

References from the Joint Consultative Group

Item for Decision:	To consider and determine various requests from the Joint Consultative Group
Contributors:	Chief Executive
Contact Officer:	Anthony Braine, Committee Officer
Financial Implications:	Within existing budgets
Council Priorities:	COM4 RES1 RES2
Recommendations:	It is RECOMMENDED that; a) the new Retirement Procedures be adopted; and b) that the updated Appeals procedure be adopted

1. Applicable Lead Member Area(s)

1.1 Community and Resources

2. Crime and Disorder – Section 17 Implications

2.1 There are no Crime and Disorder implications associated with this report.

3. Introduction

3.1 At its meeting on the 11th September, 2006 the Joint Consultative Group supported the above requests and resolved that they would be forwarded to this Committee for approval.

4. Background to Age Regulations and Retirement Procedures

4.1 The Employment Equality (Age) Regulations 2006 come into force on 1 October 2006. The purpose of the 'Age Regulations' is to implement the age-related provisions of the European Employment Directive establishing a general framework for equal treatment in employment and occupation. The other elements relating to discrimination on the grounds of sexual orientation, religion or belief and disability have already been enacted.

4.2 The regulations will have an impact across a range of Human Resources issues and policies including Recruitment, Training and Redundancy. Most East Dorset District Council policies and procedures are already 'age proof' and we have recently made changes to ensure our recruitment procedures comply with the new legislation.

4.3 By far the biggest impact of the new legislation for East Dorset District Council, will be the need to introduce Retirement Procedures.

5. Retirement Procedures

5.1 The regulations introduce new obligations in respect of retirement which employers will need to implement from 1 October 2006.

- 5.2 An employee dismissed at or above age 65 where the reason for dismissal is retirement will not be able to claim that they have been discriminated against on the grounds of age, provided the employer has complied with the notification duty.
- 5.3 The notification duty requires the employer to notify the employee in writing of:
- The date the employer intends the employee to retire, and
 - The employee's right to request working beyond retirement.

6. Appeals Procedures

- 6.1 This procedure will provide the means for employees (excluding Heads of Service and the Chief Executive), to appeal against decisions that involve them made through the Disciplinary Procedure; the Grievance Procedure; the Managing Attendance Policy; the Procedure Agreement for Dealing with Redundancies and the Equal Opportunities Policy.
- 6.2 The Appeal procedure replaces separate procedures previously contained within the Disciplinary Procedure and the Procedure Agreement for Dealing with Redundancies

7. Appendices

- 7.1 Appendix 1 – Retirement Procedures
- 7.2 Appendix 2 – Appeals Procedure

8. Background Papers

- 8.1 Local Government Employers Advisory Bulletin – Employment Relations no.514
- 8.2 ACAS Code of Practice 1 : Disciplinary and Grievance Procedures

Retirement Procedures

Employee's Right to Request Working beyond Retirement Age

The Employment Equality (Age) Regulations 2006 due to come into force in October 2006, introduce a new right for employees approaching the organisation's normal retirement age to request to continue working beyond this date.

Note: The Council's normal retirement age is 65.

The Legal Facts

- The employer has an obligation to notify the employee of their right to request to work beyond the normal retirement date
- This notification must be in writing and take place at least six months (but not longer than 12 months) prior to the normal retirement date
- The employee's request to continue working must be made in writing no later than three months before the normal retirement date and must state any changes to working practices that are requested (i.e. hours or duties) and the duration of the requested extension – this could be for an indefinite period or for a fixed period of time
- The employer has an obligation to consider any request but is not obliged to agree to the request and does not have to give a reason for turning it down.
- Any request that is made must be dealt with in a reasonable period of time by arranging a meeting with the employee where they will be given the opportunity to state their case.
- The employee has a right to be accompanied at this meeting by a workplace colleague or Trade Union representative.
- The decision of the employer must be confirmed in writing
- The employee has the right to appeal if they are unhappy with the decision
- Only **one request** in relation to each intended retirement date can be made in any **12 month period**
- A successful application will mean a permanent change to the contract
- This procedure must be repeated each time an individual nears an extended point for retirement (unless the extension is for less than 6 months from the original intended retirement date)

EDDC Procedure for Dealing with Requests to work beyond normal retirement age

Making a request:

The request must be:

- Made in writing **no later than three months** and no earlier than 12 months before the employees intended retirement date to the Personnel Department
- The request should state how long the employee wishes to continue working – this could be indefinitely or for a set period of time. The request should also give details of any changes that are being requested to the existing working arrangements (this may include changes to hours of work or duties)
- It would be helpful if the request could include an explanation of what effect the employee thinks any change would have on their work and how this might be dealt with

On receipt of a request the Council will:

- Meet with the employee within **28 days** of receiving an application
- The meeting will normally take place with the employee, their Manager and a member of the Personnel Team
- Employees will have the right to be accompanied at any meetings by a fellow worker or Trade Union Representative
- After the meeting a decision will be made to either agree to the request, deny the request, or offer a compromise (for example an extension with part time hours, or an extension for a limited period)
- The employee will be advised verbally of the decision as soon as possible and advised of the factors taken into consideration when making the decision
- The decision will be confirmed in writing within **14 days** of the meeting.
- The letter will also explain the employee's right to appeal against the decision. Any appeal must be made within **14 days** of notification of the decision
- Any request for an appeal by an employee, will be heard within **14 days** of receipt of such request.
- This appeal meeting will take place with the employee and Head of Service (or her/his nominated representative), or (where appropriate), the Chief Executive. (Note: the manager attending the appeal meeting will not be the same Manager who conducted the original meeting)
A member of the Personnel Team will also attend the appeal meeting.
- Employees who report directly to the Chief Executive, including Heads of Service, will have the right to make an appeal to the Leader of the Council.
- The employee will be advised verbally of the decision as soon as possible following the appeal and will be advised of the factors taken into consideration.
- The decision will be confirmed in writing within **14 days** of the appeal meeting.

Consideration of an application

Note: Under the legislation the only obligation for the employer is to consider an employee's request – there is no legal obligation to agree to any request OR to give any reason if the request is refused.

However, in order to promote good working relationships and to follow the ACAS 'good practice' guidelines, the Council will assess each application according to a number of factors and advise the employee of these factors.

This should ensure that employees feel they are being treated fairly and equitably.

The following factors will be taken into consideration when assessing a request:

- The operational need to secure continuity
- A specific project that needs to be completed
- A particular need for a set of skills

Normally requests will only be agreed to if the employee meets one or more of the above factors. **Any request to continue working beyond the age of 65 will be subject to medical clearance from the Council's Occupational Health Doctor and any extension granted will usually be for a maximum period, in the first instance, of 12 months.**

Further Information about Age and the Workplace can be found at www.acas.org.uk or leaflets available from Personnel.

Further information about the Local Government Pension Scheme can be found at www.lgps.org.uk or contact the Personnel team.

Appeals Procedure

1.0 Scope

This procedure provides the means for employees (excluding Heads of Service and the Chief Executive) to appeal against decisions that involve them made through The Disciplinary Policy, The Grievance Procedure, The Managing Attendance Policy, the Redundancy Policy, The Equal Opps Policy including the Harassment and Bullying Procedure and The Managing Employee Achievement Policy. The Appeal process for Heads of Service and the Chief Exec is determined nationally in the JNC terms and conditions of employment. The Job Evaluation Scheme has a separate appeals procedure.

2.0 The Procedure

If an employee is unhappy with a decision that is made concerning them under any of the above policies or procedures they can ask for an appeal. Appeals must be made in writing to the Personnel Department within ten working days of receiving confirmation of the decision. They must clearly state that they would like an Appeal Hearing and specify the reasons.

Under normal circumstances an appeal hearing will be convened within 4 weeks of the employee's written request. Appeals will be heard by a senior manager who was not involved in the original decision. This will normally be a Head of Service or The Chief Executive, but always someone more senior than the original decision maker. A representative of the Personnel Team will be available to advise.

For staff within scale 12, or Grade J, and above who are appealing against dismissal, an Appeal Panel will be convened. The panel will comprise three members of the appropriate committee, who will be advised by a member of the Personnel team or another appropriate advisor.

Employees are entitled to representation at the appeal by a trade union representative or a workplace colleague. The employee and their representative will be notified of the time, date and venue of the hearing. Parties to the appeal will, where possible, agree papers for submission up to one day before the hearing. A copy of the appropriate papers relevant to the appeal will be made available to the appeals panel/manager conducting the appeal. Any new evidence being submitted must be clearly identified and each side must be given an opportunity to comment on it.

2.1 The Hearing will proceed as follows:

- 2.1.1** the employee (or representative) will put their case, to call such witnesses as they wish in the presence of the Council's Management Representative;
- 2.1.2** the Council's Management Representative will have the opportunity to ask questions of the employee and their witnesses;
- 2.1.3** the Council's Management Representative will put the case and call witnesses as appropriate in the presence of the employee and their representative;
- 2.1.4** the employee (or representative) will have the opportunity to ask questions of the Council's Management Representative and any witnesses called;
- 2.1.5** the members of the Appeals Panel/Senior Manager/Chief Executive, as appropriate, will have the opportunity to ask questions of both parties;

- 2.1.6** both parties to have the opportunity to sum up their case if they should wish. No new information should be introduced at this stage. The employee (or representative) shall be allowed to sum up last;
- 2.1.7** the employee and their representative and the Council's Management Representative and witnesses to withdraw;
- 2.1.8** the Appeals Panel/Senior Manager/Chief Executive will then deliberate in private with a representative of the Personnel Team advising. They will recall the employee and their representative and the Council's Management Representative only to clear points of uncertainty on information already given. If recall is necessary, both parties are to return even if only one is concerned with the point giving rise to doubt;
- 2.1.9** the Appeals Panel/Senior Manager/Chief Executive are able to:
- uphold the original decision
 - amend or change the decision as appropriate
 - revoke or overturn the original decision.
- 2.1.10** the decision will be given to the employee and their representative and the Council's Management Representative verbally at the end of the hearing. The decision will be confirmed in writing to the employee within **five** working days of the date of hearing..

NOTE: The Appeals Panel reserves the right to call any witness or employee who might be able to assist and clarify any point that may emerge during the hearing that will enable them to form a decision consistent with the spirit of intent of the ACAS Code of Practice on Disciplinary and Grievance Procedures and of natural justice.