

WILTSHIRE COUNCIL

STAFFING POLICY COMMITTEE

9th March 2011

DEFAULT RETIREMENT AGE (DRA)

Purpose of Report

1. The purpose of this report is to consider what actions should be taken by Human Resources and the Council in relation to the imminent changes in employment law concerning age retirement.

Background

2. On 6 April 2011 legislation will be enacted that will make the statutory retirement age of 65 disappear on 1 October 2011. This means that the last date for giving six months compulsory notice under the existing Default Retirement Age (DRA) regulations is 30 March 2011. This will only apply to retirements that fall before 1st October 2011.
3. Requiring an employee to retire because of their age after 1st October 2011 will be both unfair dismissal and age discriminatory unless the employer can justify having its own retirement age.
4. The Coalition Government has indicated that guidance will be issued by ACAS but to date this information has been slow in being published and the details provided so far have tended to concentrate on the transitional arrangements. These give examples of good practice where companies have abolished the DRA altogether and encourage companies to use management performance processes to deal with any work place issues they may encounter with their employees.

Main Considerations for the Council

5. The limited case law on objective justification is based on aspects such as succession planning/ aiding workforce planning, creating promotion opportunities and maintaining a congenial working environment.
6. However, under the existing age retirement regulations very few cases have been taken to employment tribunal. As the case law is limited any employer who sets a DRA and is challenged will be amongst the first 'guinea pigs' for any future tribunal cases with potential damages and costs being awarded against them.
7. In justifying a retirement age, either for all jobs or for certain occupations, Wiltshire Council would also need to demonstrate that this was a proportionate means to obtain a legitimate end and that having a retirement age was an appropriate and necessary means to achieve this objective. An employment tribunal would also expect supportive evidence to be produced.
8. If we were to select certain categories of jobs for age specific retirement e.g. those that required manual work, we would have to justify this and provide proof

to back up our justification. It would be difficult at this stage to conclusively justify that all people of a certain age could not undertake a specific role when in all probability some would still be physically fit and capable whereas there could be some younger people employed in the same role that were less fit.

9. ACAS has produced case studies of a number of companies that employ people in physically demanding and manual positions that have done away with a DRA completely. Companies include T. Shea Waste Management, the Coop, Asda, Centrica, South Wales Forgemasters etc. etc. ACAS emphasise that work performance issues should be handled by managers through appropriate policies and work place discussions and managers should not rely on having a DRA to dismiss or deal with poor performance.
10. SW Employers were approached to contact other authorities in the region to see what they were considering. The feedback is inconclusive many have yet to make a policy decision although some have already decided to abolish having a DRA. Those that want to maintain a DRA haven't worked out how to legally do this and others are waiting for further guidance from ACAS.

Environmental Impact of the Proposal

11. None.

Equalities Impact of the Proposal

12. An Equalities Impact Assessment will be undertaken in the near future but the abolition of a DRA would be to the benefit of all employees

Risk Assessment

13. Any concerns about health, safety or welfare will be addressed through existing policies which apply to all staff.
14. There could be implications for death in service benefits but the government has indicated that there will be future legislation on insured benefits and occupational pension schemes that could affect the over 65s.

Options Considered

15. The new regulations have been discussed with Legal. It is felt that in the absence of further guidance and very little case law and the 6th April deadline fast approaching that we introduce an interim policy of having no Default Retirement Age but reassess the situation in one year's time. By this time there may be more information available from ACAS and further case law which would enable us to consider a case for justification.
16. This would mean that no further 6 month notice retirement letters can be sent to employees after 30th March 2011. Letters up to this date can only be sent to employees who will reach retirement age by 30th September 2011. Managers would still need to follow a proper procedure with these employees including any request from the employee to stay on being given serious consideration.

17. Legal have also suggested that a shortened form of capability for retirement cases is looked at so that employees who have spent many years working for the council can leave with dignity and not have their human rights infringed.

Recommendation

18. To approve the abolition of a Default Retirement Age but for this to be reviewed after a year when further clarification and case law may be available. Consideration also to be given to see if it is feasible to have a fitness for work procedure for retirement cases.

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The following unpublished documents have been relied on in the preparation of this Report: None