

EAST HERTS COUNCIL

HUMAN RESOURCES COMMITTEE – 13 OCTOBER 2010

REPORT BY INTERIM HEAD OF PEOPLE AND ORGANISATIONAL SERVICES

DEFAULT RETIREMENT AGE

WARD(S) AFFECTED: NONE

Purpose/Summary of Report

- To respond to the removal of the default retirement age.

<u>RECOMMENDATION FOR HUMAN RESOURCES COMMITTEE:</u>	
(A)	That Human Resources Committee approve the removal of East Herts retirement age from 6 April 2011.
<u>RECOMMENDATION FOR CORPORATE MANAGEMENT TEAM:</u>	
(B)	To consider and implement the transitional arrangements.

1.0 **Background**

- 1.1 The Government is removing the Default Retirement Age (DRA) of 65 which was introduced in 2006. Removal of the DRA will begin in April 2011, with transitional arrangements covering the period until 1 October 2011. Individual employers wanting to continue to operate a compulsory retirement age must justify it by objective criteria.
- 1.2 In the future, an employer wanting to retire an employee must follow a fair procedure as set out in s.98 of the Employment Rights Act 1996 (capability, conduct, redundancy, illegality or some other

substantial reason). The Government may issue guidance or a more formal code of practice on handling retirement.

- 1.3 The Government has issued a consultation document which sets out the background to the DRA, and explains the transitional arrangements which the Government is proposing for its removal. Responses to the consultation are required by 21 October 2010.

2.0 Report

2.1 **Implementation and transitional arrangements**

- 2.1.1 New regulations come into force on 6 April 2011 with the following effects:

- The DRA and associated regulations will finish on 6 April 2011.
- Employers will be unable to issue new notifications of retirement using the DRA on or after 6 April 2011.
- Retirements using the DRA would therefore cease completely on 1 October 2011.

- 2.1.2 There will be a six month transitional period (6 April 2011 to 1 October 2011), so that retirements that were already in train can continue through to completion, provided that:

- a notification of retirement is issued by the employer prior to 6 April 2011;
- the date of retirement falls before 1 October 2011;
- all requirements of the default retirement age procedure are met.
- the clause in the Age Regulations which allows short notice of retirement, will be repealed on 6 April 2011, and such short notice notifications would not be permitted during the transitional period.

2.2 **Options for East Herts**

- 2.2.1 Moving forward from the repeal of the DRA the Council has two options:

1. To cease using a retirement age, and use the transitional arrangements to process any upcoming retirements before 1 October 2011.
2. Choose to continue using a retirement age. However, when the DRA is removed, organisations using Employer Justified Retirement Ages (EJRA) can be challenged in the courts to show that their retirement age is objectively justified.

HR are not aware of any council implementing option 2. It would be very difficult for the Council to justify a retirement age because:

- No role within East Herts has a statutory retirement age.
- Health and safety (in relation to capability of doing the job at an older age) and performance in general could be dealt with under the managing performance policy.
- There is no economic advantage to the Council.
- In the last three years 86% of requests to work beyond retirement have been granted, suggesting that East Herts is able to sustain the removal of the DRA without there being a significant change to its current situation.

2.3 Implications for staff savings which may be proposed in the Medium Term Financial Plan

2.3.1 There are currently 4 employees reaching 65 before 6 April 2011. Should these employees wish to continue working and make a request through the current duty to consider working beyond retirement policy the following options are available to the Council:

- Place the employee on a fixed-term contract ending by the 30th September 2011 (allowing the Council to give the employee six months notice in accordance with the transitional arrangements).
- Revert the employee to a permanent contract.
- Decline the request.

- 2.3.2 A further 6 employees are due to retire during the transitional arrangements (6 April 2011 – 30 September 2011). These employees may be retired if the full statutory procedure (6 months notice) is adhered to. It will not be possible to put these employees on any form of fixed term contract as this will mean the six month notice period will not be possible. Should the Council wish to retain these employees they should revert to a permanent contract when their current contract ends.
- 2.3.3 A further 3 employees are working beyond retirement whose current fixed term contracts expire after the 30 September 2011. Unless they choose to retire, these employees will need to revert to their original permanent status, be made redundant or be dismissed on the usual fair grounds.
- 2.3.4 There are currently 17 employees due to retire between 1 October 2011 and 31 March 2014 (end of the MTFP). It will no longer be possible to retire these employees unless they chose to leave. See Essential Reference Paper C for further information.
- 2.3.5 In August 2010 HR notified Heads of Service with staff due to retire between now and 2012 so that they are aware when planning.

2.4 **Changes to East Herts Policies and Procedures**

- 2.4.1 If East Herts no longer operates a DRA it will be necessary to make a number of changes:

2.4.2 **Contracts**

The retirement clause in the current contact will need to be amended. This could be done by issuing a contract amendment letter once the DRA is repealed.

2.4.3 **Policies and Procedures**

- Removal of the Duty to Consider Working Beyond retirement policy

- A new Retirement procedure would be necessary.
- Relevant changes to the Retirement Policy would need to be made.

2.4.4 Insurance

- Employees using council vehicles (vans, pool cars etc) need to be fit to drive and full licence holders. This is not affected by age and employees' licences are checked annually.
- There is no affect on employers' liability insurance.
- The Council's Group life insurance is capped at 65, if the Council chose to extend cover to all employees it may mean very high premiums. Cover is subject to a medical questionnaire and the provider would consider each case on its merits.
- Personal accident cover is currently capped at 70. There have been very few claims and the Council is the beneficiary. It is at the Council's discretion whether to pass the benefits on to employees. For older employees it may be possible to add on individuals on a case by case basis.

2.4.5 Pensions

No changes to pension arrangements will be necessary at this stage. Employees choosing to work after 65 continue to pay into the LGPS, building up benefits unless they choose to opt out of further payments and defer their accrued benefits. According to LGPS criteria employees receive their pension on retirement or the eve of their 75th birthday, whichever occurs first. Pension drawn after age 65 will be paid at an increased rate. Employees taking flexible retirement after age 65 will also have increased benefits to reflect late payment. The Council continues to pay employer's contributions for as long as employees pay into the fund.

2.5 **Draft response to consultation**

Please see Essential Reference Paper 'B' attached to the report now submitted for the draft response.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within Essential Reference Paper 'A' attached to the report now submitted.

Background Papers

None

Contact Officer: Tinu Olowe – Interim Head of People and Organisational Services.

Report Author: Jaleh Nahvi – Human Resources Officer

ESSENTIAL REFERENCE PAPER 'A'

Contribution to the Council's Corporate Priorities/ Objectives:	Fit for purpose, services fit for you <i>Deliver customer focused services by maintaining and developing a well managed and publicly accountable organisation.</i>
Consultation:	Heads of Service & UNISON for information
Legal:	As detailed in the report
Financial:	As detailed in the report
Human Resource:	As detailed in the report
Risk Management:	As detailed in the report

**Phasing out the Default Retirement Age
Consultation questions – draft answers**

Please note where the consultation document has not asked for explanation one has been provided for CMT in italics

A1. The Government intends to remove the Default Retirement Age. Do you agree that Schedule 6 of the Age Regulations (which deals with notifications of retirement and the 'right to request' to work past retirement age) should also be removed?

Yes [X]

The current right to request puts an administrative burden on the Council and has strictly prescribed timings. If the DRA is to be removed it would be more sensible to allow organisations to develop procedures which work within their own timings and policies.

No []

A2. If you disagree, please explain why:

B1. If Schedule 6 is removed, the laws on unfair dismissal and age discrimination will still apply. Do you have any concerns about how these laws would operate in the absence of Schedule 6?

Yes [X]

No []

B2. If you have concerns, please describe them:

What happens if someone is absence managed out on health/capability grounds and they argue that this is linked to their age? Will employers be at risk from claims?

What happens to insured benefits which cannot be offered to older employees due to provider's requirements? Age Regulations exemptions for insured benefits would be helpful for employers

C1. Thinking about retirement discussions between an employer and an employee, do you think it would be useful to have:

[X] Formal guidance on how to discuss retirement in a mutually beneficial way

[] A statutory code of practice, including guidance, which covers retirement discussions

[] None of the above

[] Something else (please state below)

C2. Please explain your answer:

Guidance which outlines best practice would be beneficial to employers, however a statutory code of practice with nationally prescribed timings would be too rigid and may defeat one of

the aims of phasing out the DRA, namely removing the administrative burden of the current 'right to request' procedure.

C3. If you believe that additional guidance or a code of practice would be helpful, what topics do you think should be addressed? For example flexible retirement options, changes to duties and working hours, etc.

Timescales for discussing retirement (suggested rather than statutory) Flexible retirement, changes to duties/ grades and working hours, pension considerations (including future contributions).

D1. Do the proposed transitional arrangements strike the right balance between the policy aim of quickly phasing out the Default Retirement Age (and realising the benefits of doing so) and respecting the position of employers who have already made plans based on its use?

Yes

No

D2. If no, please explain your answer:

Many organisations use one year fixed-term contracts for employees over 65 and therefore now have staff on fixed-term contracts due to expire after 30th September 2011. As the transitional arrangements are only in place for 6 months (April 2011 – 30th September 2011) these employees will now need to be made permanent again (unless they choose to retire). This may have an affect on organisations' financial planning. A transitional period of 12 months from April 2011 to April 2012 would have been easier for organisations to manage.