

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Corporate and Efficient Governance Committee (CEGC): 22 June 2011

Subject: Retirement Process and the removal of the Default Retirement Age (DRA)

1. Purpose

- 1.1** The purpose of this report is to update the Corporate and Efficient Governance Committee (CEGC) members on the removal of the Default Retirement Age (DRA) and to outline the changes to the Council's retirement process.

2. Background

- 2.1** Following consultation the Government confirmed that, subject to Parliamentary approval, the DRA of 65 would be removed from 1 October 2011 with new Regulations coming into effect on 6 April 2011.
- 2.2** The DRA is being phased out over a transitional period running until 30 September 2011. The last day employees can be compulsorily retired using the DRA is 30 September 2011 therefore; to allow statutory notice to be given, employees must have been notified prior to 6 April 2011, of any dismissal on the grounds of age.

3. Main Issues

- 3.1** Although the DRA will not be removed until 1 October 2011 the new regulations came into force on 6 April 2011. Therefore, the transitional procedures must be followed for any employees whose date of retirement falls before 1 October 2011.

Transitional Arrangements for Phasing out the DRA

- 3.2** During the transitional period, retirements that were already in progress can continue through to completion providing that notification of impending retirement was issued to the employee prior to 6 April 2011 and the date of retirement falls before 1 October 2011.
- 3.3** During the transitional period the Fair Retirement Process still requires to be followed to ensure compliance with current statutory requirements. This includes the employee's right to request to work beyond 65 and for any request made to be given serious consideration.

1 October 2011

- 3.4** Compulsory retirements will cease completely on 1 October 2011, and employees will continue to work until they choose to retire on option or are

dismissed through a potentially fair reason for dismissal (capability, conduct, redundancy, statutory ban or some other substantial reason).

Employer Justified Retirement Age (EJRA)

- 3.5** It may still be possible to retire an employee lawfully at a set age provided that the retirement age can be objectively justified. An EJRA is used in exceptional circumstances where an employer can evidence that it is a proportionate response to a legitimate aim. For example, posts requiring exceptional mental or physical fitness. Case law around EJRA will develop once the DRA has been abolished.
- 3.6** ACAS recommends that careful consideration should be given to the introduction of an EJRA as it would be likely to be challenged and the employer would be required to provide good evidence as to why there is a set retirement age. There is no evidence to support that any specific occupation within the Council should be restricted by age and therefore it has been recommended that the default retirement age is removed from 1 October 2011. Whilst economic efficiency may be an aim, and achieved by retiring older employees in favour of younger, less expensive employees, saving money is not justification for discrimination.

Fair Reason for Dismissal

- 3.7** From 1 October 2011 'Age' will be removed from the 6 potentially fair reasons for dismissal. Where an employee is no longer able to fulfil their contract of employment through poor performance this should be managed through performance management or capability processes. ACAS suggest that the removal of the DRA is an opportunity for employers to review practices and process for managing employees and their performance to ensure all employees are treated in a fair and consistent manner. A policy to deal with capability due to poor performance will be developed in consultation with the trades unions.

Pension

- 3.8** The DRA has no impact upon occupational pension scheme rules (local government employees within the Strathclyde Pension Fund have a normal retirement date of age 65, whilst Teachers within the STSS pension scheme has a normal retirement date of 60 (members who joined before 1 April 2007) or 65 as appropriate). Employees can still voluntarily retire at a time of their choosing in line with the scheme rules and this would be deemed as "retirement on option".
- 3.9** Alternatively an employee could request to be considered for flexible retirement and access their pension whilst remaining in work (lower graded post or reduced working hours). However, there is no automatic right for this.
- 3.10** An employee working past the age of 65 has 2 options regarding the pension benefits. They can continue to pay into the scheme and accrue further

benefits (both employee and employer contributions are payable) or they can defer drawing their pension without making further contributions (neither employee nor employer contributions are payable). In both cases, the pension has to be drawn by age 75.

3.11 The new regulations do not affect an employee's state pension age and entitlements, which they may be eligible to claim at a different age from the age at which they actually retire. However, under the Government's recent Spending Review changes were announced to the age at which an individual can access their state pension this will see the age increase to 68 over a period of time.

- Between April 2010 and November 2018 women's retirement ages are increasing to 65.
- Between December 2018 and April 2020 retirement ages for men and women are increasing to 66.
- Between April 2034 and April 2035 retirement ages for men and women are increasing to 67
- Between April 2044 and April 2046, retirement ages for men and women are increasing to 68.

Action for HR&OD

3.12 To ensure compliance with the new regulations a summary of key actions which will be undertaken by HR&OD are summarised below:

- Removal of Fair Retirement Policy with effect from 30 September 2011
- Retirement on Option Procedure effective from 1 October 2011
- Development and Implementation of capability procedure for management of performance
- Removal of age as a fair reason for dismissal from relevant policies.
- Removal of DRA clause from contract of employment
- Update to terms and conditions manuals and
- Communication of changes (i.e. Core Brief)

4. People Implications

4.1 The removal of the DRA will encourage diversity in the workplace and will reduce age discrimination. Employees will have an opportunity to choose when to retire to suit their individual needs and this will help the Council retain skills and knowledge.

5. Financial Implications

5.1 There are no direct financial implications however any financial savings generated from an employee being compulsorily retired at age 65 can no longer be anticipated as part of workforce planning

6. Risk Analysis

- 6.1** If the Council was to retain the DRA without an EJRA the Council would breach legislation by discriminating on the grounds of age.

7. Equalities, Health & Human Rights Impact Assessment (EIA)

- 7.1** No significant issues were identified in a screening for potential equality impact on this measure. The removal of the DRA avoids discrimination against older workers on the grounds of age and does not directly impact upon the other protected groups. A full Equality Impact Assessment (EIA) is attached at Appendix 1.

8. Conclusions and Recommendations

- 8.1** From 1 October 2011 employees can no longer be compulsorily retired because they have reached the age of 65 unless that retirement can be objectively justified.
- 8.2** Transitional arrangements to process any forthcoming retirement before 1 October 2011 have been put in place.
- 8.3** Whilst it may still be possible to retire an employee lawfully at a set age where that retirement age can be objectively justified, which means that it is a proportionate response to a legitimate aim, this tends to be only used in exceptional circumstances. There is no evidence to support the requirement to establish an EJRA for certain posts within the Council and therefore it has been recommended that this be removed.
- 8.4** Corporate and Efficient Governance Committee (CEGC) members are asked to note the action taken in regard to the removal of the DRA of 65 from 1 October 2011.

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Appendices: Appendix 1 - EHHR - Impact Assessment

Background Papers: ACAS Guidance for Employers (Working without the default retirement age) 13 January 2011. Personnel Services Circular HRA/2/11

Wards Affected: N/A