



Women. Men. Different. Equal.
Equal Opportunities Commission

Overview of the gender equality duty

**Guidance for public bodies working in
England, Wales and Scotland**

gender equality duty

February 2007

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OVERVIEW OF THE DUTY

The Equal Opportunities Commission (EOC) welcomes the new gender equality duty as a powerful tool that will deliver real change and practical improvements in the lives of women and men, through helping public services to tackle gender inequality, which remains persistent and widespread.

The duty will be a key tool for public sector managers to make the sector more efficient, effective and responsive to the realities of how we live our lives. It should be a catalyst for real change in the way that public sector organisations think about their work, and the way that public policy and public services are designed and delivered. Both politicians and those who deliver services are realising that a one-size-fits-all approach to design and delivery no longer meets the needs of 21st century Britain. I hope the duty will help the public sector understand and address the different needs of women and men, leading to more user-friendly services, as well as making better use of the talents of both women and men in the workforce.

The gender equality duty comes into force in April 2007 and is the biggest change in sex equality legislation in thirty years, since the introduction of the Sex Discrimination Act itself. It has been introduced in recognition of the need for a radical new approach to equality – one which places more responsibility with service providers to think strategically about gender equality, rather than leaving it to individuals to challenge poor practice.

Jenny Watson
Chair, Equal Opportunities Commission

1. INTRODUCTION

The gender equality duty is a new legal requirement on all GB public authorities, when carrying out all their functions, to have due regard to the need:

- **To eliminate unlawful discrimination and harassment on the grounds of sex**
- **To promote equality of opportunity between women and men.**

Functions include policy-making, service provision, employment matters, and statutory discretion, as well as decision-making. 'Due regard' means that authorities should give due weight to the need to promote gender equality in proportion to its relevance.

The duty requires organisations to take action on the most important gender equality issues within their functions. The promotion of equal opportunities between women and men requires public authorities to recognise that the two groups are not starting from an equal footing and identical treatment will not always be appropriate. Under the duty authorities also have an obligation to eliminate discrimination and harassment towards current and potential transsexual staff. This duty will extend to trans-sexual service users in December 2007.

2. GENERAL AND SPECIFIC DUTIES

The duty applies in England, Scotland and Wales.

The duty is made up of two elements, the 'general' duty and the 'specific' duties. The general duty is the overall duty to eliminate discrimination and harassment and to promote equality. The general duty will come into force in Great Britain on 6th April 2007.

The specific duties are not an objective in themselves, but a means of meeting the general duty. The specific duties for England, Scotland and Wales are different. Full details of the legal requirements of the duty are set out in the statutory Code of Practice for England and Wales and the separate Code for Scotland.

English specific duties

The English specific duties require each organisation to:

- Prepare and publish a **gender equality scheme**, showing how it will meet its general and specific duties and setting out its gender equality objectives.
- In formulating its overall objectives, consider the need to include objectives to address the causes of any **gender pay gap**.
- **Gather and use information** on how the public authority's policies and practices affect gender equality in the workforce and in the delivery of services.
- To **consult** stakeholders (i.e. employees, service users and others, including trade unions) and take account of relevant information in order to determine its gender equality objectives.
- To **assess the impact** of its current and proposed policies and practices on gender equality.
- To **implement** the actions set out in its scheme within three years, unless it is unreasonable or impracticable to do so.
- **To report** against the scheme every year and **review** the scheme at least every three years.

Those public authorities in England that are subject to the specific duties must publish their gender equality schemes by 30th April 2007.

These duties and dates also apply to bodies in Scotland and Wales which have reserved functions, ie non-devolved bodies.

Scottish specific duties

The Scottish specific duties require listed bodies to:

By 29 June 2007

- Gather information on how their work affects women and men
- Consult employees, service users, trade unions and other stakeholders
- Assess the different impact of policies and practices on both sexes and use this information to inform their work
- Identify priorities and set gender equality objectives
- Plan and take action to achieve gender equality objectives
- Publish a gender equality scheme, report annually and review progress every three years

By 28 September 2007

- Publish an equal pay policy statement (for listed bodies with 150+ staff) and report on progress every three years.

Welsh specific duties

The Welsh specific duties will not be finalised before April 2008 at the earliest. Until they have been developed, EOC Wales and the Welsh Assembly Government are advising public authorities in Wales to:

- Develop a gender equality scheme outlining their gender equality objectives and the action that is being taken to achieve them, in the interests of clarity and transparency.
- Prioritise action to address the most significant gender inequalities within their remit and take actions that are likely to deliver the best gender equality outcomes.

3. WHO IS COVERED BY THE DUTY?

The general duty applies to all GB public bodies (or public authorities). This includes government departments and executive agencies, colleges and universities, schools, NHS Trusts and Boards, local authorities (councils), police and fire authorities, inspection and audit bodies and many publicly-funded museums.

The duty also covers private and voluntary organisations carrying out public functions, such as private organisations running prisons.

The gender equality duty also applies to functions which are carried out by external contractors, as well as those which are carried out directly by the public authority itself. Legal liability for meeting the duty remains with the public body, which is expected to take action to ensure contractors meet the requirements of the duty.

Most public authorities are also covered by the specific duties. A full list of bodies covered by the English specific duties is contained in the EOC's Code of Practice on the gender equality duty for England and Wales. The same list, classified by sector, is also available at www.eoc.org.uk/Default.aspx?page=19776

The Scottish specific duties, and the list of public authorities covered, are set by Scottish Ministers. The full list is contained in the EOC's Scottish Code of Practice and in the Order laid at the Scottish Parliament on 1 February 2007.

The list of Welsh bodies covered by the specific duties will be published when the Welsh specific duties are finalised.

4. HOW IS THE DUTY ENFORCED?

The duty will be actively enforced by the EOC then by the Commission for Equality and Human Rights (CEHR) from October 2007.

The extent to which a public authority has complied with the duty is likely to be assessed on the following criteria:

Information: does the public authority have the information which allows it to understand the impact of its work on women and on men (including transsexual women and men)? For example, is it collecting and analysing gender disaggregated data?

Consultation: have the relevant people inside and outside the authority been involved in appropriate ways, in providing information and identifying gender equality priorities? For example, voluntary and community organisations with specialist knowledge on gender equality would be highly appropriate to consult.

Transparency: has information about the gender equality scheme been widely available through appropriate channels and in a variety of formats? This should include details of decision-making processes, priorities, actions as well as updates on progress.

Proportionality: in addressing the duty, has the public authority put its effort and resources where they will have most impact on gender equality (and have they done enough to find out what the most significant issues are?)

Effectiveness: has action been taken and has it delivered the required outcomes, leading to less discrimination and greater gender equality?

The CEHR will be able to issue compliance notices to authorities that are failing to meet the **general duty**. The EOC, then the CEHR will be able to issue compliance notices on the **specific duties**. These are enforceable in the courts. Notices state that the authority must meet the duty and instruct them to tell the EOC or CEHR within 28 days what they have done to comply.

If a public authority (including a private or voluntary organization exercising public functions) does not comply with the **general** duty, its actions or failure to act can also be challenged through an application to the High Court/Court of Session for judicial review. An application for judicial review could be made by a person or group of people with an interest in the matter, or by the EOC/CEHR.

Finally, public sector inspection bodies are also subject to the duty and will therefore have to pay due regard to the duty in their functions. This means that they will have to integrate the requirements of the gender duty into their monitoring and inspection frameworks and processes.