed. Compulsory retirements using the DRA will cease completely on 1 October 2011. After that date, if an employee is compulsorily retired by an employer, unless the employer is using an Employer Justified Retirement Age (EJRA), this could be treated as unfair dismissal.

An EJRA will be allowed for some or all staff on health or safety grounds or other objectively justified grounds, but this is likely to be used by a minority of employers; examples could be air traffic controllers and police officers. There is currently no guidance on EJRA's, although case law will develop once the DRA is abolished. The only fair grounds on which an employee can be dismissed is their performance, so managing employees' performance properly will be even more important for employers in the future.

In brief...

The DRA will be phased out between 6 April 2011 and 1 October 2011.

There is an exception for insured group risk benefits.

Removal of the DRA is one of the steps the government is taking to encourage people to work longer.

Over 60% of employers already operate without a compulsory retirement age.

Only around a third of people want to work beyond age 65.

Compulsory retirement ages cannot be used unless an employer can objectively justify this, for example on the grounds of Health and Safety.

The only fair grounds on which an employee can be dismissed is their performance.

BusinessCare can provide help for employers who have Group Income Protection cover with Canada Life.



Employers who have Group Income Protection cover with Canada Life have access to BusinessCare which can provide information and assistance on problems commonly faced by organisations, including employment issues.

How will group risk benefits be affected?

In the government's response to the consultation on the phasing out of the DRA they clearly recognise the importance of group risk insurance and said:

'The government believes that it is in the wider interest that these benefits continue and wants to support the inclusiveness of group risk insurance, where the spread of risk allows cover to be provided to individuals who might otherwise be unable to obtain cover or only get cover on unfavourable terms.'

'We believe that the safest way to guard against these benefits being either greatly reduced or withdrawn for those currently covered is to provide an exemption. We therefore intend to introduce an exemption to the principle of equal treatment on the grounds of age where group risk insured benefits are provided by an employer. It will permit such benefits to be withdrawn, will apply initially to employees aged 65 and above and will rise in line with the State Pension Age.'

Some clarity is needed from the regulations on the following issues:

- The group risk insured benefits mentioned are income protection, life assurance, sickness, accident and private medical insurance. This should include critical illness.
- Only 'insured' benefits are mentioned. It is not clear whether this exemption will apply to self insured benefits. If it does not, that could be another boost to insured arrangements.
- The maximum age is going to be linked to State Pension Age. This will of course be rising, initially from 65 to 66, but there is no mention of what will happen if an income protection claim is being paid to 65, which was insured on the basis of a maximum age of 65, but the State Pension Age has increased when they reach age 65.
- It is not clear whether an employer will be able to use maximum ages that exceed the State Pension Age. Currently, employers may still allow group risk benefits to apply beyond age 65 when people continue working, but with a maximum age of perhaps age 70.

Further information

For further information, the following links to the department of Business, Innovation and Skills website, which includes links to all relevant documents including ACAS guidance for employers:

<http://www.bis.gov.uk/policies/employment-matters/strategies/default-retirement>

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In brief...

The government supports the value of group risk insurance.

An exemption to the principle of equal treatment on the grounds of age where group risk insured benefits are provided by an employer will be introduced.

Regulations will permit insured group risk benefits to be withdrawn above State Pension Age.

Clarity from the regulations is needed on whether:

- Critical Illness is included.
- Self insured benefits are included.
- Income protection claims in payment have to continue to the higher age when State Pension Age increases.
- Maximum ages above State Pension Age will be allowed.

If you have any questions regarding this bulletin, please contact your Account Manager or phone our Customer Services Centre on 0845 223 8000.



Canada Life

Canada Life Limited
3 Rivergate, Temple Quay, Bristol BS1 6ER
Telephone 0845 223 8000