

YORKSHIRE DALES NATIONAL PARK AUTHORITY
FINANCE & RESOURCES COMMITTEE

7th August 2006

EMPLOYMENT EQUALITY (AGE) LEGISLATION

Purpose of the Report

To seek Members approval for the introduction of an Age retirement Policy as a response to the introduction of the Employment Equality (Age) Regulations on October 2006.

Strategic Planning Framework

The information contained in this report is consistent with the Authority's statutory purposes and it's approved strategic planning framework:

- ***Best Value Performance Plan***

"Plan and manage all aspects of the Authority's business so as to make the most effective use of our resources"

Background

After a process of consultation on draft regulations the Government published the final version of the age regulations on 9 March 2006. This report describes actions that the Authority will implement to meet the requirements of this legislation. The Personnel Section will undertake a review of all relevant policies and processes to ensure that they are 'age proof'. This will be completed before October 2006 and any changes as required by statute will be notified to the Senior Management Team and to this committee, as appropriate.

The text box (below) gives further background to the reasoning behind the forthcoming legislation.

Why the Employment Equality (Age) Regulations have been developed:

It is estimated that age discrimination costs the economy between £19 billion and £31 billion a year in lost output. To be successful, organisations need to attract and retain valuable employees and develop the talents of all their employees.

Some key points:

- More people are living longer, active and healthier lives
- Evidence shows that differences in absenteeism between age groups are slight
- Older workers stay in their jobs longer than younger people.

- Age discrimination leads to under-achievement, reduced self-confidence and motivation, lower self-esteem and loss of personal income and status.
- Findings from many studies show that younger and older workers are on average equally effective in their work.
- Research shows that, given the right training, older people are just as capable of learning new skills as younger people.

As life expectancy increases and the birth rate remains low, the proportion of the population aged over 65 will increase dramatically. Older people will become an ever more significant proportion of the population and society will increasingly depend upon the contribution they can make. In their publication *Opportunity age: meeting the challenges of ageing in the 21st century* the Department of Work & Pensions gives details of the demographic shifts that are expected over the next few decades. The Government has stated that the best way to offset the impact of future changes in the age structure of society is to reduce levels of inactivity. Around 1 million people choose to work beyond state pension age already and the Government aspires to encourage a million older workers to do so, thereby maintaining the ratio of workers to non-workers in the economy at about the same in 2050 as it is now. Research information shows that there is a keen appetite amongst older employees for flexible working and flexible pensions and statistics indicate that activity levels for older female employees are expected to continue to rise.

A Summary of the Legislation

The regulations apply to all employers, defined as “anyone who has employees or who enters into a contract with a person for them to do work”. **Unpaid volunteers** are not covered by the legislation. The regulations cover recruitment, terms and conditions, promotions, transfers, dismissals and training. *They do not cover the provision of goods and services.*

The regulations make it unlawful on the grounds of age to:

- Discriminate directly against anyone – that is, to treat them less favourably than others because of their age – unless objectively justified;
- Discriminate indirectly against anyone – that is, to apply a criterion, provision or practice which disadvantages people of a particular age unless it can be objectively justified;
- Subject someone to harassment. Harassment is unwanted conduct that violates a person’s dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for them having regard to all the circumstances, including the perception of the victim;
- Victimise someone because they have made or intend to make a complaint or allegation or have given or intend to give evidence in relation to a complaint of discrimination on grounds of age;
- Discriminate against someone, in certain circumstances, after the working relationship has ended.

It will be unlawful to discriminate on the grounds of someone’s “apparent” age. For example, if someone is discriminated against because they look too old or too young for a particular job, they will be able to successfully complain even if the discriminator is wrong about their actual age.

Other points include:

- Upper age limits on unfair dismissal and redundancy will be removed.
- There will be a national default retirement age of 65, making compulsory retirement below 65 unlawful unless objectively justified.
- Employees will have the right to request to work beyond 65 or any other retirement age set by the company. The employer has a duty to consider such requests, but no obligation to agree to them.

Actions

It is proposed that the Authority will implement the following actions below to ensure that it complies with the Employment Equality (Age) legislation. Please note that these actions have been discussed with UNISON, and UNISON has reserved to right to request changes during the 90 day consultation period permitted. If any changes are requested, and if these are likely to have a material impact on the Authority, they will be brought back to this committee in due course. This approach will avoid delay, and allow the Authority to introduce the Age Retirement policy ahead of the legislation coming in to place in October.

(1) Training and Development and Implementation of Policies

Details	Actions
<p>Vicarious Liability Employers could be responsible for the acts of employees who discriminate on grounds of age. This makes it important to train staff about the regulations and actively implement policies as employers may have a defence if they took 'reasonable steps' to prevent discrimination by their employees.</p> <p>The employee is liable too.</p>	<p>Training on equal opportunities and diversity to be become part of the standard training package staff and line managers undertake.</p> <p>Equal opportunities training to be included in the induction programme.</p> <p>The new age regulations to be promoted on the intranet by providing some details of what it means for the Authority.</p> <p>Personnel staff to attend relevant ACAS Training sessions and to feedback to line managers.</p>
<p>Recruitment and Selection</p>	<p>Information about age discrimination to be included as part of the recruitment and selection training.</p>

(2) Pay and Benefits

Details	Actions
<p>Under 21's Inherited for local government is the practice of</p>	<p>The Personnel & Training Officer will establish whether this practice was removed following 'single</p>

<p>starting anyone under the age of 21 at Point 4 on the salary scale. Once an employee reaches 21 or on appointment if they are 21 or above, the employee will be paid at Scale Point 6</p> <p>Retirement Age</p>	<p>status' consultation and implementation. If still in existence the Authority will seek to remove this through a consultation process.</p> <p>Personnel policy needs to be adjusted to take account of the new right of employees to request that the Authority permits them to continue working beyond age 65, an entitlement introduced by the new legislation. Members are recommended to approve the Age Retirement Policy contained within the Annex to this report.</p>
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(3) Recruitment and Selection

Details	Actions
<p>Advertising</p>	<p>Language should be avoided in adverts which might imply that the Authority would prefer someone of a certain age. The Personnel section will 'age proof' adverts before being placed.</p>
<p>Application Form The application form currently includes a 'personal details' section which requests the applicant to complete their name and date of birth.</p>	<p>Personal details including date of birth to be removed from the application form. Personal details to be asked for in a 'tear off' diversity monitoring section of the application form and to be kept separate from the short-listing process (an approach which follows current best practice). This will also help to prevent other forms of discrimination occurring in the recruitment process e.g. sex and race.</p>
<p>Job Description and Person Specification</p>	<p>Personnel will conduct an audit to make sure that specified qualifications are not disadvantaging people at different ages. The Authority must be aware that if it is to be specific about qualifications it must be sure that this can be justified in objective terms and be made clear that it will consider equivalent or similar level alternative qualifications. <i>The issue relates to changes in the content and naming of qualifications over time.</i></p>
<p>Short listing</p>	<p>It is important that those doing the short listing for interviews base their decision on skills and ability alone. They should be trained and reminded of their ability not to discriminate on age grounds – this will be incorporated into recruitment and selection training.</p>
<p>Interviewing</p>	<p>Again to be incorporated into the recruitment and selection training, make sure interviewers know to avoid questions like: "How would you feel about managing older/younger people?"</p>

(4) Terms and Conditions

Details	Actions
Contracts	The following clause to be removed: <i>“No notice will be required or given to bring your contract of employment to an end when attaining the normal retirement age”</i>

RECOMMENDATIONS

Members are asked to:

1. Note of the content of this report
2. Approve the policy in the **Annex** on Age Retirement

SALLY JOWETT
PERSONNEL & TRAINING OFFICER

17th July 2006

AGE RETIREMENT POLICY

Including Guidance on Employing Staff of 65 Years and Over

1. AIMS

- 1.1 The policy aims to support the maintenance of a skilled and experienced workforce, in particular by providing a mechanism whereby officers can request to continue their employment with the Authority beyond the age of 65.

2. SCOPE

- 2.1 The Employment Equality (Age) Regulations 2006, effective from 1st October 2006, will introduce the following changes:
- The regulations set a default retirement age of 65 (which is to be reviewed in 2011). Employees wishing to work beyond the default retirement age will from 1st October 2006 have the right to make such a request, and the Authority is obliged to consider that request.
 - Compulsory retirement below the age of 65 will therefore be unlawful, unless objectively justified. Note that the Authority currently has 65 as its fixed retirement age.
 - Where the Authority is planning to retire an employee it will have to follow a set procedure, within certain time limits, to comply with the law. If the Authority does not follow the procedure then its actions will be unlawful and it will be liable, if challenged.

3. REQUESTS FROM EMPLOYEES TO WORK BEYOND 65 YEARS

- 3.1 The Authority's normal retirement age is 65. The Authority's Personnel Section will notify the employee in writing of their right to request to continue working beyond their normal retirement date (at least six months in advance but no more than 12 months before the normal retirement date). See standard letters in **Appendix B**.
- 3.2 If the employee wishes to continue working after their normal retirement age they must request to do so in writing and submit this request to their Head of Department. The request must be made at least 3 months before the employee is 65. The letter should stipulate full details of the request i.e. existing hours, reduced hours, the length of the extension or indefinite extension etc. Employees should initially discuss their request with their line manager before submitting a formal request.
- 3.3 If the employee does not meet the 3 month deadline before the retirement date the Authority no longer has a **duty** to consider the request to work beyond 65.
- 3.4 On receipt of the request, the Head of Department must inform the Personnel and Training Officer. The application will be considered by the Department Head in consultation with the line manager/s and the Personnel and Training Officer. A meeting will then be set up between the employee and the Department Head to

discuss the request (unless the request is agreed or it is not practicable to hold a meeting). The head of department should write to the employee detailing the arrangements of the meeting (see standard letters). There is no legal timescale; however best practice suggests that the meeting should be held within 10 working days of the request. At the meeting the employee will be entitled to be accompanied by a work colleague or union representative. The employee will then be informed of the decision in writing as soon as is reasonably practicable, again normally within 10 working days. The Head of Department must consult with the Personnel and Training Officer before notifying the employee of the outcome. If the application cannot be supported, reasons for the decision will be outlined in the letter.

3.5 **The procedure must be repeated each time an individual nears an extended point for retirement, (if the extension is for a period longer than 6 months).**

3.6 If the employee requests not to be retired this must be considered **before** the employee is retired. Failure to do so will make the 'dismissal' automatically unfair.

4. RESPONSIBILITIES OF THE EMPLOYEE

4.1 Before a formal application is made, employees are advised to:

- If a member of the Local Government Pension Scheme, seek advice from the North Yorkshire Pension Fund regarding implications for their occupational pension.
- Seek advice from the Benefits Agency and the Department for Work and Pensions regarding any state benefits they may be entitled to and how these would be affected if they did not retire from work at the default retirement age.
- Seek advice from the National Insurance Contributions Office in regards to conditions relating to the payment of National Insurance. The age limits for Statutory Sick Pay are removed from 1 October 2006.

5. THE RIGHT OF APPEAL

5.1 Employees may appeal against the decision after receiving notification. They must inform their Head of Department in writing within 10 working days of the decision. The appeal meeting will be held within 10 working days of receipt of the staff member's notification of their appeal.

5.2 The employee may appeal the decision if the Authority refuses the request in its entirety or if the Authority accepts the request but decides to continue employing the person for a shorter period than the employee requested. The appeal meeting can be held after the retirement has taken effect.

5.3 Appeals will be heard by a panel of two members of the Senior Management Team who have not been previously involved in the application for the employment extension.

5.4 The Appeal Hearing arrangements are detailed at **Appendix A**.

6 CRITERIA FOR CONSIDERING APPLICATIONS TO EXTEND EMPLOYMENT BEYOND COMPULSORY RETIREMENT AGE

6.1 Where an application to extend employment is made the Authority will consider the following factors:

- 1 The operational needs of the section or service and any wider corporate considerations.
- 2 Business case requirements for specific skills.
- 3 Where the request is to also to reduce working hours, the factors for considering flexible work requests should also be applied.

7. WORKING AT THE AGE OF 65 AND OVER

7.1 The employee's existing conditions of service will continue to apply with the following exceptions: the employee will not be entitled to a redundancy payment when their employment terminates at the extended retirement date. Otherwise:

- The employee will retain their salary point and progression prior to the extension of their contract and will continue to progress up the pay scale, where appropriate. Where the hours of the post change then salary will be pro rata.
- The employee will retain their leave entitlement based on their continuous service provided there is no break in service. Where the hours of the post changed then the leave entitlement will be pro-rata.
- One to one meetings, normal supervision and appraisal of performance should remain the same and continue during the period of the extension.
- Where the manager has concerns regarding the physical requirement in specific jobs they should conduct a Risk Assessment, as part of their normal duties regarding Health and Safety.

Arrangements for Appeals, in connection with flexible work requests or requests to work beyond the normal retirement age.

The employee will be notified in writing of the arrangements by the Personnel section.

Exchange of Documentation

Both sides are able to submit any documentary evidence in support of their case. At the very least the original request, the management response and the appeal submission will be sent to the officer hearing the appeal in advance of the appeal meeting. Written submissions from both sides should be available at least 7 days before the hearing date and will be exchanged between both parties and sent to the officers hearing the appeal at least 5 days prior to the hearing.

The procedure of the appeal

Introduction

1.0 The Officers hearing the appeal should:

- Introduce all those present and explain their role in the Appeal.
- Explain that the Appeal will be carried out in accordance with this procedure.
- Inform the employee of his/her right to be accompanied by a Trade Union Official or a work colleague. Explain that the accompanying Trade Union Official or work colleague has a right to address the Appeal but no right to answer questions on the employee's behalf.
- Explain that an adjournment can be requested at any point during the Appeal.
- Explain the sequence for the Appeal.

Sequence of the Appeal

- 2.0. The Employee or his/her Trade Union Official or colleague explains the grounds on which the appeal has been submitted.
- 2.1. The Department Head presents the Authority case, explaining the basis for the original decision. Witnesses may be called if appropriate; however statements may be sufficient where witnesses are part of the appeal evidence. A written statement should support witness testimony.
- 2.2 The Employee or his/her Trade Union Official or work colleague can then question (or seek clarification) of Management and any witnesses called by management.

- 2.3. The Officers considering the appeal can ask questions (or seek clarification) of Management and/or any Authority witnesses.
- 2.4. The Employee or his/her Trade Union Official or colleague, presents their case, covering the grounds for their appeal by elaborating on the facts of the case. Witnesses may be called if appropriate; however statements may be sufficient where witnesses are part of the appeal evidence. A written statement should support witness testimony.
- 2.5. The Department Head can then question (or seek clarification) of the Employee and any witnesses.
- 2.6. The Officers hearing the appeal can ask questions (or seek clarification) from the Employee and any witnesses.
- 2.7. The Department Head should then be asked if they wish to briefly summarise their case.
- 2.8. The Employee or his/her Trade Union Official or colleague should then be asked if they wish to briefly summarise their case.
- 2.9. The Officers hearing the appeal should then ensure that both parties are satisfied with the conduct of the Appeal.
- 2.10. Both parties will then be asked to withdraw to allow the Officers to consider the evidence presented to them. Should they wish to recall one of the parties (to seek clarification or additional information) both parties must be called back into the Appeal.

On reaching a final decision

- 3.0. Both parties may be called back into the room at which point the Officers hearing the appeal will announce their decision, which will be confirmed in writing within 7 days of the date of the Appeal. Alternatively the Officers hearing the appeal may wish to write to the respective parties to outline their decision within 7 days of the date of the Appeal.
- 3.1. The Appeal decision will be final.
- 3.2. The Officers hearing the appeal will provide a written summary of the appeal hearing for record purposes.

As an alternative and if mutually agreed, the appeal can be considered by written representation from both sides.

EXAMPLE STANDARD LETTERS

2a: Example of a letter informing employee of their retirement date

Dear:

Date:

I am writing to inform you that your retirement date will be *[insert date]* and that you have a right to request not to be retired.

I will give careful consideration to any request you may make to work beyond this date and will inform you if I cannot let you. I am not required by law to give a reason.

Your request not to be retired must be returned to *[insert name]* no later than three months before the date stated in paragraph 1. Failure to do so will mean that you lose your statutory right to have your request considered and you will be retired on the retirement date above.

Yours sincerely
<LINE MANAGER>

2b: Example of a letter informing employee of a meeting to discuss a request not to retire

Dear:

Date:

I am writing to inform you that after receiving your request not to be retired that there will be a meeting to discuss your request.

The meeting will be held on *[insert date]* at *[insert time]* at *[insert location]*.

You have a right to be accompanied at the meeting by a work colleague or a trade union representative. Your companion may be someone that you have chosen, but they must work for the Yorkshire Dales National Park Authority. Your companion can address the meeting but not answer questions on your behalf although you may confer with your companion during the meeting.

After the meeting if it is decided to continue your employment beyond the intended retirement date of *[insert date]*, then you will receive written notification reflecting these agreed changes to your contract.

If no agreement is reached you will receive further notification confirming your intended

retirement date and informing you of your right to appeal.

Yours sincerely
<LINE MANAGER>

2c: Example of a letter confirming retirement on the intended date

Dear:

Date:

I am writing to inform you that after our meeting held on *[insert date]* to discuss your request not to be retired, that the Yorkshire Dales National Park Authority ('the Authority') still intends to retire you on *[insert intended retirement date]*.

You have a right to appeal this decision. If you wish to appeal you must inform *[insert name]* by *[insert date]*. Failure to do so may mean that you lose the right to an appeal meeting and the Authority may consider your appeal without holding a meeting but they will consider any previous representations that you have made.

Yours sincerely
<LINE MANAGER>

2d: Example of a letter to employee notifying the result of their appeal

Dear:

Date:

I am writing to inform you that after our meeting held on *[insert date]* to discuss your appeal not to be retired, that the Yorkshire Dales National Park Authority still intends to retire you on *[insert intended retirement date]*.

Yours sincerely
<LINE MANAGER>

2e: Example of a letter to employee confirming new retirement date

Dear:

Date:

I am writing to inform you that following our meeting to consider your request not to be retired/appeal meeting *[delete as appropriate] [insert organisation]*, the Yorkshire Dales National Park Authority has agreed that your new intended retirement date shall be *[insert date]*.

As agreed at the meeting to discuss your request not to be retired/appeal meeting *[delete as appropriate]* your new working pattern will be as follows. *[Delete this paragraph if no new working pattern is agreed]*.

Yours sincerely

<LINE MANAGER>