



Congleton Town Council

Historic market town

Town Clerk: BRIAN HOGAN



1st August, 2013

Dear Councillor,

Personnel Committee – Thursday 8th August 2013

You are requested to attend a meeting of the Personnel Committee, to be held at Congleton Town Hall on Thursday 8th August, 2013 at 7.00 pm.

Yours sincerely,

TOWN CLERK

AGENDA

1. Apologies for absence. (Members are reminded of the necessity to give apologies in advance of the meeting and to give reasons for absence).
2. Minutes

To confirm the minutes of the meetings held on the 21st June 2012. (enclosed)
3. Declarations of Interest

Members are requested to declare both “non pecuniary” and “pecuniary” interests as early in the meeting as they become aware of it.
4. Outstanding Actions

None
5. 2013 -14 Staff Salary Recommendations

To consider the pay scales and allowances for 2013-14. (enclosed)



Congleton
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where friends are made

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6. Pensions Discretion Policy

To receive and consider amendments to the Pensions Discretion Policy to bring it in line with recommendations on 'early payment of pension'. (enclosed)

7. Automatic Enrolment

To review and understand the responsibility for automatic enrolment of Town Council employees. (enclosed)

8. Equality Act 2010

To review the Town Council Equality Policy in the light of advice from NALC on the Equality Act 2012. (enclosed)

To Members of the Personnel Committee
 Mayor, Deputy Mayor & Leader of Council
ccs. Other members of the Council for information
 Honorary Burgesses (5) (for information)
 Press (3)

PAY SETTLEMENT 2013/14

The National Joint Council for Local Government Services (NJC) has confirmed that the Local Government Employers and trade unions have agreed the pay scales for 2013/14.

A pay increase of 1% has been agreed with effect from 1 April 2013.

Local Government Employers and trade unions have also agreed that Spinal Column Point 4 (SCP4) will be deleted with effect from 1 October 2013. Therefore, employees on SCP4 will progress to SCP5 on 1 October and, if automatic increments apply, will progress to SCP6 with effect from 1 April 2014.

NALC and SLCC will shortly confirm the national salary award for clerks, deputy/assistant clerks and RFOs employed under the model employment contract agreed between NALC and SLCC which can be applied from 1 April 2013.

This briefing was issued by Meera Tharmarajah, Solicitor and Head of Legal Services

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Employment Briefing

E02-13

22 July 2013

2013/2014 NATIONALSALARY AWARDS

This is an update to Employment Briefing E01- 13.

Below are the new pay scales applicable from 01 April 2013 for clerks, deputy/assistant clerks and RFOs and other staff employed below SCP 15.

These recommendations are made jointly by the National Association and the Society of Local Council Clerks.

This briefing was issued by Meera Tharmarajah, Solicitor and Head of Legal Services

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NATIONAL ASSOCIATION OF LOCAL COUNCILS
109 GREAT RUSSELL STREET, LONDON, WC1B 3LD

AND

SOCIETY OF LOCAL COUNCIL CLERKS
8, THE CRESCENT, TAUNTON, TA1 4EA

JULY 2013

2013/14 NATIONAL SALARY AWARD FOR LOCAL COUNCIL CLERKS

REVISED SCALES

1. The National Joint Council (NJC) for Local Government Services has reached agreement on the pay scales for 2013-14. Consequently the National Association of Local Councils and Society of Local Council Clerks jointly recommend that the salary scales of all full and part-time clerks be adjusted in accordance with the new spinal column points (SCP) – including revised figures (based on the change as agreed at NJC) for SCPs 50 and above.
The rates of pay set out below should be applied from **1st APRIL 2013**,

Scale	Points below Substantive range		Substantive Benchmark range		Points above substantive range
LC1					
	(15-17)		(18-22)		(23-25)
15	£16,215	18	£17,333	23	£20,400
16	£16,604	19	£17,980	24	£21,067
17	£16,998	20	£18,638	25	£21,734
		21	£19,317		
		22	£19,817		
LC2					
	(26-29)		(30-34)		(35-38)
26	£22,443	30	£25,727	35	£29,528
27	£23,188	31	£26,539	36	£30,311
28	£23,945	32	£27,323	37	£31,160
29	£24,892	33	£28,127	38	£32,072
		34	£28,922		
LC3					
	(39-42)		(43-47)		(48-51)
39	£33,128	43	£36,676	48	£41,148
40	£33,998	44	£37,578	49	£42,032
41	£34,894	45	£38,422	50	£43,085
42	£35,784	46	£39,351	51	£44,158
		47	£40,254		

LC4

(52-55)		(56-60)		(61-68)	
52	£45,268	56	£49,963	61	£58,053
53	£46,390	57	£51,208	62	£59,752
54	£47,415	58	£52,918	63	£61,475
55	£48,743	59	£54,619	64	£63,162
		60	£56,330	65	£64,763
				66	£66,398
				67	£68,071
				68	£69,794

PART-TIME CLERKS - HOURLY RATES

2. Salary scales and hourly pay rates for **ALL** part-time clerks are calculated by **pro-rata** reference to the standard NJC working week for all local government staff of 37 hours. To calculate the hourly pay rate for part-time clerks paid between LC1 and LC4, divide the full-time annual salary by 52 weeks and then by 37 hours rounded to the 3rd decimal place. For part-time clerks in LC1 and part LC2, for example, the hourly rates, payable from 1st April 2013 are:

Scale LC1 and part LC2

SCP (Spinal Column Point) 15	£8.428p
SCP 16	£8.630p
SCP 17	£8.835p
SCP 18	£9.009p
SCP 19	£9.345p
SCP 20	£9.687p
SCP 21	£10.040p
SCP 22	£10.300p
SCP 23	£10.603p
SCP 24	£10.949p
SCP 25	£11.296p
SCP 26	£11.665p
SCP 27	£12.052p

- 3.

SALARY RATES (BELOW LC Scale) (only applicable to staff other than the Clerk)

SCP	£	Hourly £p	SCP	£	Hourly £p
4	12,266	£6.375	9	13,725	£7.134
5	12,435	£6.463	10	14,013	£7.283
6	12,614	£6.556	11	14,880	£7.734
7	12,915	£6.713	12	15,189	£7.895
8	13,321	£6.924	13	15,598	£8.107
			14	15,882	£8.255

On October 1st 2013, all employees paid at the rate of SCP4 are automatically raised to SCP5.

Congleton Town Council

Minutes of the Personnel Committee meeting held on
Thursday, 21st June, 2012

PRESENT: Councillors D T Brown (Chairman)
Mrs D S Allen
L D Barker
R I Brightwell
J S Crowther
G R Edwards
G P Hayes
Mrs S A Holland
M J Hutton
Mrs S Martin
D A Parker
Mrs J D Parry
N T Price
G S Williams
Miss R K Williams

1. APOLOGIES

Apologies for absence were received from Councillor Mrs E Wardlaw and Miss R K Williams (Miss R K Williams joined the meeting when it reconvened at 8pm.)

2 MINUTES OF THE PREVIOUS MEETING

PERS/01/1213 RESOLVED –That the Minutes of the meeting held on 29th March, 2012 be approved and signed by the Chairman.

3 DECLARATIONS OF INTEREST

Members are requested to declare both “personal” and “personal and prejudicial” interests as early in the meeting as they become aware of it.

Mrs S Holland declared a personal interest in item 6.9

4 OUTSTANDING ACTIONS

None.

5 RESOLUTION TO EXCLUDE THE PUBLIC & PRESS

PERS/02/1213 RESOLVED –That in accordance with the Public Bodies (Admission to Meetings) Act 1960, public and press be excluded from the meeting for the matters set out below on the grounds that it could involve the likely disclosure of private and confidential information or staff matters.

MATTERS TO BE CONSIDERED WITH THE PUBLIC AND PRESS EXCLUDED

6 JOB EVALUATION

Chris Rolley Associates carried out a job evaluation exercise of a number of staff posts and produced a report and set of recommendations for the members to consider

Each of the recommendations in the report were discussed by the members in detail

PERS/03/1213 RESOLVED That:-

1. To receive the report from Chris Rolley Associates.
2. To approve the recommendations in the report with effect from 1st September 2012.
3. Future incremental pay increases would be subject to achievement of performance related objectives approved by the Chairman and Vice Chairman.
4. The Town Clerk to produce a report for the next meeting on the effect of the new pension regulations on staff members not currently in the Pension Scheme

The meeting commenced at 6.30pm and was suspended at 6.58pm to allow members to attend the Town Council meeting and was reconvened at 8pm

David Brown
Chairman

Local Government Pension Scheme (LGPS) Employer Discretions additional requirements

Introduction

As part of the Regulations governing the LGPS, Scheme Employers are required to prepare, review and update their Pensions Discretions in line with those regulations, and as you will be aware as a result of the Local Government Pension Scheme (Miscellaneous) Regulations 2012 which came into force 1 October 2012, employers are now required to incorporate two additional discretions into their published pension policy by 31 March 2013.

In the following section we have set out the additional discretions that you are required to include within your published Employer Discretions.

Power of Employing Authority to grant early payment of a suspended Tier 3 Ill Health Pension – Regulation 30A (3) of the LGPS Benefits, Membership and Contributions Regulations 2007

Explanation

Employers must include in their discretions their policy on how they would exercise their discretion in the following case.

Whether to release benefits early to employees who have left local government with an entitlement to a tier three ill-health pension which has since been suspended and who apply for early payment on or after age 55 and before age 60.

Where suspended tier three benefits are released in the above circumstances, whether or not to waive, on the grounds of compassion, any reductions that would otherwise apply to the member's pension and lump sum.

Employer Actions

Ensure you review your policies and include the additional discretions by 31 March 2013 and remember that where changes are made employees must be given one month's notice. A copy of the published policies must be sent to the Cheshire Pension Fund.

Further Information - Contact Details

For further information and guidance on Employer Pension Discretions please refer to the Funds guidance notes issued in January 2013, which can be found in the Employer Section of the website under Employer Discretions, or by contacting the pension communications team using the details below.



01244 972302



pensioncomms@cheshirewestandchester.gov.uk



www.cheshirepensionfund.org



Cheshire Pension Fund, Cheshire West and Chester Council, HQ, Nicholas Street, Chester, CH1 2NP.

CONGLETON TOWN COUNCIL

PENSIONS DISCRETIONS POLICY

1. Introduction

- 1.1 There is a legal requirement for the Council to publish a policy statement on its approach to specified pensions discretions. The policy also sets out the Council's approach to other discretions.

2. Policy

- 2.1 The policy addresses the discretions available to the Council under the Local Government Pension Scheme (LGPS) Regulations.

3. Aims/Principles

- 3.1 To operate pensions discretions in a way that is fair and equitable to employees and that manages the liabilities of the pension fund in the overall interests of its members and of the Council.

4. Scope/Application

- 4.1 The Policy applies to all Council employees who are eligible for membership of the Local Government Pension Scheme.
- 4.2 The exercise of discretions outside the general approach detailed in Appendix 1 will be subject to a decision of the Council or of a Committee or Panel with appropriate delegated powers.

5. Definitions

- 5.1 Augmentation: an employer may resolve to increase the total membership of an active [LGPS] member, up to 10 additional years.
- 5.2 Active member: an employee who is currently a member of the Council's Pension Scheme
- 5.3 Deferred member: an employee or former employee who has benefits in the Council's pension scheme from an earlier period of service

Appendix 1(Policy on Pensions Discretions)

APPROACH TO THE USE OF PENSIONS DISCRETIONS

1. **Regulation 12 - Power to increase total membership of active members (augmentation of service)**

Explanation - An employer may resolve to increase the total membership of an active member. The maximum that can be awarded, including additional membership from different employers, is 10 years. The award is funded by a payment made by the employer to the pension fund.

1.1 **Policy** - The Council has agreed to adopt this provision to enable redundant employees to purchase additional service with any additional redundancy payment over and above the payment made under the Statutory Redundancy Scheme.

1.2 The power to increase total membership will not be used in any other cases other than in exceptional circumstances.

2. **Regulation 13 - Power to award additional pension (of up to £5,000 per year)**

Explanation - An employer may resolve to award a member with an additional pension of not more than £5,000 p.a. payable from the same date as their pension. The additional pension may be paid in addition to any membership awarded under Regulation 12 and the same funding requirement applies as under that regulation.

2.1 **Policy** - This power will not be used, other than in exceptional circumstances

3. **Regulation 18 - Flexible retirement**

Explanation - This discretion allows members to "wind down" towards full retirement by receiving immediate payment of their accrued pension whilst continuing in employment. A member who is age 55 or over (age 50 if they make an election before 31 March 2010) may, with their employer's consent, reduce their hours and/or grade and receive all or part of their pension without retiring. If payment occurs before age 65 the benefits are actuarially reduced but the employer may waive part or the whole of the reduction with the cost of this being paid to the pension fund.

3.1 **Policy** - May be agreed where an employee reduces their hours by at least one fifth, and/or their pay grade by at least two grades. Approval

must be granted in conjunction with the change in contract and will take account of the Council's overall best interests and value for money.

- 3.2 Where pension is released under this discretion, it will be on an actuarially reduced basis where the current Pension Scheme Regulations allow for this.

4. **Regulation 30A (3) - Choice of early payment of pension**

Explanation

Members who have left employment may choose to receive early payment of their retirement benefits from age 55, subject to the consent of their employer. Members aged 60 and over do not need their employer's consent.

The Council's Discretion

Applications for early release of benefits should be made in writing to the Town Clerk.

Upon receipt of the application to request early payment of pension, the Council will make their decision on the following grounds:

- Previous performance and conduct including any disciplinary action
- Circumstances on hardship grounds
- Circumstances on compassionate grounds
- The burden of additional costs
- A detrimental effect on the ability to meet service demand
- An inability to recruit additional staff
- A detrimental impact on quality
- A detrimental impact on performance

The Council may hold a meeting with the employee/previous employee in order to ascertain certain information relevant to making the decision. The Council will write to the employee to confirm whether they consent to the early release or not. The Council does not resolve to waive any reduction or enhance benefits awarded under this regulation.

- 4.1 **Policy for Active Members** - Early release of pension to an active employee will only be approved where the Council is satisfied that such release represents value for money, or is on compassionate grounds. The Council will release benefits on compassionate grounds in full for active members.

- 4.2 **Policy for Deferred Members** - Early release of pension to a former employee will only be approved where the Council is satisfied that such release is on compassionate grounds.

5. **Regulation 3 - Contributions payable by active members**

Explanation - Employers will determine the contribution rate to be paid by employees at commencement of membership based on their whole-time equivalent pensionable pay and in accordance with the table (bands increased by RPI each April) in this regulation.

Where there has been a permanent material change to a member's pensionable pay in the course of a financial year, the employer may re-determine the contribution rate to be applied.

- 5.1 **Policy** - Employees will be allocated to a contribution band once a year from 1st April and this will only change if their contract changes permanently (i.e. a promotion or downgrading). Any other changes to pay will be taken into account when the band is reviewed on the following 1st April.

6. **Regulation 16 - Re-employment and rejoining deferred members**

Explanation - Where a deferred member becomes an active member again before becoming entitled to the immediate payment of retirement benefits in respect of his former membership, he may elect to have his former membership aggregated with his current active membership.

An election must be made in writing to the member's appropriate administering authority before the expiry of the period of 12 months, beginning with the date that he again became an active member (or any such longer period as his employer may allow).

- 6.1 **Policy** - An employee may elect to aggregate current and previous periods of membership within 12 months of current membership commencing. Extensions to the 12 month period will not normally be allowed, although sympathetic consideration will be given where the current employment is initially temporary.

7. **Regulation 22 - Applications to make absence contributions**

Explanation - Where members have been absent without pay due to maternity leave, industrial dispute or an authorised leave of absence they have 30 days from returning to work or termination of employment to opt to pay the relevant contributions to enable the membership to count. Employers have the discretion to extend the 30 day period from

the end of the absence for a person to apply in writing to make contributions.

- 7.1 **Policy** - An employee may elect within 30 days of notification of an unpaid absence to make up the lost contributions. Extensions to the 30 day period will not normally be allowed, other than in exceptional circumstances. .

8.0 Regulation 83 - Inward transfer of pension rights

Explanation - A person who becomes an active member who has relevant pension rights may request their fund authority to accept a transfer value for some, or all, of his former rights. An election must be made in writing before the expiry of the period of 12 months, beginning with the date that he became an active member (or any such longer period as his employer may allow).

- 8.1 **Policy** - An employee may elect to transfer rights from a previous pension scheme within 12 months of joining the LGPS. Extensions to the 12 month period will not normally be allowed, although sympathetic consideration will be given where the employment is initially temporary.

9. Regulation 11 - Final pay: fees

Explanation - Where a variable time employee's final pensionable pay consists of fees, the final pay is calculated by averaging the sum of all fees earned in a consecutive three year period ending with the termination date. Employers have the discretion to allow the fee earner to average all fees in a three year period ending on 31st March in the last ten year period.

- 9.1 **Policy** - The power to allow a fee earner (e.g. returning officer) to average all fees in a three year period within the last ten year period will not be used (the three years prior to the termination date will be used).

10. Regulation 20 - Early leavers – ill health

Explanation - The Council can award one of three tiers of ill health benefits to employees at any age. Before doing so the case must be referred to an Independent Registered Medical Practitioner (IRMP) who will provide an opinion and medical certificate as to whether or not the employee is permanently incapable of undertaking the duties of their employment and whether they have a reduced likelihood of obtaining any gainful employment before age 65.

- 10.1 **Policy** - The power of the employer to award one of the three tiers of Ill health pension benefits.

11. Regulation 31 - Early payments of deferred pension – ill health

- 11.1 Requests from former employees with deferred benefits who seek early release of their pension on the grounds of ill health will be considered in accordance with the guidance issued by the Department of Communities and Local Government.

Version 2 May 2013

Automatic Enrolment – Guidance for Town & Parish Councils

Introduction

With effect from 1 October 2012 the largest employers in the UK (those with more than 50,000 employees) have begun automatically enrolling 'eligible workers' into a qualifying pension arrangement. This is the most fundamental reform of workplace pensions in a generation. The changes will eventually affect all employers irrespective of size or type of employment and will require employers to make a minimum amount of contribution into an employee's pension arrangement.

As a Town or Parish Council, it is likely that you will be one of the final few employers (those with less than 50 employees) to reach your staging date from 2014 onwards. It is from this date that you will be required to comply with the new legislation. However, it is important that you register with the Pension Regulator as soon as possible who will inform you of your staging date. Information on how to do this can be found on the Pension Regulator's website.

<http://www.thepensionsregulator.gov.uk/>

Unlike previous changes within the pensions industry, automatic enrolment places most of the responsibility for compliance on the employer rather than the pension scheme. The Cheshire Pension Fund is committed to working with Town and Parish Councils to ensure they are fully prepared for the changes brought about by the automatic enrolment legislation.

This Factsheet is not meant to be a definitive guide, its purpose is to summarise some of the key issues affecting Town and Parish Councils as they prepare for auto enrolment. Town and Parish Councils may decide to seek their own legal advice on the impact of these pension reforms. To assist employers who participate in the LGPS (Local Government Pension Scheme) the Local Government Association has issued comprehensive guidance which outlines all of the duties employers are responsible for under the automatic enrolment legislation. A link to the guide is provided below.

[Automatic enrolment guide](#)

At this stage, the key issue for Town and Parish Councils is to understand their responsibilities under the auto enrolment legislation. We have split these between pre and post staging date and they are summarised below.

Employer Duties – Pre Staging Date

Categorise your Workforce

Each employer is required to categorise the types of worker they employ. There are 2 main types:

- Jobholders
 - Eligible Jobholders
 - Non-Eligible Jobholders
- Entitled Workers

An **eligible jobholder** is an employee who is:

- Aged between 22 and State Pension Age
- Earns more than the HMRC personal allowance (currently £8,105 in 2012/2013)

As an employer, you will be legally obliged to automatically enrol these employees once you have reached your staging date.

Non-eligible jobholders are not eligible for automatic enrolment, but are able to opt into a pension scheme if they wish. These employees are:

- Aged at least 16 and under 75
- Earning above the HMRC lower earnings limit (currently £5,564 in 2012/2013) but below the Personal Allowance threshold.

OR

- Aged at least 16 and under 22 or between State Pension age and 75
- Earning more than the HMRC Personal Allowance

Entitled workers are 'entitled' to join a pension scheme (employers do not have to automatically enrol them) and are:

- Aged at least 16 and under 75.
- Earning below the lower earnings limit.

Under the automatic enrolment legislation, the LGPS is classed as a qualifying scheme. As a Town or Parish Council participating in the LGPS, you will have already 'designated' certain employees or class of employee to be eligible for membership of the scheme. Prior to your staging date, you will need to decide:

- Whether you intend extending membership of the LGPS to all types of 'worker' (This would require further 'designation' by the Council)
- Whether you intend offering an alternative 'qualifying scheme' (This may be the National Employment Savings Trust which is Government backed, or an arrangement made through an insurance company)

Employer Duties – Post Staging Date

Once the Council has reached its staging date, it will be required to:

- Enrol eligible employees into a qualifying pension scheme i.e. LGPS (or any alternative arrangement for those employees not eligible to join the LGPS);
- Maintain a qualifying pension schemes for those employees who are already members of the scheme and all new employees joining the scheme;
- Inform an eligible employee that they have been automatically enrolled and their right to opt out and opt back in again;
- Inform non-eligible employees of their right to opt in who must then complete a 'Opt -in' form if they wish to join the scheme;
- Monitor any changes of age and earnings of employees.

Employee Rights

There are a number of safeguards in place to protect the rights of individuals to have access to pension saving. Therefore the Council must ensure:

- It does not take any action or make any omission by which the employee ceases to be an active member of the qualifying scheme, without putting them into an alternative qualifying scheme;
- It does not take any action for the sole or main purpose of inducing an employee to opt out of the qualifying scheme or give up membership of a pension scheme (known as 'inducement');

- During recruitment it does not ask any questions or statements that either states or implies that an applicant's success will depend on whether they intend to opt out of the pension scheme (this is known as 'prohibited recruitment conduct');
- It does not breach employment rights for individuals not to be unfairly dismissed or suffer detriment on grounds related to the new employer duties.

Contact Us

If you require any further information, please contact us using the details below.



Mark Futter 01244 972963 or Ian Fullerton 01244 977145



pensions@cheshirewestandchester.gov.uk



www.cheshirepensionfund.org



Cheshire Pension Fund, Cheshire West and Chester Council, HQ, Nicholas Street, Chester, CH1 2NP.

CONGLETON TOWN COUNCIL

EQUALITY POLICY

THE COUNCIL'S EQUALITY STATEMENT

The Council aspires to be an Equal Opportunities employer, service provider and community leader. Our aim is to ensure that all employees and service users are not subject to any form of discrimination, harassment and/or victimisation at any time on the basis of age, gender, gender reassignment, ethnic origin, colour, disability, illness (such as HIV or AIDS), marital status or being in a civil partnership, nationality, race, religion or belief, sexual orientation, pregnancy and maternity or social background.

POSITIVE ABOUT EQUALITY, DIVERSITY AND HUMAN RIGHTS

This Policy replaces the Council's original Policy of December 2005 (as amended December 2007) and recognises its general equality duty under the Equality Act 2010.

The Council is committed to providing the highest quality of governance and service and recognises that the implementation of an effective Equality Policy is an integral part of any approach based on quality of service and provision. It is not a coincidence that an organisation that is able to provide services to meet the diverse needs of its users, usually carries out its core business efficiently. Equally a workforce that has a supportive environment is more productive. The Council as a corporate body has responsibilities as an employer, a service provider and a public authority, but both Members and employees as individuals also have responsibilities as well as rights.

We are committed to ensuring that our services and employment practices are fair, accessible, responsive and appropriate for all residents, clients & service users, voluntary and business organizations and visitors in the community we serve, as well as the dedicated staff we employ and volunteers and partners who work with us.

To achieve this we are working on eliminating all forms of discrimination in accordance with our Equality Statement and ensure that human rights (dignity and respect) are central to the way in which we deliver services.

We will strive to advance equality of opportunity between people who share a protected characteristic and those who do not and to foster good relations between people who share a protected characteristic and those who do not.

We will engage with people we believe to have an interest in our approach to Equality. We will undertake periodic Equality Assessments to help us in deciding whether an existing or proposed policy, procedure, practice or service does (or may) affect people differently, and if so, whether it affects them in an adverse way. and if so, what we can do to change it.

POSITIVE AS AN EMPLOYER

The Council is committed to making full use of the talents and resources of all its employees. It will recruit, reward, develop, promote and transfer employees on the basis of the skills, relevant qualifications, experience, aptitude and ability they can bring to the job.

The Council will encourage and develop all employees to support and carry out the requirements of this Equality policy. All employees will be encouraged to identify and disseminate good practice.

Recruitment

The Council recruitment process must result in the selection of the most suitable person for the job, in respect of experience and qualifications. It is against The Council's policy to discriminate either directly or indirectly on the grounds of any characteristic listed in its Equality Statement, at any stage of the recruitment process.

The Council staff must ensure that:

- all job opportunities are open to all applicants
- no prejudgement or assumptions are made by recruiters or managers.
- all applications are given equal consideration
- no decision is made in advance regarding the outcome of recruitment
- all applicants and staff are made aware of the Council policy on recruitment

All recruitment publicity must positively encourage applications from all suitably qualified and experienced people and should avoid any stereotyping of roles. All publicity should state that The Council is an Equal Opportunities employer and welcomes diversity. All vacancies must be advertised in accordance with the Council's Personnel Policies.

The selection process must be carried out consistently at all levels. It must be fair and non-discriminatory. Application forms where used, must state that The Council is an Equal Opportunities employer. The only criteria to be used in the selection process are those based on the skills, experience and qualifications essential for the job.

All aspects of The Council's recruitment and selection process will be monitored by the Town Clerk to ensure the Council meets its obligations as an Equal Opportunities and quality employer.

Training and Development

Training and development opportunities will be made available to all employees and any form of discrimination whether direct or indirect will not be tolerated. Priority will be given to training or development activity which is linked to the achievement of The Council's aims and objectives. Where resources permit the Council will support training and development beyond the needs of the job which can be returned as a benefit to the Council i.e. increased flexibility, breadth of experience and commitment.

Terms and conditions

All employees will be treated equitably with respect to pay and other conditions of their contracts of employment.

Breaches of Policy

Employees who feel that they have been subject to discrimination should attempt to resolve the issue by talking to the individual whom they feel has acted inappropriately. If this does not resolve the issue then the employee can approach their Manager or, if necessary, the Town Clerk under the Grievance Procedure

Harassment

The Council will not tolerate or accept any form of harassment of its employees. All employees have the right to be treated with dignity and any contravention of this right may

be subject to the appropriate grievance or disciplinary procedure. Harassment policy and processes are included in the Council's Personnel Policies.

Discrimination against people with disabilities

The Council will make reasonable changes to the physical features of its premises or to its method of undertaking business where this can enable an employee to properly undertake their job role. We will think positively about disabled staff as we do with disabled customers.

Religious discrimination

Discriminatory behaviour which fails to acknowledge the rights and needs of people with different beliefs or practices will be treated as a disciplinary offence.

Bullying

Workplace bullying is a separate issue from sexual and racial harassment but the effects can be the same. Within the working environment bullying can be described as the use of a position or power to coerce others by fear, oppression or threat.

The Council will not tolerate bullying behaviour at any level and it is the responsibility of all managers to eliminate any form of bullying which they become aware of. Allegations of bullying will be dealt with under the grievance or disciplinary procedures. Any employee who feels they are being bullied should consult any manager or the Town Clerk.

Victimisation

The Council will ensure that no employee is treated less favourably than other people because, for example they have brought proceedings, given evidence, or complained about the behaviour of someone who has been harassing or discriminating against them.

Age

- Recruitment is based entirely on relevant criteria, this criteria will be specific to the post and will not include age or age related criteria.
- All Job advertisements will avoid the use of ageist language. Phrases such as 'applicants should be 25-35 years of age', 'young graduates' and 'mature person' are discriminatory.
- Person specifications must focus on job needs only. Criteria unnecessarily specifying experience, personal qualities or qualifications will be removed from job advertisements and person specifications.
- Where appropriate, advertisements will be designed to attract a mixed-age response through advertising.
- Age related details will be separated from the application form as far as practicable.
- Direct age related details (such as date of birth) will be separated via the equal opportunities monitoring form.
- Application forms will be reviewed to minimise inferred calculation of age.
- The selection of candidates will be based upon individual assessment against the relevant criteria and will not include age or age-related criteria.
- Candidates will be selected on the basis of skills and abilities. Recruitment procedures will ensure that the process is fair, consistent and does not discriminate against a particular age group.

- Only job-related questions should be asked of job applicants. Candidates will be measured against selection criteria to help decision-making.
- All successful applicants will be subject to an employment medical questionnaire irrespective of age. Assumptions about capability or medical fitness will not be based on the age of the applicant.
- Selection panel members must not make judgements about the abilities of a candidate based on stereotypical assumptions about age.
- Promotion, training and career development opportunities will be provided equally for all staff whatever their age.
- Procedures relating to appraisal, regarding and the award of accelerated or discretionary increments and other employment situations where selection is required will apply to all staff regardless of age. Any such review will focus on skills and ability.
- The take-up of training and development from different ages will be monitored.
- Specific length of service provisions relating to pay and benefits will only be permitted where this can be justified in that the arrangement rewards loyalty, encourages motivation or recognises relevant experience.
- Pay scales and access to other benefits including the occupational pension and bonuses will not be based on age. Any age related criteria will be removed.
- All policies will be reviewed to check whether they include reference to age related or length of service related entitlement. Where age or length of service related criteria are used these will be reviewed and revised where necessary.
- The Council does not have a default age for retirement.
- Any voluntary redundancy scheme will not be based on age related criteria unless such criteria may be justified under the regulations.
- Selection for redundancy will not be based on length of service alone as this is indirectly discriminatory.

Responsibilities

- All employees of the Council have a responsibility to ensure that the Council's Equal Opportunities policy is communicated and its requirements adhered to.
- All the Council staff will receive training and development in equal opportunities issues. The Council policies on managing diversity form part of its Employee Handbook.

POSITIVE ABOUT SERVICE DELIVERY

The Council's clients have the right to expect fair and non-discriminatory treatment whilst participating in or receiving any of The Council's services. It will ensure that all recipients of the services delivered directly by the Council are guaranteed the same opportunity.

All aspects of the Council's Equalities Policy impact on the manner in which it directly delivers services to and for its customers.

Adherence to the principles and practices contained within the policy will be monitored on a regular basis. The Council will look for ways that it can make its services accessible to all.

Breaches of this Policy by staff will be subject to the grievance and discipline procedures.

Where any service is delivered indirectly by contractors, partners or volunteers, the Council will ensure that they understand its Equality Policy and adhere to it.

POSITIVE ABOUT COMMUNITY LEADERSHIP

The Council has a local governance and community leadership role. Local residents, members of local organisations, businesses and visitors have the right to expect fair and non-discriminatory treatment when engaging with the Council

The Council recognises the diversity within the community and seeks to reflect this in the work it undertakes within that community. All aspects of the Council's Equalities Policy impact on the manner in which engages with the community.

Adherence to the principles and practices contained within the policy will be monitored on a regular basis. The Council will look for ways that it can make it easier for everyone to engage with it.

POSITIVE ABOUT DISABILITY

Inclusive

The Council believe that as far as possible, disabled customers should be able to obtain services in the same way as other customers who are not disabled. However, given the constraints of operating from existing buildings, there will be some situations where the same treatment is not possible. In such cases, we will come up with a solution as to how best to service our disabled customers, which demonstrate respect for their dignity.

Finding Out

The Council will periodically undertake an audit of its premises and operations to assess as far as possible, what customers with different disabilities may need in order to access our services. We will base this on good practice guidance and where appropriate talk to individual customers about any particular problems they encounter. As necessary, we will seek expert advice on finding solutions.

Existing Premises

We will focus particularly on making reasonable adjustments to the physical features of the premises. Where a physical feature makes it impossible or unreasonably difficult for disabled customers to make use of a service, we will take reasonable measures to: - remove the features, or alter the features, or provide a reasonable means of avoiding it, or provide a reasonable alternative method of making the service available.

Getting Better

We will plan the development of our business with disabled people in mind. We will ensure our staff are aware disability issues and are trained to meet the needs of disabled customers.

POSITIVE ABOUT DEMOCRACY

Where councillors are to be elected, the Council will make information available as widely as possible about the election, and help people who are interesting in standing for election, with the objective of reflecting the diversity of the Parish.

When the Council seeks a co-opted member, it will advertise widely and will ensure that every applicant has an equal opportunity. Selection will be made against objective criteria.

The Council will always promote democracy, encourage all people to engage with it and vote at elections. It will make special efforts to engage with "hard to reach" groups.

January 2013

EQUALITY ACT 2010

Introduction

1. This Legal Topic Note covers the provisions of the Equality Act 2010 ('the 2010 Act') which, in the main, came into force on 1st October 2010. The 2010 Act replaces and brings together previous legislation (such as the Sex Discrimination Act 1975, Race Relations Act 1976, the Disability Discrimination Act 1995 and the Equal Pay Act 1970).
2. Parish councils, parish meetings with a separate parish council and, in Wales, community councils should recognise the importance of the 2010 Act. This Note is aimed at explaining the key provisions of the 2010 Act and at prompting review and changes of policies and practices.
3. This Legal Topic Note gives guidance on the legislation which covers alleged discrimination which occurred on or after 1 October 2010, when the 2010 Act came into force. Alleged discrimination which occurred before 1 October 2010 will continue to be covered under legislation which predated the 2010 Act, and explained in other Legal Topic Notes and Employment Briefings referenced at the end of this Note.
4. The 2010 Act protects individuals from discrimination because of:
 - age
 - disability
 - gender reassignment
 - marriage and civil partnership
 - sex (gender)
 - pregnancy and maternity (a protected characteristic separate to sex)
 - race
 - religion or belief
 - sexual orientation.

In section 4 of the 2010 Act, the above are referred to as 'protected characteristics.' Further guidance as to their definitions is given in paragraphs 14 - 30 below.

Types of unlawful discrimination – definitions

(i) Direct discrimination

5. Pursuant to section 13 of the 2010 Act, direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic. Direct discrimination is broad enough to include (i) less favourable treatment of a person because of a protected characteristic that he or she is thought to have (this is known as 'perception discrimination'), and (ii) less favourable treatment of a person because they associate with someone who has a protected characteristic (this is known as 'associative discrimination').

Example 1: A manager fails to promote an employee because she is blind. This is direct discrimination based on the employee's disability.

Example 2: A council refuses to let a person hire a hall for his 21st birthday party because his parents are lesbians. This would be direct sexual orientation discrimination because of the person's association with his parents.

Example 3: A council only employs men to be grave diggers because it considers this is a job which cannot be done by women. This would be direct discrimination because of the council's perception that women are unsuited to this work.

6. Direct discrimination can never be justified **except** in the case of age (section 13(2) of the 2010 Act). A claim of direct age discrimination may be defended **if** the treatment complained of is a proportionate means of achieving a legitimate aim.
7. A complainant of direct discrimination cannot just claim he or she has suffered less favourable treatment; he or she must be able to show that he or she has experienced less favourable treatment because of a protected characteristic. To establish if there had been less favourable treatment because of a protected characteristic, a complainant (and ultimately a court or employment tribunal) would need to compare the complainant's less favourable treatment to the treatment of another. This comparator exercise is used to test 'like for like' or, put another way, to assess in all respects, other than the protected characteristic, that there is no material difference in the circumstances of the complainant and the person he or she is compared to.

(ii) Indirect discrimination

8. Pursuant to section 19 of the 2010 Act, indirect discrimination occurs when a person applies a "provision, criterion or practice" which disadvantages a person with a protected characteristic **and** others that share that characteristic and the discrimination cannot be shown as a proportionate means of achieving a legitimate aim. A provision, criterion or practice could include contractual terms, written or unwritten policies, rules or arrangements. Indirect discrimination applies to all the protected characteristics except pregnancy and maternity (section 19 (3)).

Example 1: If a council's dress code policy for staff required men to wear a suit and tie but stipulated no smart dress for women, this may be considered indirect discrimination against men.

Example 2: A council introduces a practice that staff must work specific hours being 8.30am-5.00pm. A female employee is unable to work these hours because she needs to pick her children up from school, and no allowances are made because of those needs. This would put the employee and some other female staff (who also have childcare responsibilities) at a disadvantage, and the council may have indirectly discriminated against the female employee unless the particular hours of work can be justified.

9. A person complaining of indirect discrimination would need to show an appropriate pool of people to whom the provision would apply and disadvantage. Once this disadvantage has been demonstrated, an indirect discrimination claim may only be defended if a person can show that the provision, criterion or practice is a proportionate means of achieving a legitimate aim. A person defending a claim would need to demonstrate that the arrangements complained of are sufficient to outweigh the negative impact on the complainant and others who share his or her characteristic having considered the implementation of an alternative provision, criterion or practice (and costs) which would not have resulted in the negative impact complained of.

Example; If a disabled person who needs a guide dog is not allowed to enter a council building because of a "no pets rule", this could be discriminatory unless the council can objectively justify the rule.

(iii) Harassment

10. Section 26 of the 2010 Act defines harassment as "unwanted conduct related to a protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual". Section 26 confirms that a harassment claim may be brought by the person who is the subject of the harassment **but also** by someone whose environment is negatively affected by the harassment of another person. A single incident could amount to harassment.

Example 1: A disabled employee, who shares an office with a colleague who is not, is frequently insulted and bullied about her condition by her manager. Both the disabled employee and the non-disabled employee that she shares an office with could claim that they were subjected to harassment by the manager. The employer may also be held vicariously liable for the conduct of the manager.

Example 2; A groundsman shouts abuse at some Irish Traveller children playing in a council owned playing field on account of their ethnic origin. Such conduct may give rise to a claim for harassment against the council.

11. Section 40 of the 2010 Act provides that an employer risks liability for the harassment of an employee by a third party who is not an employee (e.g. a member of the public or a contractor). An employer may only be liable for harassment by a

third party if it has occurred during the course of a person's employment, on at least two previous occasions, and the employer is aware that it has taken place and has not taken reasonable steps to prevent the third party continuing to harass.

12. Harassment as a form of discrimination applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership (section 26(5)).

(iv) Victimisation

13. Pursuant to section 27 of the 2010 Act, victimisation occurs when a person is subjected to detriment because they have made or supported a complaint under the 2010 Act or because they are suspected of doing so.

Example 1: A female employee has lodged a sex discrimination claim and her manager believes her male colleague will give evidence on her behalf. The manager informs him that it will damage his career if he does so. It is likely that male employee will have been victimised.

Example 2: A service user supports a person's complaint about a council discriminating against them. That user is subsequently informed that they can no longer access the services being offered by the council. It is likely that the service user will have been victimised.

Protected Characteristics

14. The protected characteristics are set out in section 4 of the 2010 Act, and listed in paragraph 4 above. Additional commentary for some of them is given below.

(i) Age

15. Individuals of any age or apparent age are protected from discrimination. Less favourable treatment of a person because of age is not unlawful direct or indirect discrimination if it is a proportionate means of meeting a legitimate aim. See also paragraphs 6 and 8 above and paragraphs 41 and 42 below.

(ii) Disability

16. Pursuant to section 6 and schedule 1 to the 2010 Act a person is disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day to day activities (for example using a telephone, walking, lifting, and reading). An impairment is long-term if –

- (a) it has lasted for at least 12 months,
- (b) it is likely to last for at least 12 months, or
- (c) it is likely to last for the rest of the life of the person affected.

17. The Equality Act 2010 (Disability) Regulations 2010 (the 2010 Regulations), issued pursuant to the 2010 Act came into force on 1 October 2010. The 2010 Regulations

confirm that those certified as blind, severely sight impaired, partially sighted, or sight impaired by a consultant ophthalmologist will be deemed to have a disability. They also confirm that persons with cancer, HIV infection or multiple sclerosis are deemed to have a disability.

18. The 2010 Regulations confirm a number of exemptions of groups of people who do not fall within the category of disabled. These include, for example, people suffering from an addiction to alcohol or nicotine.
19. Notably pursuant to section 13(3) of the 2010 Act, if a person (e.g. an employer or a service provider) treats a disabled person **more favourably** than a non-disabled person, this does not constitute direct discrimination.

Example: A sighted person is not permitted to attend a council meeting with her dog, although a blind person is permitted to attend with his guide dog.

(iii) Gender Reassignment

20. Pursuant to section 7 of the 2010 Act, gender reassignment is a protected characteristic that applies to a transsexual person who is proposing to undergo, is undergoing or has undergone a process (or part of a process) to change their sex (by physiological or other attributes of sex).
21. Section 16 of the 2010 Act provides that it is discrimination against transsexuals to treat them less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured.

(iv) Marriage and Civil Partnership

22. Pursuant to section 8 of the 2010 Act, protection is given to people who have or share the characteristics of being married or being a civil partner. By contrast, a person engaged to be married, a divorcee or a person whose civil partnership has been dissolved are not protected under the 2010 Act.

(v) Pregnancy and maternity

23. Section 17 of the 2010 Act deals with this protected characteristic in non work situations such as in the provision of services and the exercise of public functions. A person discriminates against a woman because of her pregnancy or if, in the period of 26 weeks beginning with the day on which she gives birth, she is treated unfavourably because she has given birth.

Example: If a council, which runs a youth club for teenagers, prevents a teenager from attending because she is pregnant, this would be unlawful.

24. Section 18 of the 2010 Act deals with the protected characteristic of pregnancy and maternity in work situations.

Section 18(6) confirms that the protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends—

- (a) If she has the right to ordinary and additional maternity leave, at the end of the additional maternity leave period or (if earlier) when she returns to work after the pregnancy;
- (b) If she does not have that right, at the end of the period of 2 weeks beginning with the end of the pregnancy.

Section 18 (2) and (3) confirm that a person discriminates against a woman if, in the protected period in relation to a pregnancy of hers, he/she treats her unfavourably –

- (a) because of the pregnancy, or
 - (b) because of illness suffered by her as a result of i, or.
 - (c) because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to compulsory, ordinary or additional maternity leave.
25. Breast-feeding is not a protected characteristic as defined by section 4 of the 2010 Act (see paragraph 4 above). However section 13(6)(a) specifically makes discrimination against a breast-feeding mother unlawful. The relevant protected characteristic is sex.

Example: It is unlawful for a council to ask a woman to leave a council meeting because she is breast-feeding her baby.

(vi) Race

26. Pursuant to section 9 of the 2010 Act, race includes 'colour, nationality, ethnic or national origins.' These particular terms are not defined in the legislation. Section 9 confirms that a racial group is a group of persons defined by reference to race and that a racial group can be made up of two or more different racial groups. People who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial group.

Examples:

Colour includes black or white.

Nationality could include a British, Australian or Swiss citizen.

Ethnic or national origins could include Roma, Chinese or Irish heritage.

A racial group could include British Asians.

(vii) Religion or belief

27. Pursuant to section 10(1) of the 2010 Act, religion means any religion (which includes a lack of religion). The Act does not make reference to any particular religion.
28. Belief is defined in section 10(2) as any religious or philosophical belief (which includes a lack of belief). Religious belief is wider in scope than religion. For example, Christianity does not require a Christian to wear a crucifix but a Christian may consider that wearing a crucifix is a manifestation of his or her religious belief.

Denominations (e.g. Protestants and Catholics within Christianity) or sects within a religion may be a religion or a belief.

29. The definition of a 'philosophical belief' was considered in the case of *Grainger plc v Nicholson* (2010). This employment case concerned Mr Nicholson's strong belief in man-made climate change. The Employment Appeal Tribunal held that for a belief to be covered by the legislation then in force (the Employment Equality (Religion or Belief) Regulations 2003), it must be:
 - genuinely held;
 - a belief not simply a viewpoint or opinion;
 - relevant to weighty and substantial aspect of human life and behaviour;
 - able to attain a certain level of cogency, seriousness, cohesion and importance and
 - worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with the fundamental rights of others.

(viii) Sexual orientation

30. Section 12 of the 2010 Act protects a person's sexual orientation towards:
 - (i) people of the same sex as him or her (i.e. a gay man or a lesbian);
 - (ii) people of the opposite sex from him or her;
 - (iii) people of a both sexes.

Specific Employment matters

31. Discrimination is unlawful in respect of job applicants, employees and workers. A worker is a person employed by a third party (e.g. a recruitment agency) and supplied by that third party to work for another.

(i) Recruitment

32. Section 60 of the 2010 Act relates to the recruitment process and specifically covers the enquiries that can be made **before** employment. An employer is not permitted to ask questions about a job applicant's health before offering work or, where not in a position to offer work before including the applicant in a pool of applicants from whom the employer intends (when in a position to do so) to select a person to whom to offer work. If an employer does ask health questions before a job is offered and subsequently does not offer the person a job, the burden of proof will be on the employer to prove that there was no discrimination. An applicant cannot bring an action solely on the grounds that a prohibited question on health was asked. However the Commission for Equality on Human Rights (CEHR) has powers under the Equality Act 2006 to enforce a breach of these provisions.
33. Employers may ask health related questions before a job offer is made **only in limited circumstances** for any of the following reasons:
 - (a) Identifying if a candidate is able to participate in an assessment in the recruitment process (e.g. the interview or other process designed to give an indication of a

person's suitability for the work) or establishing whether there is a duty to make reasonable adjustments to enable the disabled person to participate in the recruitment process.

If it is made known or is apparent to a council that a job candidate has a disability, it has a duty to make reasonable adjustments for the candidate to undergo the assessment (e.g. making different arrangements to facilitate the candidate's access to the venue for interview, increasing the time given to complete any tests). *Example: A job application form which states: 'Please contact us if you need the application form in an alternative format or if you need any adjustments for the interview' would be lawful.*

If a disabled person is offered the job, reasonable adjustments may have to be made such as removing or altering a physical feature at the premises where the person will be working or providing auxiliary aids for that person to undertake the work. See also paragraph 35 below.

- (b) To assess whether the candidate is able to perform functions intrinsic to the job, with reasonable adjustments in place. *Example: If a council is recruiting a person for buildings maintenance work, it can ask, in the application form or at interview, questions which relate specifically to an applicant's ability to perform aspects of the job such as climbing ladders and scaffolding and lifting if they are intrinsic or fundamental to the job.*
- (c) To monitor the diversity of people who apply for work. (NALC recommends that information submitted by applicants in relation to this is not seen or considered by the person(s) responsible for considering a person's suitability for the job advertised).
- (d) Supporting positive action in respect of the employment of disabled persons as permitted by section 158 of the 2010 Act. See paragraph 51 below for further guidance. *Example: A council operates a guaranteed interview scheme for all applications for a particular job from disabled persons. This is aimed at improving disabled persons' employment rates within the council. The council must make clear to job applicants that this is why it is asking the question.*
- (e) Establishing whether the candidate has a particular disability if this a requirement of the job. *Example: An employer wants to recruit a Deafblind project worker who has personal experience of Deafblindness. This is an occupational requirement of the job and the job advert states this. The employer can ask in the application form or at interview about the applicant's disability.*

34. Section 60 is aimed at ensuring that all job applicants are looked at properly to see if they can do the job in question, and that they are not ruled out just because of issues related to or arising from their health or disability, such as health problems which occasioned sickness absence in a previous job, which say nothing about whether they can do the job advertised.

35. There is no prohibition on making enquiries about a person's health or disability **after** a job is offered or offering a job on the condition of the employer making enquiries of the person's health or disability. At that stage, an employer may ask appropriate health related questions to ascertain if someone's health or disability would prevent them from doing the job. The employer must consider whether there are reasonable adjustments that it could make which would enable the person to do the job. However an employer will be open to a claim of direct discrimination if the job offer is subsequently withdrawn because of the person's disability.

(ii) Positive action in respect of recruitment and promotion

36. Employers should always carry out an objective assessment at all stages of recruitment and promotion. However, section 159 of the 2010 Act (brought into force on 6 April 2011) permits an employer to take positive action in recruitment or promotion with the aim of enabling or encouraging persons who share a protected characteristic to overcome or minimise that disadvantage or participate in recruitment or promotion. Section 159(4) provides that an employer is permitted to treat a person with a protected characteristic more favourably for recruitment or promotion than a person that does not have a protected characteristic **if** the following applies:-

- two candidates, one with a protected characteristic and one without, are "as qualified" as each other;
- the employer does not have a policy of treating persons who share the protected characteristic more favourably regarding recruitment and promotion than persons who do not share it; and
- taking action is a proportionate means of achieving the aim of enabling or encouraging persons who share a protected characteristic to overcome or minimise disadvantage or participate in recruitment or promotion.

(iii) Employment contract secrecy clauses relating to pay

37. Pursuant to section 77 of the 2010 Act, employers are not permitted to prevent or restrict an employee from discussing his or her pay with a colleague (or a former colleague) if the discussion is aimed at finding out whether or to what extent there is a connection between pay and a protected characteristic. Whilst, there is no general ban on secrecy clauses in employment contracts, section 77 confirms that they are unenforceable if an employee wants to discuss pay for the above reasons.

(iv) Equality of terms

38. Section 66 of the 2010 Act requires a sex equality clause be read into the terms under which people are employed. The effect of this is that any term in the employment contract which is less favourable than that of the comparator of the opposite sex is modified to ensure that both have the same effect. Where the comparator benefits from a term which is not available to the employee, the effect of the sex equality clause is to include such a term in the employee's contract of employment. Section 71 deals with sex discrimination in relation to contractual pay in circumstances where a sex equality clause would not operate. This could be

because there is no comparator doing equal work with whom an employee can compare his or her pay or other terms. For the first time, a person who is treated less favourably than others by being paid less because of his or her sex (or a combination of two protected characteristics based on section 14 of the 2010 Act, which is not yet in force - see paragraph 56 below) including sex may pursue a claim for direct (or combined) discrimination where an equality clause does not operate.

(v) Defences to discrimination for occupational requirement

39. Pursuant to Schedule 9 of 2010 Act, an employer can defend a claim for direct discrimination if it can show that, having regard to the nature or context of the work –
 - (a) the protected characteristic is an occupational requirement,
 - (b) the application of the requirement is a proportionate means of achieving a legitimate aim, and
 - (c) the person to whom the requirement is applied does not meet it (or the employer has grounds for not being satisfied that the person meets it).
40. The occupational requirement defence applies to all protected characteristics and enables an employer to state that only people with a particular protected characteristic are eligible for the job.

Example: It would be lawful for a domestic violence women's refuge to advertise only for female counsellors.

(vi) Retirement

41. Employment Equality (Repeal of Retirement Age Provision) Regulations 2011 came into effect on 6 April 2011. They repeal and amend provisions in the 2010 Act (and related provisions in the Employment Rights Act 1996 which except certain dismissals based on retirement from constituting direct age discrimination and unfair dismissal). From 6 April 2011, retirement of an employee constitutes age discrimination unless it can be justified as a proportionate means of achieving a legitimate aim. It will no longer be lawful for an employment relationship to terminate by retirement unless the employer can justify it or the employee agrees it to.

(vii) Exceptions to discrimination relating to age

42. There are statutory exemptions to discrimination based on age which are listed in schedule 9, Part 2 of the 2010 Act. These exemptions include:
 - Payment of minimum wage – which is set for those no longer at school and aged 16 and 17 or over.
 - Dismissal of an employee up until 5 April 2011 based on the default retirement age of 65. Further guidance as to the statutory process which applied is available in the Employment Briefings referenced at the end of this Note.

- The provision of certain benefits based on length of service in so far as such benefit is earned by not more than 5 years service (e.g. annual leave entitlement).
- Statutory redundancy pay which is calculated in accordance with a person's age and length of service

Public office

43. Section 58 of the 2010 Act makes it unlawful for local authorities (which includes parish councils and in Wales, community councils) to discriminate against a member of the authority in relation to the member's carrying out of official business. It is unlawful for a local authority to discriminate against, harass or victimise their members in relation to providing access to facilities such as training which relate to the carrying out of their official business. This does not apply to election or appointment to offices within or by the local authority.
44. Section 58 imposes a duty on local authorities to make reasonable adjustments for disabled members.

Example: A deaf councillor complains that she cannot participate in council meetings. If provision of hearing loops were considered to be a reasonable adjustment, this would be discrimination.

Services and public functions

45. Part 3 of the 2010 Act prohibits discrimination, harassment and victimisation by providers of a service to the public or a section of the public (for payment or not). As confirmed by section 31, the 'provision of a service' includes a reference to (i) the provision of goods and facilities, (ii) the provision of a service in the exercise of a public function, and (iii) the exercise of a public function that is not the provision of a service.
46. Parish councils and parish meetings without a separate council and, in Wales, community councils are subject to Part 3 of the 2010 Act.
47. It is unlawful to discriminate against or harass a person because of a protected characteristic, or victimise someone when providing services. A person is protected both when requesting a service and during the course of being provided with a service, and when the service is terminated.
48. Section 29 of the 2010 Act confirms that refusing to provide or not providing a service includes providing a person with a service of different quality, or in a different way or on less favourable terms than the service would normally be provided is unlawful.
49. Pursuant to section 29(8) there is no protection for harassment related to religion or belief or sexual orientation in either the provision of services or in the exercise of public functions. Conduct that would otherwise have fallen within the definition of harassment may still amount to direct discrimination.

Premises

50. Part 4 of the 2010 Act prohibits discrimination, harassment and victimisation in relation to the disposal, management and occupation of premises. However where separate provisions of the 2010 Act cover, for example, work (Part 5 of the 2010 Act) or services and public functions (Part 3 of the 2010 Act), then those provisions, rather than the provisions in Part 4 of the 2010 Act apply. For example, where accommodation is provided either as a short-term let or where it is provided as part of a service or in exercise of a public function Part 3 (services and public functions) applies instead of Part 4.

Positive action

51. Section 158 permits a person (e.g. a council) to take positive action in general for the advancement of equality.

A person is permitted to take any action which is a proportionate means of achieving the aim of—

- enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage,
- meeting those needs, or
- enabling or encouraging persons who share the protected characteristic to participate in that activity in respect of

(a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic,

(b) persons who share a protected characteristic have needs that are different from the needs of persons who do not share it, or

(c) participation in an activity by persons who share a protected characteristic is disproportionately low

Example: A council provides free access to internet facilities for unemployed school leavers between the age of 16 and 19.

Public Sector Equality Duty

52. Section 149 of the 2010 Act, which came into force on 5 April 2011, imposes on public authorities (which as specified in Schedule 19 includes principal authorities, parish councils and parish meetings without a separate parish council and, in Wales, community councils) in the exercise of their functions, a duty to take into account:
- the need to eliminate discrimination and harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - to foster good relations between those who share protected characteristics and those who do not.
53. The protected characteristics of marriage and civil partnership are not covered by the provisions of section.149.

National Association of Local Councils

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54. It is anticipated that future regulations, issued pursuant to section 153 of the 2010 Act, which impose specific duties on certain public authorities to better perform and demonstrate compliance with the general duty contained in section 149 will affect **only** principal authorities.

Provisions of the 2010 Act not yet in force

(i) Public sector duty regarding socio-economic inequalities

55. Section 1 of the 2010 Act requires certain authorities (defined to include district county and London Borough Councils but **not** parish councils or, in Wales, community councils) when making decisions of a strategic nature about how to exercise their functions, to have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage. In deciding how to fulfil this duty, the authorities must have regard to any statutory guidance.

(ii) Combined discrimination: dual characteristics

56. Pursuant to section 14 of the 2010 Act, a claim can be brought on the grounds of a combination of two protected characteristics. These types of claim will normally be made when there might not be enough evidence to support a discrimination claim based on one protected characteristic.

Example: A claim may be brought by an employee who considers she has suffered less favourable treatment on account of her being female and Asian than a colleague who does not share either of those characteristics.

57. The protected characteristics of marriage and civil partnership, and pregnancy and maternity are not included in section 14.

Additional guidance

58. The Government Equalities Office has published helpful guidance on the Equality Act 2010 called "Equality Act 2010" What do I need to know? A summary guide for public sector organisations." A copy of that guidance can be accessed via the following web link:

http://www.equalities.gov.uk/pdf/401727_GEO_EqualityLaw_PublicSector_acc.pdf

59. In respect of councils' obligations as employers, ACAS has published helpful guidance notes. These can be accessed via the following web link:

<http://www.acas.org.uk/index.aspx?articleid=1363>

Other Legal Topic Notes (LTNs) and Employment Briefings relevant to this subject (as mentioned in paragraphs 3 and 42 above):

LTN	Title	Relevance
3	The powers of a parish meeting in a parish without a separate parish council	Explains the other statutory duties which parish meetings are subject to.
5	Parish, town and community meetings	Confirms the requirement to make reasonable adjustments to enable disabled persons' access to and participation in council meetings.
18	The Human Rights Act 1998	Explains protection provided by the 1998 Act.
22	Disciplinary & Grievance Arrangements	Sets out arrangements for dealing with employment issues

Briefings relevant to this subject:

Ref	Title	Relevance
E06-06	The Employment Equality (Age) Regulations 2006	Explains statutory procedure for dismissal of an employee based on default retirement age (DRA).
E01-11	The abolition of the default retirement age	Confirms employers will not be able to issue any notifications for compulsory retirement using the DRA procedure from 6 April 2011.
E03-11	The abolition of the default retirement age update	Gives guidance in respect of councils' notice to retire an employee using DRA procedure between 1 and 5 April 2011.

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