

## UNCLASSIFIED

ENSURING EQUALITY		
This instruction applies to:	Reference:	
Prison Establishments	PSI 32/2011	
Re-Issue Date	Effective Date	Expiry Date
27 January 2020 – Revision	14 April 2011	13 April 2015
Issued on the authority of	NOMS Agency Board	
For action by	Governors (and Directors) in prison establishments	
For information	All Staff	
Provide a summary of the policy aim and the reason for its development / revision	January 2020 – References to IEP have been changed to the <a href="#">Incentives Policy Framework (IPF)</a> , which came into force on 13 January 2020	
Contact	Equalities Group – 0300 047 5005 <a href="mailto:Equalities.Group@noms.gsi.gov.uk">Equalities.Group@noms.gsi.gov.uk</a>	
Associated documents	AI 10/2011 Ensuring Equality PSI 33/2011 Equal Treatment for Staff	
Replaces the following documents which are hereby cancelled: - PSO 2800 – Race Equality PSO 2855 – Prisoners with Disabilities PSI 2008/31 – Allocation of Prisoners with Disabilities PSI 2009/25 – Equality Impact Assessments		
Audit/monitoring: Compliance with this PSI may be monitored by Audit and Corporate Assurance in line with the NOMS Agency Board requirements		
Introduces amendments to the following documents:		

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## 1 Executive summary

### Background

- 1.1 This instruction sets out the framework for the management of equalities issues in prison establishments (except for issues relating to the equal treatment of employees which are covered in PSI 33/2011). It builds on the successes of and learning from previous arrangements for the management of race and disability issues and extends coverage to all equalities issues.
- 1.2 It applies to all prison establishments – all references to Governors should be taken to include the Directors of contracted establishments.
- 1.3 It sets out the policy approach and lists some key mandatory actions designed to ensure legal compliance. These are supplemented by comprehensive guidance in the annexes to the document. Further specific guidance and tools can be found on the Equalities Group intranet site. Governors are asked to apply this to local circumstances to deliver the expected outcomes.

### Desired outcomes

- 1.4 This instruction aims to ensure that we meet our moral duty and legal obligations to provide a fair service to all.

### Application

- 1.5 *All staff must read and follow sections of this policy as required.*

### Mandatory actions

- 1.6 *Governors must ensure that all staff are made aware of this Instruction*
- 1.7 *All staff must adhere to the standards of behaviour set out in this Instruction and follow the mandatory requirements of the policy.*
- 1.8 The mandatory actions are designed to ensure the following:
  - Management: personal leadership by Governors, supported by a functional head with lead responsibility for co-ordinating work on equalities issues, and all managers taking personal responsibility for equalities issues within their areas. An annual local equality action plan based on relevant management information, discussed regularly by the SMT, with managers and staff held to account for progress.
  - Monitoring: equality monitoring information on all prisoners collected and recorded; service provision monitored; and monitoring data published.
  - Equality Impact Assessments: EIAs completed to a satisfactory standard in accordance with an annual EIA programme, devised through a risk prioritisation process.
  - Incident Reporting: an effective system for reporting and responding to incidents of discrimination, harassment and victimisation.
  - Procurement and Partnerships: all conducted in accordance with equalities legislation.
  - Disability: prisoners encouraged to disclose disabilities. Reasonable adjustments made and recorded. Disabled prisoners located appropriately. Courts and escort contractors informed of disabled prisoners' needs as appropriate.

Resource Impact

- 1.8 This instruction contains fewer mandatory actions and prescribes less process than the orders and instructions that it replaces (see [annex 1](#) for a summary of key changes). It is designed to allow Governors greater discretion and flexibility in how they go about delivering the required outcomes, and in particular to encourage better integration of equalities work into core business. This does not signal that action on equalities is now less of a priority or that this area of work is generally over-resourced and should be targeted for cost savings.

(signed)

**Phil Copple**  
**Director of National Operational Services**

## 2 **Policy**

### NOMS Equality Policy Statement

- 2.1 NOMS is committed to fairness for all. We treat our staff properly and ensure equality of opportunity. We deliver our services fairly and respond to individual needs. We insist on respectful and decent behaviour from staff, offenders and others with whom we work. We recognise that discrimination, harassment and bullying can nevertheless occur and we take prompt and appropriate action whenever we discover them.

### Staff Responsibilities

- 2.2 *All members of staff must work and behave in a way that is consistent with the equality policy statement and our legal responsibilities (see [annex A](#)) to eliminate discrimination and to promote equality and good relations.*

## 3 **Management**

- 3.1 *Governors must provide active personal leadership and set a clear positive example. A functional head with lead responsibility for co-ordinating work on equalities issues must be identified. All managers must take personal responsibility for equalities issues within their areas.*
- 3.2 *Governors must ensure that staff are aware of their equalities responsibilities.*
- 3.3 *Governors must ensure that staff and prisoners are aware of the identities of the functional head with lead responsibility for equalities issues and any other staff with specific responsibilities in this area.*
- 3.4 *Governors must ensure that management information (see [annex B](#)) on equalities issues in service delivery is analysed, and that an annual local equality action plan is produced and published. Responsibility for actions on the plan must be clear and managers and staff must be held to account for progress through relevant management checks. Progress must be tracked and an update report must be submitted regularly (at a frequency to be determined by the Governor based on an assessment of risk) for discussion by the Senior Management Team, copied to the Deputy Director of Custody, and published.*
- 3.5 *Governors must ensure that prisoners and other stakeholders, particularly those from minority groups, are consulted and involved appropriately in the management of equalities issues (see [annex C](#)).*

## 4 **Monitoring**

- 4.1 NOMS collects monitoring data (see [annex D](#)) on all equalities issues and uses it for analysis that drives action to ensure fairness for all.
- 4.2 *Governors must ensure that:*
- *equality monitoring information on all prisoners is collected and recorded;*
  - *service provision is monitored; and*
  - *monitoring data is published.*

- 4.3 *Monitoring must include areas that are mandated nationally (to enable the collation of national data). Consideration must be given to monitoring further areas that are identified as risks locally. Any additional monitoring should be in proportion to the risks identified and the outcomes and characteristics monitored should be kept under regular review.*

## **5 Equality Impact Assessments**

- 5.1 Equality impact assessments (see [annex E](#)) provide a systematic way of ensuring that our policies are formulated and implemented in accordance with our legal responsibilities (see [annex A](#)) on equalities.
- 5.2 National policies are subject to equality impact assessment in accordance with the arrangements set out in AI 10/2011.
- 5.3 Local equality impact assessments are a process that is used to identify and manage risk around equalities issues at the establishment.
- 5.4 *Governors must use a risk identification and prioritisation process to devise an annual local EIA programme, agree the programme with the relevant senior manager above establishment level and copy it to Equalities Group.*
- 5.5 *Governors must ensure that EIAs are completed in accordance with the programme, to a satisfactory standard using the NOMS service delivery EIA template or NEAT tool, made available locally and sent to Equalities Group (for publication).*

## **6 Discrimination Incident Reporting**

- 6.1 *All incidents of discrimination, harassment and victimisation must be reported using the Discrimination Incident Reporting Form (DIRF). The Discrimination Incident Report form must replace the use of Racist Incident Reporting Forms and any other locally designed forms for the reporting of other equalities incidents. Guidance on the DIRF system can be found at [Annex E](#). It should be noted that this does not mean that staff do not have a responsibility to respond appropriately at the time – many incidents can be resolved by prompt staff action, for instance by challenging inappropriate behaviour, and where this is achieved the incident and the outcome should be reported.*
- 6.2 *Governors must ensure that all incidents of discrimination, harassment and victimisation are handled in a proportionate and timely way. Appropriate systems, such as adjudications and security information reporting must also be used where possible. More serious incidents must be referred for investigation.*
- 6.3 *Governors must ensure that prisoners and visitors are aware of the system for reporting incidents of discrimination, harassment and victimisation, and that staff are aware of the system and of their responsibilities in responding appropriately to such incidents. Forms must be available in all areas of the prison, with envelopes provided to ensure privacy. The system for submitting and responding to them must be private and secure.*
- 6.4 *Victims and reporters of incidents must be protected in accordance with the local violence reduction strategy.*

- 6.5 *DIRFs must be explored (when submitted by prisoners or visitors) or reviewed (when submitted by staff) and responded to by a manager. The Governor must put in place a sign off or quality control process involving a Senior Manager (this should be determined by an assessment of the risk involved, and may vary from a quality control process for a percentage of completed DIRFs, to a process in which all DIRFs are signed off by a senior manager prior to a response being sent).*
- 6.6 *DIRFs must be logged - on receipt and response - and monitored. Data must be analysed and used as management information to inform the equality action plan.*

## **7 Procurement and Partnerships**

- 7.1 *Governors must ensure that services that are procured from or delivered in partnership with other organisations are delivered in a way that is consistent with our legal responsibilities (see [annex A](#)).*

## **8 Disability**

- 8.1 *Governors must ensure that efforts are made to identify whether a prisoner has a mental or physical impairment of any form. Governors must ensure that prisoners are encouraged to disclose their disability status and that procedures are in place to record this information (both on reception and subsequently) and to treat it confidentially. Not all prisoners will be aware of their disabled status and staff must be proactive in identifying the specific needs of all prisoners (further guidance on learning disabilities is at [annex H](#)).*
- 8.2 *Governors must consider on an ongoing basis what prisoners and visitors with a range of disabilities might reasonably need and ensure that reasonable adjustments (see [annex G](#)) are made for disabled prisoners and visitors. Governors must consider whether prison policies and practices, the built environment, or a lack of auxiliary aids and services could put a disabled prisoner or visitor at a substantial disadvantage and if so must make reasonable adjustments to avoid the disadvantage. If a request for reasonable adjustments is made by a prisoner or visitor it must be considered and the outcome documented.*
- 8.3 *Governors must ensure that where it is not possible to make the reasonable adjustments required the prisoner is transferred to another appropriate establishment. Where there is a dispute between prisons about where a disabled prisoner is best located, the Deputy Director of Custody must be contacted.*
- 8.4 *The transfer of a disabled prisoner must not be delayed or prevented on the basis of their disability (unless the proposed receiving establishment cannot provide appropriate facilities).*
- 8.5 *Governors must ensure that where a disabled prisoner is required at court, the escort contractor and Clerk of Court are informed of the details of the disability and the needs of the prisoner.*

**Annex A****Legal Responsibilities****Introduction**

- A.1. NOMS staff are expected to meet high standards of professional and personal conduct, and this includes complying with the legal responsibilities in the equalities legislation. As well as refraining from discrimination, harassment and victimisation, these include actively promoting equality. All staff are personally responsible for their conduct in this area and failure to maintain the required standards can lead to action, which may result in dismissal from the Service.
- A.2. This guidance sets out the characteristics of a person that are protected by the Equality Act 2010 and the conduct that is not allowed in relation to these characteristics, and explains the duties which the Act imposes on staff. More detailed guidance and some examples can be found on the Equalities Group intranet site or obtained from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)
- A.3. Information about how the Act relates to NOMS as an employer can be found in annex A of PSI 33/2011.

**Protected characteristics**

- A.4. For something to be illegal under the Act it has to relate to a protected characteristic. These are described below.

**Age**

- A.5. This refers to a particular age group, whether this is a particular age or a range of ages.

**Disability**

- A.6. This covers people who have or have had a physical or mental difficulty which has a substantial and long-term negative effect on their ability to carry out normal day-to-day activities, or would have such an effect if measures were not being taken to treat or control the difficulty.

**Gender reassignment**

- A.7. This covers people who propose to undergo, are undergoing or have undergone a process or part of a process for the purpose of reassigning their sex by changing physiological or other attributes of sex. The process is a personal one not a medical one: it is not necessary for the person to be undergoing medical treatment.

**Marriage and civil partnership**

- A.8. This covers people who are either married or in a civil partnership.

**Pregnancy and maternity**

- A.9. This refers to when a woman is pregnant or the period of 26 weeks after the birth of her child (in particular if a woman is breastfeeding).



### Race

A.10. A racial group is a group of persons who are defined by reference to race. Race includes colour, nationality and ethnic or national origins.

### Religion or belief

A.11. This includes any religion, religious belief or philosophical belief. It also includes any lack of religion, religious belief or philosophical belief.

### Sex

A.12. This covers men and women.

### Sexual orientation

A.13. This means a person's sexual orientation: whether that person's sexual orientation is towards persons of the same sex, persons of the opposite sex, or persons of either sex.

### **Prohibited conduct**

A.14. As a public authority, it is unlawful for NOMS in the exercise of its public function to do anything that constitutes discrimination, harassment and victimisation. This covers treatment of prisoners and others such as visitors. Discrimination, harassment and victimisation are defined as follows.

### Direct Discrimination

A.15. This is where someone treats another person less favourably than others because of a protected characteristic. Direct discrimination can occur when a person is treated less favourably because that person is linked or associated with someone who has a protected characteristic. It can also occur where a person is treated less favourably because it is wrongly thought that the person has a particular protected characteristic or is treated as if that person does. It should be noted that in relation to age, direct discrimination can be justified as a proportionate means of achieving a legitimate aim.

### Indirect discrimination

A.16. This is where a rule or policy is applied to everybody but would put people with a relevant protected characteristic at a particular disadvantage. However, there is no discrimination if the rule or policy can be justified as a proportionate means of achieving a legitimate aim.

### Discrimination arising from disability

A.17. This is a particular form of discrimination where someone treats another person less favourably because of something arising in consequence of their disability. However, there is no discrimination if the treatment can be justified as a proportionate means of achieving a legitimate aim.

### Harassment

A.18. This is where unwanted conduct related to a relevant protected characteristic (or unwanted conduct of a sexual nature) has the purpose or effect of violating another person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for another person. It also constitutes harassment if, following rejection of or submission to unwanted conduct of a sexual nature or unwanted conduct related to gender reassignment or sex, a person is treated less favourably.

#### Victimisation

A.19. This is where someone is subjected to a detriment because that person does a protected act, or it is believed that that person has done, or may do, a protected act. A protected act means bringing proceedings under the Equality Act 2010, giving evidence or information in connection with proceedings under the Act, doing any other thing for the purposes of or in connection with the Act and making an allegation that someone has contravened the Act. However, people who give false evidence or information, or make a false allegation, are not protected from victimisation if they have done so in bad faith.

#### **Duties**

A.20. The Act imposes the following additional duties on NOMS as a public authority.

#### Eliminate unlawful discrimination, harassment and victimisation

A.21. Unlawful discrimination, harassment and victimisation should be eliminated.

#### Provide equal opportunities

A.22. Prisoners, visitors and others with whom we work should be provided with equal opportunities. This can be done in a number of ways:

- Removing or minimising disadvantages suffered by people who share a relevant protected characteristic that are connected to that characteristic.
- Taking steps to meet the needs of people who share a relevant protected characteristic that are different from the needs of people who do not share it.
- Encouraging people who share a relevant protected characteristic to participate in any activity in which participation by such people is disproportionately low.

A.23. Further guidance in the context of disabilities can be found in [annex G](#).

#### Foster good relations

A.24. Good relations between people with a protected characteristic and people without that protected characteristic should be fostered, in particular through tackling prejudice and promoting understanding.

#### **Further information**

A.25. Further information on the Act can be found on the following websites:

[www.equalities.gov.uk](http://www.equalities.gov.uk)

Government Equalities Office

[www.equalityhumanrights.com](http://www.equalityhumanrights.com)

Equality and Human Rights Commission

A.26. If you have any questions which are not covered in this guidance please contact the Equalities Group.

Telephone: 0300 047 5005

E mail: [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)

Mail: 3.16 Clive House  
70 Petty France  
London  
SW1H 9HD

**Annex B****Management information**

B.1. When devising and monitoring the equality action plan, relevant information should be derived from a full range of relevant sources. Of particular importance are:

- MOJ / NOMS corporate equalities publications;
- Equality Impact Assessments (see [annex E](#));
- Equalities audit test guide and ACA reports;
- Performance management information;
- Monitoring data (see [annex D](#));
- MQPL reports;
- Hate incident reporting;
- Consultation with prisoners and other stakeholders (see [annex C](#));
- HM Chief Inspector of Prison reports;
- Independent Monitoring Board reports.

B.2. This annex provides guidance on how these sources of information can be used to devise and monitor the equality action plan.

**MOJ / NOMS corporate equalities publications**

B.3. NOMS has set out the corporate approach to equalities in 'Promoting Equality in Prisons and Probation: the NOMS Single Equality Scheme 2009-2012' and its Annual Equalities Report. These and any other MOJ / NOMS corporate publications should be used to inform local priorities.

**Equality Impact Assessments**

B.4. These should be the main source of actions to address the priority risks identified locally. See [annex E](#) for details of the process.

**Equalities audit test guide and ACA reports**

B.5. The audit test guide sets out the key risks and the mandated ways of managing them. ACA conduct regular audits using this guide and the actions from their reports should be included in the establishment action plan.

**Performance Management Information**

B.6. Performance on the equality indicators on which data is captured as part of the KPT and Management Information systems must be monitored regularly and actions to improve performance included in the plan.

**Monitoring data**

B.7. Monitoring data should be collected and used to drive action. This includes the mandatory SMART II data on race equality and locally prioritised data collection on other areas and other protected characteristics using the local section of SMART II and the Equality Monitoring Tool (Short-term). See [annex D](#) for details.

**Measuring the quality of prison life reports**

- B.8. The MQPL report contains data about the perceptions of different groups of prisoners. Where there are significant differences actions should be generated to explain and/or address them.

**Incident Data**

- B.9. Analysis of the monitoring data on reported incidents of discrimination, harassment and victimisation should inform the development of the plan.

**Consultation with prisoners and other stakeholders**

- B.10. There should be regular engagement with prisoners and other stakeholders, particularly those from minority groups, and this should inform the plan.

**HM Chief Inspector of Prisons (HMCIP) Reports**

- B.11. Inspection reports generate actions on equalities issues. They also contain data on the survey responses of different groups of prisoners and where there are significant differences actions should be generated to explain and/or address them.

**Independent Monitoring Boards (IMB) Reports**

- B.12. Independent Monitoring Board reports often include useful information or highlight issues that need to be addressed.

**Annex C****Prisoner and stakeholder consultation and involvement**

- C.1. It is important to consult prisoners and other stakeholders and where possible to involve them in the management of equalities issues.
- C.2. Prisoner equality and diversity representatives can play an important role in this. There is a good practice guide available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)
- C.3. Involving external stakeholders, particularly those who are representative of minority groups, can be valuable in the management of equalities issues.
- C.4. In order to allow prisoners and other stakeholders to engage, relevant management information, including monitoring data and equality impact assessments should be made available to them in a form that is comprehensible to them.

**Annex D****Monitoring**

D.1. Monitoring is the process of collecting, storing, and analysing equalities data about prisoners. This annex provides an outline of how it is done and signposts a series of other guidance documents available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)

**Why monitor?**

- D.2. Monitoring is a key way of ensuring that establishments are meeting the legal duties to eliminate unlawful discrimination and promote equality, and demonstrating that they do so. It allows the identification of patterns of disproportionality in outcomes between different groups of prisoners, which can be explored and either explained or tackled appropriately. It also provides evidence to inform the impact assessment process.
- D.3. By making monitoring data available to staff, prisoners and other stakeholders we ensure that our service delivery is transparent and that unfounded perceptions of unfairness can be challenged.

**Sensitive and confidential handling of personal data**

D.4. All staff responsible for collecting, handling and publishing personal data should be aware of their responsibilities under the Data Protection Act. Such data will usually constitute sensitive personal data and should be handled fairly and lawfully. Offenders should be informed of the reasons for the collection of personal information relating to them and assured that it will not be misused. The data should generally not be published except in an anonymised format. For more information on the Data Protection Act and NOMS policy see PSO 9020.

**On which characteristics should monitoring data be collected from prisoners?**

- D.5. Monitoring data should be collected from prisoners and recorded on the NOMIS system on:
- Age;
  - Disability;
  - Gender;
  - Race;
  - Religion and belief;
  - Sexual Orientation.
- D.6. The general principle is that prisoners should be asked for this information. Where information is already available to staff with responsibility for collecting it, prisoners should be asked to check that it is accurate.

**Which outcomes should be monitored?**

- D.7. Monitoring of some outcomes using the SMART tool is mandatory for all establishments (see SMART user guidance for further details). This allows aggregation of the data and the production of national figures.
- D.8. Decisions about additional monitoring should be taken by identifying and prioritising risks around equalities issues locally. A process similar (and parallel) to that used for identifying



and prioritising EIAs (see [annex E](#) and risk prioritisation guidance) should be used. Bringing together the outcome of consultation with prisoners (and particularly those who are members of protected groups) and other evidence of actual or potential discrimination, the key risks to the establishment should be identified and prioritised. Monitoring of identified outcomes according to the relevant protected characteristics should be put in place in proportion to the risks identified.

- D.9. The outcomes monitored should be kept under regular review, and should reflect the current level of risk.

#### **How should outcomes be monitored?**

- D.10. Outcomes monitoring should be conducted using the tools provided – the local monitoring pages of SMART for functions monitored by race on a monthly basis (see How to get the best out of SMART guidance), and the Equality Monitoring Tool (short-term) for functions monitored by race over other time periods and by other characteristics (guidance, including on how to decide on monitoring periods, is included in the tool itself).

#### **Analysis of monitoring data**

- D.11. Monitoring data should be examined regularly for evidence of disproportionality.
- D.12. We are committed to fairness. Disproportionality occurs when protected groups are under or over represented in a particular function or area; for example, if the data shows that the local incentives scheme consistently denies certain privileges to particular protected groups. This does not establish that unfairness is occurring - it is possible that disproportionality represents fair outcomes: for example, there may be differences in the level of need between different groups - but it is a prompt for further investigation.
- D.13. The monitoring tools are designed to allow disproportionality to be spotted quickly (see Range-setting guidance and Interpreting graphs guidance), allowing actions to address it to be identified (see Next steps guidance).

#### **Publication of monitoring data**

- D.14. Monitoring data should be shared with staff, prisoners and other stakeholders in a form that is comprehensible to them.
- D.15. It is unlikely that simply publishing figures or graphs will be adequate for this purpose as most people lack the technical knowledge to interpret them. It is advisable to offer some form of narrative explanation alongside the data.
- D.16. Prisoner equalities representatives can be used to explain the figures to other prisoners.

**Annex E****Equality Impact Assessments**

- E.1. Establishment Equality Impact Assessments are a process that is used to identify and manage risk around equalities issues locally. They can helpfully be seen as a type of investigation – a way of finding out the cause of an equalities issue (e.g. disproportionality in monitoring data results or prisoner perceptions of discrimination in the operation of a policy or function) and putting in place actions to address it.

**Equality Impact Assessment Programmes**

- E.2. The annual EIA programme should include a description of the process that was used to prioritise areas for impact assessment. This process should be based on all relevant local management information and informed by national data and guidance; include consideration of the risks faced by the establishment with regard to each of the equalities issues; and involve full consultation with stakeholders, including prisoners.
- E.3. There should be flexibility to make changes to the programme and/or to conduct additional impact assessments as and when new risks are identified.

**Templates**

- E.4. EIAs may be completed using the NOMS Equality impact Assessment Tool (NEAT), or the delivery unit EIA template, both of which are available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk) NEAT provides a way of working through and recording each step of the process, whereas the EIA template is designed simply to capture the key information in a shorter document. Each is supported by comprehensive guidance.

**Commissioning**

- E.5. Each EIA on the programme should be commissioned by an SMT member. This can be done using the 'Commission an EIA report' section of NEAT or by completing the first page of the EIA template. This stage is designed to ensure that the EIA focuses on the risks identified.

**Process**

- E.6. Whether using NEAT or the EIA template, the following steps should be taken to investigate the risks identified (they can be documented in the relevant sections of NEAT):
- the aims of the policy under consideration should be considered;
  - those groups and individuals with a particular interest in the policy should be identified;
  - the way in which the policy is controlled and monitored should be considered, and relevant data collected and analysed;
  - all sources of information about the effects of the policy should be examined;
  - all relevant stakeholders should be asked for their views;
  - the results of the various stages of the process should be brought together and relevant issues about the use of discretion and prisoner confidence considered;
  - the findings should be summarised and the issues that remain to be addressed identified;
  - an action plan to address the issues identified should be devised;

- appropriate arrangements should be put in place to monitor the actions in the 'Action Plan' and to review the EIA.

### Sign Off

E.7. The Governor should put in place a system to ensure that:

- a thorough investigation of the policy has been conducted;
- an appropriate action plan has been put in place to address the issues identified; and
- the EIA document is fit for publication.

### Publication

E.8. The completed EIA should be sent to Equalities Group who will publish for public access. Establishments should make the completed EIA available locally to staff, prisoners and other stakeholders.

### Review

E.9. A review of the EIA should be conducted in line with the deadlines in the action plan in the EIA. The purpose of the review is to assess the extent to which the initial concerns have been addressed and whether there remain issues which result in unfair outcomes. This involves reviewing the actions on the action plan to determine whether or not they have been carried out and if so how successful they have been in addressing the issue. If the issue has not been fully addressed, consideration should be given to the level of risk that remains and to what further action is required.

**Annex F****Discrimination Incident Reporting**

- F.1. Section 6 above mandates the use of the Discrimination Incident Reporting Form, and this annex provides guidance on its use.
- F.2. We are working towards a system in which all equalities-related incidents are handled through generic systems, principally the complaints system for those reported by prisoners and a new information reporting system (replacing Security Information Reports) for those reported by staff. It is anticipated that this change will be made during 2012.
- F.3. For this reason this guidance places increased emphasis on issues being handled by staff and managers using generic systems, with appropriate checks by a manager and sign off / quality control by a senior manager. This is intended to equip staff and managers to deal with equalities issues as a mainstream part of their responsibilities in preparation for moving them fully in to generic systems. Governors may choose to retain posts with specialist responsibilities for equalities issues (such as Race Equality Officers and Disability Liaison Officers) and to assign to them particular responsibilities to deal with reports of discrimination incidents but this does not remove from all staff and managers their equalities responsibilities. Serious incidents and allegations against staff will continue to be handled through formal investigations.

**Discrimination Incident Reporting Forms**

- F.4. Forms should be available in all areas of the prison, with envelopes provided to ensure privacy. The system for submitting and responding to them should be private and secure.

**Staff witnessing an incident of discrimination, harassment or victimisation**

- F.5. Staff witnessing an incident of discrimination, harassment or victimisation on the basis of any of the protected characteristics should take appropriate action to address the issue. This may include challenging inappropriate behaviour using interpersonal skills in accordance with 'Challenge It, Change It' training and guidance, available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk). Appropriate systems should be used to address such behaviour, such as the incentives scheme and adjudications.
- F.6. If the incident involves misconduct by staff this should be reported to a manager and/or via the reporting wrongdoing process (see PSI 09/2010).
- F.7. Having taken action, staff should report the incident appropriately. As well as completing a DIRF, other forms of reporting may be appropriate, including a disciplinary report, an entry in the case notes section of NOMIS, a Security Information Report etc.
- F.8. Discrimination Incident Reporting Forms submitted by staff should be reviewed by a manager to ensure that the action taken was appropriate. The manager should identify any further action necessary and ensure that it is completed. Where action taken was not satisfactory, they should provide feedback to the member of staff who submitted the form.

**Prisoners or visitors witnessing or being subject to an incident of discrimination, harassment or victimisation**

- F.9. Prisoners witnessing or being subject to an incident of discrimination, harassment or victimisation on the basis of any of the protected characteristics may submit a complaints form or a Discrimination Incident Reporting Form. Visitors witnessing or being subject to an incident of discrimination, harassment or victimisation may submit a DIRF.

- F.10. Complaints forms reporting incidents of discrimination, harassment or victimisation will receive an interim response and be logged on a Discrimination Incident Reporting Form for response.
- F.11. DIRFs concerning serious incidents and/or allegations of misconduct by staff should be referred for investigation in accordance with PSO1300 or Conduct and Discipline. The prisoner should be informed that this is what has happened, and of any outcome of the investigation that is relevant to them.
- F.12. DIRFs concerning other issues should be handled by a manager. The manager should interview the prisoner or visitor to explore the issue that has been raised. They should then seek to address the issue through an appropriate means, which may include informal conflict resolution, action through systems such as incentives, adjudications etc., or specific action to expedite an outcome. A written response explaining the action taken should be sent in all cases.

#### **Protection of victims and reporters of incidents**

- F.13. Managers handling DIRFs and conducting associated investigations should ensure that appropriate measures are in place to protect victims and reporters of incidents in accordance with the local violence reduction strategy.

#### **Logging**

- F.14. All DIRFs should be logged on receipt and response, and the outcome should be noted on completion. *The information collected on the log must include the protected characteristic concerned. Copies of completed DIRFs should be retained.* A suitable log is available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)

#### **Senior Management Sign Off / Quality Control**

- F.15. In order to ensure effective responses, a sign off or quality control process involving a senior manager should be used. The Governor should set this in accordance with an assessment of the risk involved. It may vary from a quality control process for a percentage of completed DIRFs, to a process in which all DIRFs are signed off by a senior manager prior to completion. A suggested management check form is available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)

#### **Management Information**

- F.16. The DIRF log should be analysed and relevant information used to inform action. This should include trend analysis of the nature and location of incidents as well as patterns of involvement of particular individuals.

#### **Prisoners wishing to appeal about the outcome of a complaint/DIRF**

- F.17. Where a prisoner is not satisfied about the outcome of a DIRF about an incident to which they have been subject, they should submit a stage 2 complaint.

#### **Timeliness**

- F.18. The general principle is that DIRFs should be handled in accordance with the timescales for prisoner complaints (see Complaints PSO/PSI). Where a serious issue is referred for investigation it will not be possible to provide a full response within this timeframe and an interim reply will be sent. There may be some other issues that require longer to resolve, and this is acceptable provided that the reporter is kept informed of developments.

**Prisoner Confidence**

- F.19. It is crucial to ensure that prisoners have confidence in the DIRF process. Amongst the measures that can be taken to ensure this is external scrutiny of responses. Guidance on good practice for external scrutiny is available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)
- F.20. Prisoner equalities representatives can also be useful in building prisoner confidence.

**Annex G****Reasonable adjustments**

G.1. NOMS is under a duty to make reasonable adjustments. A reasonable adjustment is an adaptation to change a provision, criterion or practice, or to change a physical feature, or to provide auxiliary aids or services in order to avoid placing a disabled person at a substantial disadvantage. The duty is an anticipatory one, meaning it is necessary to consider on an ongoing basis what prisoners and visitors with a range of disabilities might need and whether a current way of doing things or the built environment puts disabled persons at a substantial disadvantage. In prison, a reasonable adjustment should enable a disabled prisoner to take a full part in the normal life of the establishment.

**How do we decide what is reasonable?**

G.2. The law does not specify what factors you should take into account when considering what is 'reasonable'. In the event of any legal action, reasonableness is determined by the courts on an individual basis.

G.3. You may need to take some of the following factors into account when considering what is reasonable:

- how effective any steps would be in overcoming the difficulty;
- how practicable it would be for you to take these steps;
- how disruptive taking the steps would be;
- the financial and other costs of making the adjustment;
- the extent of the prison's financial and other resources;
- the amount of any resources already spent on making adjustments;
- the availability of financial or other assistance.

**What level of cost should we bear?**

G.4. The courts consider the Prison Service to be a single entity, similar to a large organisation like a supermarket chain. Compare what would be reasonable at a small corner shop and what could be expected from a large supermarket. The supermarket, as part of a chain, will be expected to bear a higher level of cost than a small independent retailer. The same applies to us. Because we are part of a large organisation, we cannot use the cost of an adaptation as reason not to provide it, unless it is significant and out of proportion to the benefit the individual will receive. The courts will look at the funds available across the entire organisation, rather than the budget for the establishment in question.

G.5. An example might be the provision of a lift. It could be reasonable for us to specify a lift in a new build, as part of the overall cost, but not to install one in an existing old building at significant cost, to help a single prisoner. In this situation, providing an alternative location for the facilities would be acceptable. *However, when specifying the requirements of a new build, we must ensure it is legally compliant, as failing to consider access at that point would not be reasonable.*

G.6. It is important to remember that reasonable adjustments extend beyond physical changes such as the building of lifts and ramps. A reasonable adjustment could include a decision to provide an auxiliary aid (such as special computer software) or a change to a particular policy or practice which puts a disabled person at a disadvantage (such as ensuring that the local incentives scheme does not penalise behaviour that is the consequence of a disability).

### Where should we locate the prisoner?

- G.7. It is not normally appropriate to locate a prisoner with a disability in healthcare unless he/she needs that level of medical care. Placing a prisoner on healthcare does not allow them to take a full part in the regime of the establishment, and blocks a bed that may be needed by a prisoner who is actually ill. Disabled prisoners should have reasonable adjustments made to enable them to live in normal accommodation. Where this is not possible the prisoner should be transferred to another appropriate establishment. 'Appropriate' means in accommodation suitable for his/her disability, in the right category, with access to the required interventions, work and education, and other regime activities.

### Ensuring access for all prisoners

- G.8. An access survey will help to identify those areas which cause physical access problems. However physical access is not the only issue. Access to courses and activities may be restricted for prisoners with learning difficulties or sensory problems. For example, if you have to apply for the gym by completing a form, and you have learning difficulties or are blind, you may not be able to complete the form. If fire alarms are all audible, a deaf prisoner may be unaware that he/she should evacuate. Access to information might also be restricted, in which case providing the information in accessible formats will almost always be a reasonable adjustment. Some of these issues may become apparent from complaints, but many prisoners will not complain and it is necessary to consider whether issues are present in advance of any complaints. *You must, therefore, make sure that prisoners are aware that they can either get help or use alternative methods to access facilities.*

### Who can provide advice?

- G.9. There is a range of organisations and people to whom you can go for help with reasonable adjustments:
- Talk to the prisoner - always discuss what support is needed with the prisoner, as each individual will have different ways of managing their disability.
  - Specialist organisations - in the case of an individual reasonable adjustment for a specific prisoner, the best source of information will be organisations that deal with the particular disability. General reasonable adjustments are designed to make prison life accessible to the largest number of prisoners possible. You can get advice on ways to make the prison, facilities, information and activities more accessible from the specialist organisations.
  - Charities - there are charities and other third sector organisations which specialise in supporting people with particular disabilities, and can often supply aids and adaptive technology or recommend suppliers.
  - Healthcare staff - can advise on the suitability of some aids and may be able to source things like hearing aids, walking supports etc.
  - Occupational therapists - for individuals entering custody who need aids and adaptations it is important to consider a referral to a local specialist, such as an occupational therapist, for an assessment of activities of daily living (ADL). This will determine that they are able to manage in the prison setting. Prisoners who develop a disability in prison should also be referred for advice on personal aids and adaptations. It is not always in their best interest to be provided with 'off the shelf' aids and adaptations.



Further Guidance

- G.10. Further guidance on and examples of reasonable adjustments are available on the Equalities Group intranet site or from [equalities.group@noms.gsi.gov.uk](mailto:equalities.group@noms.gsi.gov.uk)

**Annex H****Learning Disabilities**

- H.1. People with learning disabilities are over-represented in the prison population. Estimates vary but it is thought that between 7% and 14% of prisoners have learning disabilities, compared to 2% of people in the community.
- H.2. People with a learning disability find it harder than others to learn, understand and communicate. Taking these difficulties into account will facilitate improved management of prisoners who otherwise might simply be labelled difficult or unwilling to engage.

**Identifying prisoners with learning disabilities**

- H.3 Identifying a possible learning disability allows a prisoner to be directed for more comprehensive needs assessments through healthcare and education. This process is speeded up if a prisoner's abilities are assessed on reception into prison. The extent of some prisoners' learning disability may mean that they are unable to articulate that they have a learning disability.
- H.4. If a prisoner does not think they have learning disabilities it is not for staff to inform them otherwise. The situation should be handled by health professionals. However, this does not mean that an obvious reasonable adjustment which would assist a prisoner should not be made simply because the prisoner does not consider themselves to have a disability. This would include going more slowly through information with a prisoner who has difficulties in understanding it. Prisoners with learning disabilities will often quickly forget what they have been told, therefore regular reinforcing of the information may well be necessary.

**Location within the prison**

- H.5. It is important to place prisoners with learning disabilities in the part of the prison that will best allow staff to monitor and promote their safety and security. This could be in a main wing, a vulnerable prisoner wing, or in some cases in the healthcare centre if he/she needs that level of medical care. Wherever they are located, access to those parts of the regime identified in a prisoner's sentence plan is crucial.

**Communicating with prisoners with learning disabilities**

- H.6. You may find the following helpful when communicating with prisoners with learning difficulties:
- Explaining to the prisoner exactly why they are in a new situation, and what they should expect.
  - Using the prisoner's name at the start of each sentence.
  - Visual aids and clear and simple language will help to increase the prisoner's understanding.
  - Breaking large amounts of information down into smaller chunks.

- Preparing the prisoner for each stage of the communication, for example, 'Mr Jones, I am now going to ask you some simple questions' or 'Mr Jones, I am now going to explain what we are going to do.'
- Being patient and calm whilst communicating. Do not rush the prisoner as they may need longer to process the questions and think about their answers.

H.7. It may not be clear that the prisoner does not understand what is happening or what is being said. Some prisoners with learning disabilities will agree with a statement or a question simply to please you or because they are frightened. Some prisoners will pretend they understand what you are talking about as they are embarrassed to admit they have not understood.

### **Daily life**

H.8. A prisoner with learning difficulties may be unable to complete forms on their own. This may include applications for their meals, their canteen, to request visits from family and friends, and to make a complaint. You may need to assist some prisoners in making these applications; this may involve filling in a form in accordance with the prisoner's instructions.

H.9. Prisoners with learning disabilities may also need help with the following tasks:

- Reading and writing letters.
- Reading prison information, understanding what the information means, or both.
- Telling the time.
- Cleaning clothes.
- Making telephone calls.

H.10. Rules and regulations may need to be explained to the prisoner, rather than expecting the prisoner to read up on what these are on their own.

H.11. Prisoners, subject to appropriate risk assessment and supervision, can be employed to assist prisoners with learning difficulties to manage their daily routines.

### **Incentives Policy Framework**

H.12. It is important that a prisoner's learning disability, and any behaviour which is a consequence of that learning disability, should not affect a prisoner's incentive level. A prisoner's learning disability may impact on interpersonal relationships and the understanding of instructions, and this should be taken into account when making decisions relating to that prisoner's incentive level.

### **Employment**

H.13. Appropriate and reasonable adjustments should be made to ensure that prisoners with learning disabilities are not excluded from work. Where appropriate, adjustments to procedures and alternative formats for information may need to be provided. A prisoner

may need to have a process explained in a simpler manner than it is explained to other prisoners.

### **Regime**

- H.14. Any adjustments arising from a prisoner's learning disability need to be fed into sentence plans. Interventions may need to be adapted to ensure that they are appropriate for prisoners with learning disabilities. Activities should not exclude prisoners with a learning disability.

### **Further Information**

- H.15. Further information can be found in the Department of Health publication 'Positive Practice, Positive Outcomes: A handbook for professionals in the criminal justice system working with offenders with a learning disability', available at:  
[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_124743](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_124743)

Annex ISummary of Key Changes from Previous PSOs

- I.1. This PSI reduces the amount of prescription for establishments. In nearly all areas it does not prevent Governors from continuing to manage in the same way, but offers the flexibility to adopt a different approach where this is more likely to achieve the fair outcomes that are the aim of the policy.

PSO 2800

- I.2. Amongst the key changes from PSO2800 are:
- Race Equality Action Teams – the PSI does not mandate the existence of a team or a regular meeting. An action plan remains mandatory, but the mechanism used to manage it can be determined locally. Consultation and involvement of prisoners and other stakeholders, particularly those who are members of protected groups, remain mandatory.
  - Race Equality Officers – the PSI does not mandate the existence of a REO. It is envisaged that many of the issues currently handled by REOs as part of the RIRF process will be handled through the DIRF system, and it is for Governors to decide whether to continue to use a specialist member of staff for this work or to distribute it to other managers. Some investigations of serious allegations will continue to be required but can be distributed amongst other managers. Much of the other work that is currently done by REOs in many prisons – collecting and analysing monitoring data, co-ordinating and updating the action plan, organising consultation with prisoners etc – will remain necessary, but it can be distributed amongst other managers and staff if this is deemed more effective locally.
  - Racist Incident Reporting Forms – the PSI replaces the RIRF system with a DIRF system. The guidance in annex F explains that this is an interim measure and that the direction of travel is towards handling all incidents through other systems, principally the complaints system for those reported by prisoners and the incident reporting system for those reported by staff. It is anticipated that this change will be made during 2012. For the interim period a separate form continues to be used, but increased emphasis is placed on issues being handled by staff using generic systems, with appropriate checks by managers and sign off / quality control by senior managers.
  - Communications Strategies – the PSI does not mandate these, but there remains a requirement to consult and involve prisoners.
  - Community Engagement Strategies – the PSI does not mandate these but there remains a requirement to consult and involve other stakeholders, particularly those who are members of minority groups.

PSO2855

- I.3. The following requirements of PSO2855 are removed:
- Local Disability Policies – the PSI does not mandate the existence of a local policy. An action plan remains mandatory.
  - Disability Liaison Officers – the PSI does not mandate the existence of a DLO. Much of the work that is currently done by DLOs in many prisons – providing support to disabled prisoners and advice to staff – will remain necessary, but it can be distributed amongst other managers and staff if this is deemed more effective locally.

# Stage 1 – initial screening

The first stage of conducting an EIA is to screen the policy to determine its relevance to the various equalities issues. This will indicate whether or not a full impact assessment is required and which issues should be considered in it. The equalities issues that you should consider in completing this screening are:

- Race
- Gender
- Gender identity
- Disability
- Religion or belief
- Sexual orientation
- Age (including younger and older offenders).

## Aims

**What are the aims of the policy?**

The aim of the policy is to ensure that we meet our legal obligations to treat prisoners, visitors and other stakeholders fairly.

## Effects

**What effects will the policy have on staff, offenders or other stakeholders?**

Prisoners, visitors and other stakeholders will be treated fairly

## Evidence

**Is there any existing evidence of this policy area being relevant to any equalities issue?**

*Identify existing sources of information about the operation and outcomes of the policy, such as operational feedback (including local monitoring and impact assessments)/Inspectorate and other relevant reports/complaints and litigation/relevant research publications etc. Does any of this evidence point towards relevance to any of the equalities issues?*

The policy is designed to ensure compliance with equalities legislation.

## Stakeholders and feedback

Describe the target group for the policy and list any other interested parties. What contact have you had with these groups?

- Managers and staff will be required to operate the policy. A range of managers were consulted over the PSI, as were the unions.
- Offenders will be subject to the policy. Some groups of offenders were consulted over some aspects of the PSI, such as the design of the discrimination incident reporting form.
- Visitors.
- Other NOMS stakeholders. A range of groups were consulted over the development of the PSI.

Do you have any feedback from stakeholders, particularly from groups representative of the various issues, that this policy is relevant to them?

All groups consulted were satisfied that the policy is designed to ensure compliance with equalities legislation.

Some managers identified risks around a reduction in the level of prescription from the previous instruction on race equality. In response to this the 'Resource Impact' section of the Executive Summary was adjusted to ensure that this PSI is not perceived as a signal that action on equalities is now less of a priority or that this area of work is generally over-resourced and should be targeted for cost savings.

## Impact

Could the policy have a differential impact on staff, prisoners, visitors or other stakeholders on the basis of any of the equalities issues?

The policy is designed to ensure that there is no differential impact.

## Local discretion

Does the policy allow local discretion in the way in which it is implemented? If so, what safeguards are there to prevent inconsistent outcomes and/or differential treatment of different groups of people?

The policy does allow substantial local discretion. However the mandatory actions are designed to ensure that there is no differential impact.

## Summary of relevance to equalities issues

Strand	Yes/No	Rationale
Race	No	
Gender (including gender identity)	No	

<b>Disability</b>	No
<b>Religion or belief</b>	No
<b>Sexual orientation</b>	No
<b>Age (younger offenders)</b>	No
<b>Age (older offenders)</b>	No

If you have answered 'Yes' to any of the equalities issues, a full impact assessment must be completed. Please proceed to STAGE 2 of the document.

If you have answered 'No' to all of the equalities issues, a full impact assessment will not be required, and this assessment can be signed off at this stage. You will, however, need to put in place monitoring arrangements to ensure that any future impact on any of the equalities issues is identified.

### Monitoring and review arrangements

Describe the systems that you are putting in place to manage the policy and to monitor its operation and outcomes in terms of the various equalities issues.

Comprehensive national monitoring of outcomes for offenders through the SMART system and other data (see for example the NOMS Equalities Annual Report).

Monitoring of perceptions of offenders through the Measuring the Quality of Prison Life, HMCIP and other surveys.

Management systems for equalities issues will be a priority in the 2011-2012 audit programme.

State when a review will take place and how it will be conducted.

The policy will be reviewed in 2012-2013 in the light of data and audit results from 2011-2012.

	<b>Name and signature</b>	<b>Date</b>
<b>Policy lead</b>	Chris Barnett-Page	March 2011
<b>Head of group</b>	Claire Cooper	March 2011