

REPORT TO: Corporate Services Policy and Performance Board

DATE: 27th September, 2006

REPORTING OFFICER: Strategic Director Corporate and Policy

SUBJECT: Equality Legislation

WARD(S): Borough-wide

1.0 PURPOSE OF THE REPORT

1.1 The purpose of the report is to update the Board as to forthcoming changes in legislation in relation to age, disability and gender.

2.0 RECOMMENDATION

2.1 That the report and preparations currently underway are noted.

3.0 SUPPORTING INFORMATION

3.1 Age Discrimination

3.2 The Employment Equality (Age) Regulations 2006 will come into force on the 1st October 2006. The Regulations implement the EU Framework Directive (adopted in November 2000) requiring member states to introduce legislation to ban age discrimination. As should be clear from the title, these regulations are concerned with discrimination in the employment field (including vocational training) and are not concerned with access to services.

3.3 The Regulations do a number of things:

- They prohibit unjustified direct and indirect age discrimination (NB – The regulations do not outlaw discrimination on grounds of old age but on grounds of age)
- They prohibit all harassment and victimisation on grounds of age
- They remove the upper limit for unfair dismissal/redundancy claims
- They allow pay and non pay benefits to continue which depend on service requirements of 5 years or less or which fulfil a business need (e.g. by encouraging loyalty or motivation or rewarding experience)
- They remove the age limits for statutory benefits (Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay and Statutory Paternity Pay)

- They remove the lower and upper age limits in the statutory redundancy scheme (i.e. 18 and 65) but leave the banding system in place (the Government relied on an opt out for this purpose)
 - They set the default retirement age at 65. Compulsory retirement at or above this age will not normally be unfair provided the employer follows the retirement procedures.
 - They introduce a duty to consider requests to work beyond retirement age – as long as the employer follows the procedures and the employee is 65 or over the dismissal should be by reason of retirement and not unfair.
- 3.4 The Regulations apply to all workers including self employed workers and contract workers. The regulations also apply to people taking part in or applying for employment related vocational training including all courses at Further Education and Higher Education institutions. The regulations do not apply to political office holders e.g. Mayor, Leader, Chairs etc.
- 3.5 Direct and Indirect Discrimination on grounds of age can be objectively justified if it can be shown that the discriminatory treatment contributes to the pursuit of a legitimate aim and is the least discriminatory way of achieving it. For example, requiring every worker to pass a very stringent medical test every three years could indirectly discriminate against older workers. However, if the workers in question are airline pilots, and the aim being pursued is passenger safety, the requirement for a medical may be justified.
- 3.6 The Council is in the process of reviewing its Personnel procedures to take account of the Regulations. Areas which will need to be looked at include:
- Retirement notification procedures
 - Procedures to implement the new duty to consider requests to work beyond retirement age
 - Salary bands with more than 5 incremental points

The Operational Director for Human Resources will report further on these preparations at the meeting.

3.7 Disability Discrimination Act 2005

- 3.8 The Disability Discrimination Act 2005 builds on and extends earlier disability discrimination legislation, principally the Disability Discrimination Act 1995. The main changes brought in by the Act which are relevant to the Council are set out below.
- 3.9 The definition of disability has been broadened by the Act. Individuals with HIV, Cancer and Multiple Sclerosis are now classed as disabled from the point of diagnosis (they no longer need to show that the illness impairs their ability to carry out day to day activities). For individuals with a mental impairment, it is no longer necessary to show that the

impairment results from a “clinically well-recognised” illness (this should shift the focus away from the classification of the illness to the effect of the impairment on the individual). Among other things, these changes have implications for employment practices and procedures. For example, an employer will no longer be able to discriminate against a job applicant with one of these conditions.

- 3.10 The Act makes provision enabling the extension of the anti-discrimination provisions to cover public transport (which was allowed to remain exempt when the 1995 Act was introduced).
- 3.11 The Act introduces a duty on all public sector bodies to promote equality of opportunity for disabled people. Among other things, this will mean that we must take account of the needs of disabled people as an integral part of our policies, practices and procedures. We will be required to publish a Disability Equality Scheme explaining how we intend to fulfil this duty. Compliance is enforceable by the Disability Rights Commission. This duty will come in as from the 4th December 2006.
- 3.12 The Act extends, as from the 4th December 2006, the DDA to cover discrimination in the carrying out of public functions, coupled with a duty to make reasonable adjustments. This brings public functions on to a par with services and employment.
- 3.13 The Act also inserts a new section into the DDA which makes it unlawful for a local authority to discriminate against its disabled members when they are carrying out their official business, and requires authorities to make reasonable adjustments for disabled members in the same way as for disabled employees.
- 3.14 In terms of the implications for the Council the most significant change is the new Disability Equality duty and the requirement to produce a Disability Equality Scheme. It is proposed to deal with the requirement to produce a Scheme by incorporating it into the Council’s Corporate Equality Plan rather than produce a separate document, and hopefully most if the requirements for a Scheme are already covered in that Plan. The Council Solicitor will report further on the process for producing a scheme at the meeting.

3.15 Equality Act 2006

- 3.16 The Equality Act 2006 received Royal Assent on the 16th February this year. The Act has three main purposes:
 - i. To establish the Commission for Equality and Human Rights (CEHR). The CEHR will come into being in October 2007 and will bring together under one roof the work of the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission.

- ii. To make discrimination unlawful on grounds of religion or belief in the provision of goods, facilities and services, the disposal and management of premises, education and the exercise of public functions. No date has yet been set for bringing this into effect.
- iii. To create a duty on public authorities to promote equality of opportunity between men and women, and to prohibit sex discrimination in the exercise of public functions. This duty will take effect from the 6th April 2007.

3.17 The most significant of these provisions from a local authorities point of view is likely to be the new gender equality duty. As well as being a general duty, there are powers in the Act for the Secretary of State to introduce further specific duties by regulations.

3.18 To a large extent the gender equality provisions mirror those for race equality and disability equality. In terms of the practical aspects of implementation, at least so far as the Council as an employer and service provider is concerned, the legislation should not require the Council to alter drastically what it has already put in place to ensure that it operates in a way that is compatible with equality legislation.

3.19 But what the legislation does do is to shift the emphasis away from compliance to requiring authorities to be more proactive in their approach to gender equality. The fact that an authority does not discriminate is not enough to comply with the duty. For example, it has been sufficient to date for authorities to be able to demonstrate that they have procedures in place for ensuring that they do not discriminate against women or men in their employment practices. In future they will have to satisfy themselves that those procedures are actually achieving results in ensuring an appropriate gender mix in the workforce, and in eliminating any pay gap between the genders.

4.0 POLICY, FINANCIAL AND OTHER IMPLICATIONS

4.1 The council's employment policies will need to be reviewed in the context of the new rules on age discrimination.

4.2 The new rules mean that the legislative framework relating to those matters of social identity covered by the Council's Equality Policy is now almost complete (see table below).

Equality – Legislative Protection

	Employment	Services
Age	1st October 2006	
Colour, race, nationality, ethnic or national origin	√	√

Disability	√	√
Family Status	√	6 th April 2007
Gender Re-assignment	√	√
Marital Status	√	6 th April 2007
Pregnancy	√	√
Religion or faith based belief	√	Power to introduce (Equality Act 2006)
Gender	√	√
Sexual Orientation	√	Power to introduce (Equality Act 2006)

5.0 RISK ANALYSIS

- 5.1 Good practice around equalities in employment practice will help to ensure that the Council recruits, trains and promotes the best people for the job, and in relation to services, will help to ensure that the Council's services are customer focussed.
- 5.2 The Council has a reputational risk if it is seen not to be complying with its equality obligations.
- 5.3 The Council has a financial risk of claims being brought against it under the legislation.
- 5.4 The Council is subject to a number of external performance measures in relation to equality issues which contribute to its CPA rating.
- 5.5 These risks have been mitigated by the Council putting in place sound management disciplines, policies and procedures in relation to equality.

6.0 EQUALITY AND DIVERSITY ISSUES

- 6.1 As outlined in the report.

7.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

- 7.1 None