

SUBJECT: DEFAULT RETIREMENT AGE

**JOINT REPORT OF THE CHIEF FIRE OFFICER, CLERK TO THE AUTHORITY,
THE FINANCE OFFICER AND PERSONNEL ADVISOR**

1 INTRODUCTION

1.1 The purpose of this report is to inform Members of the provisions for the removal, by Government, of the default retirement age.

2 BACKGROUND

2.1 On 13 January 2011, the Department for Business, Innovation and Skills (BIS) confirmed that, subject to Parliamentary approval, it will phase out the default retirement age of 65 from April 2011.

2.2 The Government's response to the consultation also confirms the removal of the associated statutory retirement processes, including the employer's duty to provide notice of retirement and the employee's right to request to work beyond normal retirement age.

2.3 As a result of these changes the government intends for employees to have more choice on whether to retire upon reaching pensionable age (either state pension age or the occupational pension age) or to continue working.

2.4 Members will be aware that the 'normal' retirement age for Grey Book employees, previously 55 years, was removed as a consequence of the age discrimination legislation. However, a default retirement age of 65 years is in place for all staff, and it is this which is subject to change.

3 MANAGING THE REMOVAL OF THE DEFAULT RETIREMENT AGE

3.1 The default retirement age will be phased out between 6 April and 1 October 2011 using transition arrangements.

3.2 Compulsory retirements during the transition period will be lawful provided that:

- notification of retirement has been issued before 6 April 2011, and
- the date of retirement falls before 1 October 2011, and
- all requirements of the statutory retirement procedures are met.

3.3 However, Members should note that the last bullet point of the transition arrangements require the employee to be given at least 6 months' notice of the intended date of retirement. This means that the last day employees can be lawfully compulsorily retired using the default retirement age provisions is **30 March 2011** to ensure the retirement takes place on 30 September 2011.

PREVENTING PROTECTING RESPONDING

- 3.4 From 1 October 2011, Regulation 3 of the Employment Equality (Age) Regulations 2006 will mean that employers will still be able to use a compulsory retirement age to dismiss employees but only where they can show that it is a proportionate means of achieving a legitimate end. This will be called the Employer Justified Retirement Age.
- 3.5 Compulsory retirement will therefore be direct age discrimination but employers can objectively justify this difference of treatment on the grounds of age if they can prove that it is necessary to meet legitimate employment policy, labour market or vocational training objectives, and that a compulsory retirement is an appropriate and necessary means of achieving these objectives.
- 3.6 Where employers do not have this justification for compulsory retirement, the dismissal of an older employee will have to follow a fair dismissal procedure that relies on one of the reasons set out in section 98 of the Employment Rights Act 1996 (i.e. capability, conduct, redundancy, illegality or some other substantial reason).
- 3.7 There are clearly opportunities and benefits for employers in the removal of the Default Retirement Age and some areas of the public sector and some local authorities are successfully managing their staff without reference to a default retirement age. Nevertheless, the current system works well for this Authority for the purposes of workforce planning and in supporting those employees who wish to work beyond retirement age to do so. The legislative framework allows flexibility for both parties and, as it involves working to a point in time, it is a prompt for discussion and allows both parties to plan. Equally importantly the ability to enforce a compulsory retirement age provides employees with a controlled and dignified exit from working life where necessary, which will now be removed.
- 3.8 Members are advised that it is unlikely compulsory retirement could be justified unless the individual is not fit for role, i.e. a capability issue.
- 3.9 The Chief Fire Officer is making the necessary procedural changes as a consequence of this change in legislation.

4 RISK MANAGEMENT

- 4.1 A risk assessment has been undertaken to ensure that the risk to the Authority has been minimised as far as practicable. The assessment has considered an appropriate balance between risk and control; the realisation of efficiencies; the most appropriate use of limited resources; and a comprehensive evaluation of the benefits. The risk to the authority has been assessed as medium utilising the standard risk matrix based on control measures being in place. The complete risk assessment is available on request from the Chief Fire Officer.

5 FINANCIAL IMPLICATIONS

- 5.1 There are no direct financial implications by virtue of this report.

6 EQUALITY AND FAIRNESS IMPLICATIONS

6.1 There are no equality and fairness implications in respect of this report, however the continued application of a default retirement age would be viewed as direct discrimination.

7 HEALTH AND SAFETY IMPLICATIONS

7.1 There are no health and safety implications in respect of this report.

8 RECOMMENDATIONS

8.1 Members are recommended to:

- a) Note the content of this report;
- b) Endorse the actions of the Chief Fire Officer;
- c) Receive further reports as appropriate.

BACKGROUND PAPERS

The undermentioned Background Papers refer to the subject matter of the above report:

- Strategic Plan 2006-2010
- Default Retirement Age Drafts

