



Guidance on Employment Beyond Normal Retirement Age (Age 65)

This applies to: All DCC Staff inc. Teachers and School Support Staff

Policy Date : 2006

Policy & Strategy Team
Corporate Resources Directorate

If you require further help in the interpretation of this policy you can contact the HR Helpdesk at hrsshelp@devon.gov.uk or Schools Personnel Helpdesk at hrealaid@devon.gov.uk.

If this document has been printed please note that it may not be the most up-to-date version. Version 011209

For the current version please refer to: Corporate Users: [The Source](#);

Schools: [Schools Personnel Policies \(http://staff.devon.gov.uk/schoolspersonnel.htm\)](http://staff.devon.gov.uk/schoolspersonnel.htm).

© Devon County Council 2006

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

CONTENTS

	Page
POLICY	
1.0 Introduction	3
2.0 Purpose	3
3.0 Principles	3
PROCEDURE	
4.0 8 months Before	4
5.0 8-6 months Before	4
6.0 6-3 months Before – What the employee should consider	4
7.0 No less than 2 months Before (Right to Request meeting)	5
8.0 Agreement to Continue Employment	6
9.0 Further Periods of Employment	6
10.0 Request to Continue Employment Declined (Retirement to take place)	6
11.0 Recruitment and Selection	7
MANAGEMENT GUIDANCE	
12.0 The Employment Equality (Age) Regulations 2006	8
13.0 A Fair and Planned Retirement	8
14.0 Responsibilities	9
15.0 Should Reasons Be Given When Declining Further Employment?	10
16.0 Is the Full Procedure Necessary?	10
17.0 Fixed Term Employees	10
18.0 Annualised Hours (52 weeks) Employees	10
19.0 Employees on Contracts for Variable Hours	11
20.0 Casual, Occasional or Relief Workers	11
21.0 Do the Statutory Dismissal Procedures Apply as Well?	11
APPENDICES	
1 Procedure Flowchart	12
2 Frequently Asked Questions	13
3 Appeal Process	15
3a Confirmation of appeal meeting	17
3b Appeal meeting decision - new employment period	18
3c Appeal meeting decision – retirement	19

POLICY

1.0 Introduction

- 1.1 The Employment Equality (Age) Regulations 2006 made it unlawful to discriminate against employees, job applicants and trainees because of their age. Devon County Council fulfils its obligations under the new Regulations by applying this to its employment policies.
- 1.2 The County Council recognises the skills and experiences of all employees contributing to the delivery of its services and therefore encourages employees to express an interest in continuing their employment beyond age 65 and indeed by appointing new employees of age 65 and over.
- 1.3 It also recognises that employees who have provided loyal service to Devon County Council may now wish to pursue other activities away from work and retire as they had planned.

2.0 Purpose

- 2.1 The Age Regulations brought in new rights and responsibilities for employers and employees in relation to retirement and working beyond the normal retirement age of 65.
- 2.2 The new rights under the legislation include a planned retirement with the employer having to give six to twelve months notice to the employee of their retirement date. The employee also has a timeframe to request to continue working beyond the employer's normal retirement age.

3.0 Principles

- 3.1 Devon County Council has retained a normal retirement age of 65.
- 3.2 A stepped procedure outlines the process and responsibilities for ensuring that the County Council offers employees a fair and planned retirement plus a fair and planned process to request to continue employment. Please refer to Appendix 1.
- 3.3 The procedure needs to be undertaken for employees approaching age 65, or up to the end of the current employment contract where the employee is already beyond age 65, except for casual, occasional or relief workers (refer to 20.0).
- 3.4 Any further period of employment after age 65 will be on a contract (normally for twelve months), with a planned retirement date not a temporary contract.

PROCEDURE

The procedures below apply to employees either:

- approaching age 65
- beyond age 65 and coming to the end of their current employment contract
- Teachers can retire at the end of the school term in which they are 65 but it is possible to work beyond this age.

The time periods given below and shown on the Procedure Flowchart (Appendix 1) need to be followed to comply with the Age Regulations

4.0 8 Months Before

4.1 The line manager/Headteacher will receive notification from their Personnel Administrative team/School Support Team of those employees in the above stages of their employment.

5.0 8-6 Months Before

5.1 The line manager/Headteacher will inform the employee in writing of their right to request to continue their employment. A shell letter for the line manager/headteacher is available.

5.2 If the employee does not wish to continue employment beyond age 65 or their current employment period, the line manager/Headteacher will acknowledge this in writing, giving formal notice and thanking the employee for their service. A shell letter is available.

5.2.1 When completing Prism 2 please ensure that you put the last day of service as the date of the 65th birthday.

5.3 In this instance the employee will be offered the opportunity to attend a pre-retirement course. Courses are funded for Devon County Council employees (schools will need to pay from their individual budgets).

<http://staff.devon.gov.uk/cr/learningdevelopment/ldoptions/learninganddevelopmentcourses/preparingretirement.htm>

6.0 6-3 Months Before – What the employee should consider

6.1 If the employee wishes to make a request to continue, the employee must submit a signed request form to their line manager/Headteacher. A shell pro-forma is available.

- 6.2 The employee must also include any proposed change they are requesting to their current working hours and/or pattern.
- 6.3 The request will need to be returned to the line manager/Headteacher no later than three months, but not more than six months, before the age of 65 or the end of the current employment period, as failure to do so within this time limit will mean the loss of the statutory right to have the request considered.
- 6.4 The onus is on the employee to be aware of their personal financial circumstances. The Local Government Pension Scheme (LGPS), Teachers Pension Scheme (TPS) or line manager/Headteacher are not able to give financial advice.
- 6.5 If the employee is a member of the LGPS or TPS, it is at this stage that the employee should contact the relevant Pension Scheme:
- LGPS members can view information at <http://staff.devon.gov.uk/cr/dfs/pensions.htm>
- TPS members can view <http://www.teacherspensions.co.uk>
- 6.6 If the employee wishes to release pension benefits during the period of further employment, after the age of 65, the “abatement rules” may apply.
- 6.6.1 This means, that if at any time the annual rate of pay and the annual rate of pension together are more than the annual rate of pay at retirement at age 65, the annual rate of pension will be reduced by the amount of excess. This will happen no matter how short the further employment period.

7.0 No less than 2 Months Before (“Duty to Consider” Meeting)

- 7.1 Following a valid request to continue working beyond the notified retirement date, the line manager/Headteacher, may agree with the request. In this case please forward to 8.0 below.
- 7.2 In other cases, the line manager/Headteacher must hold a meeting with the employee to discuss the request and any proposed change to the working hours and/or pattern.
- 7.3 After consideration by the Directorate/School, the line manager/Headteacher will need to respond to the employee as soon as a decision is reached.
- 7.4 A response will need to be undertaken in accordance with either 8.0 or 10.0 below.

8.0 Agreement to Continue Employment

- 8.1 Agreement to a request should be confirmed in writing as soon as practicable but no less than 2 weeks before the 65th birthday or end of the current employment period.
- 8.2 The letter will include:
- the new planned retirement date (normally for a period of 12 months, starting from the date of the 65th birthday or the day following the end of the current employment period)
 - any changes to the working hours and/or pattern
 - changes to terms and conditions of employment (for example pro rata annual leave where the hours are decreasing). Refer to Frequent Questions and Answers at Appendix 2.
- 8.3 Any further period of employment will be on a contract with a planned retirement date not a temporary contract.

9.0 Further Periods of Employment

- 9.1 A further review will commence around 8 months prior to the new planned retirement date.
- 9.2 The process to request a further period of employment will then be repeated.

10.0 Refusal to the Request to Continue Employment (Retirement to take place)

- 10.1 Where this is being contemplated, reference to the management guidance section should be made and specific advice may be sought from the HR or Schools Helpdesk before further discussion with the employee.
- 10.2 If after considering the request, the line manager/Headteacher wish to continue with the retirement, this decision should be referred to the senior manager with delegated authority to dismiss/Chair of Governors to ratify the decision.
- 10.3 The employee must be met to be advised of the decision at the earliest opportunity.
- 10.4 At this meeting the employee has the right to be accompanied by a representative if they so wish.
- 10.5 Any decision will need to be confirmed in writing reiterating the date retirement is due to take place. A shell letter is available.
- 10.5.1 Where the employee is approaching the 65th birthday, the earliest date of retirement will be the date of the 65th birthday. Where the employee has already

reached age 65, the date of retirement will be the end of the current employment period.

- 10.6 If the employee is dissatisfied with the outcome they have the right to appeal within 10 working days after notification of the request decision. Please refer to Appendix 3 for further information on the appeal process.

11.0 Recruitment and Selection

- 11.1 Recruitment and selection for all new entrants will follow the recruitment standards

<http://staff.devon.gov.uk/recruitment.htm>

- 11.2 Applicants should be advised of the Devon County Council policy on employment beyond the normal retirement age of 65.
- 11.3 Any further period of employment after age 65 will be on a contract with a planned retirement date not a temporary contract.

MANAGEMENT GUIDANCE

12.0 The Employment (Age) Regulations 2006

- 12.1 Since the introduction of the Employment Equality (Age) Regulations 2006 retirement has been included as one of the potentially fair reasons for dismissal in the unfair dismissal provisions.
- 12.2 An employee can be dismissed at the default age of 65 or higher, and the dismissal may be fair. However, to establish that the reason for dismissal is retirement, the employer must bring about the dismissal in accordance with the Employment Equality (Age) Regulations 2006.
- 12.3 The Regulations specify the “duty to notify” procedure, of notifying the employee of the intention to retire the employee, and of the “duty to consider” procedure, the employee’s right to request to continue employment beyond age 65.
- 12.4 This includes the right to a planned retirement with set timescales for the employer to notify the employee of their retirement date and for the employee to request working beyond the employer’s normal retirement age.
 - 12.4.1 Devon County Council has retained the normal retirement age of 65.
- 12.5 Case law has shown that to abide by the Regulations, the actual date of the retirement must take place, at the earliest, on the date of the 65th birthday.

13.0 A Fair and Planned Retirement

- 13.1 The County Council complies with the Regulations by implementing corporate procedures which outline the responsibilities for a fair and planned retirement plus a process for the employee to request to continue employment, all within certain time periods.
- 13.2 If this has been adhered to then the procedure should be fair. If not, even if there is a minor technical breach such as a letter being undated, the procedure could be seen as automatically unfair.
- 13.3 To establish a fair dismissal for retirement, it is essential to prove that retirement is the reason for ending the employment and that there is no other reason.
 - 13.3.1 Managers must not be tempted to use "retirement" as a pretext for terminating the employment of an employee where the reason could be for example redundancy, conduct or capability. If the employee elects to lodge a claim for unfair dismissal at an employment tribunal the onus will be on the employer to prove the reason for dismissal.

13.3.2 Even if the alternative reason for dismissal is a potentially fair reason, unless the employer has followed the appropriate procedures in relation to that reason, the dismissal will be unfair.

13.4 Dismissal on the grounds of retirement will be automatically unfair in the following situations:

- prior to retiring the employee, the employee has not been informed of the right to request to continue working and of the intended retirement date

- the employee has been informed less than two weeks before the retirement date

- the dismissal takes effect while the process is still underway and the employer has not yet held the meeting with the employee or informed the employee of the decision

- once the procedure has started the employer has failed to comply with it properly

14.0 Responsibilities

14.1 The responsibility of Devon County Council as an employer, is held with the line manager /Headteacher who must undertake the following to make sure the retirement is seen as fair:

- write to the employee giving him/her between 6-12 months notice of the date of retirement and telling him/her of their right to request not to be retired and to continue working

- where necessary, undertake the "duty to consider "meeting using best practice as for any other formal meeting

- ensure the end of employment actually takes effect on the notified day of the retirement

- make sure the employee would be age 65 or over at the date of the retirement

14.2 It is the employee's responsibility to respond to the notification from the line manager/Headteacher no later than three months before the age of 65 or the end of the current employment period

14.3 Where the employee confirms they do not want to request to continue working the employee will leave employment.

14.3.1 The date of retirement and the last day of service will be confirmed in writing, with formal notice being given. A shell letter is available.

15.0 Give Reasons When Declining Further Employment?

- 15.1 The employer does not have to state the reasons why they have refused an employee's request for a further period of employment beyond age 65 or where they are already beyond age 65.
- 15.2 As previously stated, the employer does have a "duty to consider" the request and it is essential to be clear that retirement is the reason, if the decision is not to continue employment.
- 15.3 It is also good practice to explain the Authority's Guidance on employment beyond age 65 to the employee.
- 15.4 The employee can only challenge the employers decision not to extend employment if the employer has not followed the correct procedures.

16.0 Is the Full Procedure Necessary?

- 16.1 The full retirement procedure is necessary for all employees approaching the age of 65, or up to the end of the current contract where the employee is already beyond age 65, except for casual, occasional or relief workers (Refer to 19.0).

17.0 Fixed Term Employees

- 17.1 A fixed term contract of employment is one which is due to end when a specified date is reached, a specified event does or does not happen or a specified task has been completed.
- 17.2 If the employee is approaching age 65 or beyond age 65, has not had any breaks in service and is part way through the contract, then the full procedure needs to take place.

18.0 Annualised Hours (52 Weeks) Employees

- 18.1 Annualised hours is a flexible working option where the employee is paid for the total number of hours worked over the whole year and the actual weekly hours vary to account for busy and quiet periods.
- 18.2 If the employee is approaching age 65 or beyond age 65, has not had any breaks in service and is part way through the contract then the full procedure would need to take place.

19.0 Employees on Contracts for Variable Hours

- 19.1 Contracts for variable hours are a flexible working option where the employee's hours vary each month to meet the needs of a service. Employees have continuous service from the start of their contract for variable hours.
- 19.2 If the employee is approaching age 65 or beyond age 65 and is employed on a contract for variable hours, then the full procedure would need to take place.

20.0 Casual, Occasional or Relief Workers

- 20.1 A worker of this nature is engaged by the Authority under terms and conditions agreed and defined, in operating standards and/or statement of particulars, not by a temporary or permanent contract stating guaranteed hours.
- 20.2 This is therefore temporary work which:
- occurs only once, and for a short period of time, or
 - occurs more often but on an irregular or unpredictable basis, or
 - has no obligation on the authority to offer work, and no obligation on the individual to accept it.
- 20.3 In each case there is therefore no on-going employment contract and the full retirement procedure does not need to take place.

21.0 Do the Statutory Dismissal Procedures Apply as Well?

- 21.1 The statutory dismissal procedures do not apply to retirement dismissals where the new retirement procedural requirements apply instead.

PROCEDURE FLOWCHART: The following time limits apply where the employee is either approaching age 65 or the end of an employment period where the employee is already employed beyond age 65

Please note: This process does not apply to employees under age 65 who may wish to take their pension early

<u>Time Limits</u>	<u>Procedure</u>	<u>Information</u>	<u>Shell letter or Pro-forma available on GAP:</u>
8 months before	The line manager/Headteacher receives a report via the Personnel Administrative/School support teams of employees as above	Responsibility for the procedure now lies with the line manager or Headteacher	
8-6 months before	Line manager/Headteacher advises the employee in writing of the right to request to continue in employment beyond age 65/end of current employment period where beyond age 65 and <i>For employees wishing to retire, this should be acknowledged in writing, giving formal notice and thanking them for their service.</i>	A request form should be provided	Letter
6-3 months before	Employee returns a completed request form to continue employment, to line manager/Headteacher, including any request to change the working pattern.	The earliest date the age retirement can take place, is the actual date of the 65 th birthday	Letter
No less than 2 months before	Line manager/Headteacher and employee will meet to discuss the request including any possible change to the working hours and or pattern. Requests agreed confirmed in writing, including the new planned retirement date, any revised working hours and/or pattern where applicable. Where the line manager/Headteacher wishes to continue with the retirement, the line manager/Headteacher and employee will need to meet to comply with the duty to consider procedure. The employee has the right to be accompanied by a representative and the right of appeal within 10 working after notification of the request decision.	No later than 3 months before. Failure will mean the lose of statutory right to have the request considered	Form
No less than 2 weeks before	By this stage, employees should have confirmation of retirement or continuing employment.		Letter
8 months prior to new planned retirement date	<i>Process will be repeated 8 months before new stated planned retirement date</i>	Note: If the manager is contemplating this action, this should be discussed with the HR Helpline or Schools Helpdesk	Letter

If this document has been printed please note that it may not be the most up-to-date version. Version 011209

For the current version please refer to: Corporate Users: [The Source](#);

Schools: [Schools Personnel Policies \(http://staff.devon.gov.uk/schoolspersonnel.htm\)](http://staff.devon.gov.uk/schoolspersonnel.htm).

© Devon County Council 2006

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

Frequently Asked Questions

Appendix 2

Recruitment and Selection

Should a number of years experience be added to recruitment advertisements?

It is advised that a specific “numbers of years” experience are not used for job specifications, advertisements or at recruitment interviews.

Instead, use the tasks and/or actions that the employee would need to undertake and explore ways that this can be demonstrated/explained either at the application stage, interview or during other assessment tasks.

Training and Development

Are training and development courses available to all employees?

Training and development opportunities are available for all employees.

Staff Appraisal Scheme

Are appraisals undertaken for employees of all ages?

All employees are to be included in the Council’s Corporate Staff Appraisal Scheme.

Annual Leave

Can I still accrue annual leave during employment beyond the age of 65?

For employees employed beyond the normal retirement age of 65, annual leave will continue to accrue.

As long as there is continuous service the entitlement will not drop, unless the employment beyond age 65 is on a reduced hours contract in a full annual leave year. In this case annual leave will be pro rata for that period of time. All employees should endeavour to use their annual leave entitlement within that annual leave year.

Line managers will have a period of approximately 8 months to ensure that employees use their annual leave as they go through the year. This is in case the employee does not wish to request a further period of employment.

Where there are successive periods of employment beyond age 65, there should be no reason why a “carry over” of up to 4 days annual leave entitlement is made.

If this document has been printed please note that it may not be the most up-to-date version. Version 011209

For the current version please refer to: Corporate Users: [The Source](#);

Schools: [Schools Personnel Policies](#) (<http://staff.devon.gov.uk/schoolspersonnel.htm>).

© Devon County Council 2006

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the copyright owner.

Conduct and Capability

Does the Conduct and Capability policy apply to all employees?

The Conduct and Capability policies and procedures apply to all employees.

Retirement or redundancy?

Employees of any age are entitled to receive a statutory redundancy payment if they are dismissed by reason of redundancy and have at least two years' continuous service.

Where the reason for the termination of the employment is retirement, and not redundancy, the employee will not be entitled to a statutory redundancy payment. If, however, an employee who is still working beyond the employer's normal retirement age is dismissed by reason of redundancy, he or she will be entitled to a redundancy payment on termination.

Local Government Pension Scheme (LGPS)

In general the Local Government Pension Scheme (LGPS) is available to all employees between the ages of 16 to 75 years. Please note that payments must be made before a members' 75th birthday to allow both payment of a pension and lump sum. If payment is made after the age of 75 the Inland Revenue do not permit pension benefits in the form of a lump sum to be made.

Please note that NI contributions are no longer paid after reaching state pensionable age (currently age 65 years for men and 60 for women, increasing to 65 years for women between 2010 and 2020). Please note that Payroll will need to hold a Certificate of Age Exception (CA4140) in order to exempt an employee from NI contributions.

State Pension

Employees can choose whether or not to draw pension at pensionable age, and entitlement is not generally affected by whether or not they are working.

If they do not draw pension they may be entitled to a higher level of pension when they do decide to claim it.

1.0 Appeal Process

- 1.1 An employee has the right of appeal, where a request for a further period of employment beyond the Devon County Council normal retirement age of 65, has been declined.
- 1.2 The employee can appeal on the grounds of the Authority not having followed the correct procedure.
- 1.3 Where the employee wishes to appeal, this must be done within 10 working days after being notified of the request decision.
- 1.4 The appeal must set out the grounds of the appeal, be dated and addressed to the Director or designated deputy of the directorate concerned or the Clerk of Governors of a school.
- 1.5 If the employee submits an appeal outside of the timescale or without reason then advice must be sought from the appropriate HR Helpdesk.

2.0 Appeal Meeting

- 2.1 On receipt of the appeal notification, an appeal meeting will normally be arranged within 6 weeks. A shell letter is available at 8a.
- 2.2 The employee should be advised of their right to be accompanied by a representative.
 - 2.2.1 If the employee/representative suggests an alternative date within seven days of that proposed, the manager should take reasonable steps to re-arrange the meeting to the new date/time suggested.
- 2.3 The appeal should be conducted by a senior manager rather than the level of manager who conducted the initial meeting.
- 2.4 Both parties must take all reasonable steps to attend.
- 2.5 The appeal meeting can take place after the retirement has taken effect.

3.0 Appeal Decision

- 3.1 After the appeal meeting the decision will be in writing, dated and be given to the employee within 5 working days and shall be final within the procedures of Devon County Council.

- 3.2 If the appeal is upheld, this must be stated and specify for how long the employee's employment will now continue and state the new intended retirement date. A shell letter is available at Appendix 8b.
- 3.3 However, there may be situations where alternative working patterns and retirement dates can be suggested to the employee.
- 3.4 Where a mutual agreement is reached, the alternative working patterns will be confirmed in writing with the date this new pattern of working will be effective.
- 3.5 Where the decision is to refuse the appeal, written confirmation must be given to the employee that Devon County Council still wishes to retire the employee. A shell letter is available at Appendix 8c.
- 3.5.1 This must specify the date on which the dismissal for retirement will take effect.

Confirmation of Appeal Meeting

Appendix 3a

DATE

Dear

Re: Confirmation of Appeal Meeting

Post Title:

Post Number:

Hours per week:

Following your request to appeal the decision to retire you on (INSERT INTENDED RETIREMENT DATE), I would like to invite you to an appeal meeting with (INSERT SENIOR MANAGER NAME)* on (INSERT DATE). I will be supported by NAME, Human Resources Adviser.

You have the right to be accompanied by a Trade Union Representative, colleague, or friend at this meeting.

Yours sincerely,

NAME

Title

***This should be a senior manager rather than the level of manager who conducted the initial meeting**

Cc Employee personal file

DATE

Dear

Re: Appeal Meeting Decision

Post Title:

Post Number:

Hours per week:

Following our meeting on (INSERT DATE) to discuss your appeal not to be retired, I confirm that Devon County Council has agreed to extend your employment for 12 months and your new intended retirement date shall be (INSERT NEW RETIREMENT DATE).

(INSERT IF NEW WORKING PATTERN): As agreed at the meeting your new working pattern will be as detailed below. This will commence from (ADD DATE)

I would like to take this opportunity to thank you for your service to the Authority.

Yours sincerely,

NAME

Title

Cc Employee personal file

DATE

Dear

Re: Appeal Meeting Decision

Post Title:

Post Number:

Hours per week:

I am writing to inform you that after our meeting held on (INSERT DATE) to discuss your appeal not to be retired, that Devon County Council still intends to retire you on (INSERT INTENDED RETIREMENT DATE)*.

I would like to take this opportunity to thank you for your service to the Authority.

Yours sincerely,

NAME

Title

Cc Employee personal file

***For an employee approaching normal retirement age (65) the earliest date of the retirement will be the date of the actual 65th birthday.**

POLICY HISTORY

Policy Date	Summary of change	Contact	Implementation Date	Review Date
	Re-structured		September 2008	
	Includes management guidance		September 2008	
	Revised and re-formatted to take account of best practice.		August 2009	
	Revision of the last day of service at age 65 to be the actual date of the 65 th birthday. This was agreed with all the relevant trade unions; Unison, GMB, Unite and TCC advised.		August 2009	