

# Police Service of Northern Ireland

HQ Ref: Diversity 01/2006/B

PD 04/06

## POLICY DIRECTIVE

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### EQUAL OPPORTUNITIES POLICY

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#### 1. POLICY IDENTIFICATION

**POLICY TITLE:** Equal Opportunities Policy

**POLICY OWNERSHIP:**

<b>DEPARTMENT</b>	Human Resources
<b>BRANCH</b>	Equality and Diversity

**POLICY APPROVED BY:**

<b>CCF REF/OTHER</b>	Chief Constables Forum - Ref: 06/06
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## **2. POLICY STATEMENT**

The purpose of this Policy is to ensure that, during the course of their employment, no police officer or member of police staff receives less favourable treatment or is discriminated against on the grounds of their sex, pregnancy or maternity leave, marital or civil partnership status, sexual orientation, race or ethnic origin, colour, religious belief (or similar philosophical belief), political opinion, national identity, age, disability or whether or not they have dependants.

The Police Service of Northern Ireland (PSNI) recognises that all police officers and members of police staff should be treated with respect and dignity in the workplace.

As such, the PSNI is committed to providing a working environment that is free from discrimination, victimisation, harassment, bullying and inappropriate behaviour.

Commitment to the principle of equal treatment also ensures that all police officers and members of police staff are given equal opportunity to develop their skills and abilities and to realise their full potential within the PSNI. It also ensures that all individuals are provided with equal access to opportunities for employment, promotion, training and development.

### **Job Applicants**

The PSNI welcomes applications from all suitably qualified candidates irrespective of their sex, pregnancy or maternity leave, marital or civil partnership status, sexual orientation, race or ethnic origin, colour, religious belief (or similar philosophical belief), political opinion, national identity, age, disability or whether or not they have dependants.

Applications from under-represented groups as identified through our monitoring framework are particularly welcome. As females, Roman Catholics and individuals from minority ethnic communities are currently under-represented in the PSNI, applications from these groups are particularly welcome. Appointments will be made based on the merit principle and where relevant, in accordance with the provisions of Section 46 of the Police (Northern Ireland) Act 2000.

Section 46 of the Police (Northern Ireland) Act 2000 states: "In making appointments under section 39 on any occasion, the Chief Constable shall appoint from the pool of qualified applicants formed for that purpose by virtue of section 44(5) an even number of persons of whom - (a) one half shall be persons who are treated as Roman Catholic; and (b) one half shall be persons who are not so treated."

The PSNI recruitment agent must be fully compliant with all relevant employment legislation and recruitment best practice when carrying out its duties under the terms of the outsourced arrangements.

The PSNI is an Equal Opportunities Employer.

## **3. INTRODUCTION**

### **(1) Executive Summary**

- (a) The aim of this Policy is to communicate the commitment of the Chief Constable and the Service to the promotion of equality of opportunity in the PSNI.
- (b) The Service recognises that all police officers and members of police staff, irrespective of their terms and conditions of service, should be treated with respect and dignity in the workplace and as such, the Service is opposed to all forms of unlawful and unfair discrimination.

- (c) To reinforce this commitment, the Service has revised its Service Procedure on Equal Opportunities and has produced a new Equal Opportunities Policy Directive and Equal Opportunities Statement which now extends to all police officers and police staff.

**(2) Origin**

This is the PSNI's Equal Opportunities Policy Directive.

**(3) Aims/Objectives**

The purpose of this Policy is to ensure that, during the course of their employment, no police officer or member of police staff is subjected to discrimination, harassment or victimisation on the grounds of their sex, pregnancy or maternity leave, marital or civil partnership status, sexual orientation, race or ethnic origin, colour, religious belief (or similar philosophical belief), political opinion, national identity, age, disability or whether or not they have dependants.

**(4) Application**

- (a) The Service is committed to the principle of equal treatment for all police officers, members of police staff, student officers, job applicants, agency workers, temporary workers and contractors (who together shall be referred to as 'police staff').
- (b) This Policy covers:
  - (i) Recruitment and selection - including arrangements for deciding who should be offered employment;
  - (ii) Access to benefits, including opportunities for appointment, promotion, transfer, training or any other benefits, or the refusal of those opportunities; and
  - (iii) The terms on which employment is offered.
- (c) Whilst the responsibility for providing equality of opportunity rests with the Chief Constable, all police officers and members of police staff have a personal and professional duty to ensure that the principles enshrined in this Policy Directive (and the attached Equal Opportunities Statement) are complied with in their day-to-day work.
- (d) As such, all police officers and police staff must:
  - (i) Read and comply with the terms of this Policy;
  - (ii) Support the Service in upholding the terms of this Policy and to establish and maintain good working practices;
  - (iii) Ensure that the terms of this Policy are adhered to in relationships with other members of the Service;
  - (iv) Notify an appropriate Manager or Supervisor if they feel they have been discriminated against or have witnessed such behaviour involving others.

- (e) The actions of all police officers are governed by the PSNI Code of Ethics and those of police staff by the Northern Ireland Civil Service (NICS) Handbook (encapsulating a Disciplinary Code and Code of Ethics). A failure by a police officer or member of police staff to carry out their duties under this Policy may, in appropriate circumstances, lead to disciplinary action being taken against them following due investigation and consideration of the circumstances.
- (f) The PSNI Code of Ethics (Article 1 – Professional Conduct; Article 10 – Duty of Supervisors) and the NICS Handbook place a particular emphasis on management and supervision on line managers of all ranks and grades. In addition, they have a particular duty to ensure all equality issues and matters of fair treatment are addressed in accordance with this Policy Directive.

**(5) Legal Basis**

- (a) In light of the Equal Pay Act (Northern Ireland) 1970 (as amended), the Sex Discrimination (Northern Ireland) Order 1976 (as amended), Race Relations (Northern Ireland) Order 1997 (as amended), Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended), Disability Discrimination Act 1995 (as amended), the Northern Ireland Act 1998, the Fair Employment (Monitoring) Regulations 1999, Equality (Disability, etc) (Northern Ireland) Order 2000, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 and the Sex Discrimination Order 1976 (Amendment) Regulations (Northern Ireland) 2008 the Service has recognised that the creation and implementation of such a Policy is in line with current best practice.
- (b) Section 75 of the Northern Ireland Act also places a statutory duty on the Service to have due regard to the promotion of equality and good working relationships internally and externally.
- (c) This Policy also takes into account the provisions of the Human Rights Act 1998.

**4. IMPLICATIONS OF THE POLICY**

**(1) Human Resources/Training**

- (a) The Service is committed to the development of good working practices and will seek to cascade and implement the terms of this Policy through awareness raising and appropriate training to all levels of staff. The Equality and Diversity Unit will arrange this training.
- (b) The Service also recognises that no Policy Directive or subsequent training will be of any value unless the effectiveness of the Policy and the implementation methods are regularly monitored in order to promote improvements both to the Policy terms and implementation methods. To this end, the Service will adopt appropriate monitoring methods to ensure effectiveness is reviewed regularly.

**(2) Internal Policy Links**

In addition to the provisions set out in the PSNI Code of Ethics and the NICS Handbook (encapsulating a Discipline and Code of Ethics) this Policy is supported by and linked to policies dealing with Bullying and Harassment, Service Grievance complaints and Disability Discrimination. It also relates to Codes of Practice/Guidance provided in reference to Racial Discrimination, Fair Employment, Confidentiality of Information, Neutral Working Environment and Appropriate Language in the Workplace and Wider Community.

**(3) Consultation**

- (a) This Policy has been formulated by a working party representing management, police officers and police staff including:
  - (i) The Police Federation for Northern Ireland (PFNI);
  - (ii) Northern Ireland Public Service Alliance (NIPSA);
  - (iii) Superintendents' Association of Northern Ireland (SANI);
  - (iv) Unite;
  - (v) The Labour Relations Agency (LRA);
  - (vi) The Amalgamated Transport and General Workers Union (ATGWU);
  - (vii) The Equality and Diversity Unit;
  - (viii) Professional Standards Department (PSD); and
  - (ix) PSNI Heads of Human Resources (HR).
- (b) This Policy was also distributed to the following Staff Associations and external agencies for comment:
  - (i) The Equality Commission for Northern Ireland;
  - (ii) The PSNI's Ethnic Minority Police Association (EMPA); and
  - (iii) The PSNI's Gay Police Association (GPA).

**5. HUMAN RIGHTS/EQUALITY/INTEGRITY/ FREEDOM OF INFORMATION**

- (1) Section 75 of the Northern Ireland Act 1998 places a statutory duty on the Service to have due regard to the promotion of equality and good working relationships internally and externally.
- (2) Human Rights/Code of Ethics
  - (a) This Policy provides a clear statement of commitment to Equality of Opportunity particularly with Article 14 (Prohibition of Discrimination) of the Human Rights Act. By communicating that commitment, providing definitions and referencing the supporting policies relating to dealing with equality of opportunity issues, eg Bullying and Harassment and Grievances this Policy supports the following Human Rights articles:
    - (i) Article 3 (Prohibition of Torture or to Inhumane or Degrading Treatment);
    - (ii) Article 6 (Right to a Fair Trial);
    - (iii) Article 9 (Freedom of Thought, Conscience and Religion);
    - (iv) Article 10 (Freedom of Expression).

- (b) The articles of the PSNI Code of Ethics set the ethical standards required of police officers. The statement of commitment and aims of this Policy directly engage with Article 6 (Equality); Article 1 (Professional Conduct) and Article 7 (Integrity). In addition the provisions of definitions and the reference to supporting policies, which set out procedures and guidance, link to and engage with:
    - (i) Article 2 (Investigation);
    - (ii) Article 3 (Privacy and Confidentiality of information etc);
    - (iii) Article 10 (Duties of Supervisors).
  - (c) The NICS Handbook in its Chapter on Conduct and Annexed Code of Ethics establish the principles of Integrity, Honesty, Objectivity, Impartiality, Political Impartiality and Rights and Responsibilities which equate with the PSNI Code of Ethics and relate to ensuring Equality of Opportunity.
- (3) This Policy is deemed to be Human Rights compliant; it has been screened for Section 75 considerations and meets integrity standards. This Policy is suitable for disclosure in accordance with the Freedom of Information Act 2000.

## **6. REVIEW**

- (1) The responsibility for the implementation, communication and monitoring of this Policy rests with the Equality and Diversity Unit, Lisnasharragh.
- (2) The Equality and Diversity Unit annually monitor and assess the impact of this Policy.
- (3) The next annual review will take place on or before 1 October 2009 and will be conducted by the Equality and Diversity Unit.
- (4) Equality of opportunity between men and women will be monitored through the collection and analysis of statistical data.
- (5) The Equality and Diversity Unit also monitors workforce composition and undertakes periodic reviews as required by Article 55 of the Fair Employment and Treatment (Northern Ireland) Order 1998.
- (6) This Policy is available in other languages, formats (eg Braille) and fonts upon request. Please contact the Equality and Diversity Unit on Extension 69575 or 69770 for further information.

## PROCEDURES AND GUIDANCE

### 1. PROCEDURE

- (1) There is no stand-alone procedure for dealing with breaches of this Policy Directive. However, behaviour or treatment of an individual which is contrary to the Equal Opportunities Policy, can constitute an element of other complaints – for example, where someone complains of Bullying and/or Harassment, a breach of Code of Ethics or a breach of the NICS Discipline Code – that behaviour or treatment may also be in breach of this Policy Directive.
- (2) Any behaviour or treatment of any police officer or member of police staff, which is held contrary to this Policy Directive, will be a disciplinary matter and must be dealt with by management according to the appropriate procedures for police officers (Code of Ethics) and members of police staff (NICS Discipline Code).
- (3) However, where there is an existing procedure for dealing with certain specific issues (eg a dissatisfaction with an annual appraisal or the unfair refusal of an appointment, transfer, posting or promotion etc) police officers and police staff must raise their appeal, objection or complaint etc using the appropriate complaints/appeals procedure (where one exists) as directed by the relevant department(s).
- (4) Police officers and police staff must specifically state, when lodging their appeal, objection or complaint, the grounds on which they are appealing (and where they feel that they have been discriminated against, the following additional information):
  - (a) precise details of the specific incident, discriminatory behaviour and/or less favourable treatment; and
  - (b) precise details of how that specific incident, discriminatory behaviour and/or less favourable treatment relates to their sex, pregnancy or maternity leave, marital or civil partnership status, sexual orientation, race or ethnic origin, colour, religious belief (or similar philosophical belief), political opinion, national identity, age, disability or whether or not they have dependants (ie the 'equality issue'); and
  - (c) the relationship between that 'equality issue' and the specific nature and basis of their appeal, objection or complaint etc.

#### **Example:**

Mark believes the reason he is not offered a post in another District is because he revealed at his interview that he is disabled and has difficulty in walking, bending and lifting heavy objects.

A few days after the interview, a colleague told him that he was not being offered the post because one of the interviewing panel commented "his sort wouldn't last too long up there."

Mark has appealed the decision refusing his appointment. He has appealed using the appropriate procedure and forms. He has also given precise details of the offending comment, when he heard it, from whom and on what dates. Mark believes he has been discriminated against on the grounds of his disability.

**NOT PROTECTIVELY MARKED**

He states on his appeal form that he believes he is not being offered this post because he is disabled.

He also states that his treatment is potentially in breach of the PSNI's Equal Opportunities Policy.

The Appeal Panel must seek advice from Mark's HR Manager, the Equality and Diversity Unit and Legal Services if appropriate and the original interview panel as part of Mark's appeal.

- (5) The individual handling the appeal, objection or complaint etc may seek guidance from the Equality and Diversity Unit, and Legal Services if appropriate, on the 'equality issue'. However, there should be sufficient information in the Equal Opportunities Policy for managers to determine, whether on the facts of the case, there is an 'equality issue' contained within the individual's appeal, objection or complaint etc.
- (6) If there is no existing mechanism for dealing with an individual's appeal, objection or complaint, police officers and police staff can use the **Service Grievance Policy** (Policy Directive 02/05) to seek resolution of their issue.
- (7) The manager handling the grievance may seek guidance from the Equality and Diversity Unit, and Legal Services if appropriate, on the 'equality issue'. However, there should be sufficient information in the Equal Opportunities Policy for managers to determine, whether on the facts of the case, there is an 'equality issue' contained within the individual's grievance.
- (8) Anyone who believes they have been bullied (or specifically, harassed on grounds of their sex, race, marital or civil partnership status, religious or political belief, disability, age or sexual orientation) must raise the matter either informally or formally using the **Service Bullying and Harassment Policy** (Policy Directive 01/05).
- (9) A formal complaint of Bullying and/or Harassment must be made following the procedure(s) set out in the Bullying and Harassment Policy.
- (10) If there is a formal complaint of **bullying (but not harassment)**, the Equal Opportunities Policy is not directly relevant because 'bullying' is non-specific to someone's sex, race, disability, sexual orientation, religion etc.
- (11) However, if there is a formal complaint of **harassment**, the Equal Opportunities Policy is directly relevant and the guidance notes in Appendix 'B' of this Policy Directive should be referred to for assistance.
- (12) The information gatherer and/or decision-maker handling the bullying/harassment complaint may seek guidance from the Equality and Diversity Unit, and Legal Services if appropriate, on the 'equality issue'. However, there should be sufficient information in the Equal Opportunities Policy for managers to determine, whether on the facts of the case, there is an 'equality issue' in the individual's grievance.
- (13) Anyone who is found to have committed an offence of bullying and/or harassment will face disciplinary action as set out in the Bullying and Harassment Policy.

**NOT PROTECTIVELY MARKED**

- (14) These internal procedures do not replace or retract from the right of police officers or police staff to pursue complaints under the Sex Discrimination (Northern Ireland) Order 1976, the Disability Discrimination Act 1995 (and subsequent amending legislation), the Race Relations (Northern Ireland) Order 1997, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005, or under the Fair Employment and Treatment (Northern Ireland) Order 1998, to a Fair Employment Tribunal.

## **2. INTERNAL LINKS**

This Policy Directive should be read in conjunction with the following related instructions:

- (a) Policy Directive PD 01/05 Bullying and Harassment Policy;
- (b) Policy Directive PD 02/05 Grievance Policy;
- (c) Policy Directive PD 07/06 Disability Discrimination Act – Management of All Staff - (Police Officers and Police Staff);
- (d) PSNI Code of Ethics;
- (e) Northern Ireland Civil Service (NICS) Disciplinary Code;
- (f) Policy Directive Disability Discrimination – Management of Serving Police Officers (to be issued);
- (g) PSNI Guide to Appropriate Language in the Workplace and Wider Community.

## **3. CANCELLATION**

Service Procedure No 7/2003 – Neutral Working Environment.

## **PSNI EQUAL OPPORTUNITIES STATEMENT**

The purpose of this Policy is to ensure that, during the course of their employment, no police officer or member of police staff receives less favourable treatment or is discriminated against on the grounds of their sex, pregnancy or maternity leave, marital or civil partnership status, sexual orientation, race or ethnic origin, colour, religious belief (or similar philosophical belief), political opinion, national identity, age, disability or whether or not they have dependants.

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Commitment to the principle of equal treatment also ensures that all police officers and members of police staff are given equal opportunity to develop their skills and abilities and to realise their full potential within the PSNI. It also ensures that all individuals are provided with equal access to opportunities for employment, promotion, training and development.

### **Job Applicants**

The PSNI welcomes applications from all suitably qualified candidates irrespective of their sex, pregnancy or maternity leave, marital or civil partnership status, sexual orientation, race or ethnic origin, colour, religious belief (or similar philosophical belief), political opinion, national identity, age, disability or whether or not they have dependants.

Applications from under-represented groups as identified through our monitoring framework are particularly welcome. As females, Roman Catholics and individuals from minority ethnic communities are currently under-represented in the PSNI, applications from these groups are particularly welcome. Appointments will be made based on the merit principle and where relevant, in accordance with the provisions of Section 46 of the Police (Northern Ireland) Act 2000.

Section 46 of the Police (Northern Ireland) Act 2000 states: "In making appointments under section 39 on any occasion, the Chief Constable shall appoint from the pool of qualified applicants formed for that purpose by virtue of section 44(5) an even number of persons of whom - (a) one half shall be persons who are treated as Roman Catholic; and (b) one half shall be persons who are not so treated."

The PSNI recruitment agent must be fully compliant with all relevant employment legislation and recruitment best practice when carrying out its duties under the terms of the outsourced arrangements.

The PSNI is an Equal Opportunities Employer.

GUIDANCE NOTES

Definitions

1. DISABILITY DISCRIMINATION

- (1) (a) The Disability Discrimination Act 1995 ('the DDA 1995') and subsequent amending legislation, makes it unlawful for employers to discriminate against current or prospective employees or workers who have a disability or who have had a disability in the past (as specified in the DDA 1995).
- (b) Police officers and police staff are asked to ensure they have read the Service Policy Directive (Disability Discrimination Act – Management of Serving Police Officers (to be issued)).
- (c) A disability is defined as 'a physical or mental impairment, which has a substantial and long term adverse effect on a person's ability to carry out their normal day-to-day activities.'

(2) Direct Discrimination

- (a) A person ('X') directly discriminates against a disabled person ('Y') if, on the ground of Y's disability, they treat Y less favourably than they treat or would treat a person not having Y's particular disability whose relevant circumstances, including their abilities, are the same as, or not materially different from, those of Y.
- (b) Direct (disability) discrimination occurs if:
  - (i) it is on the grounds of the disabled person's disability;
  - (ii) the treatment is less favourable than the way in which a person not having that particular disability is (or would be) treated; and
  - (iii) the relevant circumstances, including the abilities of the person with whom the comparison is made are the same as, or not materially different from those of the disabled person.
- (c) Direct (disability) discrimination can also occur where the Service fails to comply with their obligation to make 'reasonable adjustments' and that failure cannot be justified.
- (d) The duty to make reasonable adjustments arises where a provision, criterion or practice applied by or on behalf of the employer, or any physical feature of premises occupied by the employer, places a disabled person at a substantial disadvantage compared with people who are not disabled.

(3) Disability-related Discrimination

This is another form of unlawful discrimination.

- (a) A person ('X') discriminates against a disabled person ('Y') if, for a reason which relates to Y's disability, they treat Y less favourably than they treat or would treat other persons to whom that reason does not or would not apply and they cannot show that the treatment in question is justified.

- (b) To be able to justify the treatment in question, X must show that the reason for it is both material to the circumstances of the particular case and substantial. But, X will be unable to justify the treatment if it amounts to direct disability discrimination. In addition, X will be unable to justify the treatment if they have also failed to comply with the reasonable adjustment duty (see below) unless the treatment would have been justified even if X had complied with the duty.
- (c) **eg** Y is dismissed due to their high absence levels, which are disability-related. But X failed to make a particular reasonable adjustment to Y's working arrangements which would have helped Y to reduce their absence levels so that X would not, in that event, have dismissed Y.
- (d) In this scenario, due to their failure to make a reasonable adjustment which would have made a difference, X will be unable to justify dismissing Y.

(4) **Failure To Comply With The Reasonable Adjustment Duty**

This is another form of unlawful discrimination.

- (a) An employer ('X') discriminates against a disabled person ('Y') if they fail to comply with a duty to make reasonable adjustments imposed on them in relation to Y.
- (b) A failure to comply with the duty cannot be justified.
- (c) The reasonable adjustment duty is imposed on X where:
  - (i) **a provision, criterion or practice applied by or on behalf of X; or**
  - (ii) **any physical feature of premises occupied by X,**  
places Y at a substantial disadvantage in comparison with persons who are not disabled.
  - (iii) But, the duty will not be imposed where X does not know, and could not reasonably be expected to know, that Y is disabled and is likely to be placed at a substantial disadvantage by the provision, criterion, practice or physical feature in question.
  - (iv) The duty requires X to take such steps as it is reasonable, in all the circumstances of the case, to take in order to prevent Y being placed at a substantial disadvantage by the provision, criterion, practice or physical feature in question.

(5) **Victimisation** is also an unlawful form of discrimination under the Disability Discrimination Act.

- (a) It is unlawful for one person to treat another ('the victim') less favourably than they treat or would treat other people in the same circumstances because the victim has:
  - (i) brought or given evidence or information in connection with, proceedings under the Act (whether or not proceedings are later withdrawn);
  - (ii) done anything else under or by reference to the Act; or
  - (iii) alleged someone has contravened the Act (whether or not the allegation is later withdrawn); or because the person believes or suspects that the victim has done or intends to do any of these things.

- (b) It is not victimisation to treat a person less favourably because the person has made an allegation which was false and not made in good faith. However, the fact that a person has given evidence on behalf of the applicant in a claim, which was unsuccessful, does not, of itself, prove that their evidence was false or that it was not given in good faith.
- (c) It is unlawful for the Service to discriminate on the grounds of disability in the following areas:
  - (a) Recruitment and selection (including advertisements);
  - (b) Terms and conditions of service;
  - (c) Arrangements for induction;
  - (d) Sickness policies and procedures;
  - (e) Pensions (subject to exceptions);
  - (f) Opportunities for promotion, development, transfer, training or receipt of other employment benefits (or refusal of such opportunities); and
  - (g) Dismissal or any other detriment.

## 2. RELIGIOUS AND POLITICAL DISCRIMINATION

- (1) The Fair Employment and Treatment (Northern Ireland) Order 1998 ('the Order') makes it unlawful to discriminate against someone on the grounds of their religious belief (or similar philosophical belief), political opinion and the absence of any particular religious belief or political opinion.
- (2) **Direct Discrimination**
  - (a) The Order (as amended) defines direct discrimination as the "less favourable treatment of a person on grounds of religious belief or political opinion."
  - (b) This includes a person's **supposed** religious belief or political opinion (and the absence of any) or any **particular** religious belief or political opinion.
- (3) **Indirect Discrimination**
  - (a) Indirect discrimination may occur where a provision, criterion or practice, although applied equally to all, has the effect that a considerably smaller proportion of people of a particular religious belief or political opinion can comply with it and non-compliance causes detriment to those individuals who cannot comply.
  - (b) However, such a provision, criterion or practice would be lawful if it could be objectively justified on grounds other than religion or political opinion.
  - (c) Discrimination also includes the victimisation of a person because they have asserted, or assisted another person to assert, their rights under the Order.

### 3. RACE DISCRIMINATION

(1) Under the Race Relations (NI) Order 1997 ('the Race Relations Order'), it is unlawful to discriminate, either directly or indirectly, on the grounds of someone's race, colour, nationality or ethnic origin.

(2) **Direct Race Discrimination**

Direct (race) discrimination occurs when a person is treated less favourably than another because of their race, colour, nationality or ethnic origin.

(3) **Indirect Race Discrimination**

Indirect race discrimination occurs when a person applies a provision, criterion or practice, which disadvantages people of a particular race, colour, nationality or ethnic origin.

(4) **Defence of 'Genuine Occupational Requirement'**

In limited circumstances, an objectively justifiable requirement, termed a 'genuine occupational requirement' would allow an individual of a particular race, colour, nationality or ethnic origin to be employed because the nature of the job requires or demands it.

(5) **Irish Travellers**

The Irish Traveller community is specifically identified in the Race Relations Order as a racial group against which racial discrimination is unlawful.

### 4. SEX DISCRIMINATION

(1) Under the Sex Discrimination (NI) Order 1976 ('the Sex Discrimination Order'), it is unlawful in employment to discriminate, either directly or indirectly, on the grounds of someone's sex or marital status.

(2) **Direct Sex Discrimination**

The Sex Discrimination Order defines **direct** (sex) discrimination as less favourable treatment on the grounds of the sex of a man or a woman, of their marital status **or because** they intend to undergo, is undergoing or has undergone gender reassignment.

(3) **Indirect Sex Discrimination**

(a) The Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005 have amended the definition of **indirect** sex discrimination.

(b) The Regulations state that **indirect** (sex) discrimination occurs where someone discriminates against a woman if they "apply to her a provision, criterion or practice which they apply or would apply equally to a man, but which puts or would put women at a particular disadvantage when compared with men (and which they cannot show to be a proportionate means of achieving a legitimate aim)".

(c) This may be apparent from a comparison of the statistics of male or female workers who are at a disadvantage – ie that a larger proportion of one sex experiences a detriment.

(4) **Direct Pregnancy Discrimination**

- (a) The recent changes in the Sex Discrimination (NI) Order have also had the effect of expressly prohibiting discrimination on the grounds of pregnancy and maternity leave.
- (b) A person ('X') directly discriminates against a woman ('Y') if during a 'protected period' and on the ground of Y's pregnancy X treats Y less favourably than they would treat her had she not become pregnant.
- (c) A 'protected period' is generally the period that commences when Y becomes pregnant and ends when her entitlement to ordinary or, where applicable, additional maternity leave ends or, if earlier, when she returns to work. For a woman who is not entitled to ordinary maternity leave, the protected period ends at the end of a period of two weeks after the end of the pregnancy.

(5) **Direct Maternity Leave Discrimination**

A person ('X') directly discriminates against a woman ('Y') if on the ground that Y is exercising or seeking to exercise, or has exercised or sought to exercise, a statutory right to maternity leave, X treats her less favourably. A woman need only show she is being treated less favourably by reason of her pregnancy or her exercising her right to maternity leave.

**Example:**

If a pregnant woman applies for promotion and is unsuccessful because of her pregnancy she will have grounds to complain in addition to any claim of discrimination which she might have had prior to the 2008 amendment and will not have to compare herself to a male colleague.

(6) **The difference between 'Sex-based' and 'Sexual' Harassment**

- (a) On 5 October 2005, the Sex Discrimination Act was amended by the Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005 ('the Regulations') and subsequently by the Sex Discrimination Order 1976 (Amendment) Regulations 2008.
- (b) The Regulations state that a person subjects a woman to sexual harassment if:
  - "he engages in unwanted conduct that is related to her sex or that of another person and has the purpose or effect of violating her dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for her"
  
  - "he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature creating an intimidating, hostile, degrading, humiliating or offensive environment for her...." **OR**
  
  - "on the ground of her rejection of or submission to unwanted conduct [of this kind], he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct."
- (c) Conduct shall be regarded as having the effect mentioned above, only if having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered having that effect.

- (d) Sexual harassment can therefore either be:
  - (a) unwanted conduct 'not of a sexual nature' (ie 'sex-based'); or
  - (b) unwanted conduct which is 'of a sexual nature'(ie 'sexual harassment').
- (e) As part of an ongoing campaign of sexual harassment (in an office of five men and one woman), the men deliberately put critical equipment on a high shelf, which can only be reached by tall people (mainly men).

This is potentially unwanted conduct related to a person's sex, which is not 'of a sexual nature.'

It is potentially 'sex-based' harassment.
- (f) Sexual harassment, which is 'of a sexual nature', is potentially the more serious offence. For example, if a police officer or member of police staff made unwelcome sexually explicit remarks to a female colleague, that would be regarded as unwanted conduct which is 'of a sexual nature' ie 'sexual harassment.'
- (g) The definition of sexual harassment as amended by the 2008 Regulations and came into force on 6<sup>th</sup> April 2008 means a person complaining of harassment under the Sexual Discrimination Order is **not** required to show that the alleged treatment took place because the complainant was a woman (or a man). Connection with either gender will give sufficient basis for a harassment claim.
- (h) The new definition provides for "third party" harassment which can arise if an employee has been subject to harassment from a member of the public on at least two occasions. There is now an onus on employers to take reasonable practical steps to protect employees from third party harassment relating to gender, where the employer knows that such harassment has occurred on at least two other occasions. The implications of this change have yet to be tested in Industrial Tribunals.

## **5. CIVIL PARTNERSHIPS**

- (1) The Civil Partnership Act, which came into force on 5 December 2005, has given same-sex couples the opportunity to register their relationships legally in a similar way to marriage.
- (2) Same-sex couples now have rights and responsibilities as married partners for the purposes of tax, immigration and nationality, inheritance, employment and pension benefits. This has necessitated changes to some discrimination legislation to prevent discrimination for same-sex partners.
- (3) The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 have been amended to make it clear that the status of a civil partner is now comparable to a spouse. Therefore, a civil partner treated less favourably than a married partner can bring a claim for discrimination on the grounds of sexual orientation.
- (4) Furthermore, an employer will not be able to justify less favourable treatment of a civil partner as compared to a spouse in similar circumstances unless they can show that being heterosexual was a genuine occupational requirement.

- (5) The Service should therefore ensure that its Policy Directives and procedures are screened to ensure that benefits extended to married partners, such as private health insurance, paid travel expenses for spouses and staff discounts, are also available to civil partners.
- (6) The Service must also be conscious of informal policies and customs in the workplace, such as the way employees are invited to social events, allowed to take additional unpaid leave for a honeymoon or to make an informal company contribution to a wedding gift etc may foster a claim if the same benefits are not opened to registered civil partners.
- (7) Furthermore, under the new Act, the Service must treat civil partnerships registered in foreign jurisdictions (which meet the criteria for UK civil partnerships) in the same way as they treat UK civil partners.
- (8) The Equality and Diversity Unit must be consulted to ensure that the Service does not inadvertently discriminate against individuals in civil partnerships.
- (9) In order to ensure equality of treatment the Service must seek to ensure that all Policy Directives, Service Procedures and terms of certain benefit packages (eg pension schemes) extend to civil partners equally. Advice can be sought from the Equality and Diversity Unit on these matters.

## 6. GENDER REASSIGNMENT

- (1) The Employment Equality (Sex Discrimination) Regulations (Northern Ireland) 2005 also state that harassment on the grounds of 'gender reassignment' is unlawful.
- (2) The Regulations state that a person subjects another person to harassment if:
  - (a) On the grounds that someone intends to undergo, is undergoing or has undergone gender reassignment, engages in unwanted conduct that has the purpose or effect of:
    - (i) violating that person's dignity; or
    - (ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; **OR**
  - (b) On the grounds of that person's rejection of or submission to unwanted conduct of a kind mentioned above, treats that person less favourably than they would have done had that person not rejected or submitted to the conduct.
- (3) Police officers and police staff should remember that conduct will only be taken to have the effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment of having regard to all the circumstances, including in particular the perception of the complainant, it is reasonably considered as having that effect.

## 7. SEXUAL ORIENTATION DISCRIMINATION

- (1) Under the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 ('the Regulations') it is unlawful to discriminate, either directly or indirectly, on the grounds of someone's **actual or perceived** sexual orientation.
- (2) Under the Regulations, 'sexual orientation' means a sexual orientation towards:
  - (a) Persons of the same sex (this covers gay men and lesbians);
  - (b) Persons of the opposite sex (this covers heterosexual men and women); and

- (c) Persons of both sexes (this covers bisexual men and women).

**(3) Direct Sexual Orientation Discrimination**

- (a) Direct (sexual orientation) discrimination is where someone is treated less favourably than another because they either are or are perceived to be of a particular sexual orientation.
- (b) It is therefore unlawful to discriminate against people because they are or are perceived to be homosexual (gay, lesbian) bisexual or heterosexual. On this rationale, a police officer and/or member of police staff could bring a complaint to an Industrial Tribunal under the Regulations, based on their colleagues' incorrect assumptions about their sexual orientation.
- (c) An example of this might be where the best candidate at interview was not offered a job because the interviewer suspected they were gay whilst a less able candidate, who the interviewer believed to be heterosexual, was offered the post.
- (d) Sexual orientation discrimination also protects individuals who are treated less favourably because they associate with people of a particular sexual orientation.
- (e) On this rationale, a police officer and/or member of police staff could bring a complaint to an Industrial Tribunal under the Regulations, because they were discriminated against as a result of having gay or bisexual friends or for example, because a relative is gay or bisexual.

**(4) Indirect Sexual Orientation Discrimination**

- (a) Indirect (sexual orientation) discrimination occurs when either a person applies (or a policy creates) a provision, criterion or practice, which disadvantages people of a particular sexual orientation.
- (b) In very limited circumstances, a justifiable requirement (otherwise known as a 'genuine occupational requirement') allows an individual of a certain sexual orientation to be employed because the nature of the job requires or demands it.
- (c) The Regulations state that in order to successfully justify such a provision, criterion or practice, it must be shown that applying such a provision, criterion or practice is a 'proportionate means of achieving a legitimate aim.'
- (d) If an allegation of indirect (sexual orientation) discrimination is made against the Service, an Industrial Tribunal will balance the discriminatory effect of the provision, criterion or practice against the reasonable 'business' needs of the employer.
- (e) In order to avoid directly or indirectly discriminating on grounds of sexual orientation, the Service should therefore ensure that it does not treat job applicants or existing police officers or members of police staff less favourably because of their actual or perceived sexual orientation.
- (f) In particular, all police officers and members of police staff should be aware that treating existing police officers, members of police staff and/or job applicants less favourably because of their relationship status (or unwillingness to declare or discuss it) has the potential to be viewed as indirect discrimination on a number of equality grounds including sexual orientation.

## 8. PROMOTING A GOOD AND HARMONIOUS WORKING ENVIRONMENT

### (1) General

- (a) All police officers and police staff are reminded of their responsibility to ensure that their behaviour and comments are of the highest standard. Supervisors have a particular responsibility for ensuring that their staff do not work in an environment where inappropriate comments and behaviour exist or where the display of inappropriate material is accepted.
- (b) Article 7.1 of the PSNI Code of Ethics states that police officers must act with integrity towards the public and their colleagues, so that confidence in the Police Service is secured and maintained. Article 6.1 requires officers to use appropriate language and behaviour in their dealings with the public, groups from within the public and their colleagues.
- (c) This guidance does not prevent the display of items as part of a formal training programme designed to increase staff awareness of the various cultures in the Province.

### (2) Inappropriate Behaviour

Any behaviour by a police officer or member of police staff which affects the dignity of an individual or groups of individuals and which is based on the gender, religion, marital status, political opinion, race, disability, sexual orientation, age, personal characteristics and/or the social/economic/welfare background of an individual or group of individuals, eg touching, gesturing and/or any other act that may be reasonably perceived as inappropriate, intimidating, offensive and/or oppressive by an individual or group of individuals.

### (3) Inappropriate Comments

Any comments by a police officer or member of staff that refer to the gender, religion, marital status, political opinion, race, disability, sexual orientation, age, personal characteristics and/or the social/economic/welfare/background of an individual or group of individuals, eg jokes, innuendo or direct insults that may be reasonably perceived as inappropriate, intimidating, offensive and/or oppressive by an individual or group of individuals.

### (4) Inappropriate Display of Material

- (a) The display of any material that refers to the gender, religion, marital status, political opinion, race, disability, sexual orientation, age, personal characteristics and/or the social/economic/welfare background of an individual or group of individuals, eg glamour posters/postcards, caricatures, cartoons, satirical poems, religious tracts etc that may be reasonably perceived as inappropriate, intimidating, offensive and/or oppressive by an individual or group of individuals.
- (b) Examples of such inappropriate behaviour, comments and displays also include sending inappropriate emails and graffiti, offensive comments and inappropriate jokes.

### (5) Items Indicating Assumed National Identity

- (a) Examples of items falling within this category are pictures of the Royal Family, calendars or posters containing the Union Flag, Saoirse ribbons, Bloody Sunday ribbons, etc.

- (b) All items indicating national identity will not be displayed in police stations except:
  - (i) those designed to be attached to permanent memorials;
  - (ii) photographs of police officers or members of staff in the company of members of the Royal Family that are displayed in their offices;
  - (iii) poppies or shamrocks, when worn with decorum and at the appropriate period, and in accordance with current Equality Commission guidelines.
- (c) District Commanders/Heads of Departments will take steps to ensure that all items indicating assumed national identity, with the exception of (i) – (iii) above, are not displayed.

**(6) Items of Military Memorabilia**

- (a) This relates to items displayed on police station walls. As there is a need to emphasise the civil responsibilities of the Police Service, it is felt that the presence of military memorabilia could give an inaccurate perception of police priorities. It is accepted that the police would continue to need the support of the military for some of their tasks. This guidance has been agreed with senior military commanders who have agreed with the police proposals.
- (b) Items of military memorabilia will not be displayed in police stations unless they had been given in relation to a memorial.

**9. EXIT INTERVIEWS**

- (1) Exit interviews will be offered to all police officers and police staff who voluntarily resign.
- (2) The primary purpose of the exit interview is to gather data to enable PSNI to identify the reasons police staff decide to resign/leave and to enable the Service to identify and address any equality issues which may have led to an individual's decision to resign.

**10. GENERAL DEFINITIONS**

**(1) Indirect Discrimination**

- (a) As a result of the various amendments which were made to the equality statutes in the past two years, there is now an essentially uniform definition of indirect discrimination across each of the statutes – although there is still some variation in the wording used in each statute.
- (b) However, the following is a reasonably accurate amalgam of the new definition as it applies to each equality area -

A person ('X') indirectly discriminates against another person ('Y') if they apply to Y a provision, criterion or practice which they apply, or would apply, equally to persons not of the same sex or religious belief or political opinion or race or sexual orientation as Y but:

- (i) which put, or would put, persons of the same sex or religious belief or political opinion or race or sexual orientation as Y at a particular disadvantage when compared to other persons; and
- (ii) which puts Y at that disadvantage; and

(iii) which X cannot show to be a proportionate means of achieving a legitimate aim.

When making the comparison between how X treats persons who share the same equality characteristics as Y and other persons, it is necessary to compare situations in which the relevant circumstances are the same or not materially different.

(2) **Harassment**

(a) A new harassment definition applies uniformly across each of the anti-discrimination statutes, albeit with an extended definition in the sex discrimination legislation.

(b) The new uniform harassment definition is as follows:

A person ('A') subjects another person ('B') to harassment where, on the ground of religious belief or political opinion or sex or race or sexual orientation, A engages in unwanted conduct which has the purpose or effect of:

(i) violating B's dignity; or

(ii) creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

Conduct shall be regarded as having the effect specified in sub-paragraphs (i) and (ii) only if, having regard to all the circumstances, including, in particular, the perception of B, it should reasonably be considered as having that effect.