

REPORT TO EMPLOYMENT PANEL

Title: **CHANGE TO COMPULSORY RETIREMENT DATE FOR NON-TEACHING STAFF**

Date: 23 December 2008

Member Reporting: Councillor Burbage

Contact Officer(s): Carol Naismith, Head of HR

Wards affected: None

1. SUMMARY

- 1.1.1 It is the Council's current policy to retire non teaching staff on the day before their 65th birthday. It has recently been identified that this is contrary to the Employment Equality (Age) Regulations 2006.
- 1.1.2 The Council's policy and procedure will be updated so that the retirement date is the day of the employee's 65th birthday.
- 1.1.3 All staff affected by this decision will be notified of this change to their terms of employment.

2. RECOMMENDATION

That the date of retirement for non teaching staff be determined as the day of their 65th birthday.

The Head of HR be authorised to update the Management of Retirement and Continuation in Employment Policy and Procedure to reflect this change.

What will be different for residents as a result of this decision?
Ensures that the Council complies with the Employment Equality (Age) Regulations 2006, thus protecting the Council from unfair dismissal claims.

3. SUPPORTING INFORMATION

3.1 Background

- 3.1.1 The Council's policy has been to retire non teaching staff on the day before their 65th birthday. Any pension entitlement then became effective on the day they were 65. (Teaching staff retire at the end of the term in which they are 65)

- 3.1.2 As a result of the Employment Equality (Age) Regulations 2006, the Council introduced a Management of Retirement and Continuation in Employment Policy and Procedure, which manages the retirement process and requests from staff to remain in employment beyond age 65. The Regulations made retirement a dismissal and therefore required employers to follow a procedure in order to allow retirement to be considered a fair reason for dismissal.
- 3.1.3 A recent Employment Tribunal case (Plewes V Adam Pork Produce Ltd) established that in order to comply with the provisions of the Employment Equality (Age) Regulations 2006, any compulsory retirement must take effect on the 65th birthday. A compulsory retirement before the 65th birthday is contrary to the Regulations and therefore automatically unfair dismissal.
- 3.1.4 The Council retains a compulsory retirement age (provided for in law) as it enables it to manage the exit of staff at the end of their working career. There are occasionally cases where performance dips, but not sufficiently to warrant formal action, but where the 65th birthday provides a suitable end date to the employment. Inevitably those who wish to remain in employment and have their request rejected, will be dissatisfied and therefore likely to pursue a claim if the Council's policy and procedure does not comply with the Regulations. This could prove costly in terms of time and potential compensation.
- 3.1.5 As a result of this change, the Council's policy and procedure will be updated to reflect the revised retirement date. In addition, contracts of employment will be updated and all existing staff affected by this decision will be notified of this change to the terms of their employment.

4. OPTIONS AVAILABLE AND RISK ASSESSMENT

4.1 Options

	Option	Comments	Financial Implications
1.	Approve the change of compulsory retirement date for non teaching staff	Ensures compliance with regulations and removes the risk of unfair dismissal claims	Revenue: Limited Capital: None
2.	Do not approve the change of policy	Potential risk of unfair dismissal claims from those whose requests for an extension of their retirement date is rejected.	Revenue Capital: Potentially significant

4.2 Risk assessment

- 4.2.1 The Council's current practice is not in line with the Employment Equality (Age) Regulations 2006 and therefore leaves the Council vulnerable to unfair dismissal claims, in the event that a request to continue in employment is rejected and the employee is retired on the day before their 65th birthday. Changing the retirement date to the 65th birthday, will remove that risk.

4.2.2 The Berkshire Pension Scheme advised that there would be no detrimental effect on scheme members of this decision.

5. CONSULTATIONS CARRIED OUT

5.1.1 The Trade Unions representing non teaching staff were consulted. Only Unison responded. They recognised the need to ensure compliance with the Regulations and supported the proposal.

6. COMMENTS FROM THE OVERVIEW AND SCRUTINY PANEL

6.1.1 N/A

7. IMPLICATIONS

7.1.1 The following implications have been addressed where indicated below.

Financial	Legal	Human Rights Act	Planning	Sustainable Development	Diversity & Equality
N/A	✓	✓	N/A	✓	✓

Background Papers: Employment Equality (Age) Regulations 2006.