AGENDA ITEM NO 12
REPORT NO 437/11

ANGUS COUNCIL
STRATEGIC POLICY COMMITTEE – 14 JUNE 2011

REMOVAL OF UK DEFAULT RETIREMENT AGE: IMPLICATIONS FOR COUNCIL

REPORT BY CHIEF EXECUTIVE

ABSTRACT
This report proposes that, in light of legislative changes, the council no longer operate with a retirement age.

1 RECOMMENDATION
The committee agree that with effect from 1 October 2011 the council no longer operate with a retirement age.

2 BACKGROUND
In line with the UK default retirement age the council’s policy is that employees retire at 65, subject to the proviso that those approaching 65 have been able to request to work beyond their ‘retirement date’, in accordance with the Employment Equality (Age) Regulations 2006.

The Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011, abolishes the national default retirement age of 65 with effect from 1 October 2011. From that date employers must operate without a retirement age or adopt an ‘employer justified retirement age’ (EJRA).

This report considers whether the council should adopt an EJRA.

3 EMPLOYER JUSTIFIED RETIREMENT AGE
An EJRA must be capable of ‘objective justification’ before tribunals and courts. Such justification must be for a ‘legitimate aim’ eg to preserve health and safety or for workforce planning purposes and it must be a ‘proportionate means’ of achieving this aim.

It will be extremely difficult to retain a retirement age and sustain an argument of objective justification. This is not an option being pursued by any Scottish council, nor, it would appear, by many employers. The current trend in employment practice is strongly against maintaining this restriction, acknowledging the arbitrariness of a fixed retirement age in a changed economic and social environment.

Should the council choose to not adopt an EJRA, the position of employees over the age of 65 in regard to termination of employment would be the same as it is currently for employees under that age. Their employment could only be terminated by the council for one of the potentially fair reasons for dismissal as set out in the Employment Rights Act 1996 ie capability, conduct, redundancy, illegality, or some other substantial reason.

Some commentators on the effects of the abolition of the default retirement age have voiced concerns about the difficulties it may cause employers in respect of performance management. Aside from being based on inappropriate and inaccurate stereotypical assumptions about the abilities or application of older employees, it fails to recognise that performance difficulties are not unique to any age group. The council has robust performance management mechanisms and supports its managers in using these where required. Having no set retirement age would not change this position.

Similarly some commentators have raised concerns about the difficulties for employers in respect of workforce planning. However the lack of a retirement age should not adversely impact on this. It would still be entirely reasonable to seek information from employees, of all ages, on their short and medium term career plans and aspirations. What will not be permissible however would be any attempt to persuade employees towards retirement in any way.
Accordingly it is proposed that the council does not adopt an EJRA and operates without a retirement age from 1 October 2011 thereby permitting employees to continue working for as long as they wish to do so, provided that they can do so effectively, and to retire at a time of their choosing.

This would reinforce the council’s commitment to equal opportunities and would recognise the value of a diverse workforce.

Should the committee agree this proposal, all employees will be advised of the change to their contractual position and guidance will be issued to managers to assist them to implement the new arrangements on an ongoing basis.

It will also result in the removal of the existing ‘upper age limit’ related restrictions from our recruitment processes under which the council does not accept applications from anyone within six months of their 65th birthday.

4 FINANCIAL IMPLICATIONS

There are no financial implications associated with the terms of this report.

5 HUMAN RIGHTS IMPLICATIONS

There are no human rights implications associated with this report.

6 EQUALITIES IMPLICATIONS

The issues dealt with in this report have been the subject of consideration from an equalities perspective. An equalities impact assessment has been undertaken.

7 CONSULTATION

The Director of Corporate Services, Head of Finance and Head of Law and Administration have been consulted on the terms of this report.

RICHARD STIFF
CHIEF EXECUTIVE

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NOTE  No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973, (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.