

Review of removal of the default retirement age

Department for Business, Energy and Industrial Strategy

RPC rating: fit for purpose

Description of proposal

The Employment Equality (Age) Regulations (2006) provided for a national default retirement age (DRA) of 65 years and prohibited compulsory retirement below that age unless 'objectively justified'. Employers could compulsorily retire employees at age 65 or above provided they followed a set retirement procedure, which gave employees a statutory right to six months' notice of retirement and a right to request to work beyond their retirement date, which the employer had a duty to consider. Employers were under no obligation to agree to such requests.

Following a 2010 review of the DRA, the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011 began the process of phasing out the DRA from 6 April 2011, prohibiting compulsory retirement taking place after 5 October 2012 unless objectively justified. The main aims were to provide greater opportunities for people aged 65 or more to participate in the labour market and to remove the administrative burdens associated with the DRA 'right to request' retirement procedure.

It remains possible for employers to retire employees lawfully at a set age provided that the retirement age is objectively justified, i.e. shown to be a proportionate response to a legitimate aim. This is known as an employer-justified retirement age (EJRA). Without such justification, a compulsory retirement age would be discriminatory under section 13(2) of the Equality Act 2010.

Impacts of proposal

2010 impact assessment

The post-implementation review (PIR) explains that the impact assessment (IA) estimated a net present value of £2.89 billion and sets out a breakdown of costs and benefits to employees, employers and the Exchequer (page 9). The IA's estimates of the recurring impacts of the measure rested on three sets of assumptions regarding: first, the effect on labour supply; second, in relation to employer use of a compulsory retirement age and the number of employees that would otherwise submit a request to work longer; and third, changes to performance management

systems and appraisals. The IA estimated an increase in the labour supply of 6,200 older employees in the first year, rising to 10,600 employees by 2020. This was very small in comparison with overall labour market levels and trends for older workers.

The main benefits (all of which were ongoing) were: increased earnings as older workers remain in work (£102.8 million in the first year); increased tax receipts (£76.1 million); increased employers' operating surplus (£38.6 million); and administrative burden savings resulting from the removal of the 'right to request' procedure (£5.4 million). The main costs were: familiarisation (£18.1 million one-off); introducing a performance management system and conducting appraisals (£33.2 million one-off; £3.6 million annual) and increase in employment tribunal claims for unfair dismissal (£3.3 million annual). The equivalent annual net direct cost to business for the measure, excluding the £38.6 million business benefit from an increase in labour supply deemed to be indirect, was £8.0 million.

The PIR explains that attributing outcomes directly to the removal of the DRA is complicated by the absence of a clean counterfactual and presence of confounding factors, such as increases in the state pension age and the collapse of many company pension schemes. The PIR therefore focuses on testing the validity of the assumptions made in the IA and whether the anticipated outcomes were achieved (page 10).

Research methods

The Department conducted its research in four stages: an in-house review of existing evidence relating to retirement ages, the DRA and the potential and actual impacts of its removal; collection and analysis of primary data from the British social attitudes survey series on retirement expectations among employees and the extent to which these have changed since the removal of the DRA; analysis of survey and administrative data on trends in the nature of labour market participation, dismissal disputes and age discrimination complaints over time and effects of the policy on performance management systems; and semi-structured interviews with three employer representative organisations and consultation with organisations representing individuals. The data sources used included the labour force survey, work-life balance employer survey, employment tribunal statistics and ACAS early conciliation data, and employer skills survey. The PIR also draws on a 2017 report for the Department for Work and Pensions based upon qualitative interviews with 50 businesses employing older workers.

Findings

Sections three to five of the PIR consider the impact of removing the DRA on individuals, employers and the Exchequer, respectively. Section three presents absolute and percentage increases in employment between 2011 (when DRA began to be phased out) and 2016. This shows that employment of workers aged 65 and over increased by 271,000 (31 per cent), in excess of the assumptions in the IA, compared to 2.1 million (7 per cent) for workers aged 16 and over. Section six revisits the assumptions underpinning the IA. Overall, the PIR concludes that the removal of the DRA has achieved its objectives. In general, it finds no evidence of possible unintended consequences anticipated in the IA, such as increased levels of dismissal disputes, ongoing use of EJRA or the use of performance appraisal systems to 'manage out' older employees in place of the DRA. It does, however, identify that, in the absence of a set retirement procedure, some employers are unsure of how to have conversations with their staff about their retirement plans. It recommends, therefore, the provision of better advice and guidance in this area.

Quality of submission

The Department's submission covers the key areas that a PIR of a relatively high-impact measure needs to cover. In view of this and the inherent difficulty of attributing changes in labour supply among individuals aged 65 and over to the removal of the DRA, the Department has provided sufficient analysis to support the recommendation to retain the measure. The Department's structured approach to the PIR and use of a variety of research methods are welcome, and the PIR is well-written. The identification of the uncertainties experienced by some employers about how to have conversations with their staff about their retirement plans is a valuable finding and leads to the proposal for better advice and guidance.

There are some areas where the PIR would benefit from providing additional information:

- *Comparison against the IA estimates.* The PIR addresses primarily the recurring impacts of the proposal. The PIR would benefit from additional coverage of transition costs, particularly as the estimates for familiarisation in the IA appear to have been based on previous IAs. The PIR could also provide further comparisons of actual recurring impacts of the measure (e.g. the saving from not having to process a 'right to request' to remain in work) against the IA's assumptions.

- *Evidence to support the conclusions drawn on unintended consequences.* In particular:
 - *Use of EJRA.* The PIR notes that “*Indicative research suggests that employer use of an Employer-Justified Retirement Age (EJRA) has reduced since the abolition of a fixed retirement age and is now only used among a minority of employers*” (page 51). The PIR could address further whether this is influenced by “*...the cost and time required to justify objective criteria in the event of being taken to an Employment Tribunal.*” (page 35). The PIR’s statement that “*One business stakeholder mentioned that some employers report that justifying the retirement age makes it expensive to ‘retire people’ as a result of this de-regulatory measure*” (page 40) could have been investigated further.
 - *Use of Employment Tribunal statistics.* The PIR acknowledges the difficulties in isolating the effects of the removal of the DRA on age discrimination claims. These include the likely impact of the introduction of employment tribunal fees and ACAS early conciliation in reducing the number of employment tribunal cases. The PIR’s conclusion that it has found “*...no systematic evidence that employees increasingly sought redress through the employment tribunal system as an unintended consequence of removing the Default Retirement Age...*” (page 34) might, therefore, be further qualified.
 - *Employment of younger workers.* The Department has updated the IA’s literature review on whether increased labour market participation of older workers affects the employment or progression opportunities of younger workers. The PIR would benefit from further discussion of this subject, drawing upon any relevant information collected for the PIR.
- *Consideration of comments raised in the RPC consultation stage opinion on the IA.*¹ In particular, the PIR would benefit from considering evidence on whether the measure addressed any ‘culture of retirement’, whereby employees were less productive as they approached their DRA.
- The relationship between wages and productivity of older workers.
- Reduced pension liabilities.

¹ ‘*Phasing out the Default Retirement Age*’, 16 December 2010 (no RPC reference number).

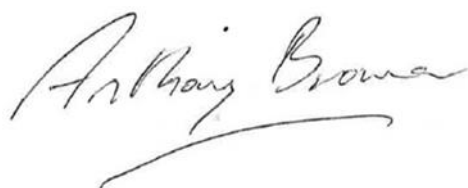
- How the conclusions might have been affected by the widespread changes to private, as well as public, pension systems.

Finally, the PIR might usefully draw lessons for how to evaluate a policy effectively when more than one policy change may have an impact on the same environment. In particular, this could highlight what steps can be taken to help ensure an evidence base can isolate the impact of different policies on outcomes.

Departmental recommendation	Retain
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RPC assessment

Is the evidence in the PIR sufficiently robust to support the departmental recommendation?	Yes
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Anthony Browne, Chairman