

EMPLOYMENT RELATIONS BILL 1999 - IMPLICATIONS

Accountable Officer: Bev Bithell (Head of Human Resources)

Authors: Gill Drew/Cindy Stanton (Senior Human Resources Officer (Employee Relations)) - MK253847

1. Purpose

- 1.1 To outline the provisions of the Employment Relations Bill, and to relate them to Milton Keynes Council's current policies and procedures.
- 1.2 To anticipate where changes to current policies and procedures may be needed, once the legislation comes into force.

2. Summary

- 2.1 The Employment Relations Bill 1999 follows the Fairness at Work White Paper issued in May 1998 and covers issues which have an impact on employment practices, policies and documentation
- 2.2 In anticipation of the Employment Relations Act and the provisions of the regulations which bring it into force, this report sets out the possible changes to current policy and procedure which may need to be made.
- 2.3 A further review of Council policies and procedure will take place once the legislative provisions are confirmed and the results of that review will be reported to Personnel Committee

3. Recommendations

- 3.1 The Committee is recommended to:
 - (a) note the provisions of the Employment Relations Bill and the possible amendments to Council policy and procedure outlined in paragraph 5 of the report, Issues and Choices; and
 - (b) note that a further review will take place, following consultation with the unions, to enable Council policy and procedure to be amended, where appropriate, in the light of the future Employment Relations Act and the subsequent regulations

4. **Background**

- 4.1 The Employment Relations Bill is due to receive Royal Assent by July 1999. Certain of the provisions will be introduced by means of regulations, following consultation with appropriate bodies. Other provisions will be introduced by means of a commencement order, specifying a date for introduction.
- 4.2 The Employment Relations Bill follows the Fairness at Work White Paper, issued in May 1998 and forms the legislation which will implement those proposals.
- 4.3 Although the Bill may be amended during its passage through Parliament, it is in a fairly advanced state of development. However, in certain cases, particularly with regard to parental leave, time off to deal with domestic incidents and part-timers' rights, key points of detail and exceptions to the general principles will be fleshed out subsequently by regulations.
- 4.4 The Bill enables the Part-Time Workers' Directive to be incorporated into UK Law, within the timescale set, by April 2000. The Bill enables the Parental Leave Directive to be incorporated into UK law within the timescale set, by December 1999.
- 4.5 The detailed provisions of the Employment Relations Bill are **Annexed**. They have been considered against the Council's current policies, set out at paragraph 5 below.

5. **Issues and Choices**

5.1 Disciplinary and Grievance Hearings

Under the Bill, an employee may request to be accompanied by a fellow worker or trade union official. The right of representation by a trade union representative or work colleague is already included in the Council's Disciplinary and Grievance Procedures. It is considered good practice within the Council to offer the right of representation, even at the informal stages of disciplinary or grievance procedures. Certain matters relating to the role of the 'companion' at the hearing and circumstances where the 'companion' is unavailable to attend, will need to be clarified in the Council's procedures, in line with the legislation. In accordance with the Bill, the trade union official may be a fellow colleague who has been elected as a trade union representative. However, he or she may be an employed official and therefore external to the Council and could be from a non-recognised union of the employee's choice

5.2 Maternity Leave

The Bill provides for an increase from 14 to 18 weeks for 'ordinary' entitlement to maternity leave. This will not affect local authority employees since the NJC Green Book provisions currently are for 18 weeks leave. The reduction in the qualifying period from two years to one year for 'additional' maternity leave (up to 40 weeks leave) will not affect employees since the NJC Green Book provides for a qualifying period of one year. However, it will affect teachers since their national scheme is based on the current statutory limit of two years and hence, the Maternity Policy for Teachers will need to be revised accordingly. Minor amendments to the Council's Maternity Policy are envisaged

to clarify the terms 'ordinary' and 'additional' entitlement, as well as 'compulsory' leave which defines the two weeks following the baby's birth. The Bill extends the right to contractual benefits, other than remuneration, from ordinary to additional leave. The Council's current Maternity Policy provides for contractual benefits to continue during additional leave.

5.3 Parental Leave

The Bill provides an entitlement to three months leave for the purpose of caring for a child. The legislation will enable the Council to reach a collective agreement with the unions on a parental leave policy specific to the organisation. The Council's policy on parental/maternity support leave is currently to provide five days paid leave around the time of the birth. Under the provisions, the Council will need to keep records of parental leave taken, for up to eight years or longer if there are further children. The Council's policy will need to be revised in the light of the regulations and following consultation with the trade unions.

5.4 Time Off for Domestic Incidents

The Bill defines domestic incidents as events which either occur in the employee's home or affect a member of the employee's family or a person who relies on the employee for assistance. As is the case with parental leave, the Council will be enabled to reach a collective agreement on a policy specific to the organisation. The Council will be able to specify the circumstances to be taken into account and may require evidence of the cause. The Council's policy on Compassionate Leave currently provides for up to five days paid leave and will need to be revised in the light of the regulations and following consultation with the trade unions.

5.5 Unfair Dismissal

The employer's potential exposure in unfair dismissal cases will increase as a result of the rise in the current limit on unfair dismissal award from £12,000 to £50,000 and the reduction in the qualifying period for the ability to claim unfair dismissal from 2 years to 1 year. The Council's policy documents relating to termination of employment emphasise the need for managers to follow proper dismissal procedures and to address problems in attitude or performance at an early stage.

5.6 Fixed Term Contracts

Under the legislation, it will no longer be possible for an employer to include a clause, in a fixed term contract of one year or more, waiving the right to claim unfair dismissal. Managers will have to consider the need for an employee to be re-engaged or the possibility of alternative work being available, before a fixed term contract is terminated. It should be noted that the European Social Partners have proposed a directive that will give employees on fixed term contracts entitlement to the same rights, pro rata, as those on indefinite contracts, unless there is a valid objective reason for treating them differently. The Council's policy is to offer the same terms and conditions to fixed term staff as to permanent employees. The Council's Recruitment and Selection Policy will need to be revised to ensure that the proper considerations are given before fixed term contracts are offered and renewed.

5.7 Part Time Workers

The Bill provides for part timers to have the same legal rights at work as full timers. The Council currently offers the same terms and conditions, pro rata, to part-timers as to full-timers and thereby complies with this provision of the Part-Time Workers Directive. The Code of Practice encourages the introduction and development of part-time working opportunities and flexible working. The Council will need to continue its practice of offering flexible hours in accordance with the flexitime procedure and considering all posts, at whatever level, for job sharing.

5.8 Trade Union Recognition and Consultation

The Bill sets out the process for union recognition and de-recognition. The Council already recognises a number of unions representing employees Council-wide and acknowledges the employee relations benefits of so doing, for the purposes of consultation and negotiation. The Council will need to note the provisions of the future Act, as it relates to Trade Union Recognition and Consultation

6. **Implications**

6.1 Environmental

None.

6.2 Equalities

The Employment Relations Bill addresses a number of equalities issues, such as the rights of part-time workers and those on fixed term contracts. The Bill introduces a number of family friendly working conditions and these will be reinforced by the Code of Practice on eliminating discrimination and developing flexible working

6.3 Financial

The financial implications relate to the proposed provision of parental leave, during which period all benefits under the contract continue other than remuneration, as well as time off for domestic incidents, though the exact cost is difficult to quantify until the eligibility criteria are confirmed. The rise in the current limit of the unfair dismissal award from £12,000 to £50,000 is a potential cost should a case succeed at Employment Tribunal.

6.4 Legal

The legislation is still in draft form and several provisions will be expanded through regulations. The report anticipates the changes to Council policy and procedure, though final revisions will not be made until the Employment Relations Act is in force.

6.5 Staff and Accommodation

None.

7. **Conclusions**

- 7.1 The legislation relating to the rights and benefits set out in the Fairness at Work White Paper is still in draft form. Some of the provisions will need regulations to bring them into force. This report highlights those areas of policy and procedure where revisions are likely and anticipates the amendments necessary. A further review will take place when the details and the implementation timetable are confirmed.

Background Papers: None