

**EQUALITY, HEALTH & HUMAN RIGHTS IMPACT ASSESSMENT October  
2010 further reviewed April 2011**

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| <b>Section 1: Policy Details</b><br>A policy is understood in the broad sense including the full range of functions, activities and decisions the council is responsible for, i.e. everything it does. This includes both current policies and new policies under development. This guidance is also relevant for assessing the impact of financial decisions. |   |
| Name of Policy:  | Fair Retirement Process   |
| Lead Department & other departments/ partners involved:  | HR & OD   |
| Responsible Officer  | Linda McAlister   |
| Impact Assessment Team   | Melissa Connor<br>Tracy Keenan<br>Ricardo Rea   |
| Is this a new or existing policy/function?   | Existing  |
| Start date: (the assessment should be started prior to policy development or at the early stages of review):   |   |
| End date (this should allow for the assessment to inform decision-making):   |   |
| What are the main aims of the policy?  | The Policy set out the process for ensuring retirement on the grounds of age followed statutory process. This policy will be removed on 1 October 2011 when DRA has been removed. |
| Who are the main target groups/ who will be affected by the policy?  | Employees aged 65.  |
| What does the policy aim to achieve?   | When the default retirement age is removed it will remove the currently allowable age discrimination against employees age 65 and over.   |
| Relevance (relevance of the policy, service, function to the general equality duties and equality groups, also record where there is no relevance giving reasons and evidence)   |   |
| Yes<br>Reasons:<br>Age Discrimination ruling has removed the default retirement age.   |   |

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|   | If yes, complete all sections, 2-9   |
|   | If no, complete only sections 8-9  |
|   | If don't know, complete sections 2& 3 to help assess relevance   |
| <b>Section 2: Evidence</b><br>Please list the available evidence used to assess the impact of this policy, including the sources listed below. Please also identify any gaps in evidence and what will be done to address this. |  |
| <b>Available evidence:</b>  |  |
| Consultation/ Involvement with community, including individuals or groups or staff as relevant  | The Government undertook national consultation before taking the decision to remove the default retirement age. Occupational Health was involved in assessing whether any posts within the Council could justify a set retirement age being maintained.  |
| Research and relevant information   | <p>The Employment Equality (Age) Regulations 2006 (the Regulations) came into force on 1 October 2006. The Regulations implemented the November 2000 European Directive outlawing age discrimination in employment and vocational training. However, the Government restricted the protection available to people over the age of 65 by creating a new 'default retirement age' of 65 for both men and women. This permits employers to set a 'mandatory retirement age' at or above the age of 65. Employers will only be able to justify forced retirement under the age of 65 in exceptional circumstances.</p> <p>In practice it means an employer can compel its employees to retire at or after 65 and can refuse to recruit anyone over the age of 65. It is lawful for an employer to force employees age 65 or over to retire as long as they follow the correct procedure, which includes giving the employee between six and twelve months notice. Employees have the right to request to continue working beyond the date when the employer wants them to retire, but the employer can refuse the request and the law does not require them to give any reason for that decision.</p> <p>The legal challenge</p> |

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|  | <p>The charity Age Concern and Help the Aged (Age UK) sought a judicial review of the Employment Equality (Age) Regulations 2006 just after the Regulations were published. The case against the UK Government argued that the Age Regulations had improperly implemented the EU's 2000 Equal Treatment Directive by including a national default retirement age applicable to all UK workers. The judicial review also challenged the linked exception relating to the recruitment of employees near or over age 65 and the scope for justification of direct discrimination on grounds of age.</p> <p>The High Court needed clarification on how the EU Directive should be interpreted and so made an order referring five questions to the European Court of Justice. The wording of the questions was agreed between the DTI (later BERR and now BIS) and the charity and were endorsed by the High Court. The European Court of Justice published its judgment in March 2009, in which it made it clear that the UK government has to meet a high standard of proof in demonstrating that its default retirement age is justifiable on grounds of social or employment policy.</p> <p>The case returned to the High Court and a hearing was held on 16-17 &amp; 20 July 2009. The Commission used its legal powers to intervene in the case, so that it could support the charity's claim with additional evidence and legal arguments. The charity and the Commission presented evidence and legal arguments on one side, and the Government on the other. The ruling on the case was made on 25 September 2009.</p> <p>The ruling</p> <p>The judge decided that the Default Retirement Age (DRA) was lawful when it was first introduced, so the law will stay as it is. However, the judge also said that there is now a 'compelling' case for</p> |
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|   | <p>setting the age higher than 65. Mr Justice Blake recognised the 'very substantial weight' of the arguments put forward by the Commission and Age UK to stop people being forced out of work at 65.</p> <p>In explaining his ruling he said he took into account the Government's move to bring forward a review of DRA from 2011 to 2010. This review will consider whether a Default Retirement Age is still 'appropriate and necessary'. By 2011 the Government will have scrapped mandatory retirement ages for all but the most senior of its civil servants.</p> <p>He also observed that a DRA of 65 would be unlikely to be lawful if it was introduced in 2009 because of the state of the economy. However, his decision to allow a DRA of 65 was based on the circumstances and evidence available three years ago when it was introduced.</p> <p>The Government confirmed on the 13 January that, subject to parliamentary approval, the DRA would be phased out from 6 April 2011 until on 1 October 2011.</p> |
| Officer knowledge   | <p>The Council currently receives a significant number of requests to work past 65. Officer knowledge suggests that the abolishing of the DRA can be a positive opportunity for WDC to develop its flexible working and worklife balance approach. The change also gives an opportunity for the Council to consider workforce planning and performance issues in the round, with workplace equality in mind.</p>  |
| Equality Monitoring information – including service and employee monitoring | <p>Service monitoring information is not relevant</p> <p>A copy of the Employment Equalities Monitoring report for 2008/9 and 2009/10 is appended</p>   |
| Feedback from service users, partner or other organisation as               | N/A   |

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| relevant   |  |
| Other  | ACAS - recommends that DRA be removed unless objectively justifiable.  |
| <b>Are there any gaps in evidence?</b> Please indicate how these will be addressed |  |
| Gaps identified  | Few workplaces in the UK have no default retirement age, so there is some lack of evidence about potential impacts   |
| Measure to address these   | <p>Some secondary research was undertaken internally after the age regulation (2006); this can be re-examined and refreshed and feed into our approach as it is developed.</p> <p>The issue can be added to the agenda of the Clyde Valley Shared Services equality Group and discussed with peer organisations.</p> |
| <i>Note: Link to Section 6 below Action Plan to address any gaps in evidence</i>   |  |

### **Section 3: Involvement and Consultation**

Include involvement and consultation relevant to this policy, including what has already been done and what is required to be done, how this will be taken and results of the consultation.

Please outline details of any involvement or consultation, including dates carried out, protected characteristics. Also include involvement or consultation to be carried out as part of the developing and implementing the policy.

| <b>Details of consultations</b> | <b>Date</b> | <b>Findings</b> | <b>Characteristics</b>         |
|---------------------------------|-------------|-----------------|--------------------------------|
|                                 |             |                 | Race                           |
|                                 |             |                 | Sex                            |
|                                 |             |                 | Gender<br>Reassignment         |
|                                 |             |                 | Disability                     |
|                                 |             |                 | Age                            |
|                                 |             |                 | Religion/ Belief               |
|                                 |             |                 | Sexual<br>Orientation          |
|                                 |             |                 | Civil Partnership/<br>Marriage |
|                                 |             |                 | Pregnancy/<br>Maternity        |

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|  |  |  | Health |
|  |  |  | Other  |
| <i>Note: Link to Section 6 below Action Plan</i> |  |  |        |

| <b>Section 4: Analysis of positive and Negative Impacts</b> |   |  |                  |
|---|---|--|------------------|
| <b>Protected Characteristic</b>                             | <b>Positive Impact</b>  | <b>Negative Impact</b>   | <b>No impact</b> |
| Race  |   |  | No direct impact |
| Sex   |   |  | No direct impact |
| Gender Re-assignment  |   |  | No direct impact |
| Disability  |   |  | No direct impact |
| Age   | Employees now have the freedom of choice to continue to work beyond the age of 65 | <p>Potential negative impact on younger employees as opportunities for career progression may be limited (Not convinced this is correct as employees not near retirement age in positions younger employees want to achieve will create the same effect regardless of DRA)</p> <p>But note that labour market research strongly indicates that young people are being most affected in terms of not being able to gain employment.</p> |                  |
| Religion/ Belief  |   |  | No direct        |

|   |   |   |                  |
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|   |   |   | impact           |
| Sexual Orientation  |   |   | No direct impact |
| Civil Partnership/ Marriage   |   |   | No direct impact |
| Pregnancy/ Maternity  |   |   | No direct impact |
| Socio- economic   | Employees now have the option to continue working beyond age 65 and there is an economic advantage to have older people working rather than be supported solely by a pension. | Inter generational unemployment tends to be concentrated in Lower Socio Economic groups, therefore the Councils approach to Recruitment and selection and employability must be informed by statutory requirements of the Equality Act and the Councils stated commitment to equality |                  |
| Human Rights  | Employees now have more freedom of choice around their career and working life.   |   |                  |
| Health  | Removal of the policy will have a positive effect on older employees as they will no longer be viewed as an employee at the end of their career unless they choose to be.     | Employees may feel pressure to remain in work for a longer period than their health can support   |                  |
| Other   |   |   |                  |
| <i>Note: Link to Section 6 below Action Plan in terms of addressing impacts</i> |   |   |                  |

**Section 5: Addressing impacts**

Select which of the following apply (use can choose more than one) and give a brief explanation – to be expanded in Section 6: Action Plan

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| 1. No major change   |   |
| 2. Adjust the policy   |   |
| 3. Continue the policy   |   |
| 4. Stop and remove the policy  | X |
| Give reasons:  |   |
| The Fair Retirement Policy will be removed in line with legislation. |   |
| <i>Note: Link to Section 6 below Action Plan</i>                     |   |

**Section 6: Action Plan**

Please describe the action which will be taken following on from the assessment of impact above in order to reduce or remove any negative impacts, promote any positive impacts, gather further information or evidence or further consultation required

| Action                                | Responsible person (s)         | Intended outcome          | Date for completion                            | Protected Characteristic    |
|---------------------------------------|--------------------------------|---------------------------|--|-----------------------------|
|                                       |                                |                           |  | Race                        |
|                                       |                                |                           |  | Gender                      |
|                                       |                                |                           |  | Gender Reassignment         |
|                                       |                                |                           |  | Disability                  |
| Removal of the Fair Retirement Policy | Linda McAlister/Melissa Connor | Fairness to older people. | Transition phase 6 April 2011 – 1 October 2011 | Age                         |
|                                       |                                |                           |  | Religion/ Belief            |
|                                       |                                |                           |  | Sexual Orientation          |
|                                       |                                |                           |  | Civil Partnership/ Marriage |
|                                       |                                |                           |  | Pregnancy/                  |



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|  |   |  |       | Maternity       |
|  |   |  |       | Socio- economic |
|  |   |  |       | Human Rights    |
|  |   |  |       | Health          |
|  |   |  |       | Other           |
| <b>Are there any negative impacts which cannot be reduced or removed? If so, please outline the reasons for continuing with the policy</b>                           |   |  |       |                 |
| N/A  |   |  |       |                 |
| <b>Section 7: Monitoring and review</b>  |   |  |       |                 |
| Please detail the arrangements for review and monitoring of the policy   |   |  |       |                 |
| How will the policy be monitored? What equalities monitoring will be put in place?   | Monitoring will no longer take place under this policy but will be monitored through workforce planning, performance management and retiral on option procedures. |  |       |                 |
| When will the policy be reviewed?  | 1 October 2011  |  |       |                 |
| <b>Section 8: Signatures</b>   |   |  |       |                 |
| The following signatures are required:   |   |  |       |                 |
| Lead/ Responsible fficer:  | Signature:  |  | Date: |                 |
| Equality Impact Assessment Trained Officer:  | Signature:  |  | Date: |                 |
| <b>Section 9: Follow up action</b>   |   |  |       |                 |
| <b>Publishing:</b> Forward to community Planning and Policy for inclusion on intranet/ internet pages  | Signature:  |  | Date: |                 |
| <b>Service planning:</b> Link to service planning/ covalent – update your service plan/ covalent actions accordingly   | Signature:  |  | Date: |                 |
| Give details:  |   |  |       |                 |
| <b>Committee Reporting:</b> complete relevant paragraph on committee report and provide further information as necessary   | Signature:  |  | Date: |                 |
| <b>Completed form:</b> Pass completed forms retained within department and copy passed to Policy Development Officer (Equality) within Community Planning and Policy | Signature:  |  | Date: |                 |