

EAST AYRSHIRE COUNCIL

CORPORATE GOVERNANCE COMMITTEE 28 SEPTEMBER 2006

EMPLOYMENT EQUALITY (AGE) REGULATIONS 2006

Report by the Depute Chief Executive/Executive Director of Corporate Support

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to advise the Committee of the impact of the Employment Equality (Age) Regulations 2006 on Council Employment Policies and Procedures.

2. BACKGROUND

- 2.1 The Employment Equality (Age) Regulations 2006 SI 2006/1031 will come into effect from 1 October 2006. In common with existing discrimination legislation, the Regulations outlaw direct and indirect discrimination in employment, vocational training, the award of professional qualifications and trade union membership and make special provision for harassment and victimisation.

3. THE EMPLOYMENT EQUALITY (AGE) REGULATIONS 2006

- 3.1 There are a number of key issues introduced under the Regulations which include:
- The upper age limits on unfair dismissal and the upper and lower limits on redundancy will be removed;
 - There will be a national default retirement age of 65 years;
 - Employees have the right to request to work beyond 65 years or any other retirement date set by the employer;
 - There are limited circumstances when discrimination may be lawful;
 - Retirement is a fair reason for dismissal but only where an employer follows a prescribed procedure. The employer must advise the employee in writing of the intended date of retirement and the right to make a request to continue working past that date. This requirement must be fulfilled no more than one year and no less than 6 months before the intended retirement date.
- 3.2 An audit of the Council's employment policies and procedures has been carried out to ensure that any potential age discrimination has been eliminated from the various processes. This has resulted in a number of proposed changes to existing procedures which are outlined in the following paragraphs: -

3.3 PAY ISSUES

3.3.1 WAGE FOR AGE

It will be illegal for employers to pay arbitrarily different rates of pay above the National Minimum Wage to workers according to their age. At present local

government employees aged 16 and 17 years of age are paid at a lower rate of pay than employees who are 18 years of age.

It is proposed that these current wage for age pay rates be discontinued with effect from 30 September 2006. There are currently 16 employees who are paid on a wage for age basis. This proposal will not impact on apprentices as they are paid on the basis of the year of their apprenticeship rather than by their age.

3.3.2 RETIREMENT

At present, the retirement age for local government employees is 65 years of age except in the case of school crossing patrollers who retire at 70 years of age.

Employees can currently apply to work beyond 65 years of age and a new defined procedure for retiring employees by which their dismissal under the Regulations will be legal will be introduced. Employees will be able to continue to apply to work beyond the retirement age of 65 years and in the case of school crossing patrollers beyond 70 years.

3.3.3 REDUNDANCY PAYMENTS

The Regulations remove the lower and upper limits on the right to claim redundancy payments (previously 18 and 65) and the taper by which payments were reduced for employees aged over 64 year of age.

Employers will still be able to offer redundancy payments that vary according to the employee's age so long as they are based on the statutory multipliers.

The current redundancy payments payable under the Pension Regulations will be amended as a result of the impending revised Local Government Pension Scheme Discretionary Payments Regulations. It is therefore proposed to await the details of the changes under the impending revised Discretionary Payments Regulations before making any amendments to the existing enhanced redundancy payments. A report will be submitted on any proposed changes to a future meeting of the Committee.

3.3.4 RECRUITMENT AND SELECTION

The Council's Recruitment and Selection Policy and Procedures have been reviewed to ensure that any unjustified age discrimination is eliminated from the recruitment process eg. Job Specifications have been amended to minimise the requirement that applicants must have a specific number of years experience at a certain level. Job advertisements will avoid any reference to age related language e.g. mature, young, fit etc.

In addition, diversity training will minimise the risk of any inadvertent age discrimination eg. asking a young applicant how they would feel about managing a group of older employees or requiring applicants to be recent graduates.

3.3.5 SERVICE RELATED BENEFITS

There is a general exemption to the application of the normal age discrimination rules in respect of service-related benefits. The effect of this is to make it lawful for

an employer to award benefits on the basis of an employee's length of service up to five years.

The Council currently awards three additional days annual leave for 10 years service to former APT&C staff. This arrangement is being reviewed under the harmonisation of the former APT&C staff and manual workers conditions of service under the Single Status Agreement.

The Regulations permit where a legitimate business need can be established e.g. in encouraging the loyalty or motivation of employees, an employer can award further service benefits beyond 5 years. It is anticipated therefore, that the Council will be able to meet this standard to continue the current arrangement, if deemed necessary.

4. TRAINING

- 4.1 Personnel Services are currently reviewing the Council's diversity training to reflect the implication of the new legislation.

5. FINANCIAL IMPLICATIONS

- 5.1 Any financial implications associated with the introduction of the Regulations will be met from within existing budgets.

6. POLICY/LEGAL IMPLICATIONS

- 6.1 The audit of the Council's Employment Policies will ensure that the Council meets its legal obligations as an employer. The Executive Director of Educational and Social Services will require to review the Council's employment Policies and Procedures in relation to teaching staff to reflect the implication of the new legislation.

7. TRADE UNIONS

- 7.1 The proposals are subject to consultation with the Trade Unions.

8. RECOMMENDATIONS

- 8.1 The Committee is asked to note the terms of this report.

Elizabeth Morton
Depute Chief Executive/Executive Director of Corporate Support
4 September 2006

LIST OF BACKGROUND PAPERS

- 1. The Employment Equality (Age) Regulations 2006

Anyone wishing further information should contact Martin Rose, Head of Personnel (Telephone 01563 576092).