

Leicester  
City Council

Cabinet

5 September 2006

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## Retirement Policy and Procedure

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### Report of the Town Clerk and Corporate Director of Resources

#### 1. Purpose of the Report

To seek Cabinet's agreement for the introduction of a Retirement Policy and procedure. This is in line with the Council's approach to independence for older people and extension of working life.

#### 2. Summary

2.2 The report sets out the options facing the Council in setting a new Retirement policy in the light of the Employment Equality (Age) regulations, with the effect from 1 October 2006.

2.3 While the regulations are quite specific on the procedural arrangements the Council has to make decisions on two particular aspects:

- the 'normal retirement age' for Council employees
- its policy on dealing with employee requests to remain in work after normal retirement age.

2.4 This report provides options and reasoning for the recommendations, which have been aligned to wider Council Policy.

2.5 The draft Retirement Policy, procedural requirements and associated documents are detailed in paragraph 1.6 in the supporting information report

#### 3. Recommendations

Cabinet is recommended to:

3.1 Set Normal Age Retirement for Leicester City Council employees at age 65 from 5 October 2006.

3.2 Agree that all requests by City Council employees to continue working after the normal retirement age of 65 be approved.

3.3 To approve the Retirement Policy specified at paragraph 1.6 in the supporting information report

3.4 In response to paragraph 3.1 in the supporting information report , ask corporate Health and Safety to develop a policy for health assessments.

3.5 Note that the policy will be reviewed after 12 months in operation or sooner, subject to any developments in legislation and/or decided cases.

#### **4. Headline Financial and Legal Implications**

No direct financial implications.

Legal Implications. The Regulations impose a duty to consider all requests to work beyond normal retirement age, but neither impose a duty to retain an employee nor to give an employee a reason for the decision other than retirement. The proposed policy therefore goes beyond the legal requirements set by the regulations.

The statutory procedural arrangements must be followed to rely on retirement as a fair reason for dismissal.

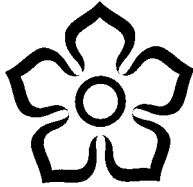
#### **5. Report Author/ Officer to contact:**

Helen Gardiner, Senior HR Advisor, HR Section, Resources Dept, Ext 7062  
24 August 2006

Tom Stephenson  
Town Clerk and Corporate Director of Resources

#### **DECISION STATUS**

<b>Key Decision</b>	No
<b>Reason</b>	N/A
<b>Appeared in Forward Plan</b>	N/A
<b>Executive or Council Decision</b>	Executive (Cabinet)



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### SUPPORTING INFORMATION

#### 1. Report

##### Background

1.1 Leicester City Council already includes Age within its equality policy, but with the new Employment Equality (Age) Regulations 2006 coming into force on 1<sup>st</sup> October 2006 we are reviewing all of our policies and procedures to ensure we comply with this legislation, including recruitment and selection, redundancy, training and development and pay and benefits. The Retirement provisions in the Age Regulations, however, are the most fundamental of the changes, demanding a shift in our understanding and perception of retirement and challenging our view of the employment cycle. The Retirement aspect is therefore the first of the Councils policies to be reviewed.

1.2 The policy is aligned with the Councils principles of active old age and employment diversity.

##### 1.3 Retirement Provisions

The legislation introduces Retirement as the sixth fair reason for dismissal, but this also means that Retirement can be an unfair dismissal if for example, statutory requirements for considering a request to work beyond the NRA (see below) are not followed and/or a retirement age is set below 65 years of age without objective justification.

###### 1.3.1 Normal Retirement Age (NRA)

The regulations require that an employer set its own NRA or the national default retirement age of 65 will apply.

###### 1.3.2 Procedural Requirements

The regulations also set out detailed procedural requirements for Retirement, which require the employer to:

- Notify the employee of their planned retirement date
- Create a 'right to request' procedure to work beyond the normal retirement age for the organisation and inform the individual of this right.

- Consider the request
- Allow the right of appeal

## **1.4 Considerations in setting 'normal retirement age' for the authority.**

### 1.4.1 The regulations:

- Prevent employers setting a retirement age at less than 65, unless they can show it is objectively justified i.e. it is a proportionate means of achieving a legitimate aim
- Set a default retirement age for 65 for men and women

### 1.4.2 Other relevant issues

- The default retirement age set by the regulations is age 65.
- The state pension age is 65 for the majority of people.
- The LGPS pension age will be 65.
- Leicester City Council currently operates a retirement age of 65.
- A higher NRA of age 70 may send a message to employees that there is an expectation that the authority **requires** them to work until age 70 rather than it being an **option**.
- The other local authorities in the East Midlands have set their NRA at 65, Nottingham City Council, Nottinghamshire County Council and Derby City Council.
- Employees who wish to work beyond the age of 65 can still make a request to remain in work.

1.4.3 Age 65 is therefore recommended as the Normal Retirement Age for the authority as this is in line with all of the issues listed above.

## **1.5 The Councils default position on continuing employment beyond planned retirement.**

1.5.1 The authority can adopt one of three options as its default position when receiving requests from employees to remain in employment passed their planned retirement date (which will be set according to the normal retirement age for the Council).

### **The 3 options are as follows:**

Agreement to all requests  
 Decline all requests  
 Case by case basis

### **1.5.2 Option 1. Agreement to all requests**

All employees who wish to continue in employment after they reach normal retirement age will have their request agreed. This is aligned to the wider policy principles of active older age.

### **Advantages**

Supports the spirit of the legislation to not discriminate against employees because of their age.

Supports Councils policies of independence for older people and extension of working life.  
It enables employees who wish to remain in employment to do so.  
It will reduce recruitment costs and encourage retention thus lowering turnover.

### **Disadvantages**

Has an adverse effect on workforce planning and succession planning, as managers do not have definite dates for retirees.  
May create a static workforce.  
Lower levels of motivation for employees who cannot progress.

### **1.5.3 Option 2. Refusal of all requests**

The risk averse option. The regulation allow for an employer to have a policy of refusing to allow employees to stay on and as long as this is consistently applied would not fall foul of the regulations.

### **Advantages**

Enable the authority to have effective workforce planning and succession planning.  
Works alongside current Pension age

### **Disadvantages**

Although the regulation allow employers to refuse a request to remain it goes against the spirit of the legislation and may run counter to wider Council policy i.e. independence for older people  
No management flexibility  
May have a demoralising effect of employees who want to continue working beyond retirement.

### **1.5.4 Option 3. Case by case basis**

Where each case is decided on its merits. This leads to the dilemma of how do we arrive at a decision, what would be the criteria if the only legally defensible grounds can be for 'retirement'.  
Legal services have advised that we should not give any reasons for refusing a request, as there is only one reason and that is retirement, any other reason may expose the council to potential claims of discrimination and/or unfair dismissal. Issues such as capability and attendance must be dealt with under appropriate procedures.

### **Advantages**

Provides business flexibility  
Complements the spirit of the regulations

### **Disadvantages**

Leaves the authority vulnerable, what grounds are we making the decision? How has one employee gained agreement and another been rejected? Could lead to perceived or real inequality.  
Legal advice states that there is no legal requirement to give reasons for rejecting a request other than 'Retirement' as this is the only fair reason under these regulations.  
Accordingly, any other reason must be dealt with under the appropriate policy, i.e. Capability, Redundancy etc.

Best practice dictates that we should be promoting an open, honest and transparent culture and not giving a reason for refusing a request is contrary to this, even though the regulations support a “no reason other than retirement” to be given.

Requires a high level of professional resource support, both in development and implementation, monitoring and review.

This may leave us open to challenge and liability under other equality legislation.

### **1.5.5 Considerations**

There has been extensive consultation with corporate directors and senior HR officers, and the consensus from this consultation is reflected in the recommendations. This truly reflects the Council's principles of active old age and supports employees who wish to remain in employment beyond their planned retirement age, therefore the recommendation of option 1, agreement to all requests was the preferred option.

1.5.6 In summary, the primary reasons put forward for approval of this recommendation are:

- It is in line with the authority's principle of promoting the concept of extending working life, the Corporate Directors Board supported adopting a blanket response to agree all requests to continue working past retirement age.
- It complements the corporate policy to promote independence for older people.
- Agreeing all requests to remain has the additional financial benefits in terms of recruitment and retention of employees.
- With regard to the advice received from the Council's legal services, that the Authority could reserve the right to decline requests to remain in work if they wished to do so, there were concerns over the criteria used to make this decision. The regulations state that the reason for a retirement dismissal can only be retirement. Further to this, no other reason for the decline of a request can be given, which does not fit with open, honest and transparent practice. It should be pointed out that as there is no legal requirement to give reasons, no adverse inference could be drawn from an employer failing to do so. However, on a point of principle this is not seen as grounds to depart from the recommendation to agree all requests.

## **1.6 RETIREMENT POLICY AND PROCEDURE**

### **Background and Scope**

1. The Employment Equality (Age) Regulations 2006 require that certain procedural steps be to be followed in all cases of Retirement. This policy incorporates all the requirements.

### **Aim of the Policy**

2. To complement the spirit of the legislation and to support wider policy implications. As an authority we promote independence for older people and as an employer we promote a fully diverse workforce.

### **Who is protected by the policy**

3. The following are protected:

- Employees
- Apprentices

4. Leicester City Council has a normal retirement age (NRA) of 65 for all employees.

5. This means that there will be a 'planned retirement' for each employee at age 65.

6. The procedural arrangements required by statute, revolve around this planned retirement date.

7. All employees will be notified prior to their planned retirement date. They will also be informed of their right to request to continue working.

8. Under the Employment Equality (Age) Regulations 2006, employees have the right to request to continue working beyond any planned retirement age imposed by their employer, either on an indefinite basis, for a defined period, or until a specified date.

9. The procedural steps will be followed whether the employee retires at the planned retirement date or if they request to remain working.

10. The Council will agree to all employees' requests to continue working beyond his/her normal retirement age .

11. Employees are encouraged to discuss their intentions regarding retirement, as early as possible to assist the organisation with workforce planning.

12. The request to continue working will be considered by the employee's Head of Service/Service Manager, (for schools: Head Teacher) and any appeals will go to the service director (for schools: Governors) in each department.

13. It should be noted that in order to ease the arrangements into existence the regulations allow for transitional arrangements for the first six months (1 October 2006 until 31 March 2007) the time frames are slightly different but the process remains the same. The main procedures are as follows with the transitional arrangements summarised later.

## **14. Procedure for Retirement**

### **Step 1: Notification**

**Timing:** At least 6 months but no more than 12 months before the planned retirement date.

Employees will be informed in writing by their HR/Personnel section of their planned date of retirement and given details of their right to request to continue working beyond this date.

### **Step 2: Request to continue working**

**Timing:** Up to 6 months and at least 3 months before the planned retirement date, the employee can make a request to work beyond their anticipated retirement. Failure to submit the form at least 3 months before the notified retirement date will mean that the employee will lose the statutory right to have the request considered and the employee will be retired on the planned date.

Employees who wish to submit a request to continue working should do so in writing on the form provided. (namely: Request to continue working beyond planned retirement)

The form states that the request is made under the relevant paragraph (i.e. paragraph 5 of Schedule 6) of the Employment Equality (Age) Regulations 2006.

The employee should specify whether the request is to continue working indefinitely, for a defined limited period, or until a specified date.

All requests will be returned to HR to be submitted for consideration to the appropriate Head of Service/3<sup>rd</sup> tier equivalent (for schools: Head Teacher)



### **Stage 3: Consideration of the Request**

**Timing:** Within 28 days.

Once the request has been received, the employee will be invited to attend a meeting with their Head of Service/3<sup>rd</sup> tier equivalent (for schools: Head Teacher) to discuss his/her request not to retire on the planned date of retirement.

The meeting will explore the nature of the continued employment, whether to continue full time/part time for instance, and will ensure that the employee has all the relevant information to make a final decision.

Employees have the right to be accompanied by a colleague or T.U. official (ref para 16).

A decision will be made following the meeting, taking into account the employee's representations.

The outcome of the request, i.e. the new planned retirement date, will be communicated to him/her in writing as soon as it is reasonably practicable to do so after the meeting.

If continued working is agreed the employee will be informed in writing, and a new planned retirement date set. Any changes to the terms and conditions of employment will be advised.

### **Stage 4: Appeal**

**Timing:** The employee can appeal against the Councils' decision within a reasonable time after receiving the decision.

The appeal will go to the employee's service director, (for schools: Governors)

The employee's notice of appeal must be in writing, include the specific grounds on which the appeal is being made and be dated.

The appeal process closely follows the initial hearing.

The lodging of an appeal does not have the effect of extending employment beyond the retirement date.

If an appeal is received, the employee will be invited to attend an appeal meeting (to be held within 28 days) to discuss his/her request not to retire on the intended date of retirement.

Employees have the right to be accompanied by a colleague or T.U. official (ref para 16)

The outcome of the appeal hearing will be communicated to him/her in writing within 14 days of the meeting.

The Council's decision at this time will be final.

## **15. Transition Arrangements 1 October 2006 and 31 March 2007**

The Age Regulations set out transitional provisions that will apply to retirement dismissals taking place between 1 October 2006 and 31 March 2007.

These procedures are in place to protect employers from unnecessary or unfair dismissal claims during the first six months of the new laws. For a retirement dismissal to be fair during this transitional period, the Council must adhere to the following transitional provisions, which comprise of notice of retirement and informing the employee of their right to request to remain.

There are two important points to note. First, the procedure only applies where the employer, the Council, gives notice of dismissal. Second, the notice of dismissal must expire before 1 April 2007.

### **15.1 Notice of retirement given before 1 October 2006**

The Council will give notice of retirement to an employee **before** 1 October 2006 that they will retire after 1 October 2006 but on or before 31 March 2007.

The authority will:

- give notice of retirement dismissal, which must be at least as long as required under contract, or
- if the contractual notice exceeds four weeks, then at least four weeks.

The employee will be made aware that the authority considers he/she is being retired on the date notice expires.

The Council will also inform the employee in writing that from 1 October 2006, they have the right to request to remain in employment.

The employee can make a request to remain, at least four weeks before the intended date of retirement. (If this is not practicable then their request must be made as soon as reasonably practicable after the Council's notification is sent out.).

The employee may make a request not to retire up to four weeks after his or her notice period has expired.

## **16. Right to be accompanied**

16.1 The regulations require:

That employees are entitled to be accompanied to both the original meeting to discuss their request, or at any subsequent appeal meeting, by a colleague of their choosing provided they are also employed by Leicester City Council, or a trade union official. The companion can address the meeting and confer with the employee during the meeting, but is not entitled to answer questions on behalf of the employee.

16.2 If the companion will not be available at the time proposed by the employer for the meeting the employer must postpone the meeting to a time proposed by the employee, provided it is convenient for the employer, employee and the companion and falls within the 7 days beginning with the day after the original date proposed by the employer.

16.3 A worker is entitled to paid time off during working hours for the purpose of accompanying the employee.

16.4 Employees are protected from being subjected to a detriment for exercising their right to be accompanied. Workers who act as a companion are also protected.

## **17. Review**

17.1 The Retirement Policy and procedure is a reaction to new legislation, during the first 12 months case law in this area will be determined. During this time the Council will also gain operational experience.

17.2 The Council has therefore scheduled a review of this policy in 12 months time (or sooner if required) to account for any changes or decisions made in tribunals.

## **18. Related Documents**

18.1. Flowchart of the procedural steps, Appendix A

18.2. Form - Right to request, Appendix B

## **2. Financial, Legal and Other Implications**

**2.1 Financial Implications**, Financial comment agreed by Steve Charlesworth, Head of Strategy and Development ext 7495

There are no direct costs associated with implementing the Policy. The indirect costs associated with establishing and maintaining procedures will be absorbed into operating costs.

**2.2 Legal Implications**, Alison Mapp, Legal Services ext 7059

### 2.2.1 The Regulations

The provisions and requirements of the Employment Equality (Age) Regulations (or “*the Regulations*”) are as set out in the paragraph 1.3 of this Report.

The Regulations impose a duty on all employers to consider all requests to work beyond the normal retirement age of 65. However, no legal duty is imposed on employers to retain an employee beyond the age of 65 and a dismissal on the grounds of retirement is not open to challenge in either the Employment Tribunal or the civil courts provided the employee has attained the age of 65, the dismissal from employment is deemed to be on the grounds of retirement and the correct statutory procedures have been followed in affording the employee the right to request the opportunity to work beyond the retirement age of 65.

Therefore where the Council dismisses an employee aged 65 years purely on retirement grounds having followed the appropriate statutory procedures, it will be afforded protection by the Regulations against claims of unfair dismissal.

### 2.2. Option 1 (Agreement to all requests)

In the event that Option 1 is agreed, then in every circumstance without exception, the Council will create a legal obligation to agree to any employee’s request to work beyond the age of 65 without question and will create a legal obligation to do so under the contract of employment rather than under the Regulations (which do not impose such a duty.)

Accordingly the Council must be aware that given the diverse range of jobs within the organisation, in the event that owing to any special circumstance, for example the nature of post, it is neither safe for the employee concerned nor fellow employees, for that employee to continue to work beyond the normal retirement age, the Council will be bound by its proposed policy to continue the employment relationship. It will also be legally obliged to put measures in place to safeguard the employee concerned and fellow employees and face potential liability if it fails to do so. Therefore, there may be implications for the Council in terms of Health and Safety legislation (which is currently a consideration under its existing policy).

Further, if circumstances dictate that the proposed policy should not be followed, then any subsequent dismissal in such circumstances could lead to potential claims for unfair dismissal and/or age discrimination in the Employment Tribunal and/or breach of contract in either the Employment Tribunal or the civil courts which will be difficult to defend by virtue of the strict application of the proposed policy and consequently the Council could not rely on retirement as a fair reason for dismissal. The legal burden of proof will therefore rest with the Council to prove that the

dismissal in such circumstances was on the grounds of performance, capability or some other substantial reason.

The Regulations are drafted so as to be mindful of such situations where working beyond the retirement age is not feasible therefore allowing each employee's request to work beyond the retirement age to be considered on a case by case basis. However the Council's proposed policy will remove the employer's discretion afforded by the Regulations.

#### 2.2.3 Option 2 (Refusal of all requests)

The Regulations allows the Council to effectively implement Option 2 provided the employee has reached the NRA of 65 and the appropriate statutory procedures in considering the request and giving a right of appeal, are followed.

#### 2.2.4 Option 3 (Case by Case basis)

The Regulations effectively support this Option as it gives the Council the right to either retain or dismiss an employee who has reached the NRA. This Option therefore gives the Council the flexibility within the workplace to consider circumstances where a retirement request would not be granted having regard to:-

- health, welfare and safety issues – deficiencies in performance might be linked to age e.g. jobs involving heavy labouring skills
- job blocking/employment planning – impact on promotion opportunities and/or to facilitate employment planning

It should be noted that although these may be factors an employer may consider when considering a retirement request, they may also serve as grounds for a defence to a potential claim for age discrimination.

#### 2.2.5 Legal Update

The Regulations are currently subject to a challenge by way of judicial review in the High Court by Age Concern.

The main point of challenge relates to the retirement age being set at 65 years and that employees have no absolute right to continue to work beyond the retirement age.

It is unlikely that this matter will be determined before the 1 October 2006 when the Regulations come into force and therefore the Council must be mindful of the need to update and review its policies prior to the 12 month review period currently proposed so as to bring its age discrimination policies in line with any changes brought about by the legal judgment in this pending case.

### 3. Other Implications

#### 3.1 Health and Safety

Our current rules would apply to the employment of older people. If a manager has any concerns about a persons capability to do the job regarding health then they should be referred to Occupational Health.

There are already statutory risk assessments in place at specific ages, set by either the HSE or DVLA these will remain in force. For example, drivers, minibus driver people working in confined spaces etc.

If the Council wished to set risk assessments at a specific age, i.e. age 70 there would need to be justified reasons for doing this. These may be because the role was physically demanding or may be because it was a particularly stressful role.

OTHER IMPLICATIONS	YES/NO	Paragraph Within Supporting information	References
Equal Opportunities	<b>Yes</b>	<b>All</b>	
Policy	<b>Yes</b>	<b>1.6</b>	
Sustainable and Environmental	<b>No</b>		
Crime and Disorder	<b>No</b>		
Human Rights Act	<b>No</b>		
Elderly/People on Low Income	<b>No</b>		

### 5. Background Papers

Employment Equality (Age) Regulations 2006

### 6. Consultations

**Corporate Directors Board** has been briefed on the Age regulations and have discussed the Retirement Policy

**TU** consultation is in progress. The only comment I have received to date is that if the policy allowed for any requests to be refused then they would strongly oppose any practice that did not allow for a full and frank discussion with the employee as to the reasons for refusing their request.

### 7. Report Author

Helen Gardiner, Senior HR Advisor, HR Section, Resources, Ext 7062  
24 August 2006

### Stage 1 – Notification

Leicester City Council will write to the employee informing them of the intended date of retirement and their right to request to work longer.

**When:** Between 6-12 months before planned retirement date.

### Stage 2 – Request to stay on

The employee can make a request to work beyond planned retirement date.

The request must be in writing on the form provided.

**When:** 3 – 6 months prior to planned date of retirement

### Stage 3 – Consideration of request

A meeting will be held with employee and his/her **Head of service/3<sup>rd</sup> tier equivalent**/Head Teacher to consider the request.

Meeting will be held within 28 days of the receipt of request.

**Following the Meeting** – the **Head of service/3<sup>rd</sup> tier equivalent**/Head Teacher will notify the employee in writing within 14 days.

### Stage 4 – Appeal

The employee can appeal against the employers' decision within a reasonable time after receiving the decision.

The employee must appeal in writing to the **Service Director**/School Governor's.

An appeal meeting will then be arranged within 28 days and the appeal considered.

**Notification of Appeal Decision** – the **Service Director**/School Governor's will write to you with their decision, within 14 days. This decision will be final

This form must be submitted to [HR/Personnel contact name] for consideration by Head of service/Service manager/Head teacher, three to six months prior to the retirement date notified to you by Leicester City Council. **This means that the earliest you can submit your request is [date, 6 months prior] and the latest you can submit it is [date, 3 months prior] .**

You are allowed to make only one request in relation to any one intended date of retirement.

Name of employee:	
Employee/Payroll number:	
Section:	
Department:	

<p><b>I wish to submit a request not to retire and to continue working beyond [planned retirement date] , in accordance with the Employment Equality (Age) regulations 2006, Schedule 6.</b></p> <p><b>Please choose only one of the options below.</b></p>	<p><b>Tick one box a, b or c</b></p>
<p><b>a.</b> I do not wish to retire on the retirement date notified to me by Leicester City Council and wish to submit a formal request to continue working <b>indefinitely beyond that date.</b></p>	
<p><b>b.</b> I do not wish to retire on the retirement date notified to me by Leicester City Council and wish to submit a formal request to continue working for <b>another .....months / .....years</b> (delete as appropriate).</p>	
<p><b>c.</b> I do not wish to retire on the retirement date notified to me by Leicester City Council and wish to submit a formal request to continue working <b>until</b> .....(insert specific date).</p>	
Signed:	
Date:	

**Please inform your Line Manager that you have submitted a request and send this form to: [Name of nominated HR/Personnel contact] [Address]**