

Report of the Corporate Director of Resources

Revised Retirement Policy

RECOMMENDATION

1. To note the revisions to the Council's Retirement Policy approved at Corporate Joint Committee on 5 March 2009.

SUPPORTING INFORMATION

- 2.1 The Employment Equality (Age) Regulations have been with us since 2006.
- 2.2 During this time we have successfully refined the process for alerting departments and individuals of impending retirements so that a planned retirement process required in law can be followed.
- 2.3 There have been a small number of appeals from employees who have been refused, following their request, to work beyond the age of 65.
- 2.4 The legislation does not require a reason to be given for refusing a request to work beyond age 65 providing a fair process is followed.
- 2.5 However, our experience at appeals indicates that elected members will expect managers to explain why a particular employee has had their request refused.
- 2.6 Section one of the policy has therefore been amended to give some guidance to managers on criteria they may wish to consider when discussing an employee's request with them. The criteria also refers to the need to consider whether the post would be affected by any policy on vacancy controls which may from time to time be imposed.
- 2.7 Finally, paragraph 1.8 has been amended to remove ambiguous wording which implied that an extension of five years to age 70 was an employee's right.

2.8 The proposed changes have been agreed with the trade unions at the Corporate Joint Committee.

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Background papers: None

List of appendices: Appendix 1 Implications
Appendix 2 Retirement Policy

IMPLICATIONS

Financial

1. None directly arising from this report

Legal

2. The European Court of Justice has ruled in the Heyday case that the UK's compulsory retirement age of 65 is lawful as long as it has a legitimate aim linked to social or employment policy. The High Court will now have to rule on whether the government's aims are legitimate.

Human Resources

3. As outlined in the report.

Equalities Impact

4. The Employment Equality (Age) Regulations are aimed at removing age discrimination.

Retirement



DERBY CITY COUNCIL

1 Policy

- 1.1 The policy applies to all Council employees except those employed under the delegated powers of governing bodies of community and voluntary controlled schools. Governing bodies of these schools are strongly urged to adopt this policy for non-teaching staff within their delegated powers.
- 1.2 The Council has agreed to use the default retirement age of 65 as allowed for under the Employment Equality (Age) Regulations 2006. Although there is no requirement to justify using a default retirement age, the Council believes that using the default age gives a high degree of certainty in order to plan its workforce requirements. It also helps to manage and plan the career expectations of other employees.
- 1.3 The regulations give employees the right to request to work beyond the age of 65.
- 1.4 The Head of Service will write to employees seven months before their 65th birthday and advise them that they can request to work beyond age 65. If the employee wishes to do this they must reply no later than three months before their 65th birthday. The Head of Service will meet with the employee to discuss the request and will give the employee a decision within two weeks of the meeting. The employee has the right to appeal if the request is refused.
- 1.5 It is essential that this process is followed correctly and within the time constraints above prior to an employee's 65th birthday.**
- 1.6 Although there is no legal requirement to give reasons for refusing the request elected members have made it clear that they expect the manager to explain the reasons for the decision at any subsequent appeal hearing. Managers should therefore consider and record the reasons for their decisions and convey those reasons to the employee at the meeting

1.7 Criteria which managers should use when considering an employees request to continue working:

- a) Is the resulting vacancy likely to be approved for filling under any existing vacancy controls?
- b) Is the resulting vacancy likely to prove difficult to recruit to?
- c) If the employee continues working what will be the impact on the department's budget and the employment position of other employees ie will it lead to a redundancy elsewhere?
- d) Will agreeing to the request affect the planned and expected progression or promotion of other employees?
- e) If the employee continues working how will this affect any positive action policies aimed at creating a more diverse workforce?
- f) Does agreeing to the request raise any other workforce management issues ie if they continue does it deny a potential opportunity to restructure the department?

This is not an exhaustive list and individual departments may have other criteria which they can apply, any other such criteria may also have to be explained to elected members if the matter reaches appeal stage.

1.8 Retirement dates are normally extended by five years to the employees 70th birthday unless the manager or the employee requires a shorter period.

1.9 At the end of any agreed extension employees have the right to request a further extension to their employment. Departments must follow the process set out in paragraph 1.4 to inform employees of this right and to consider the request.

2 III-Health Retirement

2.1 Notice of Retirement

When an employee has been declared permanently unfit to carry out their duties they will be given notice of retirement on the grounds of ill health. Whenever possible, the notice should be within the period ending when their sickness pay entitlement expires. During the contractual statutory notice period, the employee will receive full pay less the state sickness benefit they receive.

2.2 Replacing employees who are retired on ill-health

In a 'key' post where the delay in appointing a replacement seriously affects the service, the post may be filled before the expiry notice, subject to approval of the Chief Officer

3 Retirement Gratuity

This is under review because of the 1996 Local Government (Discretionary Payments) Regulations.

4 Annual Leave in Retirement Year

- 4.1 All employees reaching normal retirement age, retiring on ill health or retiring under length of service provisions are entitled to their full annual leave entitlement in their retirement year regardless of their retirement date. Payment in lieu will only be made in exceptional circumstances with approval beforehand from the Chief Officer and the Assistant Director – Human Resources
- 4.2 Employees retiring early for other reasons are excluded from the provisions and we will calculate their leave in proportion to their retirement date.

5 Flexible retirement – Local Government Pension Scheme - LGPS

- 5.1 The Council's policy on flexible retirement is made in accordance with the requirements of Regulation 66 of the Local Government Pension Scheme (Administration) Regulations 2008.
- 5.2 Flexible retirement is entirely discretionary and is not a right or entitlement for employees.

Definition

- 5.3 Under the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations effective in April 2008, where an employee is aged 55 and over, the Council can consent to a reduction in an employee's hours or grade and consent to the release of pension benefits.
- 5.4 This also applies until 31 March 2010 in the case of employees aged 50 and over who were LGPS members on 31 March 2008.
- 5.5 This means that employees can continue in their employment with the Council on reduced hours or a lower grade while drawing down their accrued pension benefits.
- 5.6 Flexible retirement can help the Council to retain valuable skills and employees to make an easier transition from full-time employment to full-time retirement.

General principles

- 5.7 Flexible retirement must be approved by the departmental Chief Officer under their delegated powers.

- 5.8 In all cases, the decision must be based on the business needs of the service and not be influenced by the employee's wish for early payment of their pension scheme benefits. The decision should be fully explained to the employee.

Cost to the Council

- 5.9 **There is no cost** to the Council on release of pension benefits where . .
- **The employee is aged 60 or over**, as the employee is past their earliest retirement date. Where such employees do not meet the '85 year rule', their pension benefits will be reduced to reflect early payment. The '85 year rule' is where their age plus their years of membership in the pension scheme add up to 85 or more.
 - **The employee is aged 50 or over but less than 60 and does not meet the '85 year rule' until after their 60th birthday.** The whole of the cost of early payment of pension benefits is borne by the employee.
- 5.10 **There is a cost** to the Council on release of pension benefits where . .
- **The employee is aged 50 or over but less than 60 and meets the '85 year rule', either at the date of flexible retirement, or at a later date that is before their 60th birthday.** In these cases the Council would have to meet the Pension Fund shortfall arising from early payment of pension benefits from the date when the '85 year rule' is met.

Council's policy

- 5.11 Where there is **no cost to the Council**, it is normally our policy to give consent to the payment of benefits from the LGPS where we have agreed to a reduction in grade, or a reduction in hours in **one** of these circumstances:
- an employee has changed from full-time to part-time working, or to a new job share arrangement in accordance with the Council's policy
 - there is a direct financial benefit to the Council in that the reduced hours are not filled
 - it is in the Council's interests to allow an employee to reduce their hours and for these hours to be undertaken by another person.

- 5.12 Where the pension benefits payable are reduced to reflect early payment as described in paragraph 5.9, the Council can agree to waive the reduction partially or completely and pay the cost to the Pension Fund. It is the Council's policy normally not to agree to this. In exceptional circumstances, the departmental Chief Officer may consider applications for the Council to meet this cost.
- 5.13 Where there is **a cost to the Council**, it is our policy not to agree to the early release of pension benefits. However, in exceptional circumstances, where it is in the Council's interests, taking account of all the relevant factors including the cost, the departmental Chief Officer may consider applications for flexible retirement.
- 5.14 Employees should seek information from the Pensions section at Matlock regarding the effect of flexible retirement on their pension benefits.