

<b>Report to:</b>	QSMTM Q3 2021-22
<b>Report by:</b>	Helen Gardner-Swift, Head of Corporate Services (HOCS)
<b>Meeting Date:</b>	3 February 2022
<b>Subject/ Title:</b> (and VC no)	Employment Policy Update VC164271
<b>Attached Papers</b> (title and VC no)	None

## Purpose of report

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1. The purpose of this Committee Report (CR) is to provide the annual update to the Senior Management Team (SMT) and provide assurance to the Scottish Information Commissioner (the Commissioner) that the organisation's employment policies are legally compliant.

## Recommendation and actions

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2. I recommend
  - i. the SMT notes the contents of this CR
  - ii. the Commissioner notes the assurance provided in paragraphs 16 and 17
  - iii. the CR is published as set out in paragraph 29.

## Executive summary

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

## Employment Policies

### Employee Handbook

4. An updated Employee Handbook (EH) was approved on 2 June 2021. Our employment law advisers, Law at Work (now Worknest) provided advice and assistance on the updates required to the EH.
5. All members of staff were consulted on the draft EH and any comments submitted were taken into account before the EH was approved by the SMT.
6. The EH is split into 2 parts:
  - Part 1 sets out the sections of the revised Employee Handbook which are incorporated into employment contracts (except where specified) and the benefits that a member of staff may be entitled to as an employee of the Commissioner.
  - Part 2 contains the policies and procedures that apply to employees during their employment:

- a number of policies are now incorporated into Part 2 instead of formerly being stand-alone policies and these included:
  - Security Vetting Policy and Procedure
  - Health Living Scheme
  - Performance and Development Framework
  - Anti-Harassment, Bullying and Victimisation Policy – this is replaced by the “Dignity at Work” policy in the revised Employee Handbook
- 7. The policies and procedures in the EH are kept under review and monitored on an ongoing basis, taking account of legislative requirements, recommendations, guidance and good practice.

### **Payroll Service**

- 8. The Commissioner entered into an agreement with the Ministry of Justice Payroll Services (MoJPS) in 2013 for the provision of payroll services. The service was subsequently sub contracted to Shared Services Connected Limited (SSCL) and CGI Ltd. The Ministry of Justice gave notice that, with effect from 1 October 2021, it was withdrawing the payroll service to the Commissioner and several other Scottish organisations.
- 9. The new payroll service (which takes over from the arrangements under the agreement entered into by the Commissioner with the MoJPS) is now in place and took effect from 1 August 2021.

### **Employment law updates**

- 10. The EH includes relevant provisions relating to sexual harassment and harassment at work and statutory parental bereavement leave (both areas were referred to in last year’s update).
- 11. In 2022, the following changes are expected and/or anticipated:
  - increase in National Insurance contributions on 6 April 2022
  - increase in National Living Wage and National Minimum Wage Minimum wage rates - these rates will also increase on 1 April 2022.
  - the UK government’s response to the consultation on workplace sexual harassment was published in July 2021, almost two years after the consultation closed. The UK government has committed to taking forward certain proposals, however, there is no specific timescale associated with the developments. The proposals are:
    - the introduction of a new statutory duty on employers to prevent sexual harassment in the workplace
    - the creation of a new statutory code of practice by the Equality and Human Rights Commission, complimented by an accessible employer guide on the practical steps they should take to prevent sexual harassment in the workplace
    - the introduction of third-party harassment provisions, the details of which have not been provided - this appears to relate to sexual harassment perpetrated not by a direct colleague but by someone else the victim came into contact with at work, for example a customer, member of the public, service user, etc.

- the extension of the time limit for raising claims under the Equality Act 2010 (probably to six months) recognising the challenges associated with the current three-month time limit, especially in cases of alleged pregnancy / maternity discrimination
- the Employment Bill (private Members' bill) has reached its second reading – the bill contains provisions relating to the rights of workers, including to negotiate pay and join trade unions and employee associations, amending the definition of worker, employment rights of members of the armed forces and employee representatives on company boards
- the introduction of a single labour market enforcement agency which will replace the main bodies that currently enforce workplace rights. The UK government consultation closed in June 2021 and the UK government has said it is committed to going ahead with this plan. At present, employment laws are generally only enforced when individual employees pursue their rights through the Employment Tribunal system
- the UK government previously announced its intention to extend the period of redundancy protection from the point an employee notifies their employer of their pregnancy until six months after the end of their maternity leave.
- two additional proposals may also be included in the proposed Employment Bill, although there appears to be no published intended timescale for the introduction of these rights
  - making flexible working the default
  - the right to a week's unpaid leave for carers. Again, there is no timescale for the introduction of these new rights.

### **COVID-19 pandemic**

12. 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.
13. 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.
14. A draft Handbook which supplements guidance that we have in place to facilitate the return to the office premises and the start of hybrid working was issued to all members of staff in November 2021. As we move into this new way of working, our existing policies and guidance will be amended over time.

### **Wellbeing**

15. All members of staff have been provided with wellbeing guidance and, if any member of staff needs extra support and understanding 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. 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

16. The EH contains all relevant and up to date employment policies and, in my view, these are legally compliant.
17. Worknest also provides regular employment law updates and advice on legal compliance when required.

## Employment accreditations/schemes

18. In February 2021, the SMT approved the Commissioner's office joining the Breastfeeding Friendly Scheme and the arrangements for this will be put in place when the office premises re-open.
19. The work on the Carer Positive Accreditation has been delayed due to the impact of the COVID-19 pandemic but it is hoped that this can be progressed and put in place in 2022.

## Employment Law Advice

20. Worknest (previously) Law at Work provide a contracted service for employment law advice and this contract has been renewed until May 2022.

## Risk impact

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21. The Commissioner's reputation and, also, public confidence in the Commissioner could be undermined if the Commissioner does not demonstrate good practice and good governance.
22. The EH mitigates against strategic and operational risks of not having effective and robust governance, policies and human resource arrangements in place

## Equalities impact

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23. The Commissioner is committed to promoting equality of opportunity and treatment and to ensuring that there is no discrimination in employment practices. The EH encourages equality, manage the risk of discrimination, promote diversity and ensure employees are managed fairly.

## Privacy impact

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24. The 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

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25. There is no additional resource impact forecasted for 2021-22. If there are new legislative requirements that come into effect in 2022 there may be a resources impact but this will depend on the requirement and what is action is required.

## Operational/ strategic plan impact

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26. There is none at present.

## Records management impact (including any key documents actions)

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27. There is none at present.

## Consultation and Communication

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28. QSMTM minute

**Publication**

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29. This CR should be published in full.