

Equality and Human Rights Impact Assessment (EHRIA) Template



To be completed by the person leading the EHRIA	
Title of Policy or Practice:	Secondary Employment
Lead Author/Reviewer:	Michele Watson
Date EHRIA Commenced:	23/09/2019
Version number:	1
Date EHRIA Completed:	
Date New/revised policy/practice signed off by Management:	2019
Date EHRIA actions due for review on:	

Revision History			
Revision Date	Version	Summary of Changes	Authoriser

For official use only by the Equality and Diversity Team	
EHRIA Tracker Number:	
Quality Assessor name:	
Date Quality Assessed:	
Publication date:	

Remember! When completing the Equality and Human Rights Impact Assessment 'policy/practice' must be interpreted in the widest possible sense to include the full range of SPS policies, provisions, criteria, functions, procedures, practices and activities for employment and service delivery.

Stage 1: Background information

What is the title of the new or revised policy/practice?

Secondary Employment Policy

What is it?

A new policy/practice

A revised policy

Are there any other SPS policies that will be altered by the proposed changes?

If so they will also need to be impact assessed separately

Yes (Please provide details)

No

Who is leading the developing and/or implementing the new or revised policy/practice?

This is the person who should lead the impact assessment as they are the decision maker for the changes to be implemented.

Name	Michele Watson
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Role	Employee Relations & Reward Manager
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Business Area	ER&R
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Who else is involved in the Equality and Human Rights Impact Assessment?

Those involved must have a detailed understanding of the policy/practice area and must be in a position to ensure that changes can be made to a developing policy/practice where they are required. It is advisable to seek the support of an Equality & Diversity Manager or practitioner for expert input. The Trade Union Side should be involved in support of the SPS Partnership agreement. Add additional boxes as necessary.

Name	Phil Thomson
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Role	Trade Union Side Secretary
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Business Area	TUS
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Name	Ian Scott
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Role	Branch Executive Committee Chair
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Business Area	TUS
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Name	
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Role	
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Business Area	
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Name	Kate Skibtschak
Role	HRBP Corporate Services
Business Area	HR
Name	
Role	
Business Area	

Stage 2: Scoping and evidence gathering

Scoping	
Why are you introducing the new policy/practice, or why are you revising an existing policy/practice?	The Policy is being reviewed as per the 3 year review Schedule.
What is the intended outcome(s) and impact of the new policy/practice, or making the changes to an existing policy/practice?	<p>To review the existing Policy and bring in line with best practice. Provide updated clarification of policy and practice for staff and managers.</p> <p>The revised policy seeks to ensure that employees are aware of their Article 10 rights and restrictions, as well as positively supporting staff from lower economic brackets to undertake secondary employment if they wish to.</p>

Evidence gathering
WHO did you consult with? SPS TUS and Management SPS HQ Equality Team
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? How did it shape your policy/practice?
The following legislation was considered when reviewing the current policy:

- Maximum Weekly Working Hours ☐
- The Working Time Regulations (1998) ☐
- The Working Time (Amendment) Regulations 2003 ☐
- The Health & Safety at Work Act 1974
- THE SPS Payment for Working Additional Hours Policy
- Staff Attendance System Working Arrangements; Code of Practice Revision #4

Specific to the above legislative considerations are:

The Working Time Regulations 1998 contain provisions relating to hours of work, rest periods, night working and annual leave.

The Working Time Regulations 1998 provide that employers may not oblige their employees to work more than an average of 48 hours per week. Although individuals may, on a voluntary basis, opt out of this provision by signing a document to indicate that they are willing to work more than 48 hours a week on average, the employer may not compel or pressurise any individual to do so. The average is measured in most cases over a rolling 17-week reference period.

SPS does not ordinarily ask employees to opt-out of the 48 hour week. However, consideration will need to be given to this when deciding on whether or not to authorise a request for Secondary Employment, as SPS do have a duty to comply with statute law.

Although the Working Time Regulations 1998 do not contain specific provisions covering workers with more than one job, reg. 4(2) requires employers to take all reasonable steps, in keeping with the need to protect the health and safety of workers, to ensure that workers adhere to the 48-hour limit.

Under the Working Time Regulations, workers are entitled to 11 consecutive hours' rest in any 24-hour period, a 20-minute break if the working day is longer than six hours, and two full days off per fortnight. Workers cannot waive these rights in their contracts and whilst the Regulations don't clearly stipulate that an employer is obliged to monitor if rest breaks are observed across jobs, the commercial, health and safety, and personal injury risks of not doing so still exist

[Barber and others v RJB Mining \(UK\) Ltd \[1999\] IRLR 308 HC](#). The employer acted in breach of employees' contracts by permitting them to work more than an average of 48 hours per week in the absence of any opt-out agreements having been signed by the employees.

[Arriva London South Ltd v Nicolaou EAT/0293/11](#). The EAT held that a worker who had not opted out of the 48-hour working week did not suffer detrimental treatment when his employer refused him the opportunity to work voluntary overtime on a rest day.

Ref; XpertHR

WHAT did you learn from your evidence-gathering exercises?

The SPS need to encourage employees to disclose information about their other jobs, as SPS has a duty of care to ensure all employees comply with the WTR and that sufficient steps can be taken to protect the Health & Wellbeing of SPS employees. By ensuring that they do not work more than an average of 48 hours per week. SPS requires all employees to seek permission to have secondary employment – it could be a disciplinary matter if they fail to do so. If an employee has more than one job then both employers are responsible for enforcing the 48 hr working week.

Employees who request to work a second job are at risk of breaching the Working time regulation in terms of the average 48 hour week as well as daily and weekly rest periods.

SPS are responsible for keeping track of employees' hours for both employers not just for work carried out for SPS, to ensure there is not breach of legislation. An employee consenting to sign an opt-out agreement will prevent a breach in legislation and provide more flexibility to the employee to do additional hours at a secondary job, although hours would still need to be monitored to ensure their health & wellbeing. Introducing a cap on the number of hours an employee can work in a secondary role would also reduce the risk.

Consideration also needs to be given to other SPS policies when considering a request for secondary employment, regarding banked hours and TOIL and their impact on both the employees' hours and rest periods who makes a request for secondary employment.

The information below details the diversity statistics for the Scottish Prison Service as of 30 March 2019.

Overall there is a higher proportion of males (3073) than females (1403) employed within the Scottish Prison Service. Over 50% of our employees have not provided any information on sexual orientation. Of those whose sexual orientation has been recorded the majority are heterosexual/straight. There are less than 80 employees who have recorded gay, lesbian, bisexual or other, which equates to less than 2% of the overall workforce. This is a larger percentage than the percentages reported in national statistics. The Scottish Household Survey 2014 indicated that 1% of the Scottish population stated they were gay, lesbian, bisexual or other. Historically the numbers of females working in the Operational pay bands has been low, however recruitment and promotion activities are providing opportunities for females to progress.

Nearly half of our employees have not provided any information on ethnic origin. Of those whose ethnic origin has been recorded, the highest proportion indicate their ethnicity to be White Scottish. Overall less than 70 employees have advised they are from an ethnic background, however with the numbers of "Not Advised" and "Prefer Not to Disclose" representing a significantly large proportion of the staff group, we are unable to confirm exact numbers of employees from an ethnic background.

In terms of full-time to part-time split, there are higher numbers of male part time workers, due in part to the workforce profile that demonstrates significantly higher numbers of males employed within the Scottish Prison Service. Further analysis indicates that the numbers of males (346) who work part time are within the higher age bracket and are reducing their hours to undertake partial retirement, whereas the majority of females (195) who work part time do so for caring responsibilities.

Ref: SPS Mainstreaming Gender Pay Gap

HOW will this shape your policy/practice?

The policy aim needs to be to cultivate an environment where employees feel comfortable discussing other work openly and SPS should check (with the employees consent) the employees secondary employment contractual obligations in terms of hours of work, daily and weekly rest periods.

SPS will need to give consideration of providing an adequate system to track hours worked and weekly/daily rest periods provide by the employee.

If an employees' secondary employment going to take their average hours over 48 hours per week, the employee could consent to signing an opt-out agreement. Alternatively, the employee would need to agree to cap their hours in their second job to remain within the Work Time Regulations.

The key is to ensure that a balance is kept which affords employees equal access – within the parameters of the Working Time regulations – to Secondary employment opportunities, should they wish to have these.

The above are all legitimate points for the policy review team to consider when reviewing this policy.

Stage 3: Identifying impact/outcomes

The Public Sector Equality Duty

In terms of the equality risk assessment for the employee journey including recruitment, retention, progression, promotion, training etc.

The impact and outcomes of the new/revised policy/practice will:

Contribute to eliminating discrimination, harassment and victimisation?
E.g.

POSITIVE:
It will contribute to eliminating discrimination, harassment, victimisation

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

Human rights	
Will the new/revised policy/practice breach the human rights articles? : Consider for people in custody in terms of the equality risk assessment of the prisoner journey with us which includes admission, residential care, establishment regime, health and wellbeing, through care, people in custody management, visits etc. Consider for staff in terms of the equality risk assessment for the staff journey with us which includes recruitment, retention, progression, promotion, training etc.	
Consider:	
European Convention on Human Rights	
Article 2	Right to life (e.g. suicide prevention)
Article 3	Prohibition of torture (e.g. person unable to consent)
Article 4	Prohibition of slavery & forced labour (e.g. safeguarding vulnerable people)

Human rights	
Article 5	Right to liberty & security (e.g. security procedures)
Article 6	Right to a fair trial (e.g. disciplinary procedures)
Article 7	No punishment without law (e.g. disciplinary procedures)
Article 8	Right to respect for private & family life (e.g. access to family)
Article 9	Freedom of thought, conscience & religion (e.g. sacred space)
Article 10	Freedom of expression (e.g. whistleblowing procedures)
Article 11	Freedom of assembly & association (e.g. trade union recognition)
Article 12	Right to marry (e.g. pregnancy)
Article 14	Prohibition of discrimination (e.g. protected characteristic groups)
Protocol 1 Article 1	Protection of property (e.g. staff/prisoner property)
Protocol 1 Article 2	Right to education (e.g. accessible information)
International Covenant on Economic, Social and Cultural Rights. Rights to: <ul style="list-style-type: none"> • Work in just and favourable conditions • Social protection • An adequate standard of living • The highest attainable standards of physical and mental health • Education 	
It will uphold human rights articles. <input checked="" type="checkbox"/>	
It will breach with human rights articles. <input type="checkbox"/>	

When considering all your responses to Stage 3 if you selected <u>POSITIVE</u>:	Please move on to stage 4 where you will be asked to provide details of the equality group(s) affected, the impact and evidence you considered.
When considering all your responses to Stage 3 if you selected <u>NEGATIVE</u>:	Please move on to Stage 4 where you will be asked to provide details of the equality group(s) affected and the impact and strategies to mitigate the impact to a reasonable level, or to remove the impact altogether.
When considering all your responses to Stage 3 if you selected for ALL areas <u>NO EFFECT</u>:	Please justify your conclusions here and move directly to Stage 5 .

Stage 4: Analysis of impact/outcomes

You have indicated that this new/revised policy/practice will have an impact/outcome on one or more of the 3 main duties of the Public Sector Equality Duty and Human Rights articles for people in custody or staff. Use these sections below to indicate whether the impact is positive or negative, and justify your assessment using the data and evidence you have already gathered (via statistics, consultation, etc.)

What are the positive impacts?

Does the new/revised policy or practice: Advance equality of opportunity? Remove discrimination? Remove harassment? Remove victimisation? Foster good relations? Encourage participation by disabled people? Uphold human rights articles?

Detail the positive impact here:

The policy is applicable to all SPS employees and encourages open dialogue between SPS and the employee to talk about other jobs and to find a workable solution to all requests where possible, whilst at the same time taking measures to protect the employees, health and wellbeing, regardless of sex, race, gender identity or religion.

Please select which group(s) will be affected by the positive impact, and provide details below each category:

Age (e.g. older people or younger people):

Who, How? What does it mean for younger people

This policy is applicable to all SPS employees regardless of age and provides the opportunity to do so.

Race (e.g. people from black or any minority ethnic groups):

This policy is applicable to all SPS employees regardless of race.

Gender (e.g. women or men):

Why will this have a positive impact

This policy is applicable to all SPS employees regardless of gender.

Disability (e.g. people with visible or non-visible disabilities, physical impairments):

This policy is applicable to all SPS employees regardless of disability.

Gender Identity (e.g. changed/changing gender from that assigned at birth):

Religion or Belief (e.g. belonging to a particular religion/belief or no affiliation):

This policy is applicable to all SPS employees regardless of religion or belief.

Sexual orientation (e.g. lesbian, gay, bisexual or heterosexual):

This policy is applicable to all SPS employees regardless of sexual orientation.

Maternity and Pregnancy (e.g. pregnant/on maternity leave/breastfeeding):

This policy is applicable to all SPS employees regardless of maternity and pregnancy.

Marriage and civil partnership:

This policy is applicable to all SPS employees regardless of marriage & civil partnership.

Socio-economic groups:

This policy provides the opportunity for those on lower incomes to boost their earnings and increase their standard of living.

Human rights compliance (e.g. civil, political, economic, social, and cultural rights):

This policy complies with employees human rights.

Inclusive Communications. What consideration have you given to the communication needs of those who will be impacted by your policy/practice, and what steps are you taking to ensure your policy/practice will be easily understood by them? For example, accessible formatting of document, alternative formats such as Plain English, Easy Read, foreign language translations, BSL translation, etc.

What are the negative impacts?

Does the new/revised policy or practice: Create any barriers or issues for people from an equality group? Discriminate against any equality group? Have a negative impact on community relations internally and/or externally? Reduce any equality groups' access to a service or any other aspect of prison life? Reduce any equality group entry or progression as a member of staff, breach human rights articles?

****Any aspect of the policy/practice that has a negative impact must either be mitigated to a reasonable, objectively justifiable level, or abandoned altogether if this is not possible****

Detail the negative impacts here:

Please select which group(s) will be affected by the negative impact, and provide details of the negative impact and how you will mitigate against it below each category:

Age (e.g. older people or younger people):

Race (e.g. people from black or any minority ethnic groups):

Gender (e.g. women or men):

Disability (e.g. people with visible or non-visible disabilities, physical impairments):

Gender Identity (e.g. changed/changing gender from that assigned at birth):

Religion or Belief (e.g. belonging to a particular religion/belief or no affiliation):

Sexual orientation (e.g. lesbian, gay, bisexual or heterosexual):

Maternity and Pregnancy (e.g. pregnant/on maternity leave/breastfeeding):

Marriage and civil partnership:

Socio-economic groups:

Human rights compliance (e.g. civil, political, economic, social, and cultural rights):

Stage 5: Identifying options and course of action

Recommended course of action: select relevant outcome and check the box when prompted:

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

Policy/practice addresses the intended outcome and is positive in its language and terminology. It advances equality and human rights as well as fosters good relations.

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 any other recommendations

Please provide summary here:

To review the policy making any changes necessary to comply with legislation prior to implementing revised policy. Particular consideration needs to be given to ensuring the health & wellbeing of SPS employees.

Outline plans to action and review the impact of the new/revised policy/practice.

- Note: any evidence that raises concern would trigger an early review rather than the scheduled date.
- Indicate if there is any data which needs to be collected as part of action to be taken and how often it will be analysed.
- Indicate how the person responsible will continue to involve relevant groups and communities in the implementation and monitoring of the new/changed policy/practice.

What:	Legislative Changes and patterns the show having a second job is detrimental to employees.
Why:	To protect health & Wellbeing of SPS employees and comply with legislation.
Who:	ER&R / TUS
When:	As required
Name of lead:	Michele Watson
Date:	01/10/2022