

PERSONNEL SERVICES

University Offices, Wellington Square, Oxford OX1 2JD
 Director of Personnel and Administrative Services

**CONFIDENTIAL**

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To: heads of departments and institutions, faculty board chairmen,
 departmental administrators and faculty board secretaries

6 October 2010

cc. heads of division, divisional secretaries, Dr Gambles, Mr Shaw,
 Principal Administrator of the Conference of Colleges

Phasing out of the default retirement age (DRA)

The Government has announced its intention to abolish the statutory default retirement age of 65 by 1 October 2011. Under current arrangements, employers can rely on the default retirement age to decline requests for staff to work beyond the age of 65.

Under the new proposals, after 1 October 2011 any employer wishing to retire an employee aged 65 or over will have to follow a fair dismissal procedure relying on one of the reasons for terminating employment set out in the Employment Rights Act 1996, such as capability (health or performance), conduct, illegality, or some other substantial reason.

The Government is currently consulting on implementation of the proposals and further information will be circulated once the final legislation is published.

The Personnel Committee has given preliminary consideration to the implications of the abolition of the DRA, which are clearly going to be significant. The University will be responding to the consultation, setting out the operational and other challenges which such a change will present, particularly when introduced on such a short timescale. The University will also be considering how it might react to the new circumstances that will obtain after 1 October 2011. The Personnel Committee will liaise closely with the colleges, via the Conference of Colleges, in relation to joint appointments.

Transitional arrangements

*In the meantime, your attention is drawn to the transitional arrangements which will apply between 1 April and 1 October 2011. Retirements due to fall before 1 October 2011 will continue to be permissible as long as the current requirements of the statutory DRA procedure have been followed. During this period, departments and divisions **must continue to follow the current university procedure in respect of all employees due to retire before 1 October 2011**, i.e. send out the statutory notification of retirement date a maximum of 12 months and a minimum of 6 months before the normal retirement date, and give due consideration to any requests from employees wishing to continue working beyond the normal retirement date.*

The current procedures for normal retirement under the current arrangements may be found at <http://www.admin.ox.ac.uk/ps/managers/pensions/retirement/index.shtml>.

1. Actions required of departments and divisions

- (i) Until further notice departments should continue to follow the arrangements set out at <http://www.admin.ox.ac.uk/ps/managers/pensions/retirement/index.shtml> for all staff whose contractual retirement date falls **before 1 October 2011** (i.e. including 30 September 2011 (the normal retirement date for relevant academic and academic-related staff), as well as 31 July 2011 (the normal retirement date for relevant support staff)). This involves:
 - a) identifying all staff whose contractual retirement date will be reached before 1 October 2011;
 - b) sending relevant staff written notification of their retirement date a maximum of 12 months and **minimum** of 6 months prior to the retirement date, and at the same time informing them of their right to request to defer their retirement date;
 - c) considering any requests to defer retirement in accordance with the arrangements set out at <http://www.admin.ox.ac.uk/ps/managers/pensions/retirement/defer.shtml>. Note that staff who are permitted to continue to work beyond the default retirement age will, after 1 October 2011, be covered by the new legislation; and
- (ii) complete the annual monitoring form (which was circulated to departmental administrators by email on 27 September), reporting how many requests to defer retirement were received and accepted or rejected in the period 1 October 2009 to 30 September 2010. The form should be returned by 8 October.

2. Background

The Employment Equality (Age) Regulations 2006 introduced the concept of a national Default Retirement Age (DRA) of 65 and prohibited compulsory retirement before that age unless it could be objectively justified. The Regulations themselves arose out of the EU Employment Framework Directive, which directed member states to introduce anti-discrimination regulations to cover a range of protected characteristics including age.

On 29 July 2010 the Government announced proposals to abolish the DRA by 1 October 2011. Whilst the phasing out of the DRA had been anticipated, the timetable for its abolition is very much faster than experts had predicted, and the full implications of this major change in employment legislation are still unclear.

Under the proposals, after 1 October 2011 any employer wishing to retire an employee aged 65 or over will have to follow a fair dismissal procedure relying on one of the reasons for terminating employment set out in the Employment Rights Act 1996, such as capability (health or performance), conduct, illegality, or some other substantial reason. The proposals also make limited provision to enable employers to maintain a compulsory retirement age (an 'Employer Justified Retirement Age' or EJRA) if they can objectively justify this as a proportionate means of achieving a legitimate aim. The University is seeking legal advice on the scope of this provision.

3. Transitional arrangements

The transitional period will run from 6 April 2011 to 1 October 2011, as follows:

- Retirements due to fall before 1 October 2011 can still be enforced as long as all the requirements of the statutory DRA procedure have been followed, including giving at least six months' notice of retirement.
- Retirements due to fall after 1 October 2011 will not be able to be automatically enforced, even if six months' notice is issued before 6 April – those due to retire after 1 October 2011 will be covered by the new legislation.
- Retirements notified after 6 April 2011 will not be able to be automatically enforced even if the retirement date is before 1 October 2011.

Until further notice departments must continue to adhere to the procedures outlined at <http://www.admin.ox.ac.uk/ps/managers/pensions/retirement/index.shtml>, which meet the statutory requirements and which are summarised below.

In the case of certain key posts, departments and divisions may wish to take a view on refilling earlier than 12 months before the post-holder's retirement date. Until further notice, departments and divisions may continue to hold informal discussions with post-holders due to retire after 1 October 2011 about their career/retirement plans, and where mutual agreement is reached recruitment arrangements may proceed.

(a) Identify staff who are due to retire

Departments should identify all employees who are due to reach the University's normal retirement dates before 1 October 2011. Advice may be obtained from your sector personnel officer on the retirement dates held in *OPENDoor*.

In addition, identify any employees (a) reaching retirement who are not paid via the university payroll; (b) who do not have a standard retirement date (for example, employees who have vested rights to retire at 67); or (c) whose normal retirement date has already been extended. These staff will also need to receive the statutory notifications of retirement.

(b) Notification of retirement dates under the transitional arrangements

All university employees who are due to retire before 1 October 2011 must be notified in writing of their impending retirement **no earlier than 12 months and no later than 6 months before** the retirement date. Thus, in the case of normal university retirement dates/ages:

Staff Group	Normal contractual retirement date	Notification Period
Support staff	31 July 2011	Earliest 31 July 2010 Latest 31 January 2011
Academic and related staff	30 September 2011	Earliest 30 September 2010 Latest 31 March 2011

The notification must advise the employee of his/her right to request to defer retirement and the procedure for making such a request. To assist departments with this exercise, additional guidance and a pro forma letter of notification are available at:

<http://www.admin.ox.ac.uk/ps/managers/pensions/retirement/index.shtml>

(c) Considering requests for the deferment of retirement

Requests from support staff: requests are considered by the head of department. Where the head of department wishes to agree to a deferment request he or she has authority to implement that decision. Where the head of department does not wish to agree a deferment, the employee will have a right of appeal to a panel comprised of members of the divisional board. Please note that for support staff, approval is required by the Personnel Committee in all cases where the proposed deferment extends beyond the 31 July preceding their 71st birthday.

Requests from academic and academic-related staff: requests are considered by the head of department or head of division, who must make a recommendation (following consultation with the appropriate Sector Personnel Officer) to the Personnel Committee where he or she wishes to agree to a deferment request. Where the head of department or head of division does not wish to agree a deferment they may reject the application without reference to the Personnel Committee, but the employee will have the right of appeal to a panel comprised of members of the Personnel Committee.

4. Annual monitoring information

In order to monitor the existing arrangements for deferred retirement, an annual report is produced detailing the number of requests for deferred retirement received from employees, and the responses to such requests. The annual report is presented to the Personnel Committee and the joint committees with staff representatives in Michaelmas Term. Departmental administrators have already received a form via email seeking information on any such cases considered between 1 October 2009 and 30 September 2010. Departments are asked to complete and return this to Cate Phillips in Personnel Services by **8 October**. Please reply stating 'nil return' if you have not had any cases during this period. The information will be collated and provided to the committees in summary form.

JEREMY WHITELEY

JDW/KAB

Replaces existing circular: No
Copy for notice boards: No
Web site: www.admin.ox.ac.uk/ps/managers/circular