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**EQUAL OPPORTUNITIES IN EMPLOYMENT
FORCE REFERENCE DOCUMENT**

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POLICY

1. The Force is committed to equal opportunities and promoting practices in the employment of its entire staff which are open and free from unlawful or unfair discrimination.
2. The Force will ensure that no job applicant, or employee, receives less favourable treatment by reason of:
 - (a) sex
 - (b) sexual orientation
 - (c) on gender reassignment
 - (d) family responsibilities
 - (e) marriage or civil partnership
 - (f) race
 - (g) nationality
 - (h) ethnic origin
 - (i) disability
 - (j) religion and belief
 - (k) age
 - (l) pregnancy or maternity

or is disadvantaged by irrelevant conditions or requirements regarding any aspect of employment which are not objectively justifiable.

3. The Force has in place an Equality Scheme Action Plan to address areas of concern and promote equality. This is monitored through the Equality and Diversity Progress Group.
4. The Force will undertake Equality Impact Assessments on all Strategies, Force Reference Documents and employment practices to ensure there is no adverse differential impact on staff, and where an impact is identified take steps to reduce the adverse impact.

STANDARDS

1. GENERAL

- 1.1 All policies will be impact assessed to avoid unlawful discrimination.
- 1.2 The Force is committed to creating a diverse workforce. Management of diversity builds on equal opportunities and requires action to ensure that the Force has an open working environment based on trust and mutual respect. Differences in personal backgrounds and characteristics will not prejudice decisions about the suitability of individuals for employment or training.

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- 1.3 The Force will apply all anti-discrimination legislation and codes of practice applying in the employment field in a proactive manner.
- 1.4 The Force will take direct positive action to increase the representation of particular groups of staff either in recruitment, promotion or for training. Positive Action aims to encourage the interest of those groups which the Force wishes to attract who are currently under-represented. However, selection is made solely on the applicant's suitability in relation to the post requirements. Positive discrimination, by selecting candidates on the basis of their sex, race, disability etc., is unlawful.
- 1.5 These standards will be monitored through the audit procedures set out for each of the appropriate Force Reference Documents.
- 1.6 In the same way as human rights legislation affects all Force practices, equality legislation must be taken into consideration when developing Force policies. This will necessitate a equality impact assessment to be carried out.

2. TYPES OF DISCRIMINATION

2.1 Direct Discrimination

- 2.1.1 Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic he/she has or is thought to have, or because he/she associates with someone who has a protected characteristic.

2.2 Associative Discrimination

- 2.2.1 Already applies to race, religion or belief and sexual orientation and is now extended to cover age, disability, gender reassignment and sex. This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

2.3 Perceptive Discrimination

- 2.3.1 Already applies to age, race, religion or belief and sexual orientation. Now extended to cover disability, gender reassignment and sex. This is direct discrimination against an individual because others think he/she possesses a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

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2.4 Indirect Discrimination

- 2.4.1 Already applies to age, race, religion or belief, sex, sexual orientation and marriage and civil partnerships. Now extended to cover disability and gender reassignment.
- 2.4.2 Indirect discrimination can occur when you have a condition, rule, policy or even a practice that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if you can show that you acted reasonably in managing your organisation i.e. that it is a proportionate means of achieving a legitimate aim. A legitimate aim might be any lawful decision you make in running your organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful.
- 2.4.3 Being proportionate really means being fair and reasonable, including showing that you have looked at "less discriminatory" alternatives to any decision you make.

3. LEGAL COMPLIANCE STANDARDS

3.1 Sex Discrimination Act 1975

- 3.1.1 Where a person of one gender is treated less favourably than a person of the other gender would be treated in similar circumstances.

3.2 Gender Reassignment Regulations 1999

- 3.2.1 These Regulations clarify the law relating to gender reassignment and prohibit discrimination directly and indirectly against transsexual people on the grounds of sex in (pay, treatment in employment and vocational training) employment.
- 3.2.2 The effect of these Regulations is to extend the Sex Discrimination Act to include gender reassignment. Employers who breach the Sex Discrimination Act in respect of discrimination on gender reassignment grounds will be liable in the same manner as they would, for example, for discrimination against a woman on the grounds of sex. The level of award at Employment Tribunal for sex discrimination is unlimited.
- 3.2.3 Individuals are protected under the Sex Discrimination Act from the time they indicate their intention to undergo gender reassignment.

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3.3 Sexual Orientation Regulations 2003

- 3.3.1 These regulations prohibit discrimination on the grounds of sexual orientation in the employment field including occupational pension schemes. The Force participates in the Stonewall Equality Index and can benchmark performance against other forces and other organisations

3.4 Age Discrimination Regulations 2006

- 3.4.1 Where someone treats a person less favourably on the grounds of age than other persons in a comparable situation and there is no objective justification for doing so.

3.5 The Race Relations Act 1976

- 3.5.1 Where a person is treated less favourably on the grounds of race, colour, nationality, ethnic or national origin than others would be treated in similar circumstances.

3.6 Race Relations Amendment Act (2000)

- 3.6.1 This Act strengthens the provisions contained in the 1976 Act; as a public authority, the Force has a requirement to promote race equality; in addition, Chief Officers are made liable for acts of discrimination carried out by those under their direction or control.

3.7 The Disability Discrimination Act 1995

- 3.7.1 Where a disabled person is treated less favourably than someone else for a reason relating to the person's disability and that reason does not apply to the other person or the treatment can not be justified.
- 3.7.2 Discrimination by way of Victimisation - treating a person less favourably than others because that person has asserted, or intends to assert, his or her statutory rights under discrimination legislation.

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3.8 The Disability Discrimination Act 2005

- 3.8.1 This Act strengthens the provisions contained in the 1995 Act. As a public authority, the Force has a requirement under the Act to promote disability equality, eliminate discrimination/harassment and take steps to take account of individual disabilities even where that involves more favourable treatment.
- 3.8.2 The Force operates a policy of positive action for support staff recruitment in line with the 'double tick' scheme. This allows for applicants with disabilities who meet the minimum criteria for the job a guaranteed interview. Further information with regards to this scheme can be obtained from the Human Resources Service Unit.

3.9 The Equality Act 2010

3.9.1 Pre-employment Health Related Checks

The Equality Act limits the circumstances when you can ask health-related questions before you have offered an individual a job. Up to this point you can only ask health related questions to:

- Decide whether you need to make any reasonable adjustments for the person to the selection process
- Decide whether an applicant can carry out a function that is essential ("intrinsic") to the job
- Monitor diversity amongst people making applications for jobs
- Take positive action to assist disabled people
- Assure yourself that a candidate has the disability where the job genuinely requires the jobholder to have a disability.

Once a person has passed the interview and you have offered him/her a job (whether this is an unconditional or conditional job offer) you are permitted to ask appropriate health-related questions.

The issue of health checks is covered in the Recruitment and Selection Force Reference Document and the Attendance Management Force Reference Document.

3.9.2 Equal Pay – Direct Discrimination

The Equality Act retains the framework that was previously in place. This means that in most circumstances a challenge to pay inequality and other contractual terms and conditions still has to be made by comparison with a real person of the opposite sex in the same employment.

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However, a change in the Equality Act allows a claim of direct pay discrimination to be made, even if no real person comparator can be found. This means that a claimant who can show evidence that they would have received better remuneration if they were of a different sex may have a claim, even if there is no-one of the opposite sex doing equal work in the organisation. This would be a claim under sex discrimination.

4. HARASSMENT

- 4.1 Harassment is “unwanted conduct related to a relevant 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”.
- 4.2 Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Staff will now be able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristics themselves. Staff are also protected from harassment because of perception and association.
- 4.3 The Force is also potentially liable for harassment of staff by people (third parties) who are not staff of the Force. The Force will only be liable when harassment has occurred on at least two previous occasions and reasonable steps have not been taken to prevent it happening again.

5. VICTIMISATION

- 5.1 Victimisation can occur when a member of staff is treated badly because he/she has made or supported a complaint or raised a grievance under the Equality Act; or because he/she is suspected of doing so. A member of staff is not protected from victimisation if he/she has maliciously made or supported an untrue complaint.
- 5.2 There is no need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

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6. RESPONSIBILITIES

6.1 Overall Responsibility

The Chief Constable and Director of Human Resources have overall responsibility for monitoring the effectiveness of this policy and for implementing programmes of action. The Human Resources Service Unit should be the first point of reference regarding advice on equal opportunity issues.

6.2 Managers' Responsibilities

- (a) Line Managers have a primary responsibility for ensuring full co-operation with equal opportunities principles.
- (b) Every employee with a supervisory or managerial responsibility will:-
 - (i) Respond promptly and positively to any complaint of discrimination.
 - (ii) Ensure that all their staff are aware of the principles of equality of opportunity.
 - (iii) Deal with any issues of discrimination brought to their attention within their area of responsibility; Line Managers must be aware of the appropriate actions in the disciplinary policy and misconduct procedures.

6.3 Staff Responsibilities

- (a) All staff will accept personal responsibility for the principles of equal opportunities, particularly discrimination against colleagues and job applicants.
- (b) Will adopt a positive approach to the working of the various policies connected with equal opportunities and challenge where these are not being applied appropriately.

7. MONITORING

- 7.1 In line with the public sector duties outlined in the Force Equality Schemes, employment policies, systems and procedures relating to employment will be

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monitored continuously by the Human Resources Service Unit with the aims of achieving equality of opportunity. Monitoring in terms of equality of opportunity include all aspects of employment for police staff and police officers from application to cessation of employment.

- 7.2 Employment Monitoring Reports will be produced by the Human Resources Service Unit on a quarterly basis.
- 7.3 Analysis of quarterly reports will be presented to the Policy Forum.
- 7.4 From time to time the Human Resources Service Unit will request information from staff with regards to monitoring requirements. This is classed as personal data and will be used for statistical purposes and to identify inequality so that appropriate action can be taken. It is not the purpose of this monitoring to identify individuals.

GUIDANCE

The guidance detailed below is general guidance for the information of all staff. From time to time specific guidance may become available on specific issues and will be appended to this general guidance.

1. AWARENESS

- 1.1 All staff should have received basic information on equal opportunities and diversity issues through attendance at in-Force training or through the Scottish Police College Probationer Training Programme. In addition, any member of staff who has Line Management responsibilities should have received additional training through attendance at People Management Skills training. Senior members of staff are also required to attend a strategic National Equal Opportunities Training Strategy course.
- 1.2 Awareness training aims to:
 - (a) Raise awareness of the existence of discrimination and prejudice across all six strands of Diversity, both at individual and organisational level.
 - (b) Examine the nature of discrimination and the ways in which it can occur.
 - (c) Provide information and advice on the implications of the relevant legislation.
 - (d) Assist participants to value difference.

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- (e) Examine the benefits to the Force of reflecting throughout the workforce the diversity of the communities served.

2. LINKS TO OTHER EMPLOYMENT POLICIES

- 2.1 A number of Force Reference Documents exist on specific processes, which supplement the information contained in the Standards Section of this document and if these are followed, this should prevent any equal opportunity issues arising. Each of these separate policies has been the subject of an Equality Impact Assessment.

3. FURTHER GUIDANCE/ASSISTANCE

- 3.1 Queries on Equality and Diversity related to employment matters should be addressed to the Human Resources Service Unit. Queries related to service delivery and community engagement should be addressed the Force Diversity Advisor.

4. GUIDANCE AND EXAMPLES ON EQUALITY LEGISLATION

- 4.1 Detailed below is further information and examples of behaviour which fall within each of the Acts detailed in the Standards Section. This information is included to give actual examples that relate to activities which occur on a daily basis.

4.2 Types of Discrimination

4.2.1 Direct Discrimination

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (see perceptive discrimination below), or because they associate with someone who has a protected characteristic (see associative discrimination below).

4.2.2 Associative Discrimination

Already applies to race, religion or belief and sexual orientation. Now extended to cover age, disability, gender reassignment and sex. This is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

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4.2.3 **Perceptive Discrimination**

Already applies to age, race, religion or belief and sexual orientation. Now extended to cover disability, gender reassignment and sex. This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

4.2.4 **Indirect discrimination**

Already applies to age, race, religion or belief, sex, sexual orientation and marriage and civil partnership. Now extended to cover disability and gender reassignment.

Indirect discrimination can occur when you have a condition, rule, policy or even a practice in the Force that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if you can show that you acted reasonably in managing your business, i.e. that it is 'a proportionate means of achieving a legitimate aim'. A legitimate aim might be any lawful decision you make in running your Force, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful.

Being proportionate really means being fair and reasonable, including showing that you've looked at 'less discriminatory' alternatives to any decision you make.

4.2.5 **Harassment**

Harassment is "unwanted conduct related to a relevant 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.

Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Employees will now be able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment because of perception and association.

4.2.6 **Third Party Harassment**

Already applies to sex. Now extended to cover age, disability, gender reassignment, race, religion or belief and sexual orientation. The Equality Act makes you potentially liable for harassment of your employees by people (third parties) who are not employees of your Force, such as customers or

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clients. You will only be liable when harassment has occurred on at least two previous occasions, you are aware that it has taken place, and have not taken reasonable steps to prevent it from happening again.

4.2.7 Victimisation

Victimisation occurs when an employee is treated badly because he/she has made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint. There is no longer a need to compare treatment of a complainant with that of a person who has not made or supported a complaint under the Act.

4.3 The Sex Discrimination Act 1975

Examples of behaviour which may lead to an accusation of sexual discrimination:

- (a) Not considering a woman with family responsibilities for a post.
- (b) A woman is promoted to a position, not on the basis of being the best candidate, but in order to achieve a "quota" of women in the area.
- (c) Questioning a woman at selection interview, or appraisal, about her plans to have a family.
- (d) Deploying women to jobs which require what are perceived to be "softer" skills because they are female.
- (e) Setting length of service as criteria for a post where this is not relevant (women on average have less service than men in the Force).
- (f) Discrimination on grounds of marriage/civil partnership.

4.3.1 Discrimination on Grounds of Sexual Orientation

Examples of behaviour which may lead to an accusation of discrimination on grounds of Sexual Orientation:

- (a) Not appointing an applicant on the grounds of his/her sexual orientation because of the perceived lifestyle of these groups.
- (b) Harassment of any type, such as:
 - (i) Insults or ridicule related to their sexual orientation
 - (ii) Threatening behaviour

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- (iii) Physical violence.
- (c) Excluding individuals from conversations or social events at work because of their sexual orientation.

4.4 The Race Relations Act 1976

Examples of behaviour, which may lead to an accusation of discrimination on grounds of race:

- (a) Deployment, promotion, etc. based on ethnic background.
- (b) Harassment of any type such as:
 - (i) Verbal abuse
 - (ii) Racist jokes or remarks
 - (iii) Racist graffiti
 - (iv) The display or circulation of racially offensive written material or images
 - (v) Excluding individuals from conversations or social events at work because of their race/nationality etc.
 - (vi) Threatening behaviour
 - (vii) Damage to property
 - (viii) Physical violence.
- (c) Insisting that a Sikh officer shave off his beard for reason of appearance.
- (d) A person can only gain employment through the recommendation of a member of the existing workforce where the profile of that workforce is predominantly of one ethnic group.

4.5 Race Relations Amendment Act (2000)

4.5.1 As well as the individuals who commit an act of discrimination, the Chief Constable may also be held liable, unless it can be shown that all reasonable steps have been taken to prevent discrimination occurring.

4.5.2 Public bodies will be called on to demonstrate what steps they have taken to promote race equality such as:

- (a) Monitor their policies for an adverse impact on race equality
- (b) Monitor existing staff and applicants for job promotion and training by their racial groups.

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4.5.3 The results of any monitoring require to be published on an annual basis.

4.6 The Disability Discrimination Act 1995

4.6.1 Discrimination on Grounds of Disability

Examples of behaviour which may lead to an accusation of discrimination on grounds of disability:

- (a) Refusing to promote an employee who uses a wheelchair, solely because that person's new work station would not be wheelchair accessible, if, by rearranging the layout and furniture, the workplace could be made accessible.
- (b) When an individual is not appointed to a post given that he/she is the most able candidate, due to the fact that they are disabled.
- (c) Harassment of any type, such as:
 - (i) Insults or ridicule related to their disability
 - (ii) Threatening behaviour
 - (iii) Excluding individuals from conversations or social events because of their disability
 - (iv) Physical violence.

4.6.2 Discrimination by Way of Victimisation

Examples of behaviour which may lead to an accusation of discrimination due to victimisation:

- (a) A member of staff supports, or gives evidence, in a sexual harassment case and he/she is then treated less favourably due to this.
- (b) Moving an individual who has made a claim of sexual harassment when the individual has not requested the move and there are no other objective reasons for the move.
- (c) Finding ways of punishing those that have raised a grievance under the equal opportunities grievance procedure, or have lodged a complaint with an industrial tribunal.

Victimisation is a disciplinary offence.

As a general principle where a case of victimisation is proven, the perpetrator, not the victim, should be transferred where transfer of one party is deemed an appropriate outcome.

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4.7 Bullying/Abuse of Power

Examples are:

- (a) Subjecting a person to practical jokes or initiations in the workplace.
- (b) Pushing, jostling or prodding a person.
- (c) Humiliating a person by ridicule, sarcasm or belittling comments.
- (d) Setting impossible objectives so that a person is bound to fail.

4.8 Genuine Occupational Qualification

4.8.1 This is the term used in the Sex Discrimination Act 1975 and the Race Relations Act 1976 to identify the case for allowing a person's gender or race (but not marital status) to be used as a job requirement **in very limited circumstances**.

4.8.2 It may not be unlawful to discriminate on grounds of gender reassignment where the job involves the holder conducting intimate searches pursuant to statutory powers.

4.8.3 If challenged, an employer must show that one or more of the statutory specified criteria was essentially applied to the job in question.

Example:

- (a) In certain circumstances advertising for a male communications controller would not be acceptable, whereas asking for a male turnkey as opposed to a female turnkey would be for purpose of decency.

4.8.4 The question of whether a Genuine Occupational Qualification can be claimed depends on the particular circumstances at the point that the post is advertised, rather than being used in all cases for a particular post or job type. Line Managers who consider that a job falls within this category must consult with Human Resources before progressing any job vacancy.

4.9 Positive Action

4.9.1 This is the term used in the Sex Discrimination Act 1975 and the Race Relations Act 1976 to describe those measures allowed by law to encourage job applications from under-represented groups and to provide special training for employees belonging to particular racial groups or gender.

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Examples:

- (a) Advertising for posts welcoming applications from women or ethnic minorities. This is, as it says, a welcome. The job criteria remain objective, and there is no positive discrimination at the point of selection.
- (b) Familiarisation day within the Firearms Section, to encourage female applicants to an area where females are under represented.
- (c) Special training courses for under represented groups e.g. ethnic minorities to develop specific skills to give them assistance in sitting the standard entrance test.

5. RAISING ISSUES OF CONCERN

5.1 Force Grievance and Harassment Procedures

- 5.1.1 The purpose of the grievance and harassment procedures is to ensure staff who are aggrieved with either colleagues or management are dealt with justly and fairly. This includes issues covered by the equal opportunities policy.

5.2 Harassment and Bullying

- 5.2.1 This is a variant of the Force Grievance procedure recognising the major role that harassment and bullying can play in discrimination issues.
- 5.2.2 A separate Force Reference Document entitled "Grievance Procedure – All Staff – Fairness and Dignity at Work" (G1) which details the procedure for issues of harassment and bullying is available.

5.3 Employment Tribunals

- 5.3.1 All staff are entitled to bring a case of discrimination at employment tribunal. The time limit for this is three months less one day from the alleged date of the discrimination occurring.
- 5.3.2 Normally internal grievance procedures should be exhausted before moving to an employment tribunal.

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5.4 Disciplinary Issues regarding Discrimination

- 5.4.1 Violation of the various policies and codes of practice on equal opportunities may invoke the Misconduct/Disciplinary Procedures.

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