

\*PART A

AGENDA  
ITEM

4B

Report to: Functions Committee  
Date of Meeting: 26<sup>th</sup> September 2006  
Report of: Head of Human Resources  
Title: Employment Equality (Age) Regulations 2006

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1. **SUMMARY**

As a consequence of the introduction of the Employment Equality (Age) Regulations 2006 effective from 1<sup>st</sup> October 2006, it is essential that the Council sets out how it intends to respond to this legislation to ensure compliance with these regulations. The attached report has been considered by the Corporate Management Board and submitted to UNISON for their comments.

2. **RECOMMENDATIONS**

RECOMMENDED that the attached report is approved.

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Report approved by: Tricia Taylor, Corporate Director

## 3.0 DETAILED PROPOSAL

### 3.1 Introduction

From 1 October 2006 the Employment Equality Act (Age) Regulations make it unlawful to discriminate against workers, employees, jobseekers and trainees because of their age. New legislation introduces additional rights to workers and will outlaw age discrimination unless there are objective justifications, (e.g. to protect younger/older workers, safety and welfare or genuine occupational requirements.)

### 3.2 Definitions

#### ***Direct Discrimination***

*Direct discrimination is less favourable treatment because of age in relation to:-*

- *Deciding not to employ someone*
- *Dismissing them*
- *Refusing to provide them with training*
- *Denying them promotion*
- *Giving them adverse terms and conditions*
- *Retiring an employee before the employer's usual retirement age or retire a employee before the default retirement age of 65 without objective justification*

*and the person allegedly discriminating cannot show the treatment, provision, criterion, or practice to be proportionate means of achieving a legitimate aim*

#### *Indirect Discrimination*

*Selection criteria, policies, benefits, employment rules or any other practices which, although they are applied to all employees have the effect of disadvantaging people of a particular age and that particular individual unless the practice can be justified.*

*There is also discrimination by way of victimisation*

**3.3** The new regulations will have an impact on a range of employment policies and practices. Set out below are the main areas affected with the actions it is proposed to take to meet the guidance.

a) **Equality Policy** – the current Equal Opportunity Policy needs to be updated to explicitly include reference to age discrimination. The actions required are set out in the following bullet points:

- That an age clause that has been agreed with the Council's Equality Officer be added into the Equal Opportunities Policy spelling out the impact of age discrimination;
- Ongoing equality training and awareness needs to make it clear that age discrimination is now unlawful and an assessment needs to be made as to whether it impacts significantly on associated policies, such as Bullying and Harassment and the Grievance Procedure;
- Lunch and Learns on the impact and requirements of the age discrimination legislation on the responsibilities of managers and the council need to be provided;
- Age needs to be added into the quality monitoring and reporting systems
- Actively track recruitment, promotion, training, retirement etc. in the context of ensuring the age legislation is being complied with.
- Written Guidance needs to be distributed to all managers and supervisors to ensure that they are fully aware of their responsibilities under the new legislation
- Employees need to be made aware of the new legislation through an article in WATS UP

b) **Recruitment and Selection** – Decisions relating to recruitment need to be objective and based on the skills required to do the job. The following actions have been taken:

- The date of birth has been removed from the application form and is now included as part of the equal opportunities monitoring form;
- New appointments are being tracked with the HR recruitment section through the review of the job description and person specification in order to remove any unnecessary references to age or years of experience gained, to check that any skills or qualifications sought can be objectively justified. Applicants who are over 65 years of age will be considered on merit for posts in the authority;
- Advertising – all external adverts will be checked to ensure that appropriate terminology is used. Adverts will be placed in such a way to be accessible to a large audience;

- Short listing – By the date of birth being removed from the application form it may still be possible for those responsible for short listing to gauge some idea of an applicant’s age. Those responsible for short listing are to be reminded of the importance of making their decisions on the basis of qualifications and skills and not age;
  - Interviewing –interviewing is about identifying the applicant’s competence for the post. Questions/comments should not be made about the applicant’s age. All interviewers should receive training in age discrimination legislation. Interviews should ideally be carried out by two people.
  - Records and scores for the short list and interviewing decision making process will be retained by the HR department for a minimum of 12 months from the date of the interview.
  - Those employment agencies that we work with will be required to satisfy the Council that they are making decisions appropriately and in accordance with the new legislation, when forwarding candidates. They will be advised in writing of the council’s requirements in respect of age legislation. In the rare circumstances that there was a “genuine occupational requirement” for someone to be recruited in a particular age range, these instructions must be given in writing.
- c) Training** – the regulations cover training provided by the employer for their employees. Current training agreements do not have any specific age related admission criteria.

Actions:

- Training applications and access be monitored;
- Training be objectively justified on the grounds of service need or personal development linked to appraisal and personal development planning.
- Opportunities for promotion and training should be made known to all employees and be available to every-one on a fair and equal basis

**d) Retirement** – The new regulations set a default target age of 65 to be reviewed in 2011 and at ages of retirement below 65 it will be necessary to provide objective justification. The responsibility of the employer to invite employees approaching retirement to advise them of their right to make a request to continue working after the retirement date (65<sup>th</sup> birthday).

Actions:

- The requirements of the statutory procedure of employees as they approach their retirement date (IRD) being incorporated into the employment agreement;
- HR will track and monitor those who are approaching the 6 month period prior to their 65<sup>th</sup> birthday in order that intended retirement date correspondence is sent to them giving them the right to request to stay on beyond age 65;
- Draft letters have been prepared to advise employees about their retirement and the requirements if they wish to make a request to continue in work beyond age 65 (and their right of appeal if refused.)
- It is recommended that the immediate line manager in liaison with HR should consider the initial request and should interview the employee who would have a right to be represented at such a meeting. It is recommended that the right of appeal is to the Head of Service who again would hear the appeal with the assistance of an HR representative .

We have an obligation as soon as the regulations come into force on 1<sup>st</sup> October 2006 to inform any member of staff due to retire due to reaching the age of 65 before 1<sup>st</sup> April 2007 of their new right to request to stay on after that date.

**e) Redundancy** – the new legislation removes the current age limits for unfair dismissal and redundancy rights. Redundancy selection criteria must be free of age discrimination , therefore those criteria linked to length of service are likely to be age discriminatory. Where redundancy/early retirement may have an impact on an employee who is a member of the pension scheme it would appear that the government intends for most age related rules and practices and pension schemes to be exempt from the scope of the new legislation; however there are changes being consulted on within the Local Government pension scheme and new draft Compensation Regulations.

Actions:

- Redundancy and early retirement policy be updated and included in the Employment Agreement and guidance on changes to these policies needs to be included in the training and written guidance to managers.

**f) Pay and Conditions of Service**

Employers need to ensure that they are not indirectly discriminating against staff in terms of pay or terms and conditions which have the effect of disadvantaging

people based on age in a way which cannot be objectively justified. Employment policies need to be checked to ensure that they do not indirectly discriminate. Any benefit earned by 5 years service or less is not regarded as discriminatory. However benefits linked to service of more than 5 years could potentially be but may be lawful if it reflects a higher level of experience, rewards loyalty or increases/ maintains motivation of the employee. However evidence of this may need to be provided, if challenged. ( Employees have the right to challenge employers at Employment Tribunals on any aspect of breaches to the Age Discrimination legislation.) The Equal Pay Audit, (agreed recently at CMB will cover an examination of pay and allowances in terms of avoiding age discrimination).

RECOMMENDED that the above changes are supported

#### 4.0 **IMPLICATIONS**

##### 4.1 Financial

The Director of Finance comments that there are no implications in this report

##### 4.2 Legal Issues (Monitoring Officer)

The Head of Legal & Democratic Services comments that the legal implications are contained within the body of the report.

##### 4.3 Staffing

There are no implications in this report

##### 4.4 Accommodation

There are no implications in this report

##### 4.5 Equalities

The Council's Equalities Officer has been consulted on this report and changes made to the council's Equality Policy

##### 4.6 Community Safety

There are no implications in this report

##### 4.7 Sustainability

4.8 Potential Risks

If the Council does not adopt these recommendations then it is likely to fall foul of the new regulations and be subject to successful claims in the Employment Tribunal

Background papers:

*ACAS Guide*

*LGE Advisory Bulletin*

File reference:

None