

General Purposes committee On 2 March 2006

Report title: Preparing for Age Discrimination Legislation

Report of Head of Personnel

1. Purpose

To outline potential affects on council policy as a result of new Age Legislation due to commence 1 October 2006 and propose adoption of notice arrangements and appeal arrangements for Age 65 employees.

2. Recommendations

- a. Note potential affects on council policy of new Age legislation.
- b. Agree process for notifying Age 65 employees and providing appeal arrangements from 1 April 2006. (see section 4.1 for details)

Report authorised by:

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3. Access to information:

Local Government (Access to Information) Act 1985

No documents that require to be listed were used in the preparation of this report.

4. Background

Age discrimination legislation is due to come into effect from 1 October 2006.

The main proposals contained in the legislation are:

- to set a national default retirement age of 65
- an employer must give at least six months' notice to an employee before their intended age retirement date and inform the employee of their right to appeal against that retirement
- pension schemes in most respects will be exempt from the legislation.
- no upper age limit for unfair dismissal (but a dismissal on grounds of retirement will still be fair if it is at or after 65 years and in accordance with the new procedural requirements for planned retirement)
- no direct age criteria will apply to redundancy rights
- to permit as far as possible the use of a length of service criterion in pay and non pay benefits

5. Implications for Council policy

The council ruled out discrimination in terms of age within its equalities policy many years ago, and our recruitment and training policies are already compliant with the age regulations. So we are well placed to deal with the new legislation.

However, we will need to review the processes for retiring people and we will need to look at service related benefits, such as long service awards and annual leave. We also need to ensure there is no age criterion in our pay and benefits.

5.1 Retirement processes

The legislation says that employers need to notify employees of their age retirement date (council policy is 65 years of age) at least six months in advance. At the same time we also need to inform the employee of their right to request to work longer.

If the employee makes a request to work longer the manager has a duty to consider it, at the latest six weeks before the retirement date.

Management will have to hold a meeting with the employee to discuss the request and then inform the employee of the decision within two weeks. The employment will continue until this is done, even if it is after the intended retirement date.

The employee has a right of appeal against the employer's decision within two weeks of receiving it. If the employee does appeal, the appeal meeting can be held after the retirement has taken effect.

It is proposed to adopt the above process with effect from 1 April 2006. This is so that we can properly notify and consider those employees whose age retirement date are 1 October or later.

It is further proposed to add into the process that the employee must provide reasons and benefits for themselves and the organisation of wanting to work longer. This will help management consider the merits of the case and it will assist the employee if management refuse the request because reasons why the case is not approved will need to be given.

The managers decision will need to be copied to the Head of Personnel for monitoring purposes.

If the employee appeals this will be considered by the Head or Deputy Head of Personnel in liaison with the employees Assistant Director/ Director.

If an extension is granted this should be for a fixed period of at least six months. It is important that a new planned retirement date is set to comply with the legislation and allow for a fair dismissal at the later date.

If a new retirement date is set we have to give the employee the same notification and duty to consider working longer rights as outlined above. Therefore a minimum six month fixed term extension is necessary for practical reasons.

5.2 Service related benefits

In many cases employers require a certain length of service before a benefit is given or increased, for example sick pay entitlement increases as an employee gets more service. This will often amount to indirect age discrimination because some age groups are more likely to have completed the required length of service than others.

Following consultation with employers the government recognise that such benefits are desirable and therefore the Age regulations will contain two specific exemptions for length of service benefits.

- Any length of service requirement of five years or less will be exempt.
- Any length of service requirement that mirrors a similar requirement in a statutory benefit will also be exempt.

It will be possible to justify length of service requirements longer than this but the onus is on the employer to justify this. The test for this justification is

- Awarding or increasing a benefit an employee to reflect higher level experience, or reward loyalty, or increase/ maintain motivation.
- There is a business benefit resulting from the award as outlined above.

- The criterion is applied similarly to other employees in similar situations.

Most of the councils benefits fall within the five year exemption rule e.g. sick pay entitlement or maternity pay qualification.

However the Council's Annual Leave provisions give additional leave after 10 years local government service and the Long Service Award is given to staff with 25 years local government service.

Both these provisions should be revised to ensure they comply with the Age regulations. This will require negotiation with the trade unions.

Incremental pay progression also requires review as it is currently based solely on length of service for staff (chief officers, senior managers and former manual workers excluded).

Since the council is considering elements of the pay and benefits package under the Equal Pay and Conditions review (this also covers Single Status issues for former manual and officer staff) it is proposed to include any proposed revisions with these negotiations.

6. Staff seminar

We will be running lunchtime seminars for staff during February on 1st and 21st to outline how the Age legislation may affect them. A speaker from the Employers Forum on Age will be attending.

7. Legal Services Comments

The final version of the Employment Equality (Age) Regulations 2006 has not yet been published. The comments on this report are therefore made in the light of the content of the draft regulations published last year. The final draft of the regulations is expected in April 2006 and the Council's policies and procedures will need to be assessed in relation to any substantial changes in the legislation.

Much of the overall effect of the draft legislation is set out in the report and requires no further legal comment. However, there are two aspects of the legislation which should be borne in mind when the Council is reviewing its arrangements: -

- The draft Regulations do not set out any statutory criteria for an employer's consideration of an employee's request to work beyond retirement age. The provisions in the legislation are purely procedural. In the circumstances it is open to an employer to determine its own criteria for the application of the procedure, provided that the criteria chosen are fair, objective and non-discriminatory. The proposal that any employee requesting that they work beyond retirement age should set out

a business case for the request is a reasonable criterion for the Authority to adopt, provided that it retains its discretion to consider any case on its own merits.

- Age related service benefits are subject to the two specific exemptions referred to in the report. In addition it should be noted that the legislation does provide for an employer being able to justify direct discrimination on the grounds of age in relation to any particular action or provision if that employer can show that it meets a legitimate business aim and the means chosen to achieve that aim is proportionate.

8. Financial Implications

The rise in life expectancy is one of a number of significant factors affecting the cost of pension liabilities. Encouraging staff to delay retirement beyond age 65 reduces the long term pension liability which in turn impacts on employer contribution rates.

9. Equalities implications

This is a key piece of discrimination legislation and many of the councils policies already comply with proposed the proposed Age regulations and work is well under way to address any shortfalls.

Personnel are working closely with Equalities team and OD & Learning colleagues to ensure that the council fully complies with the proposed legislation.