

This template summarises the key decisions/actions taken in the EHRIA, and has been separated from the full EHRIA document for publication on the SPS external website in compliance with statutory requirements.

Background	
Title of the Policy	Enterprise and Employability (E&E)
EHRIA Lead Person	Scottish Prison Service Enterprise and Employability Manager, Strategy and Innovation
Date EHRIA completed	11/08/2015
Review date and frequency	First Review August 2016
Is this a new or revised policy/practice?	New <input type="checkbox"/> Revised <input checked="" type="checkbox"/>

Scoping	
What are the aims of this policy/practice?	The enterprise and employability workstream has been developed out of the SPS's review of 'Purposeful Activity'. The purpose of the enterprise and employability work-stream is to support the overarching vision and strategy for the future of work based activity in prisons and to stimulate and deliver a range work based opportunities for more of those in custody to attain upskilling and qualifications which are relevant to the external job market and potential employers.
WHO did you consult with?	Head of Offender Outcomes at establishments Scottish Prison Service Industrial Managers Trade Unions Equality and Diversity Manager (Prisons) and selected employers. Scottish Government Community Justice Policy Unit Ministerial Group on Offender Reintegration (MGOR) Scottish Government policy around employer engagement.
WHAT did you learn?	Traditional prison work based activities have developed and evolved organically i.e. activities which have historically 'aye been' or which largely support the internal prison regime, or which have evolved through staff having particular skills and interests.

## Scoping

	<p>The upskilling, qualification and employability considerations for offenders are largely not the primary consideration in the choice of activities made available.</p> <p>This has led to a poorly co-ordinated range of work based activities available to offenders (over 50+ variant activities across the estate).</p> <p>Lack of business case outlining the expected outcomes of each work based activity. No meaningful measurement and data capture of outcomes achieved for the prisoners.</p> <p>There is limited sense of work being undertaken or commissioned as part of a clear corporate strategy or with due regard to meeting specific needs (including Equality and Diversity).</p> <p>Increasing focus towards local commissioning of work based services and activities (driven by a lack of central strategy and limited corporate support for Offender Outcome Managers). Decisions often appear to be made to serve a local need (to have some activity) rather than as part of strategic view of what work activities that SPS provide the optimum 'benefit' to the prisoners.</p> <p>Employability Pipeline methodology is in use at most sites.</p> <p>There is currently no consideration on the impact / potential impact on other enterprises in the community when SPS seek to commence a new work based activity.</p>
<p>HOW will this shape your policy/practice?</p>	<p>The general principle of prison based work and the enterprise and employability workstream is that the policy and practice of work based activities should be accessible to all prisoners who are at a stage in their sentence, personal progression and employability pipeline of being ready for work, or capable of work.</p>
<p>What quantitative and/or qualitative evidence as well as case law relating to equality and human rights have you considered when deciding to develop new or revise current policy/practice?</p>	<p>Prisoners as 'disadvantaged workers' – see attached.</p> <p>The attached paper, whilst it reflects a response to the Public Consultation on changes to the Public Procurement Regulations, considers the socio / economic factors of prisoners and those who have</p>

been in custody as 'disadvantaged workers' in terms of securing employment. The issue of having been in custody can compound and perpetuate disadvantage particularly where employers screen applicants with regard to past criminal convictions.

The paper considered an established EU definition for disadvantaged worker as being "any person who has not obtained his or her first regular paid employment since beginning a period of imprisonment or other penal measure". The paper includes references to various research including the Scottish Index of Multiple Deprivation (SIMD), and Social Exclusion and Imprisonment in Scotland, Glasgow Caledonian University, 2005, etc

Hopkins (2012) conducted a study of the employment, education and training status of offenders in England and Wales and found that:

- Those who had been in prison before were less likely to have been employed than those who had not, and those who had been employed prior to custody were 25% less likely to be reconvicted within a year of leaving prison;
- 48% of prisoners said they needed help finding a job on release;
- 41% with education; and
- 40% to improve work-related skills.

(Ministry of Justice, 2012)

The results of Hopkins' research are also supported in a Ministry of Justice (2013) study which explored the impact of employment on re-offending. This research provided some statistically significant returns and concluded that:

'steady employment, particularly if it offers a sense of achievement, satisfaction or mastery, can support offenders in stopping offending.

Employment has been identified as an important factor in supporting desistance among offenders aged over 27'.

- Offenders in employment at some point in the year after being released from custody were less likely to re-offend than similar offenders who did not gain employment.
- For custodial sentences of less than one year, the re-offending rate was 9.4 percentage points lower

for those who found employment after release than for those who failed to secure employment.

- For sentences lasting one year or more, the one year re-offending rate was 5.6 percentage points lower for those who found employment than for those who failed to secure employment.
- The time from release until first re-offence was longer for offenders who got employment than for those who did not get employment.

(Ministry of Justice, 2013)

### SPS Organisational Review – Unlocking Potential

Transforming Lives recognises that the closer integration of services to help prisoners access health, housing and support into employment when prisoners leave custody is fundamental to reducing reoffending rates. Working with communities to educate and inform about the support that works best when trying to prevent reoffending, and therefore further victimisation, is also essential to creating an environment where support is available to prisoners on release.

The Organisation Review has a focus on nine key Offender Outcomes – Employment Prospects Increased, Encouraging Uptake of Learning, Skills and Development Opportunities during Custody

Howard League – Business Behind Bars - Making real work in prison work

Whilst the report is written for NOMS, many of the key themes around the positive impact of work within the prison regime, empowerment, etc are equally applicable to Scotland.

### SPS - Prisoner Survey 2013

#### Work in prison

Prisoners were asked in the last published Prisoner Survey to comment on a number of issues relating to work in prison. Three quarters (75%) of prisoners reported that they had undertaken work in prison. Of these, around six in ten prisoners reported that they found prison work interesting (63%), that it had helped them to learn to work with other people (62%), that it had helped them to take more responsibility (61%), and that work in prison helped them to learn to work regular hours (58%).

## Scoping

	<p>Preparation of release A quarter of prisoners had accessed services while in prison in order to help them prepare for release (26%), a decline from 2011 figures (34%). Of those who accessed services, 70% had sought advice in relation to housing and 41% in relation to employment.</p> <p>The Survey asked prisoners a number of questions relating to the upward trend in the prison population. It is noted that approximately half reported that prisoner numbers had an impact on their access to their opportunities for training and education (48%), and their ability to access work/prison job (48%).</p>
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## Impact

Will the impact and outcomes of the new/revised policy/practice:

<p><b>Contribute to eliminating discrimination, harassment and victimisation?</b> E.g.</p> <ul style="list-style-type: none"> <li>• Raise awareness of our SPS vision and values for equality and diversity</li> <li>• Challenge appropriately any behaviours or procedures which do not value diversity and advance equality of opportunity</li> </ul>	<p><b>POSITIVE:</b> It will contribute to eliminating discrimination, harassment, victimisation <input type="checkbox"/></p> <p><b>NO EFFECT:</b> It will have no effect on discrimination, harassment and victimisation <input checked="" type="checkbox"/></p> <p><b>NEGATIVE:</b> It will make discrimination, harassment and victimisation worse <input type="checkbox"/></p>
<p><b>Advance equality of opportunity between those who share a protected characteristic and those who do not?</b> E.g.</p> <ul style="list-style-type: none"> <li>• Remove or minimise disadvantage</li> <li>• Meet the needs of equality groups that are different from the needs of others participation in public life</li> </ul>	<p><b>POSITIVE:</b> It will advance equality of opportunity <input checked="" type="checkbox"/></p> <p><b>NO EFFECT:</b> It will have no effect on equality of opportunity <input type="checkbox"/></p> <p><b>NEGATIVE:</b> It will reduce equality of opportunity <input type="checkbox"/></p>
<p><b>Foster good relations between those who share a protected characteristic and those who do not?</b> E.g.</p> <ul style="list-style-type: none"> <li>• Tackle prejudice</li> <li>• Promote understanding</li> </ul>	<p><b>POSITIVE:</b> It will foster good relations <input checked="" type="checkbox"/></p> <p><b>NO EFFECT:</b> It will have no effect on good relations <input type="checkbox"/></p> <p><b>NEGATIVE:</b> It will cause good relations to deteriorate <input type="checkbox"/></p>
<p><b>Ensure Human Rights Compliance?</b></p>	<p>It will uphold human rights articles. <input checked="" type="checkbox"/></p>

## Impact

Will the impact and outcomes of the new/revised policy/practice:

It will breach human rights articles.

**Please summarise the results of the Equality & Human Rights Impact Assessment, including the likely impact of the proposed policy/practice advancing equality and human rights.**

## Positive Impacts

Protected characteristics affected: Age, Race, Gender, Disability, Socio-Economic groups, Human Rights Compliance

- The general principle of prison based work and the enterprise and employability workstream is that work based activities should be accessible to all prisoners who are at a stage in their sentence, personal progression and employability pipeline of being ready for work, or capable of work (the latter may be part or full time). Other opportunities such as education, programmes, etc will continue and remain open to prisoners alongside work.

This will advance equality of opportunity through improved identification of offender needs by asset-based case management plans, more effective targeting of resources and improved referrals to both internal and external service providers.

- Work, whether as in-prison support services (catering, cleaning, laundry, grounds-keeping), or engagement in Prison Industries or vocational skills training provides a number of positive benefits to those that engage. The social impact and 'normalisation' of engaging in interesting work, which supports learning, taking responsibility, engaging with others and working regular hours is recognised (through research and survey) as a valuable part of the prisoner regime and progression. The enterprise and employability workstream recognises that additional value can be attained from prisoners working for a real employer, doing real work and not just the state (SPS). The value add is improved where the skills attained have genuine external relevance and there is a sectoral pull into potential employment.

- The enterprise and employability workstream and momentum that SPS seeks to build from engaging with external employers to work in prisons or to work with offenders will also start to address societal discrimination about employing those who have been in custody.

- This aligns with National Outcomes and the aspirations of the Ministerial Group on Offender Reintegration (MGOR) and Scottish Government which is promoting wider engagement of ex-prisoners by employers in the private, public, or third sectors.

- In building links with employers who are receptive to working with prisoners in custody and engaging / employing some of individuals following liberation, we will be dealing with organisations that seek to break down societal discrimination (against prisoners) by advancing equality of opportunity for those who have been in custody. Case studies, positive examples and further workshops (with employers, the SG or others) will serve to further advance the agenda.

### Positive Impacts

- There are existing constraints around the separation of prisoner groups within the prison regime including in work-based activities e.g. male / female, protected prisoners from mainstream, Young Offenders separated from older prisoners. Enterprise and Employment would like to see a normalisation of work based activity with some risk assessed mixing in the work areas (mirroring work conditions in the community).
- Some prisoners may wish / need to engage in work on part-time basis alongside other programmes or education either as part of their case management asset based development or as a consequence of Age or Disability affecting their ability to work.
- Upholds Human Rights Article 4 - Prohibition of slavery & forced labour (e.g. safeguarding vulnerable people) the aim to provide a mixed economy of employability options.
- Foster good relations by improving engagement by offenders in their case management where work has a stronger sense of purpose and increased evidence of positive outcomes being achieved for those that engage (i.e. prisoners not just working for the sake of out-of-cell statistics but for a real employer, learning meaningful skills that have an external value and which can lead to employment for some).

### Negative Impacts

Protected characteristics affected: Age, Race, Human Rights

Impact	Mitigation
<ul style="list-style-type: none"> <li>• Individual prisoners need to be physically capable of engaging in work – age related capacity (recognising that the prison estate includes some prisoners over the retirement age), disability (physical or mental), etc. Access could also be difficult for offenders who are unable to work because of learning difficulties, or Foreign Nationals (non-English speaking).</li> <li>• Prisoners with low levels of prior learning (literacy and numeracy) may also need to develop such skills as part of being ready to work. Equally those with specific health issues (e.g. drug dependency) may require intervention and a period of stability prior to being ready to engage with work.</li> <li>• There are pre-existing constraints around available work-spaces or types of work available in each prison – these constraints may continue to apply.</li> </ul>	<p>The asset based approach, assessments and screening tools should identify areas of risk and opportunity to engage. The enterprise and employability workstream will also seek to develop outcomes that recognise these needs in so far as reasonable adjustments or additional training can accommodate this in a work context. Some reasonable workplace adjustments may be necessary on case by case basis.</p> <p>Prison staff are trained to encourage prisoners to engage. Healthcare and Learning staff will have a similar supportive or intervention based role.</p> <p>enterprise and employability will seek to develop the range of work based opportunities available in prison. The profile of work-spaces will be mapped and due consideration given to how any changes through enterprise and employability affect accessibility</p>

## Negative Impacts

Protected characteristics affected: Age, Race, Human Rights

- There are existing operational constraints which lead to the separation of prisoner groups within the regime including in work-based activities e.g. male / female, protected prisoners from mainstream, Young Offenders separated from older prisoners. These constraints may exist and persist for operational reasons.

- Socio-economic factors – prisoners liberated back to the community from which they came (this environment may not be conducive to sustaining work and a work ethic).

- The nature of some offences (sexual) and associated Licence or supervision requirements following liberation will affect the potential employability of some individuals along with their ability to access some types of work.

The artificial separation of prisoners by gender and age exists in part due to the prison regime and also to ensure the safety of individuals in custody. This separation does not exist in work in the community. Prisons will be encouraged to review how all prisoners can be integrated in work activities (subject to appropriate security and operational measures).

Prison staff will be trained to support and continue asset-based plan in the community e.g. Throughcare Officer following prisoners progress into identified post liberation employment and providing initial support.

SPS develop information for potential employers explaining the risk management and prisoner progression processes leading to individual being assessed as ready for work or external work.

Human Rights Article 4 - Prohibition of slavery & forced labour

- Work in Scottish prisons is neither forced nor enforced to the extent that there has been any serious challenge based on alleged breach of Article 4. Nonetheless there is a line of argument by some campaigning organisations and individuals that prison work, with the expectation of attendance, coupled to the level of Prison Wage remuneration provided to prisoners, is by its nature exploitative.

- Prison 'work' is not employment. It is clear from the Prison Rules 2011 that 'work' is considered a 'purposeful activity' rather than a form of employment. This is based on its inclusion under Rule 84 and the intention around the provision of work being that of rehabilitation of the offender and to develop the individual's skills which may strengthen their employability prospects post-release.

- Prisoners are also exempted from UK Minimum wage legislation (Section 45 of the National Minimum Wage Act 1998).

- The SPS Prisoner Wage Earning Policy (SPS Notice 55A dated 08 Oct 2012) provides scope for weekly 'earned income' for prisoners engaging in purposeful activity including work based activity of between approx £10-£25 per week. All prisoners who are required to work or join in other activities instead of work, such as education, are expected to attend the activity.

- The 'exploitation' argument is not new or exclusively relevant to the proposed enterprise and employability workstream i.e. it could apply equally to prisoners engaged in SPS led prison industry activity, current work-placements, or to any private sector activity where the outcome of the work may be sold for profit.

- The enterprise and employability workstream therefore needs to establish a clear counterpoint and evidence from each work based engagement how the activity has supported the prisoners who engage to strengthen their skills, qualifications and post-release employability prospects

### Negative Impacts

Protected characteristics affected: Age, Race, Human Rights

thereby also breaking down some of the socio-economic disadvantage and barriers to employment that currently exist for those who have been in custody.

### Recommended course of action

**Outcome 1:** Proceed – no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.



**Outcome 2:** Proceed with adjustments to remove barriers identified for discrimination, advancement of equality of opportunity and fostering good relations or breach of human rights articles.



**Outcome 3:** Continue despite having identified some potential for adverse impact or missed opportunity to advance equality and human rights (justification to be clearly set out).



**Outcome 4:** Stop and rethink as actual or potential unlawful discrimination or breach of human rights articles has been identified.



### Summary of Outcome decision and Recommendations

There is no identified potential for unlawful discrimination or adverse impact or breach of human rights articles. The enterprise and employability workstream seeks to ensure that that work based activities (whether provided by SPS or partners) should be accessible to all prisoners who are at a stage in their sentence, personal progression and employability pipeline of being ready for work, or capable of work (the latter may be part or full time). The SPSs' evolving asset-based case management will provide the platform to enable more effective referrals into relevant work based activities. The enterprise and employability workstream and momentum that SPS seeks to build from engaging with external employers to work in prisons or to work with offenders will also start to address societal perceptions and discrimination about employing those who have been in custody.

This aligns with National Outcomes and the aspirations of the Ministerial Group on Offender Reintegration (MGOR) and Scottish Government which is promoting wider engagement of ex-prisoners by employers in the private, public, or third sectors. In building links with employers who are receptive to working with prisoners in custody and engaging / employing some of individuals following liberation, we will be advancing equality of opportunity for those who have been in custody.

### Next steps

SPS will continue to progress the enterprise and employability workstream to develop the strategic and sectoral relationships which will support the development of in-prison work led by SPS or selected partners. The work based activities being accessible to all prisoners who are at a stage in their sentence, personal progression and employability pipeline of being ready for work, or capable of work (the latter may be part or full time).

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