

# Equal Opportunities in Employment

**This document outlines the Scottish Prison  
Service Policy in relation to Equal  
Opportunities in Employment**

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**Unlocking Potential. Transforming Lives.**



**Policy Number:**

**HR020/v001**

**Directorate Owners:**

**Corporate Services, Human Resources**

**Policy Scope:**

**All SPS Employees and Job Applicants**

**Links to Other Policies:**

**Whistleblowing Policy**

**Dignity at Work Policy**

**Grievance Policy**

**Recruitment Policy**

**Civil Service Commissioners Recruitment Principles**

**Performance Management Policy**

**Staff Health and Wellbeing Notice**

**SPS Equal Pay Statement**

**Approved by:**

**Head of Human Resources**

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## 1.0 Introduction

The Scottish Prison Service (SPS) is committed to creating a culture where equality of opportunity, diversity, and human rights are actively promoted and where unlawful discrimination is not tolerated.

This policy sets out the SPS approach to equal opportunity in employment.

This policy has been developed and agreed in Partnership with the SPS Trade Union Side (TUS) and the Prison Governor's Association Scotland (PGA(S)). This policy will not form part of any employee's contract of employment and may be amended by SPS at any time in Partnership.

This policy should be read alongside the: [Equality, Diversity and Human Rights Statement](#), and [Dignity at Work Policy](#).

## 2.0 Aim

The aim of this policy is to:

- promote a culture where all individuals receive fair and equal treatment in all aspects of employment while embracing the benefits of working within a diverse workforce;
- ensure that existing employees, and those who apply to work with SPS, are judged solely on merit by reference to their skills, abilities, qualifications, aptitude and potential;
- ensure that colleagues and their trade union representatives are provided with appropriate forums to discuss equality, diversity and human rights issues and given the opportunity to raise any concerns.

## 3.0 Policy Statement

Equality of opportunity in employment is fundamental to the vision and values of SPS.

SPS is committed to promoting equal opportunities in employment, where colleagues and any job applicants will receive equal treatment regardless of their sex, gender identity, marital and civil partnership status, pregnancy and maternity, race (including ethnic or national origin, nationality or colour), disability, sexual orientation, age or religion and belief and regardless of other characteristics such as: social

background, patterns of work, trade union activity or political opinion (this is qualified as per the [Civil Service Management Code](#), Section 4.4).

SPS recognise that an effective equal opportunity policy will help all employees to develop to their full potential, which is clearly in the best interests of both employees and the SPS. SPS aim to ensure that they not only observe the relevant legislation but also do whatever is necessary to provide genuine equality of opportunity.

SPS recognise that respect for human rights in the workplace can also help to attract and retain the best staff and improve productivity and performance.

SPS recognise the benefits of employing individuals from a range of backgrounds, as this creates a workforce where creativity and valuing difference in others thrive. SPS value the wealth of experience within the community in which they operate and aspire to have a workforce that reflects this.

SPS seek to ensure that no one suffers, either directly or indirectly, as a result of unlawful discrimination. This extends beyond the individual's own protected characteristics, to cover discrimination by association and by perception.

## 4.0 Scope

This policy covers all aspects of recruitment and employment including pay and conditions, training, performance management, promotion, conduct at work, grievance and complaint procedures, and the termination of employment.

This policy applies to all who work within the SPS, regardless of their employment status. It includes members of staff working within SPS on behalf of other agencies and those on secondment to SPS.

## 5.0 Definitions

For simplification of this document the following terms and definitions apply:

- **Equal Opportunity** – this means treating people according to their needs, sometimes more favourably than others, to ensure they have equality of opportunity to fulfil their potential. It involves:
  - removing or minimising the disadvantage suffered by people due to their protected characteristics;
  - taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people;

- encouraging people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.
- **Positive Action** – action which an employer can take if there is evidence that employees or job applicants:
  - are at a disadvantage because of a protected characteristic; and/or
  - are under-represented in the organisation, or whose participation in the organisation is disproportionately low, because of a protected characteristic; and/or
  - have specific needs connected to a protected characteristic.

Positive action can include taking proportionate steps to remove any barriers or disadvantages, or providing support, training and encouragement to increase the participation of people with a particular protected characteristic.

Positive action can also be used as a ‘tie breaker’ during recruitment or promotion. In situations where there are two or more candidates who have scored the same following a fair and merit-based assessment process, and one shares a particular protected characteristic, an employer can use that protected characteristic as the ‘tie breaker’ **only** if there is evidence that people who share that protected characteristic:

- experience disadvantage related to that characteristic in the workplace; or
- are disproportionately under-represented in the workforce or the particular job where there is a vacancy.

Positive action is not the same as positive discrimination, which is unlawful. Positive discrimination is selecting an individual solely on the basis of their protected characteristic, where there is no evidence that the individual is the most suitable candidate for the vacancy, or there is no evidence that people who share that protected characteristic experience disadvantage or are underrepresented in the organisation. SPS does not practice or endorse positive discrimination.

## 6.0 Roles and Responsibilities

### Executive Management Group

Has overall responsibility for the effective operation of this policy and for ensuring compliance with relevant legislation.

## Director of Corporate Services

Has responsibility for the development and review of this policy, in Partnership, including:

- Ensuring the effective implementation of the policy through senior and line managers;
- Developing appropriate training to ensure all staff are aware of and understand their rights and responsibilities;
- Taking reasonable steps to gather and monitor information on the relevant protected characteristics of job applicants and those who work in the SPS, analysing this information and using it to advance equality of opportunity.

## Governors and Managers

Have the responsibility to:

- Implement this policy, including creating an environment which advances equality, values diversity and places human rights at the heart of all decisions, in particular (but not limited to) recruitment and selection, training and development, discipline and grievance;
- advance equality of opportunity in their areas of responsibility on a day-to-day basis, ensuring that staff, whether SPS employees or not, within their business areas are aware of and understand this policy;
- take action to challenge and address any act or failure to act which could result in unlawful inequality of opportunity;
- recognise that everyone has different needs, and it may be necessary to treat individuals differently in order to ensure equality of opportunity;
- maintain confidentiality of sensitive personal data in accordance with data protection legislation;
- support and implement reasonable adjustments where needed for disabled individuals;
- conduct Equality and Human Rights Impact Assessments to ensure that policies and procedures give suitable consideration to the need to advance equality of opportunity and ensure human rights are upheld;
- contribute to the monitoring, evaluation and reporting of equality, diversity and human rights work in SPS;
- ensure that information is communicated in a way which promotes accessibility and inclusiveness.

## Employees

Have the responsibility to:

- co-operate and comply with this policy to ensure equality of opportunity;
- not discriminate in the course of their duties or encourage others to do so;
- take action to challenge any act or failure to act which could result in unlawful inequality of opportunity.

## 7.0 Types of Unlawful Discrimination

### Direct Discrimination

Direct discrimination occurs when a person treats another person less favourably than they would treat others because of a protected characteristic. Direct discrimination is generally unlawful except:

- where there is an occupational requirement for a person to have a particular protected characteristic, e.g. a requirement for an imam to be Muslim. [The Occupational Requirements guidance](#) document provides further details;
- in relation to disability, as the law allows disabled people to be treated more favourably than non-disabled people;
- in relation to age, where the less favourable treatment is justifiable as being a proportionate means of achieving a legitimate aim, e.g. not employing under-18s as prison officers, adjusting redundancy payments on the basis of age.

In the case of women who are pregnant or on maternity leave, the test is not whether the woman is treated worse than someone else, but whether she is treated unfavourably from the time she indicates she is pregnant to the end of her maternity leave (equality law calls this the protected period) because of her pregnancy, a related illness or because of maternity leave.

### Discrimination by Association

Discrimination by association is where a person is directly discriminated against because of a relevant protected characteristic of a friend, spouse, partner, parent or another person with whom they are associated.

### Discrimination by Perception

Discrimination by perception is where a person is directly discriminated against because others think they have a relevant protected characteristic when in fact they do not.



## Indirect Discrimination

Indirect discrimination happens when there is a provision, criterion or practice that applies to everyone but which particularly disadvantages people who share a relevant protected characteristic. Indirect discrimination may be justified if it can be shown that the rule, policy or practice is intended to meet a legitimate objective in a proportionate way.

## Discrimination Arising from a Disability

Disability discrimination occurs when a disabled person is treated unfavourably because of their disability or something connected to it. This treatment will only be considered as discriminatory where it cannot be objectively justified and where the employer is aware (or ought reasonably to be aware) of the disability.

The treatment of the disabled person does not need to be compared to another disabled person, or to a non-disabled person, to establish discrimination arising from a disability. It is enough that the person was treated unfavourably and that this treatment was connected to their disability.

## Failure to Make Reasonable Adjustments

Failure to make reasonable adjustments is where a provision, criterion or practice, a physical feature or the absence of an auxiliary aid puts a disabled person at a substantial disadvantage and reasonable adjustments are not implemented to enable the disabled person to overcome the disadvantage.

# 8.0 Equal Opportunities in Employment

## 8.1 Recruitment and Selection

SPS aims to ensure that:

- their recruitment practices are free from unlawful discrimination. Except where an occupational requirement applies, all vacancies are open to eligible individuals (subject to Civil Service Recruitment Principles), regardless of their protected characteristics or background;
- applications are encouraged from candidates from a diverse range of backgrounds;
- where protected characteristics are suggested in the application or selection process, these do not determine in any way the success or otherwise of the applicant;
- reasonable adjustments are made for disabled applicants at all stages of the recruitment process;

- disabled applicants meeting the minimum criteria for the job who have indicated that they wish to participate in the guaranteed interview scheme, will in all cases be shortlisted for inclusion within the selection process. A disabled applicant's suitability for a post will be considered taking into account any reasonable adjustments that they would require in the post;
- questions about health, disability or absence will not be asked prior to an offer of employment unless relating to intrinsic aspects of the post; or to reasonable adjustments to the recruitment process; or for the purposes of equalities monitoring;
- Job descriptions and person specifications will be reviewed to ensure that unlawfully discriminatory criteria are not applied, and that no conditions or requirements are imposed that cannot be objectively justified by the demands of the post.

## 8.2 Career Development and Training

SPS aims to ensure that:

- all employees receive the widest possible range of development opportunities for advancement in line with business needs, without unlawful discrimination;
- employees are encouraged to discuss their career prospects and their training and development needs with their line manager regularly and through their performance management processes;
- opportunities for development and training will be communicated and made available to everyone, including those absent from work, on a fair and equal basis, with selection for training free from unlawful discrimination;
- SPS training modules, reference manuals, training materials and methods of delivery will be updated and reviewed to ensure they are compliant with this policy.

## 8.3 Pay, Benefits and Terms and Conditions

SPS is committed to:

- equal pay, ensuring that men and women on full-time or part-time employment have a right to 'no less favourable' pay, benefits and terms and conditions where they are doing equal work – 'equal work' means 'like work', 'work rated as equivalent' and 'work of equal value';
- extending the principle of equal pay to other protected groups, and taking steps to ensure that there is no pay gap linked to any protected characteristics that is not objectively justifiable;

- monitoring pay statistics and publishing reports on a regular basis and taking appropriate remedial action in areas of non-compliance, in partnership with the Trade Union Side;
- ensuring that terms and conditions of employment do not unlawfully discriminate on the grounds of any protected characteristics either in their design or their implementation in practice;
- understanding the diverse needs of employees by conducting Equality and Human Rights Impact Assessments, and through consultation with recognised trade unions and staff equality and diversity networks.

## 8.4 Working Hours and Flexible Working

SPS recognises the value that flexible working can bring both to employees and to the business. SPS is committed to supporting requests to work flexibly where this is operationally feasible and in line with business need.

All employees with more than 26 weeks' continuous service will have the right to request flexible working under the SPS [Flexible Working Policy](#).

Any employee, regardless of service, may request flexible working as a reasonable adjustment for their disability, separate from the Flexible Working Policy.

## 8.5 Disciplinary, Dismissal and Retirement

SPS will have in place disciplinary procedures which operate free from unlawful discrimination, and will not unlawfully discriminate when dismissing an employee for any other reason, or in procedures for employees' retirement.

In the case of disabled employees, SPS will not discriminate directly or indirectly, nor will they treat disabled employees unfavourably for reasons connected to their disability where such treatment is not proportionate and objectively justified. Reasonable adjustments will be made for disabled employees where such adjustments would prevent the employee from experiencing disadvantage.

SPS does not operate a default retirement age.

Decisions on the grounds of ill-health are taken seriously: SPS will explore all options in consultation with the employee and with expert medical advice, making reasonable adjustments to enable the employee to continue working wherever possible.

## 9.0 Assessing Impact

SPS will consider relevant evidence in order to understand whether their employment policies and practices contribute to upholding human rights for all, and to advancing equality of opportunity between those who share a protected characteristic and those who do not.

SPS recognise that impact assessment is not an end in itself but an important part of policy and decision-making, enabling them to take effective action on equality, develop better policies and practices based on evidence, and be more transparent and accountable.

For transparency, results of impact assessments will be published on the SPS intranet site, and also on the external SPS website.

## 10.0 Monitoring

SPS has a duty to gather, analyse and use employment equality information on the recruitment, retention and development of employees. SPS will gather information about the composition of job applicants and our workforce by protected characteristic, and use this information to eliminate discrimination and other prohibited conduct, advance equality of opportunity between people who share a protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not.

Analysis of this data will identify key equality issues in the entire employment journey, and action that can be taken on statistical trends to ensure that SPS' equality policies work as intended. SPS will take lawful action, including positive action where appropriate, to ensure that all employees and prospective employees experience equality of opportunity.

SPS will seek to involve staff diversity networks and trade union partners in the analysis of equality monitoring information and in any action planning that may result. The SPS' aspiration is to increase their capacity to monitor equality information, and will seek to improve their monitoring to ensure that they can use this to help advance equality across the service.

The information will be published as part of SPS' Public Sector Equality Duty.

SPS (and anyone else processing data on their behalf) will treat equality monitoring information as strictly confidential. Equality monitoring reports will always be anonymised and data will never be published in a manner which could identify individuals.

Equality monitoring data and the results of any analysis are never used for any decision-making process related to recruitment or selection, promotion, performance management, training or disciplinary proceedings.

## 11.0 Complaints

Any employee who believes that they have been treated less favourably in the course of their employment, due to a protected characteristic or for any other unacceptable reason, is encouraged to raise the matter with their line manager or, if not possible or appropriate, their second line manager.

SPS will treat any complaint about less favourable treatment seriously.

Anyone who raises a complaint, in good faith, around less favourable treatment will not suffer any form of detriment for having brought the complaint.

An attempt should be made to resolve the issue informally before a formal complaint is made, unless the issue is of such a serious nature that it is not possible and/or appropriate to resolve informally.

If attempts to resolve matters informally have been unsuccessful, an employee is entitled to make a formal complaint.

To avoid duplication for the benefit of all concerned, formal complaints regarding breaches of this policy will be dealt with as formal grievances under the [SPS Grievance Policy](#).

## 12.0 Advice and Support

Advice and support is available from:

- line managers, or any manager;
- local HR teams;
- Trade Union representatives;
- relevant policy owners e.g. Resourcing Team for recruitment practices;
- the Equality and Diversity Team at HQ. Since responsibility for implementation of this policy lies with managers, the E&D Team is not able to deal with or resolve matters, but can provide signposting to appropriate ways to raise a matter, and avenues of support;
- [‘help’ SPS Employee Assistance Programme](#) – ‘help’ have a confidential support line which is open 24 hours a day, 7 days a week, 365 days a year.

They can provide advice and guidance on a range of matters including discrimination at work and unacceptable behaviour. To contact 'help' visit <https://sps.helpeap.com/> or call 0800 854 562, quoting the unique code: 'SPS';

- the [Equality Advisory Support Service \(EASS\)](#) advises and assists individuals on issues relating to equality and human rights;
- the [Equality Human Rights Commission](#);
- [ACAS \(Advisory, Conciliation and Arbitration Service\)](#) provides free and impartial information and advice on all aspects of workplace relations and employment law.

## Further Information:

The SPS recognises that from time to time employees may have questions or concerns relating to Equal Opportunities in Employment. In certain situations employees' rights and obligations regarding Equal Opportunities in Employment may change. In these circumstances the SPS will abide by any statutory obligations.

The SPS wishes to encourage open discussion with employees to ensure that questions and problems can be resolved as quickly as possible. Employees are encouraged to seek clarification on any issues with the appropriate Line Manager in the first instance.

## Sustainability

Improving our environmental performance and doing things in a more sustainable way should be seen as integral to our core business practices.

In line with the SPS Sustainable Policy and to demonstrate compliance with the Scottish Government's commitment to improving environmental and sustainable development performance, please be mindful if printing this document – keeping paper usage to a minimum (print only version), printing on both sides, and recycling.

## Equality Statement

The SPS is an equal opportunities employer where all employees are treated with dignity and respect. We are fully committed to equality, diversity and human rights and to ensuring our culture, working environment, policies, processes and practices are free from bias. This policy applies to all employees regardless of protected characteristics, and, subject to any eligibility criteria, length of service, grade, working pattern or operational status.

## Inclusive Communications

It is our ambition to ensure that SPS documents are readable, accessible and engaging for employees.

In formatting this document, good practice principles around engagement and inclusive communications have been adhered to.

If you require this document in an alternative format please contact Human Resources.

## Review and Monitoring

This policy will be reviewed every three years or sooner where applicable to reflect changing business and legislative requirements.

## Human Resources Policy and Guidance in SPS

SPS policies take into account current legislation, rules, regulations and best practice guidance from a range of professional and public bodies, including the following:



UK Civil  
Service  
Management  
Code



UK Legislation



EU  
Legislation



ACAS



CIPD Best  
Practice