



Manager Briefing on Changes to Age and Retirement legislation

1. Introduction

The Default Retirement Age (DRA) of 65 has been removed from legislation by the Government, effective from 1st October 2011. Alongside raising the State Pension Age to 66 by 2020, the move is part of a Government strategy to encourage people to work for longer.

2. Legislative Background

After the 1 October 2011:

- The Equality Act 2010 (see Figure 1) makes age discrimination unlawful unless it can be justified objectively. Although theoretically possible, it is likely to be very difficult to justify compulsory retirement (e.g. at age 65).
- Without an objective justification it will no longer be lawful to enforce someone to retire because they reach 65, even if their contracts of employment contain an existing clause relating to compulsory retirement at a given age.
- In other words, 'retirement' is no longer a potentially 'fair' reason for dismissal in employment law terms.
- Staff reaching 65 will no longer have to request to work beyond 65 – they will simply continue working if that is their preference.
- Staff will in future need to resign in order to retire from work. For the University's Retirement Resignation procedure, visit:

<http://www.shef.ac.uk/hr/guidance/leaving/retirement>

Figure 1. THE EQUALITY ACT 2010 and AGE

The Equality Act made age a protected characteristic, protecting employees, workers and job applicants of all ages, for example in relation to:

- Job opportunities
- Access to opportunities for promotion
- Access to training, benefits, facilities / services, etc.

In addition to direct discrimination, indirect discrimination, victimisation and harassment, there are two new areas of anti-discrimination to be aware of:

- Associative Discrimination; e.g. An employee's husband/wife/partner has retired, his/her manager assumes that the employee will also be retiring soon and treats him/her less favourably as result.
- Perceptive Discrimination; e.g. A manager thinks that a member of staff who would not be interested in (or not suitable for) a promotional opportunity because s/he thinks the employee is too old or too young.



3. Recruitment and Selection

There are a few points to be aware of in relation to recruitment and selection:

- The original exemption in the Equality Act 2010 which allowed employers to set a maximum recruitment age of 65 has been removed, so applicants of any age should have equal access to job opportunities.
- 'About the Job' should match the job requirements and be free from unfair age bias.
- Avoid language that might stop people from applying because of their age.
- Ensure that your interview questions are free from age bias.
- Check any assumptions you might make about whether a person is 'capable' of performing a job based on age.

4. Training and Development

Employees of any age may seek opportunities to develop and learn new skills, and managers can help to maintain staff motivation through appropriate access to/use of:

- TUOS Staff Review and Development Scheme
- Staff development and training opportunities
- Regular, open and honest discussions with all staff about plans and career aspirations – individual, department/Faculty, etc – e.g. within regular one-to-one discussions.

5. Employee Performance and Capability

Managing employees effectively has always been a priority for managers and Heads of Department. The following tips are good practice for managing all staff:

- At least annually, use SRDS to discuss with all employees: reviewing performance against objectives, setting future objectives, assessing development and support needs, and exploring future departmental plans (and employee aims and aspirations) and the impact these may have.
- Hold regular one-to-ones with all staff throughout the year.
- Set clear and achievable work objectives for all staff.
- Provide / arrange appropriate support and training to address any skills needs.
- Don't avoid/delay addressing under-performance issues, seek to identify the cause of the issue and a possible resolution promptly, and provide reasonable opportunity (and appropriate support where relevant) for the employee to improve performance.
- Manage any performance management issues consistently for staff of all ages.
- Avoid age-related judgements about capability.
- Use a risk management approach for early identification of potential health risks due to age.
- Reasonable adjustments / job changes may need to be considered, e.g. where an age-related disability develops.
- Consult HR where you have concerns.



6. Planning for the Future

Open and honest discussion between any member of staff and their manager can help both to plan more effectively for the future and, where appropriate, can help to facilitate the transition from work to retirement for both the individual and the department.

Opportunities such as SRDS and one-to-one's may be a helpful place in which to discuss with all employee their aims and ambitions, as well as organisational plans and staffing needs. Equally a member of staff may request a stand-alone meeting with their manager to discuss issues such as their plans leading to retirement. The following tips may help managers to hold such discussions:

- Ask open questions, e.g.
 - What are your aims and plans career-wise for the next year or two?
 - We are offering all staff the opportunity to [be trained in the new technology / attend this course, etc] – how do you feel about this?
 - I am asking all staff if they would like to be considered for [a career development/promotional opportunity].
- Ask each employee where they would like to see him- or herself in the short, medium and long term.
- If you discuss an employee's retirement needs, make it clear that you are not suggesting or trying to influence an employee to retire at a given time, or that you expect him / her to do so. Emphasise that it is helpful to understand his/her plans, even if they are not definite, in order to make sure that future staffing plans can be considered.
- Ensure that all staff understand that any discussions will not be taken as confirmation (e.g. of retirement at a given date) of retirement.
- Bear in mind that some employees may not choose to discuss his/her plans openly with you.
- It is not necessary to ask all employees exactly the same questions – they need to be adapted to individual circumstances – but all the relevant issues should be explored with all employees in an open way which avoids making assumptions based on age.
- If an employee indicates his/her intention to retire shortly, you may wish to explore succession planning options with him/her (See Section 7).

7. Succession Planning

When managers are discussing future plans with individual employees, they should consider the experience and skills that each employee has and how these might best be deployed. For example, if an employee indicates an intention to retire shortly, the manager may wish to explore:

- How to retain the knowledge, skills and experience that the employee has
- How such knowledge, skills and experience could be passed on to other colleagues



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- Whether there is anyone else in the organisation who might be a suitable replacement for the employee
- Whether the employee may be suitable for, and agreeable to, taking on a mentoring role in respect of less experienced staff or a prospective replacement.

8. Flexible Retirement

An employee considering future retirement may wish to explore with you any opportunities to transition towards their future retirement – e.g. different responsibilities, different roles, reduced or flexible hours. Pension schemes such as USPS and USS (from 1 October) enable employees reaching pensionable age to draw their pensions whilst continuing to work.

For the manager, any potential benefits of such requests will need to be considered against the potential managerial challenges such as: business needs of an area, overall workforce planning issues, and the need to meet the full requirements of the role.

9. Further Support

Advice and support, including discussions relating to individual cases, is available from your customary Human Resources Adviser/Lead:

<http://www.sheffield.ac.uk.eresources.shef.ac.uk/hr/aboutus/whoweare/ops.html>

The Department of Human Resources
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