

Report to:	QSMTM
Report by:	Helen Gardner-Swift, Head of Corporate Services (HOCS)
Meeting Date:	4 February 2021
Subject/ Title: (and VC no)	Employment Policy Update VC144046
Attached Papers (title and VC no)	None

Purpose of report

1. To provide the annual update to the Senior Management Team (SMT) on the employment policies of the Scottish Information Commissioner (the Commissioner).

Recommendation and actions

2. I recommend
 - (i) the SMT notes the contents of this report
 - (ii) the Commissioner notes the assurance provided in paragraphs 18 and 19
 - (iii) the report is published in full save that the revised Employee Handbook is not published for the reasons set out in paragraph 29

Executive summary

3. The C1 Governance Reporting Arrangements (GRA) state that the HOCS provides an annual update to the SMT of changes in employment law and, also, provides an annual assurance that the Commissioner's employment policies are legally compliant.

Employment Policies

4. The Commissioner has in place an Employee Handbook (current EH) which was approved on 30 April 2012 and which has been updated from time to time. The current EH sets out some of the policies and procedures that apply to employees and refers to additional and separate policies, for example, equality, anti-harassment, victimisation and bullying, data protection, healthy living, security and vetting and performance and development that the Commissioner has in place.
5. An updated and revised version of the Employee Handbook (revised EH) has been in preparation for some time – the project initially fell to the FAM to complete, was passed to the HOOM (my predecessor) and then carried forward into 2017-2018 and 2018-19 for me to undertake. The revised EH now incorporates all relevant employment policies, including

those separate policies referred to in paragraph 4 above. The revised EH also states which sections of the handbook form part of an employee's contract of employment.

6. The revised EH was considered by the SMT in 2018-19 and referred back to me for further consideration and advice. Due to staff absence, and additional work relating to data protection and GDPR implementation, it was not possible for me to continue with the revised EH until Q3 2019-20 when the revised EH was circulated to the SMT for consideration and comment. However, following the issue of guidance by the Equality and Human Rights Commission (see paragraph 7 below), Law at Work were then instructed to review the draft revised EH and ensure that it takes account of this guidance. This work was completed in Q2 2020-21 and the revised EH was submitted to the SMT for consideration in November 2020. The comments made by the SMT are being considered and it is hoped that the revised EH will be ready for circulation to staff later this month.

Staff consultation

7. Staff will be consulted on the revised EH in due course.

Employment law updates

Sexual harassment and harassment at work

8. All employers have a duty of care to protect their workers and will be legally liable for harassment in the workplace if they have not taken reasonable steps to prevent it. On 15 January 2020, the Equalities and Human Rights Commission published guidance on sexual harassment and harassment at work. The guidance sets out advice on an employer's responsibilities and on how to tackle and respond effectively to harassment. The revised EH has been updated to take account of this guidance.

Statutory parental bereavement leave and pay when a child dies

9. The Employment Rights Act 1996 has been amended by the Parental Bereavement (Leave and Pay) Act 2018 and on 6 April 2020, the following rights were brought into force:
 - Statutory Parental Bereavement Leave - this is a statutory right for an eligible parent to take up to 2 weeks leave to deal with the death of a child, if they die under the age of 18 or are stillborn (this covers employees only)
 - Statutory Parental Bereavement Pay - this is a statutory right for an eligible parent to receive 2 weeks' pay when dealing with the death of a child, if they die under the age of 18 or are stillborn after 24 weeks of pregnancy (this covers employees and workers)

10. The revised EH is being updated to set out the procedures relating to these statutory rights.

COVID-19 pandemic

11. Since closing our office premises temporarily on 23 March 2020 and putting in place our business continuity arrangements, we have worked to maintain operational output. As an organisation, our priority has been to continue to provide key services and guidance within available resource while safeguarding the health, safety and wellbeing of all members of staff.
12. From 23 March 2020 until 03 June 2020 there were 8 members of staff who were able to work remotely using laptops and mobile phones (with no remote access to our office systems) and 3 members of staff who were able to carry out limited remote working using mobile phones. Subsequently, the remote working capacity was increased in two tranches (second tranche completed 23/08/20) and all members of staff are able to work remotely, with remote access to the office systems and mobile phones. Remote working training for all members of staff and line managers was provided in Q3 2020-21.
13. All members of staff have been regularly kept up to date about the temporary closure of the office premises.
14. Revised governance arrangements and interim guidance relating to information management and remote working is in place. Interim HR policies have also been agreed by the SMT and issued to all staff. The interim guidance and interim HR policies are updated as required and kept under review.
15. All members of staff have been provided with wellbeing guidance and, if any member of staff needs extra support and understanding during this time or, if they have any particular concerns or needs, they have been, and continue to be encouraged to speak to their line manager or one of the SMT.
16. All members of staff have also been provided with the contact details for the Employee Assistance Programme (EAP) that is in place and can contact the EAP at any time for advice.

Assurance

17. The revised EH will contain all relevant and up to date employment policies. If there is a continuing need for interim HR guidance and policies relating to the impact of the COVID-19 pandemic, these will also remain in place.
18. At the present time, the interim HR guidance and policies that are in place supplement the current EH. As the revised EH is near completion, account is also taken of any revised policies and guidance set out in that document to ensure that our employment policies are as

legally compliant as possible. Regular employment law updates are provided by Law at Work and Law at Work also provide advice on legal compliance when required.

Employment accreditations/schemes

19. Work is currently being undertaken by myself and the Corporate Services Team relating to the following and these will be the subjects of separate Committee Reports in due course:

- Breastfeeding Friendly Scheme
- Carer Positive Accreditation
- Fair Work First

Employment Law Advisers

20. Law at Work currently provide a contracted service for employment law advice. This contract has been renewed until 25 November 2021.

Risk impact

21. The current EH, the interim HR policies and the revised EH mitigate operational risks particularly those relating to not having effective policies and good human resources governance in place.

Equalities impact

22. The current EH, the interim HR policies and the revised EH set out the employee policies relating to equality and diversity which aim to ensure that, in employment, no one is unlawfully discriminated against and that everyone can participate freely and be given the opportunity to excel during their employment.

Privacy impact

23. The revised EH refers to the relevant data protection policies and guidance that the Commissioner has in place. The Commissioner's Privacy Notice provides information on the processing of employees' personal data and is updated as required.

Resources impact

24. I anticipate that any additional cost for the finalisation of the revised EH can be met from within current resources.

Operational/ strategic plan impact

25. There is none at present.

Records management impact (including any key documents actions)

26. There is none at present.

Consultation and Communication

27. QSMTM minute, staff consultation on the revised EH

Publication

28. This committee report should be published in full but the revised EH should be withheld on the basis that the exemption in Sections 30(b)(ii) of the Freedom of Information (Scotland) Act 2002 would apply if a request were, at this stage, to be made for the information.