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## Staff Handbook Chapter 5

# Equality and Diversity

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## Staff Handbook Chapter 5

# Equality and Diversity

### INTRODUCTION

5000 This Chapter explains the Forestry Commission's equality and diversity policy and covers individual employees' rights and responsibilities.

### GENERAL POLICY

5001 The Forestry Commission values and respects its staff in that we treat one another with respect and trust. In doing so we recognise that each person is different and can make a unique contribution to our work. The purpose of this policy is to demonstrate that we are an equal opportunity employer and our aim is to be fair to everybody. To do this we must ensure that no eligible job applicant, or employee receives less favourable treatment on the grounds of their gender, or gender re-assignment, ethnic origin, disability, age, nationality, national origin, sexual orientation, marital status, religion and religious or philosophical belief, social class or offending background.

All employees, whether part-time, full time or temporary will be treated fairly and equally. Selection for employment, promotion or training or any other benefit will be on the basis of aptitude and ability. All employees will be helped and encouraged to develop their full potential and the talents and resources of the workforce will be fully utilised to maximise the efficiency of the organisation. No person shall be disadvantaged by conditions or requirements which cannot be shown to be justifiable.

The Forestry Commission also follows good employer practices aimed at ensuring that all staff work in an environment free from both illegal and unfair discrimination and harassment. Consolidated statements of the Commission's obligations with regard to equality of opportunity and diversity are shown at Annexes 1, 2, 3 and 4. Full details of these initiatives arising from our policies are also set out in the Personnel Development Intranet site.

The Forestry Commission will monitor the success of its policies by:-

- Collecting and analysing data as appropriate.
- Regularly reviewing procedures [recruitment, performance management, promotion and pay] to ensure that they are free of unfair discrimination.
- Report the results of equality and diversity monitoring to the Personnel Management Sub-Committee on an annual basis.
- Liaising closely with Cabinet Office and other Government Departments to ensure that we are keeping abreast of all changes in legislation and other developments.

### DEFINITIONS

5002 The following definitions outline our corporate application of enabling equality of opportunity on merit.

**Equal Opportunities:** Enables people to be dealt with in a manner which is fair, reasonable and without prejudice. It mainly concentrates on under represented groups and incorporates legal requirements.

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**Diversity:** Relates to all ways in which people differ, for example, different styles of working, thinking and communicating with others, arising from differences in social background, education, gender, ethnicity, religion or belief, sexual orientation, age etc. It also builds upon and compliments established approaches to equal opportunities.

Managing diversity is built around the concept that everyone should be valued as individuals for their particular contribution, which can bring fresh ideas and input to organisational goals and performance.

## **RESPONSIBILITIES**

### **The Forestry Commission**

5003 Is firmly committed to actively pursuing equality of opportunity for every one with whom we work and deal. We will demonstrate our commitment by the application of our organisational values which are:-

- Respect
- Professionalism
- Communication
- Teamwork
- Learning
- Creativity

These recognise and value the differences and contributions each person brings to our work.

### **Line Managers**

5004 Line managers must ensure that all staff for whom they have responsibility are aware of the policies on equal opportunity and diversity and that there must be no unlawful discrimination of any kind. In particular line managers of new staff have a specific responsibility for ensuring that the Forestry Commission's policy on equal opportunities and diversity is explained to them. This requirement is set out in the New Entrants Induction Pack. Discrimination is a serious matter and, after consulting the Departmental Equal Opportunities Officer, they should take appropriate action in respect of any member of staff who misbehaves or is suspected of misbehaving, in this way. Serious discrimination will be treated as a disciplinary offence. Line managers can be answerable personally to Employment Tribunals for complaints of discrimination by, or from, their staff.

### **The Individual**

5005 All staff must be aware of their responsibility not to discriminate unlawfully against colleagues. Personal equality and diversity responsibilities include compliance with the Sex Discrimination Act, Race Relations Act [as amended] and the Disability Discrimination Act. All staff must also comply with overall Civil Service policy as set out in the Civil Service Management Code and the Programmes for Action on gender, ethnicity and disability to achieve equality of opportunity.

5006 To comply with the departmental equality and diversity policies, all staff must also:

- a. Uphold the principle of treating people fairly in all dealings that arise from, or in connection with their employment, including colleagues, customers and partners.
- b. Challenge inappropriate behaviour of others, regardless of pay band, when necessary.
- c. Ensure that their own behaviour is appropriate.
- d. Recognise and take account of the diversity of all colleagues and customers and not deliberately exclude any individuals.
- e. Recognise individuals' outside interests and obligations.

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- f. Deal with people with an open mind, not assuming or avoiding issues but at the same time not asking intrusive questions about an individual's personal life.
- g. Not display or distribute material which could be regarded as being offensive.
- h. Not use offensive words to describe a person or tell offensive jokes.
- i. Not make physical contacts with someone in a way which is unwelcome or unsolicited.
- j. Not make a person feel humiliated, intimidated or threatened.
- k. Behave in a manner which respects any individual's known sensitivities and beliefs.

The important role of all staff, and especially managers, is to ensure a safe, non threatening environment in the workplace.

### **Discrimination and Harassment**

5007 Discrimination and harassment of any kind are contrary to the Forestry Commission's policy of Equal Opportunities. All staff should have equality of opportunity in their terms and conditions of employment, career development and advancement and to a working environment free from discrimination and harassment, regardless of their gender or gender re-assignment, ethnic origin, disability, age, nationality, national origin, sexual orientation, marital status, religion or religious or philosophical belief, social class or offending background. It therefore follows that neither discrimination nor harassment will be tolerated and may result in disciplinary action where necessary. Staff should therefore ensure that they are familiar with the following guidance and avoid behaviour which could lead to complaints.

### **Unconscious Discrimination**

5008 Care should always be taken to guard against some of the more subtle and unconscious forms of discrimination, which may not easily be perceived. These may result from general assumptions about the capabilities, characteristics and interests of particular groups, which are allowed to influence the treatment of individuals or groups, or from the application of conditions or requirements, without considering whether they operate disproportionately to the disadvantage of particular groups and, if so, whether they can be shown to be justifiable within the spirit of the Acts referred to above. Unconscious discrimination and negative stereotyping may show itself in several ways:

- a. Staff may be channelled into particular types of work, on the basis of these general assumptions, without sufficient regard to the particular attributes and abilities of them as individuals.
- b. Preconceptions about the ability of staff to supervise may be allowed to affect the recruitment or promotion to supervisory positions.
- c. The allocation of work and the recruitment or promotion of ethnic minority workers, women and those with a disability into particular posts, may be affected by assumptions about the reaction of staff not in these groups and/or members of the public.
- d. Assumptions about an ethnic minority worker's command of English or a disabled person's ability to communicate, that are not based on evidence of their actual capacity, may adversely affect decisions on recruitment, promotion or postings.
- e. There is a risk that 'double standards' may be used in making judgements of merit and that different standards may be used.

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- f. Recruitment or other vocational or occupational tests and forms should be objectively related to job requirements or performance and should not indirectly discriminate against any applicants or staff members.
- g. Line managers should take particular care to be seen to be impartial in their dealings with all staff and, when interviewing staff in ethnic minority groups (especially in appraisal interviews), should see, as far as they are able, that the Government's race relations policy is being properly implemented. They should note whether any difficulties discussed are due, directly or indirectly to race, ethnic origin etc.

These and similar kinds of behaviour may occur without any conscious or deliberate intention to discriminate and without giving rise to complaints by those affected. All staff must, therefore, be fully aware of the requirement to avoid unconscious discrimination. Standards must be the same for all staff. In particular the training of selection and promotion panels will include warnings about the less obvious forms of discrimination and the need to preserve full records of the assessment of candidates and the reasons for the rejection of those who are unsuccessful.

5009 – 5010 Unallocated

### **Training in Equal Opportunities and Diversity**

5011 Staff involved in recruitment and selection Boards will be required to complete a training course which will highlight the FC's policy on equal opportunities, diversity, recruitment of ex-offenders and the laws which apply. This training must be completed by those involved in the administration of Boards as well as those concerned with the interviewing/selection elements.

### **The Departmental Equal Opportunities Officer**

5012 The Departmental Equal Opportunities Officer (DEOO), in Staff Inspection and Diversity Branch, Silvan House, is responsible for the full scope of equal opportunity and diversity matters, and has five main roles:

- a. To review Departmental policy and procedures, to recommend necessary changes and to ensure their implementation.
- b. To provide a direct link with the Cabinet Office (to exchange information, discuss problems and progress and to carry out agreed recommendations).
- c. To be responsible for the dissemination of advice to all managers as necessary and to deal with any queries or suggestions.
- d. To use the joint management/trade union Personnel Management Sub Committee to oversee the implementation of policy.
- e. To provide general information and advice to members of staff.

The DEOO reports to the Director Personnel Development who has operational responsibility for ensuring equality of opportunity under the direction of the Director General.

5013 Country Directors, Agency Chief Executives and other senior managers are responsible for the implementation of the Commission's equal opportunities and diversity policies within their areas of control.

## **EQUAL OPPORTUNITIES FOR MEN AND WOMEN**

### **Provisions of the Sex Discrimination Act 1975**

5014 The purpose of the Sex Discrimination Act is to render unlawful discrimination on grounds of sex or marital status. It establishes and specifies the functions of an Equal Opportunities Commission. In the employment field, its provisions supplement those of the Equal Pay Act 1970. This together with the Equal

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Pay Act (Amendment) Regulations 1983 establishes the right of an individual woman or man to equal treatment in respect of pay and other terms of service as a person of the opposite gender. It applies:

- a. When he/she is employed on the same, or broadly similar, work; or
- b. Where his/her work has been rated as equivalent under job evaluation; or
- c. Where the work is of equal value.

5015 Unless the employer shows that any difference in treatment is genuinely due to a material difference (other than sex) between his/her case and that of the comparator.

The Sex Discrimination Act makes sex discrimination unlawful in employment, training and related areas. It also applies to:

- the educational field;
- the provision of the general run of goods, services and facilities to the public;
- the disposal of premises or the treatment of occupiers of premises;
- discriminatory advertising related to these various fields.

In all these areas the Sex Discrimination Act covers not only direct and intentional discrimination but also conditions or requirements which, though applied equally to both sexes, are discriminatory in their effect on one sex and cannot be shown to be justifiable (indirect discrimination).

The provisions of the Sex Discrimination Act relating to sex discrimination against women are to be read as applying equally to the treatment of men, except where special treatment is afforded to women in connection with pregnancy or childbirth.

### **Application to the Crown**

5016 The Sex Discrimination Act applies to an act done by or for the purpose of a Minister of the Crown, or Government Department, or to an act done on behalf of the Crown by a body set up by an enactment or by a person holding office set up in that way, in the same way as it applies to an act done by a private person. Public appointments come within the scope of the Act.

### **Discrimination in Employment**

5017 It is unlawful for an employer to discriminate on grounds of sex either between applicants for jobs or between existing employees, as regards the treatment the employer accords to them. In particular this applies to promotion, transfer or training. In the employment field, discrimination on the grounds that a person is married is also unlawful.

Section 48 of the Act makes provision to enable special training to be provided to one sex to equip them for work which they have not previously done, or in which they have been represented only in small numbers.

### **Provisions of the Trade Union Reform and Employment Rights Act 1993 & Employment Rights Acts 1996 & 1999**

5018 The EU Pregnant Workers Directive requires member states to provide a number of pregnancy and maternity rights and benefits, and makes provisions for the health and safety of women who are pregnant, have recently given birth or who are breast-feeding. Several of the requirements of the Directive were implemented by the Trade Union Reform and Employment Rights Act 1993 which came into force on 16 October 1994 but now form part of the Employment Rights Act 1996, as amended by the Employment Rights Act 1999.

5019 Amongst the provisions, it is unlawful for an employer to:

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- dismiss an employee, or select her for redundancy, in preference to other comparable employees, because she is pregnant or has given birth, or for any other reason connected with her pregnancy or childbirth.

This special protection applies up to the end of the statutory maternity leave period or up to a maximum of 4 weeks after the end of that period if the woman has since then been incapable for work due to a medically certified illness. It also applies regardless of the employee's length of service or hours of work.

Rights are given for time off for antenatal care, maternity leave, a minimum underpinning of Statutory Maternity Pay or Maternity Allowance.

## **EQUAL OPPORTUNITIES FOR STAFF OF ETHNIC MINORITY ORIGIN**

### **Provisions of the Race Relations Act 1976**

5020 The purpose of the Act was to introduce laws against racial discrimination and establish the Commission for Racial Equality. The Act repeals and replaces the Race Relations Acts 1965 and 1968. The Act covers not only direct discrimination against a person on the grounds of colour, race, nationality or ethnic or national origins but also unjustifiable indirect discrimination (see paragraph 5012). The Race Relations Act makes racial discrimination unlawful in employment, training and related areas. It also applies to the educational field, to the provision of the general run of goods, services and facilities to the public, to the disposal of premises or the treatment of occupiers of premises, and discriminatory advertising in these various fields.

### **Provisions of the Race Relations [Amendment] Act 2000**

5021 The new Act strengthens and extends the scope of the 1976 Act in that it extends protection against racial discrimination by public authorities and places a new enforceable general statutory duty on public authorities. These authorities include government departments, the Scottish Administration, the National Assembly of Wales, the Armed Forces, the NHS, local authorities, governing bodies of publicly funded schools and colleges, the Housing Corporation, Scottish Homes, and police authorities.

The duty means that, in everything they do, these listed authorities must have 'due regard' to the need to:

- eliminate unlawful racial discrimination
- promote equality of opportunity
- promote good relations between people of different racial groups.

To meet the duty, the listed authorities should take whatever steps are needed to make sure that their policies and practice do not disadvantage people from particular racial groups. They will need to ask whether their policies have (or are likely to have) an impact on race equality.

5022 If a listed public authority has a contract or other arrangement with a private company or a voluntary organisation to carry out any of its functions, and the duty applies to those functions, the authority is responsible for meeting the duty concerning those functions. Private or voluntary organisations do not have this obligation. Listed public authorities working in partnership with other organisations are still responsible for meeting the general duty and any specific duties.

5023 The Forestry Commission is committed to its Race Equality Scheme and outline details are shown at Annex 3. The Race Equality Scheme and action plan sit on the Personnel Development Intranet site.

### **Application to the Crown**

5024 The Race Relations Act applies to an act done by, or for the purposes of, a Minister of the Crown or Government Department, or to an act done on behalf of the Crown by a body set up by an enactment or a person holding office set up in that way, as it applies to an act done by a private person. Public appointments come within the scope of the Act.

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### **Discrimination in Employment**

5025 It is unlawful for an employer to discriminate on racial grounds against applicants for employment. This includes discrimination in the arrangements they make for recruiting staff. It is also unlawful for an employer to discriminate in the way they treat existing employees, in particular in respect of promotion, transfer or training.

### **Sexual and Racial Harassment**

5026 Harassment includes any unwelcome and inappropriate conduct which, whether intentionally or not, creates feelings of unease, humiliation, embarrassment, intimidation, discomfort or causes offence. It can result in exclusion or withdrawal and can threaten or appear to threaten an officer's ability to do their job. Harassment can occur deliberately or unintentionally, but it is the impact of the conduct on the recipient that matters, not the harasser's intent.

Although harassment normally takes the form of repeated actions and incidents, one single incident can also constitute harassment if it is sufficiently serious.

5027 The following paragraphs give examples of racial and sexual harassment. It is important to bear in mind, however, that harassment could arise on other grounds, such as age, sexual orientation or religion.

- verbal or physical threats or abuse, including derogatory or stereotypical remarks or statements;
- displaying, viewing or circulating racially offensive or sexually suggestive or offensive material, such as pin-ups or pornography (including material of this kind accessed through the Internet);
- innuendo, mockery, lewd or sexist/racist jokes or remarks;
- unwelcome attention, such as spying, following or pestering, overly familiar behaviour or other unwelcome verbal or physical attention.
- unwarranted, intrusive or persistent questioning about a person's marital status, personal life, sexual interests or orientation, or similar questions about a person's racial or ethnic origin, including their culture or religion;
- unwelcome sexual advances or repeated requests for dates, or threats or suggestions that sexual favours may further a person's career or that not offering them may adversely affect their career;
- leering and rude gestures, touching, grabbing, patting or other unnecessary bodily contact such as brushing up against others;
- making or sending unwanted, sexually suggestive, hostile or personally intrusive phone calls, e-mails, faxes or letters.

5028 Sexual and racial harassment can occur:

- among colleagues;
- towards a member of the public;
- where a person uses implicitly or explicitly racist or sexual behaviour to control, influence or affect the career of another person whom they manage or over whom they exert actual, or perceived, authority;
- where a person engages in implicit or explicit behaviour of a racist or sexual nature to influence the attitudes or decisions of another, possibly more senior person, to further career opportunities or to undermine discipline or authority.

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Managers must also be alert to the possibility that harassment can arise insidiously, for example by the growth of the sexually-slanted banter in the office or the display of posters which give offence or are sexually suggestive.

Further information is contained in paragraphs 5040–5085.

## **EQUAL OPPORTUNITIES FOR STAFF WITH DISABILITIES**

### **Provisions of the Disability Discrimination Act 1995**

5029 The Act makes treating people with disabilities less favourably than others, without justification, unlawful in areas such as buying goods, using services, finding somewhere to live, applying for and in employment. The provisions of the Act replace the quota scheme and the designated employment scheme for registration as a disabled person. For service providers (e.g. businesses and organisations):

- since December 1996 it has been unlawful to treat disabled people less favourably than other people for a reason related to their disability;
- since October 1999 they have had to make reasonable adjustments for disabled people, such as providing extra help or making changes to the way they provide their services;
- from 2004 they will have to make reasonable adjustments to the physical features of their premises to overcome physical barriers to access.

In addition, the Disability Discrimination Act requires schools, colleges and universities to provide information for disabled people and allows the Government to set minimum standards to assist disabled people to use public transport easily.

### **Application to the Crown**

5030 The Disability Discrimination Act applies to an act done by, or for the purposes of, a Minister of the Crown or Government Department. It also applies to an act done on behalf of the Crown by a body set up by an enactment or by a person holding office set up in that way, as it applies to an act done by a private person.

### **Definition of Disability**

5031 The Disability Discrimination Act offers the following definitions:

- a. The Act defines a disabled person as someone with a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities. People who have had a disability within the definition are protected from discrimination even if they have since recovered.
- b. The term 'physical impairment' includes sensory impairments such as those affecting sight or hearing. The term 'mental impairment' is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities. However, the Act states that it does not include any impairment resulting from or consisting of a mental illness, unless that illness is a clinically well-recognised illness. A clinically well recognised illness is one that is recognised by a respected body of medical opinion.
- c. A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which exist among people.
- d. A long term effect of an impairment is one:
  - which has lasted at least 12 months; or

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- where the total period for which it lasts is likely to be at least 12 months; or
  - which is likely to last for the rest of the life of the person affected.
- e. Normal day-to-day activities are those which are carried out by most people on a fairly regular and frequent basis. The test of whether an impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed below:
- mobility;
  - manual dexterity;
  - physical co-ordination;
  - continence;
  - ability to lift, carry or otherwise move everyday objects;
  - speech, hearing or eyesight;
  - memory or ability to concentrate, learn or understand; or
  - perception of the risk of physical danger.
- f. People with severe disfigurements are covered by the Act. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.
- g. Progressive conditions are covered by the Act from the moment a condition leads to an impairment which has some effect on ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment is likely eventually to have a substantial adverse effect on such ability.

**What *doesn't* count as a disability?**

5032 Certain conditions are not considered impairments under the DDA:

- lifestyle choices such as tattoos and non-medical piercings;
- tendency to steal, set fires, and physical or sexual abuse of others;
- exhibitionism and voyeurism;
- hayfever, if it doesn't aggravate the effects of an existing condition;
- addiction to or a dependency on alcohol, nicotine or any other substance, other than the substance being medically prescribed.

**Discrimination in Employment**

5033 The Act makes it unlawful to discriminate against a disabled person in the field of employment and it says that discrimination occurs in two ways:

- discrimination is deemed to have occurred when, for a reason which relates to an individual's disability, the employer treats that disabled person less favourably than the employer treats or would treat others to whom the reason does not or would not apply. Additionally, the employer cannot show that this treatment is justified;
- discrimination is deemed to have occurred when an employer fails to comply with a duty of reasonable adjustment imposed on him by the Act in relation to the disabled person, and he cannot show that this failure is justified.

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5034 The Disability Discrimination Act makes discrimination in the field of employment unlawful. Specifically this relates to:

- Recruitment, which covers job specification, advertising, processes of selection, including location and timing, assessment techniques, interviewing and selection criteria.
- Terms and conditions.
- Induction.
- Training and career development.
- Promotion and transfer.
- Termination of employment.

### **Disability Harassment**

5035 Clear harassment of a disabled person would occur, for example, where an individual or group made fun of someone's disability, or used offensive language in describing someone with a disability.

5036 Language is sometimes used thoughtlessly or insensitively (rather than maliciously) in describing someone with a disability and this could give rise to harassment, as can the assumption that 'disability' means 'inability'. Examples of inappropriate terms used to describe people (whether FC staff or members of the public) would include the following:

- "the disabled" - does not allow for the diverse nature of disabilities which may be experienced. Use "disabled people";
- "the handicapped and mentally handicapped". Historically, these terms had associations with "cap in hand" and begging and are offensive to many disabled people. It is preferable to use "disabled people" or, for example, "person with a learning disability";
- "cripples" - is old fashioned and derogatory. Use "physically impaired" or "physically disabled";
- "wheelchair bound and confined to a wheelchair" - places excessive emphasis on the wheelchair, to the detriment of the person in the wheelchair. It is more appropriate to use "wheelchair user".
- "a spastic" - spasticity is a precise medical term and should not be used to define a person. Use "person with cerebral palsy" instead.

Discrimination of disabled people can arise from ignoring or devaluing an individual's ability, or when a disabled person is excluded or prevented from fully participating at work or by lack of job opportunities. Further information is contained in paragraphs 5040-5085.

### **Reasonable Adjustments**

5037 As part of the protection against discrimination employers may have to make "reasonable **adjustments**", if their employment arrangements or premises place disabled people at a substantial disadvantage compared with non-disabled people. This duty applies not only throughout the course of the employment but also at the recruitment stage. Reasonable adjustment will not be necessary in the case of all disabled people and nor should it be assumed that an adjustment will be expensive. Examples of reasonable adjustments include special computer equipment for people with an eyesight impairment; a restructured job where specific tasks (e.g. filing) cannot be physically accommodated; a flexible working arrangement where a disabled person is unable to attend work first thing in the morning. A confidential Self Declaration of Disability Form, for use at any time, can be found in the Disability folder in the Personnel Development Intranet site.

**5038 – 5085 Unallocated.**

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For information on harassment and bullying, and dealing with grievance cases relating to harassment and bullying, please refer to HR Policy - Harassment and Bullying and HR Procedure – Grievance in the staff Handbook.

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ANNEX 1

**EQUAL OPPORTUNITIES POLICY STATEMENT**

1. Civil Service equal opportunities policy provides that all eligible people must have equality of opportunity for employment and advancement on the basis of their suitability for the work. There must be no unfair discrimination on the basis of age, disability, gender, marital status, sexual orientation, race, colour, nationality, ethnic or national origin, or (in Northern Ireland) community background.
2. Departments and agencies must comply with equal opportunities legislation and with Codes of Practice issued under such legislation. They must also have regard to the provisions of the Civil Service programmes for action to achieve equality of opportunity for people of ethnic minority origin, for women and for disabled people; to Department for Education and Skills guidance on age discrimination; and (in Northern Ireland) to the Fair Employment Commission guide "Taking Affirmative Action".
3. Each department and agency is responsible for implementing Civil Service equal opportunities policy in its own organisation. Departments and agencies must develop their own strategies, based on Civil Service policy, and draw up action plans to implement these strategies.
4. Departments and agencies must make their equal opportunities policy known to all staff and potential applicants for employment. They must make clear to all staff their rights and responsibilities in relation to the implementation of this policy, and provide for their staff a working environment which is free from unfair discrimination and harassment.
5. Departments and agencies must have in place procedures for handling complaints of unfair discrimination and harassment, and must make these procedures known to all staff. All such complaints must be handled promptly and appropriately. In drawing up procedures and guidance for their staff, departments and agencies must be aware of the Cabinet Office guide "Good Practice for Equal Opportunities Staff: Complaints Procedures".
6. To enable them to monitor the effectiveness of their policies and action plans, departments and agencies must collect data on the age, gender, ethnic origin, disability, and (in Northern Ireland) community background of staff and applicants. They must use these data to monitor and analyse staff in post and the effects on each group of key personnel procedures, including recruitment, career development, promotion, job allocation, resignations, personal review, salary, performance pay, and access to opportunities for training and personal development.
7. To record the ethnic origin of staff and to permit analysis of ethnic minority representation Service-wide, departments and agencies must use the standard Civil Service ethnic origin categories or those relating to the 2001 Census, as specified in Cabinet Office guidance. They must also take appropriate steps, as described in the Model Code of Practice on Ethnic Monitoring issued by the Cabinet Office, to safeguard the confidentiality of ethnic origin data on individuals, consistent with the conduct of effective monitoring for equal opportunities purposes.
8. The Cabinet Office will also monitor the overall effectiveness of Civil Service equal opportunities policy. Where possible, this will draw on data held and collected centrally, but departments and agencies may be required to provide additional information.
9. Departments and agencies must identify one or more equal opportunities officer(s) to have overall responsibility for the implementation of their equal opportunities policy and action plan and for monitoring and reviewing progress as specified in Cabinet Office guidance. This is in addition to the responsibility of individual line managers for achieving progress within their own commands.

## **RACE RELATIONS POLICY STATEMENT**

### **General**

1. It is the policy of the Civil Service that all eligible persons shall have equal opportunity for employment and advancement in the Civil Service, on the basis of their ability and qualifications and fitness for the work. There must be no direct racial discrimination against any eligible person, whether in recruitment, training, promotion or in any other way. Similarly there must be no indirect racial discrimination. This occurs where a requirement or condition is applied equally to people from different ethnic origins but is unfavourable to particular groups defined by reference to any of the characteristics of colour, race etc because a considerably smaller proportion of them can comply with it: unless the requirement or condition can be shown to be justifiable irrespective of the colour, race etc of those to whom it is applied.

2. This policy pursues and builds on the statutory position in Great Britain. The intention is to comply as much with the spirit as with the letter of the legislation and to establish and pursue an effective policy of promoting equal opportunity. In Great Britain it is generally unlawful to discriminate on grounds of colour, race, nationality, ethnic or national origins under the Race Relations Act 1976.

A person discriminates against another in any circumstances relevant for the purposes of any provision of this Act, if:

- a. on racial grounds he treats that other less favourably than he treats or would treat other persons; or
- b. he applies to that other a requirement or condition which he applies or would apply equally to persons not of the same racial group as that other but:
  - i. which is such that the proportion of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it and
  - ii. which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied and
  - iii. which is to the detriment of that other because he cannot comply with it.

3. It is essential that this policy should be clearly communicated to all management and staff and should therefore be published in, for example, office notices, circulars, information on promotion and departmental staff handbooks. It should also be made known to potential applicants, through recruitment and careers literature and job advertisements, that the Civil Service is an Equal Opportunities Employer.

### **Departmental Responsibility**

4. Although the Cabinet Office is responsible for developing, formulating and promulgating the policy for the Service as a whole, operational responsibility lies with the Principal Establishment Officer of each department, under the direction of the head of that department. Personnel Sections and line managers are responsible to the Principal Establishment Officer for ensuring that all staff for whom they have responsibility are aware of this policy of equal opportunity and that there is no unlawful discrimination of any kind. For an equal opportunity policy to be effective it must be adopted at all levels of management and supervision.

5. An officer should be designated within each department to be responsible for coordinating the equal opportunity policy and to act as an inter-department liaison officer with the Cabinet Office. In larger departments it will often be appropriate for officers to be designated with this responsibility at regional and/or local levels.

6. Existing joint management/union machinery should be used at departmental and where appropriate local levels to plan and oversee the implementation of the policy on a continuing basis. Similarly joint machinery at national level should be responsible for monitoring equal opportunity policies and programmes on a Service-wide basis.

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### **Individual Responsibility**

7. The existence of law cannot of itself ensure that any policy of non-discrimination will work effectively. This will be achieved only if staff at all levels examine critically their attitudes to people and ensure that no trace of discrimination is allowed to affect their judgement. In this connection staff should be aware of the forms which unfair discrimination can take, guard against them and avoid any action which might influence others to discriminate unfairly.

### **Unconscious Discrimination**

8. Care should always be taken to guard against the more subtle and unconscious varieties of discrimination which may not easily be perceived. These may result from general assumptions about the capabilities, characteristics and interests of particular groups which are allowed to influence the treatment of individuals or groups. They may also take the form of applying conditions or requirements, without considering whether they operate disproportionately to the disadvantage of particular groups. Any such requirements must be shown to be justifiable within the spirit and terms of the Race Relations Act. Unconscious discrimination may show itself in several ways:

\* Race Relations Act 1976 Section 1(1)

- a. Staff may be directed into particular types of work on the basis of these general assumptions without sufficient regard to the particular attributes and abilities of individuals.
- b. Preconceptions about the ability of ethnic minority staff to supervise may be allowed to affect recruitment or promotion to supervisory positions.
- c. The allocation of work, and the recruitment or promotion of ethnic minority workers into particular posts, may be affected by assumptions about the reaction of other staff and/or members of the public.
- d. There is a risk that 'double standards' may be used in making judgments of merit and that different standards may be used according to the ethnic or national origins of individuals.
- e. Assumptions about a command of English or ability of ethnic minority staff to communicate that are not based on evidence of actual capacity may affect decisions on recruitment, promotion or postings.

9. These and similar kinds of behaviour may occur without conscious intention to discriminate and without giving rise to complaints by those affected. Line managers should take particular care to be seen to be impartial in their dealings with all staff. When interviewing ethnic minority staff – whether in job appraisal reviews or in the course of day to day business – they should ensure that their own conduct accords with the policy in this statement and ascertain whether any difficulties discussed are due directly or indirectly to race, colour etc and take all appropriate action to deal with any discrimination.

### **Recruitment, Selection for Training, Allocation to Duties and Promotion**

10. Eligibility criteria for recruitment should be formulated to ensure that they are related to job performance and are non-discriminatory. These criteria should be included in the information sent to prospective candidates about any scheme of recruitment. Those, which could act as discriminatory barriers to the employment of staff from these ethnic minorities, should be identified and reviewed. Similarly, any tests used in recruitment, training or promotion should be examined to ensure that they are related to job performance and are non-discriminatory.

11. Selection and promotion board decisions and reasons for such decisions should be recorded at each stage of the selection and promotion process. Where recording the criteria used at each stage of the process is sufficient to explain the decisions of selection and promotion boards, this will be an adequate record.

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### **Training**

12. Training and information can play a major part in the promotion of equal opportunity. It is essential that departments should make every effort to ensure that all those with managerial and supervisory responsibilities perform those duties with full regard to all the implications of the equal opportunities legislation. The policy described in this statement should be explained wherever possible in management courses and in literature and circulars as referred to in paragraph 3 above.

13. The Race Relations Act 1976 (Section 38) provides, inter alia, that where members of particular racial groups have been under-represented over the previous twelve months in particular work, employers may encourage them to take advantage of opportunities for doing that work or to provide training to help them attain the skills needed for it. Departments should be aware of this provision and should take it into account in arranging, or in providing guidance on, equal opportunity training.

14. Where the workforce includes employees whose knowledge of English is limited, steps should be taken by departments to assist those employees who have difficulties to improve their command of English so as to ensure more effective performance and better communications within the organisation.

### **Advertising**

15. Advertisements whether internal or external (this includes all media, leaflets, posters, films and other visual aids) must not indicate, or appear to indicate, an intention to discriminate in selection for recruitment, promotion, training or transfer.

16. In all areas of advertising care must be taken to ensure nothing is said about Civil Service policies or activities which might be interpreted as reflecting any form of discrimination.

17. Advertisements should not be confined unjustifiably to those areas or publications which would exclude or disproportionately reduce the number of applicants of a particular racial group. Where appropriate, consideration should be given to advertising in publications of special interest to ethnic minorities in addition to wider press advertising.

18. Where a particular qualification is required it should be made clear that a fully comparable qualification obtained overseas is as acceptable as a UK qualification.

### **Complaints of Discrimination**

19. Grievance procedures. All civil servants should be made aware of the grievance procedures which are available to them, including the right to request a formal written explanation of treatment they believe to be discriminatory. A written explanation should also be given to those job applicants to the Civil Service who claim that a refusal to offer employment was discriminatory.

20. Tribunals. Employees who think they have been discriminated against and who consider they have failed to secure adequate redress have a legal right to take their case to an Industrial Tribunal. In these circumstances complaints can be brought against managers as well as against the employing departments.

### **Agreement**

21. This policy has been jointly agreed by the Official and Trade Union Sides in the Commission and all parties affirm their full support for the principle of equality of opportunity and are concerned that there should be a practical and generally accepted programme for action. They are determined that everything possible is done to ensure its full and effective implementation.

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ANNEX 3

**THE FORESTRY COMMISSION'S RACE EQUALITY SCHEME**

**The duty to promote race equality**

1. The amended Race Relations Act gives public authorities a new statutory duty to promote race equality. The aim is to help public authorities to provide fair and accessible services, and to improve equal opportunities in employment.
2. The Forestry Commission is committed to ensuring that its policies and practice do not disadvantage people from particular racial groups. The Forestry Commission's Race Equality Scheme will comply with the general and any specific duties arising out of the Race Relations [Amendment] Act 2000.

**The general duty**

3. The general duty applies to all public authorities listed in Schedule 1A of the Act. As a government organisation the Forestry Commission will comply with the aim of the duty to make the promotion of racial equality central to its work. The general duty also expects public authorities to take the lead in promoting equality of opportunity and good race relations, and preventing unlawful discrimination.
4. In practice, this means that the Forestry Commission must take account of racial equality in the day to day work of policy-making, service delivery, employment practice and other functions. To do this, we should take two factors into account:-
  - The weight which we attach to racial equality should be in proportion to its relevance to a particular function. For instance, standards of customer care are going to be much more relevant than, say, roads maintenance.
  - Since public authorities must meet all three parts of the duty - eliminating unlawful discrimination, and promoting equal opportunities and good race relations - we must make sure we know how all our policies and services affect race equality. For example, a new recruitment policy may help to promote equal opportunities, but if it is badly introduced, it may actually damage race relations.

**Specific duties**

5. The Home Secretary issued orders under the Act which place specific duties on many public authorities to help them to meet the general duty. These duties came into effect on Monday 3 December 2001. Under these duties, the Forestry Commission will have to prepare and publish a Race Equality Scheme. The scheme should explain how we will meet both their general and specific duties.
6. Under the Race Equality Scheme, public authorities will have to:
  - assess whether their functions and policies are relevant to race equality;
  - monitor their policies to see how they affect race equality;
  - assess and consult on policies they are proposing to introduce;
  - publish the results of their consultations, monitoring and assessments;
  - make sure that the public have access to the information and services they provide;
  - train their staff on the new duties.

The Race Equality Scheme – itself one of the specific duties – essentially packages the other duties into a coherent strategy and action plan.

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**Race Equality Schemes**

7. Although Race Equality Schemes are a new development in Britain, many public authorities already have equality strategies and action plans. Public authorities should not see the duty as a burden. Promoting race equality will improve public services for everyone. Public authorities can meet the duties in their own way and avoid unnecessary work and expense by using their existing arrangements and administrative systems.

**Specific duties on employment**

8. Bound by the general duty the Forestry Commission must monitor, by ethnic group:-
- existing staff, and applicants for jobs;
  - promotion;
  - training;
  - grievances;
  - disciplinary action;
  - performance appraisals;
  - dismissals;
  - publish the results every year.
9. The Forestry Commission's Race Equality Scheme sits within the Personnel Development Intranet Site.

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ANNEX 4

**SUMMARY OF DEFINITIONS AND REFERENCES**

- The **Sex Discrimination Act 1975 (SDA)** and **Equal Pay Act 1970 (EPA)** apply in England, Scotland and Wales. There are similar laws in Northern Ireland.
- **The Equal Pay Act 1970** makes it unlawful to offer different pay and conditions where women and men are doing the same or like work or rated as equivalent in the same employment.
- **The Sex Discrimination Act 1975** applies to both males and females and makes sex discrimination unlawful in employment and vocational training, education, the provision and sale of goods, facilities and services and housing
- The **Employment Equality (Religion or Belief) Regulations 2003** and the **Employment Equality (Sexual Orientation) Regulations 2003** make it unlawful for any employer to discriminate against employees and potential employees because of their religion, their beliefs or because of their sexuality. These regulations provide protection against discrimination and harassment, they do not establish entitlements.
- It is also **unlawful to discriminate** against someone on the grounds of being married.
- There are two kinds of unlawful sex discrimination: direct and indirect.
- **Direct discrimination** is where a person is treated less favourably than another on the grounds of his or her sex. The test is:

Was treatment less favourable than the treatment which was (or would be) accorded to a person of the opposite sex?

And, if so was the treatment less favourable because of the gender of the person involved?

- **Indirect discrimination** can occur when a condition or requirement is applied which although apparently neutral disproportionately disadvantages one sex more than another and which cannot be objectively justified. The test is:
- Is it applied equally to both sexes?
- Is the proportion of one sex who can comply with it considerably smaller than the proportion of the other sex who can comply;
- Has the individual suffered because he or she cannot comply;
- Can it be shown to be an objectively justifiable condition or requirement by the employer or provider?
- There are a few **exceptions** from the Act. For instance being a woman or man can be a Genuine Occupational Qualification for a job, if a woman or a man is needed for authenticity or for a specific purpose such as a modelling or an acting role or for reasons of privacy or decency.
- **Positive Action** may be another exception, for example a single sex training course may be arranged to help men or women compete on equal terms in the labour market.
- **Victimisation is unlawful**, that is treating a person unfavourably because of the actions which the individual has taken or intends to take to gain redress against the discriminator.
- **Discriminatory Advertising is unlawful**, that is publishing an advertisement indicating an intention to unlawfully discriminate.

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- **Sexual harassment**, though not mentioned in the SDA, is unlawful, that is unwanted conduct of a sexual nature with the purpose or effect of violating the dignity of that person and of creating an intimidating, hostile, degrading, humiliating or offensive environment.
- **Discrimination against pregnant women**, the EU Pregnant Workers Directive though not mentioned in the SDA, is unlawful because pregnancy is regarded as direct sex discrimination. Dismissing a woman because she is pregnant is also unfair dismissal under the Employment Relations Act.
- **The Equal Opportunities Commission** was established under the SDA. This statutory, independent body works towards eliminating discrimination and promoting equality of opportunity between the sexes. It reviews the working of the Sex Discrimination and Equal Pay Acts. It is the main source for providing gender related information and advice to the general public and business.
- Someone who considers that they have been discriminated against can make a **claim to an employment tribunal**:-
- under the SDA a claim should be made within three months
- under the EPA, claims can be lodged at any time whilst the person is in the job or within six months of leaving it.
- Workplace Guidance on the Burden of Proof Directive

Someone who considers that they have been discriminated against can make a claim to an employment tribunal:-

- under the SDA a claim should be made within three months
- under the EPA, claims can be lodged at any time whilst the person is in the job or within six months of leaving it.
- **The Burden of Proof Directive** was passed in 1998 and must be implemented in the UK:-

To do this requires making two technical changes to the Sex Discrimination Act 1975. The first makes it clear that in a Tribunal claim that it is first up to the applicant to establish facts which constitute a "prima facie" case of sex discrimination. The burden of proof then shifts from the applicant to the employer to show that there is a non-discriminatory reason for their actions. Tribunals have operated in this way for some time and we do not think it will make any practical difference to the outcome of cases.

The second change clarifies the meaning of the phrase indirect discrimination. Again we do not think the change will be significant in practice. Although these are minor changes and are not expected to change current practice they are important.