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<b>REPORT TO:</b>	<b>FINANCE &amp; MANAGEMENT COMMITTEE</b>	<b>AGENDA ITEM: 12</b>
<b>DATE OF MEETING:</b>	<b>30<sup>TH</sup> NOVEMBER 2006</b>	<b>CATEGORY: DELEGATED/</b>
<b>REPORT FROM:</b>	<b>JAYNE JONES – DIRECTOR OF CORPORATE SERVICES</b>	<b>OPEN</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>BARRY NICHOLLS – PERSONNEL OFFICER (TEL 01283 595789)</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>AGE RETIREMENT PROCEDURE</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	<b>TERMS OF REFERENCE: FM05</b>

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## **1.0 Recommendations**

- 1.1 That the Finance & Management Committee approve the Age Retirement Procedure, which is Annexe A of this report, for adoption by this Council.

## **2.0 Purpose of Report**

- 2.1 To propose a retirement procedure that meets the requirements of the Employment Equality (Age) Regulations 2006.

## **3.0 Detail**

### **The Employment Equality (Age) Regulations 2006**

- 3.1 From 1<sup>st</sup> October 2006 these Regulations make it unlawful to discriminate against workers, employees, job seekers and trainees because of their age. In addition to discrimination the Regulations also make it unlawful to subject someone to harassment or to victimise someone on the grounds of age.

### **Areas covered**

- 3.2 The areas that the Regulations cover include:

- Recruitment, selection and promotion
- Service-related pay and benefits
- Retirement
- Unfair dismissal
- Dismissals for reasons other than retirement
- Redundancy
- Occupational Pensions

- 3.3 It has been recommended to the Joint Negotiating Group that areas for review are identified and prioritised in terms of risk of non-compliance with the Regulations. Retirement was identified as a priority area for policy development.

## Retirement

- 3.4 The Regulations will introduce a default retirement age of 65. This means that it will not be age discrimination if an employee is retired at or above the age of 65 where it is a genuine retirement. Employers will be free to employ people beyond the default age. Retirement ages below 65 will only be possible if the employer can satisfy the objective justification test (see paragraphs 3.8 and 3.9).
- 3.5 Employees will have the right to request to continue working beyond their retirement date and employers will have a duty to give consideration to such requests. ACAS recommends that employers should think about each request on an individual basis – taking into account opportunities to vary the employee's hours or the duties they perform. However, employers are under no obligation to agree to an employee's request to continue working beyond their retirement date.

## Fair retirement

- 3.6 For a retirement to be classed as "fair" the employee must be informed in writing of their intended date of retirement and of their right to make a request to work beyond retirement age. This must be done at least six months in advance (but no more than 12 months) before the intended date. If the employee makes such a request, the employer must follow the correct procedure for dealing with it, which is set out in the Regulations. Failure to do this can result in an unfair dismissal.

## Minimum legal process

- 3.7 The minimum legal process is:
- Employers should notify employees between six and twelve months in advance of their intended retirement date. Failure to do this can result in compensation.
  - If the employer fails to do this they have an ongoing duty to do so, up to two weeks before the intended date of retirement. Failure to notify up to two weeks before makes the dismissal automatically unfair.
  - If an employee has been notified of their retirement they must make any request to continue working at least three months before the intended retirement date.
  - The employer must consider all requests and where possible meet the employee to discuss their request. The employer must inform the employee of its decision as soon as possible.
  - Where the decision is to refuse the request or a new intended retirement date is proposed that is less than in the original request the employee may appeal. The appeal meeting should be held as soon as reasonable. The employee must be informed in writing of the decision reached as soon as possible.
  - The procedure must be repeated each time the employee nears the agreed extended point for retirement, unless the agreed extended period is less than six months.

## Objective justification

- 3.8 Employers will be able to justify different treatment on the grounds of age **but only if they can show that:**
- It fulfils a legitimate aim
  - The particular circumstances make it appropriate and necessary

The Regulations will ensure that objective justification will not be an easy test to satisfy. Employers will have to be able to provide supporting evidence if challenged. Assertions that an age-based approach was necessary will not be enough.

- 3.9 Employers (and providers of vocational training) will not have to objectively justify age-based decisions that they have to make in order to comply with other legislation.

### **Proposed procedure**

- 3.10 The proposed procedure in Annexe A includes the requirements of the minimum legal process and is supported by example letters to be used to ensure consistency of approach.

### **Consultation**

- 3.11 The proposed procedure has been distributed for comment to the Joint Negotiating Group at its meeting on 2<sup>nd</sup> November 2006. Responses were requested from this Group by 17<sup>th</sup> November 2006. A verbal report on any responses received will be given at the meeting on 30<sup>th</sup> November 2006.

### **Current equality provisions**

- 3.12 The Authority has included age as an area for non-discrimination for some time. It was included in the Council's Equality and Diversity Policy, which was reviewed in October 2003. Development of new Human Resources policies and reviews of current policies also feature making sure that statements regarding discrimination are included.

## **4.0 Financial Implications**

- 4.1 There are no financial implications arising from this report.

## **5.0 Corporate Implications**

- 5.1 The propose procedure provides a corporate framework for informing individual's of their retirement date and considering any requests to work beyond retirement age. It should help ensure, together with supporting information that has also been developed (i.e. a manager's guide and standard letters), a consistency of approach throughout the Authority.

## **6.0 Conclusions**

- 6.1 The Employment Equality (Age) Regulations 2006 make it unlawful to discriminate against workers, employees etc because of their age. One major area the Regulations cover is retirement. The Joint Negotiating Group agreed that this area was a priority area for review in terms of policy development.
- 6.2 The Regulations include minimum requirements for employer's to comply with regarding an individual's retirement. These have been integrated into the proposed procedure attached at Annexe A.

- 6.3 Members are asked to approve the proposed procedure at Annexe A. If it is approved interim arrangements will be agreed for those employee due to retire in the next six months.

**Annexe A (of the report – please refer to paragraph 1.1)**

## **SOUTH DERBYSHIRE DISTRICT COUNCIL**

### **AGE RETIREMENT PROCEDURE**

**Presented to Finance & Management Committee on 30<sup>th</sup> November 2006**

## CONTENTS

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**This procedure refers to the following supporting documents:**

- ❑ **Standard Letter – “Notification of Employee’s Intended Retirement Date”**
- ❑ **Standard Letter – “Confirmation of Retirement”**
- ❑ **Standard Letter – “Request Not to Retire”**
- ❑ **Standard Letter – “Employee’s Invitation to Meeting”**
- ❑ **Standard Letter – “Confirmation of Agreement to the Employee’s Request”**
- ❑ **Standard Letter – “Confirmation of Acceptance of Alternative Arrangements”**
- ❑ **Standard Letter – “Confirmation of Refusal of Employee’s Request”**
- ❑ **Standard Letter – Employee Appeal Form**
- ❑ **Standard Letter – “Proposed Alternative Arrangements Regarding the Employee’s Request”**
- ❑ **Standard Letter – “Employee’s Invitation to an Appeal Hearing”**

**These supporting documents can be found on the Intranet by clicking on corporate services/Human Resources/Age Retirement Procedure.**

## **SECTION 1 – INTRODUCTION**

- 1.1 The Council acknowledges that some employees want to continue working when they reach the age of 65. Consistent with our commitment to equality and diversity all employees will be given the opportunity to request to continue working beyond their 65<sup>th</sup> birthday. Any extended employment will be objectively considered and based on mutual agreement between the employee and the Council.
- 1.2 Requests to continue working will be considered:
  - Objectively.
  - On an individual basis.
  - In a timely manner i.e. where practical all requests should be considered before the employee's notified intended retirement date.
- 1.3 The procedure has been based on the Employment Equality (Age) Regulations 2006 and the ACAS Guide "Age and the Workplace". It has been agreed with the recognised trade unions.

## **SECTION 2 - DISCRIMINATION**

- 2.1 Managers will ensure that the following procedure is not used to discriminate against employees in accordance with the Council's Equal Opportunity and Diversity Policy (Intranet address – click on deputy chief executive/Policy & Economic Regeneration/Equalities & Diversity/SDDC Equalities Statement).
- 2.2 It will be considered unacceptable to discriminate using this procedure. Allegations of discrimination will be investigated under the appropriate procedure and this may lead to disciplinary action, including dismissal.

## **SECTION 3 - SCOPE**

- 3.1 The procedure applies to all the Council's employees.

## **SECTION 4 – THE NORMAL RETIREMENT AGE**

- 4.1 The Council considers that the default retirement age for all employees is 65.
- 4.2 Where an employee wishes to retire or to work beyond the default retirement age the procedure set out in this document should be followed.

## SECTION 5 – NOTIFYING THE EMPLOYEE OF THEIR INTENDED DATE OF RETIREMENT

- 5.1 The Head of Service should ensure that the employee receives written notice (**see letter “Notification of Employee’s Intended Date of Retirement”**) of their intended date of retirement. The written notice should be given at least six months (but no more than 12 months) in advance of the intended retirement date i.e. on or after the employee’s 65<sup>th</sup> birthday. For example, if the employee’s 65<sup>th</sup> birthday falls on a Saturday, the intended date of retirement can be the date of the following Friday.
- 5.2 The written notice **must** also inform the employee of their right to request to work beyond their intended retirement date.

## SECTION 6 – THE EMPLOYEE CONFIRMING THEIR INTENTIONS

- 6.1 The Head of Service’s notification letter should be sent with two enclosures. These are:
- The letter “Confirmation of Retirement”.
  - The letter “ Request Not to Retire”.
- 6.2 The employee should sign (and complete) **one** of these letters to indicate what they are opting to do. It should be returned to their Head of Service within the time scale indicated in the letter.

## SECTION 7 – EMPLOYEES WHO WISH TO RETIRE ON THE INTENDED RETIREMENT DATE

### Notifying the Head of Service of retirement

- 7.1 If the employee wishes to retire on the intended date then she/he should confirm this by completing the letter “**Confirmation of Retirement**” and return it to their Head of Service **by no less than three months** before the intended date of retirement. However, they are advised to return the letter as soon as possible to allow sufficient time to arrange their pension etc.

### Head of Service – receiving confirmation of retirement

- 7.2 The Head of Service will liaise with the employee’s line manager on receipt of the employee’s confirmation that they wish to retire to ensure that appropriate arrangements are made for the employee’s retirement.



### **Line manager's responsibility**

- 7.3 The line manager should ensure that the Payroll section is informed of the employee's retirement using the Payroll Termination Form. This should be done as soon as practicable to ensure that the individual receives their occupational pension as soon as they finish working. The reason for the termination of employment will be retirement.
- 7.4 The line manager should also ensure that the employee has the opportunity to attend a Pre-retirement course. Advice on this course can be obtained from Human Resources.

<p style="text-align: center;"><b>SECTION 8 – EMPLOYEES WHO WISH TO CONTINUE WORKING AFTER THE INTENDED DATE OF RETIREMENT</b></p>
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### **Putting the request to continue working in writing**

- 8.1 The employee's request to continue working should be made using the letter "**Request Not to Retire**" which should be returned to their Head of Service.
- 8.2 The information provided by the employee in the letter will help their Head of Service to make a decision about the employee's request. The employee should indicate whether they wish to continue working:
- Indefinitely
  - Until a certain date
  - For a stated period of time
- 8.3 The employee should also indicate whether she/he wants to propose any changes to their working arrangements. If so, details of their proposals should be provided for their Head of Service to consider.
- 8.4 The employee's request to continue working should be sent to their Head of Service by **no less than three months before** the intended date of retirement. However, an employee is advised to give as much notice as possible for their request to be considered and discussed with them.

### **Limit on requests to continue working**

- 8.5 An employee can only make one request to continue working beyond their intended retirement date.

<p style="text-align: center;"><b>SECTION 9 – CONSIDERING AN EMPLOYEE'S REQUEST</b></p>
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## **Objective consideration**

- 9.1 The Head of Service should consider the employee's request objectively and on an individual basis. A decision to approve or not to approve an employee's request should be appropriate, justified and based on the needs of the service. Advice is available from Human Resources.

## **Arranging a meeting with the employee**

- 9.2 The Head of Service will arrange a meeting (**see letter "Employee's Invitation to a Meeting"**) with the employee to discuss their request to continue working. The meeting should be arranged by no later than five working days of receipt of the employee's written request. The employee should be given at least three working days notice of the meeting. If this is not possible the meeting should be arranged as soon as practicable at a mutually agreed time.

## **Employee representation at the meeting**

- 9.3 Either a Trade Union representative or another employee of the Council can accompany the employee at the meeting. The employee's representative can:
- Address the meeting but not answer questions on behalf of the employee.
  - Confer with the employee during the meeting.

## **Support for the Head of Service at the meeting**

- 9.4 The employee's line manager and a member of Human Resources can support the Head of Service.

<b>SECTION 10 – THE MEETING TO DISCUSS THE EMPLOYEE'S REQUEST</b>
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## **Purpose of the meeting**

- 10.1 The meeting is an opportunity for the employee to provide relevant information to support their request to continue working.
- 10.2 It will also be possible for the employee and manager to discuss alternatives to the employee's request. This will be appropriate where the Head of Service agrees that the employee can continue to work but that their request cannot be agreed to in full (e.g. the Head of Service proposes a continuation of employment for a shorter period than requested by the employee).

## **Possible outcomes of the meeting**

- 10.3 The possible outcome of a meeting is as follows:
1. The Head of Service fully agrees to the employee's request (**see letter "Confirmation of Agreement to Employee's Request"**). Where

appropriate review meetings (see paragraph 12.2) should be agreed with the employee.

2. The Head of Service **agrees** alternative arrangements with the employee (**see letter “Confirmation of Acceptance of Alternative Arrangements”**) i.e. an alternative retirement date and/or working arrangements is mutually agreed. Where appropriate review meetings (see paragraph 12.2) should be agreed with the employee.
3. The Head of Service does not agree to the employee’s request to continue working (**see letter “Confirmation of Refusal of the Employee’s Request”**) An Employee Appeal Form (see standard form) should be enclosed with this letter.
4. The Head of Service agrees to the employee’s request to continue working but no agreement has been reached on the period of continued employment and/or the employee’s working arrangements (**see letter “Proposed Alternative Arrangements Regarding the Employee’s Request”**). In this case the Head of Service may take the opportunity (if she/he has not already done so at the meeting) to propose alternative arrangements. An Employee Appeal Form should also be enclosed with this letter.

## **SECTION 11 – NOTIFYING THE EMPLOYEE OF THE OUTCOME OF THE MEETING**

- 11.1 The Head of Service should confirm the outcome of the meeting in writing by no later than five working days after it has occurred using one of the letters referred to in paragraph 10.3.
- 11.2 The employee will continue to be employed until she/he has been notified of the Head of Service’s decision about their request to continue working.

## **SECTION 12 – EMPLOYEES WHO CONTINUE WORKING**

### **Notifying Payroll etc**

- 12.1 The line manager should:
  - Notify Payroll using the Payroll Amendment Form of the employee’s continuing employment and of any changes to their working arrangements.
  - Provide a copy of the Payroll Amendment Form to Human Resources to ensure that the employee receives a revised contract of employment.

### **During employment**

- 12.2 Age is not to be regarded as a reliable indicator of someone’s ability to adequately perform their duties. Every employee irrespective of their age is subject to an

annual and interim Performance Review and Development (PDR) that is linked to the overall business objectives. At these PDRs individual training needs and employment matters should be discussed. There should be no discrimination in terms of age for either internal or external training courses. Priorities will be determined by the training needs of the employee or their job.

### **Reaching the new retirement date**

- 12.3 The notification procedure in Section 5 must be repeated by the Head of Service when nearing the employee's new retirement date **unless the new date is less than six months from the original retirement date.**
- 12.4 Where the new retirement date is less than six months from the original one the Head of Service should give at least a months notice of the employee's new retirement date.

### **Requesting to work beyond the new retirement date**

- 12.5 An employee can only make one request to continue working beyond their new retirement date **provided that** their employment has been extended for more than six months. The procedure in Section 8 should be followed.

### **Notice periods**

- 12.6 An employee whose employment has been extended after age 65 for more than six months should give their contractual notice or a mutually agreed period of notice if they wish to retire.

<h2><b>SECTION 13 – APPEAL PROCESS</b></h2>
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### **Employee's grounds for appeal**

- 13.1 An employee will be able to appeal where:
- Their request to work beyond their retirement age or extended retirement age has been refused.
  - Their request to work beyond their retirement age or extended retirement age has been partly accepted e.g. the Head of Service has agreed to extend the employment but proposes that this is for a shorter period than the employee requested.
  - There has been no agreement reached on the employee's request to change their working arrangements (e.g. hour of work, days worked, start/finish times etc).

### **Registering the appeal**

- 13.2 The employee should use the Employee Appeal Form to register their appeal. This should be returned to the Head of Human Resources by no later than 5 working days of the employee receiving the letter from their Head of Service.

- 13.3 The Head of Human Resources will make the arrangements for the appeal to be heard by a Director.
- 13.4 If necessary the Appeal Hearing can take place after the retirement has taken effect.
- 13.5 The Director liaising with the Head of Human Resources should ensure that:
- The Appeal Hearing takes place by no later than 20 working days of the employee registering their appeal or at a mutually agreed time if this is not practicable.
  - The employee and their Head of Service are given at least 5 working days notice of the Appeal Hearing.
  - A member of Human Resources is present at the Appeal Hearing to act as Advisor/Clerk to the Director. This person must have had no previous involvement in the case.
  - The information to be presented at the Appeal Hearing is obtained and exchanged. The exchange must take place by no later than 5 working days before the Hearing. It is acceptable for the Head of Service to provide her/his information for inclusion with the letter notifying the employee (**see letter “Employee’s Invitation to an Appeal Hearing”**) of the arrangements for the Appeal Hearing.
  - Issues raised by the employee or the Head of Service are considered by the Director prior to the Appeal Hearing to prevent undue delay.

#### **Head of Service’s responsibilities**

- 13.6 The Head of Service will be responsible for producing written information to support her/his decision concerning the employee’s request. This information will be given to the employee prior to the Appeal Hearing. The Head of Service will also be responsible for presenting the information at the Appeal Hearing. She/he can be advised and supported by a member of Human Resources at the Appeal Hearing.

#### **The employee’s responsibilities**

- 13.7 The employee will be responsible for producing written information to support their appeal. This information will be given to the Head of Service prior to the Appeal Hearing. The employee or their representative (see paragraph 13.8) will also be responsible for presenting the information at the Appeals Hearing.

#### **Employee representation**

- 13.8 Either a Trade Union representative or another employee of the Council can represent the employee at the Appeal Hearing. The employee’s representative can address the Appeal Hearing (i.e. present the employee’s case) but not answer questions on behalf of the employee. It is the employee’s responsibility to ensure that their representative can attend the Appeal Hearing.

#### **Conduct of an Appeal Hearing**

- 13.9 The Appeal Hearing is the **final** opportunity for the employee to put their case to the Council and it will be conducted in line with the procedure in Annexe A.

## **Decision of the Director**

- 13.10 The decisions available to the Director are as follows:
- ❑ To accept the employee's appeal in full. Confirmation of the new retirement date and any changes to the employee's working arrangements must be included in the decision notice.
  - ❑ To reject the employee's appeal in full. Confirmation of the employee's retirement and the effective date of their retirement must be included in the decision notice.
  - ❑ To propose an alternative retirement date and where appropriate alternative working arrangements. The decision should make it clear that if the Employee does not accept the proposal then they will be retired on the intended retirement date. This date should be confirmed in the decision.
- 13.11 The employee should be informed, if possible, of the decision at the Appeal Hearing. It should then be confirmed in writing by no later than 5 working days after the Appeal Hearing.
- 13.12 The decision of the Director is final and the Council's procedure will be concluded.**

<b>SECTION 14 – PENSIONS</b>
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- 14.1 The normal retirement age for the Local Government Pension Scheme is 65. If an employee carries on working after age 65 she/he will continue to pay into the scheme accruing further benefits. Employees can receive their pension when:
- ❑ They retire
  - ❑ They reach the eve of their 75<sup>th</sup> birthday
  - ❑ They have their employer's consent for flexible retirement (advice should be obtained from the County Council's Pension's Section)
- 14.2 If an employee draws their pension after age 65 it will be increased to reflect the fact that it will be paid for a shorter time.
- 14.3 Employees aged 60 or over who, with the consent of the Council, reduce their hours of work or grade can elect to take their accrued pensions benefits whilst continuing in employment. These provisions are currently being reviewed e.g. the removal of the requirement for employees to gain consent for flexible retirement and for employees to take a reduction in hours or grade.

<b>SECTION 15 - REVIEW OF PROCEDURE</b>
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- 15.1 The Procedure may be reviewed at any time in consultation with the appropriate trade unions.
- 15.2 As a minimum it will be reviewed every two years.

15.3 Human Resources have authorisation to make minor amendments to the procedure arising out of an organisational restructure (e.g. change in post titles).

## ANNEXE A (of the Age Retirement Procedure)

### PROCEDURE AT AN APPEAL HEARING

1. The Director will chair the Appeal Hearing. A member of Human Resources who will outline the procedure to everyone present will advise him.
2. The employee (or their representative) shall put their case in the presence of the Head of Service and Human Resources representative.
3. The Head of Service may ask questions of the employee on the evidence given.
4. The Director and/or advisor from Human Resources may ask questions of the employee and/or representative on the evidence given.
5. The Head of Service shall put their case in the presence of the employee and his/her representative.
6. The employee (or their representative) may ask questions of the Head of Service on the evidence given.
7. The Director and/or advisor from Human Resources may ask questions of the Head of Service on the evidence given.
8. The Head of Service will have the opportunity to sum up their case if they so wish.
9. The employee (or their representative) will have the opportunity to sum up their case if they so wish.
10. The Director and advisor from Human Resources should consider the evidence in private. It can recall the Head of Service/Human Resources representative and the employee/their representative but only to clear points of uncertainty in evidence already given. If recall is necessary, both parties are to return even if only one is asked to clarify the point of uncertainty.
11. The Director should inform the employee/their representative and Head of Service/Human Resources representative of its decision on the same day as the Appeal Hearing if possible. The decision should then be confirmed in writing by no later than 5 working days after the Appeal Hearing.

#### **Notes:**

1. **Both parties must be present at all times when the Director and advisor from Human Resources hear evidence.**
2. **New information (i.e. information that has not been included in the evidence provided by the employee or Head of Service prior to the Appeal Hearing) cannot be discussed at the Appeal Hearing. If either side attempt to introduce new information, the Director will not allow its consideration unless both parties agree to its introduction. This may also involve an adjournment for both parties to consider their position.**