



Guidance on the gender equality duty for the Scottish voluntary sector

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Women. Men. Different. Equal.
Equal Opportunities Commission Scotland

gender
equality duty

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Introduction

Who is this guidance for?

This guidance is for voluntary sector workers or volunteers who need to improve their understanding of the gender equality duty (the duty).

We expect the duty to affect the voluntary sector in two main ways:

1. You may have new obligations under the duty.
2. You can play a key role in making sure the duty delivers real change.

This guidance is aimed at those who are responsible for delivering public services, as well as lobbyists/campaigners who would like to help the duty make a real difference to women and men, girls and boys across Scotland.

What is this guidance for?

The guidance is intended to make you aware of the questions that you can ask a public authority about how they are meeting the duty. It will also help you to decide whether you need to make any changes to your own service or employment practices in order to meet the duty. Other guidance is available from the Equal Opportunities Commission (EOC) with detailed information on key aspects of the duty (www.eoc.org.uk/genderduty).

The guidance is divided into two sections. The first sets out what the duty is, why it was introduced and who it applies to. The second section sets out how the duty affects the voluntary sector.

Taking action on the duty

How might the duty affect you?

This guidance should help you to establish how you will be affected by the duty. After you have reviewed the guidance go to the EOC website for further information. Then you should start to ask yourself:

- Do I have new obligations as a provider of public services?
- Do I have new obligations as a supplier to the public sector?
- As a funding body, should I take steps to amend my funding guidelines?
- How will the duty affect my grant applications?
- How can I promote awareness of the duty among colleagues and contacts in my sector?
- What can I do to encourage public authorities to comply with the duty?
- What should I do if I know of a public body which is not complying with the duty?
- How can I promote action on the duty in the partnerships I am involved in?

Background to the duty

What is gender equality?

The term 'sex' refers to the biological differences between women and men, which are universal and do not change. 'Gender' refers to the wider social roles and relationships that structure men's and women's lives. These change over time and vary between cultures. Although much has been achieved over the last 30 years, there is still a long way to go to achieve gender equality for all in terms of employment, access to services, political representation, care, leisure and personal safety.

Why do we need a duty?

Widespread and persistent inequality

Existing social, cultural and institutional practices mean that women's inequality is persistent and widespread.

Inequality in employment, power and public life

79% of men and 71% of women are in employment in Scotland. But significant inequalities remain:

- A 14% pay gap between the average hourly earnings of full-time women and men.
- Part-time women earn 35% less than full-time men, hour for hour.
- Discrimination against pregnant employees is still widespread.
- Sexual harassment is still evident in many workplaces.
- Pensions are designed for a traditionally male career path, and parents and carers lose out as a result.
- 38% of mothers have left a job, or been unable to take a job, due to inflexible working policies, or lack of access to childcare.
- Harassment of transsexual staff is common in the workplace.
- Women are under-represented in senior roles in many organisations.
- 1 in 4 women face domestic abuse.

Inequality in service provision

- Transport provision is still designed around the traditional pattern of male commuting to work, rather than acknowledging modern flexible working patterns and wider transport needs.
- Since 1996 the smoking rate for 15 year-old Scottish boys has fallen twice as fast as the rate for 15 year-old girls. Since 2000, the number of 15 year-old boys smoking (around 15%) has remained significantly lower than that of girls (24%). The gender gap emerges between 13-15 years of age.
- Men have generally formed the baseline for study of major diseases, and sex differences have not always been recognised. For example, 54% of heart attacks in women go undiagnosed, compared with 33% in men.

Men can face inequalities too:

- Men often delay accessing traditional healthcare services, and few services reach out to places where men feel comfortable.
- Girls are out-performing boys in terms of attainment at all levels of education (consistent with results from across the OECD countries).
- Boys are much more likely than girls to be excluded from school (males accounted for 79% of all exclusions from Scottish schools in 2004/05).

Transgender people face particular discrimination and harassment in employment and in accessing services, and this is often not addressed by our public bodies.

Although some authorities have taken action to tackle gender inequality, it is not yet common practice. The gender equality duty has been introduced to address this reality. It is intended to be a powerful tool for tackling systematic discrimination against women and men.

Previous legislation

Previous legislation such as the Sex Discrimination Act (which has been updated to include the duty) relied heavily on individuals taking action to challenge discrimination. However, many people find the idea of taking legal action on their own very daunting, expensive and time-consuming. Also, individual cases have a limited impact on systematic causes of discrimination. For example, one employee could win an equal pay or sexual harassment case, but this would not necessarily mean that the person at the next desk would not experience unequal pay or be free of harassment. The duty places a responsibility on public bodies to identify and *prevent* discrimination rather than *react* to problems when they occur. It is a proactive, rather than a reactive, approach to gender equality.

The gender equality duty **does not mean that individuals are no longer able to take legal cases if they experience discrimination** (such as taking their employer to an employment tribunal if they were being sexually harassed). The duty is an extra tool that can be used for tackling discrimination and promoting equality in the public sector.

Overview of the duty

What is the gender equality duty?

The gender equality duty came into force on 6th April 2007. It is a new legal requirement on public authorities, when carrying out their functions, to pay due regard to the need to:

- **Eliminate unlawful discrimination and harassment.**
- **Promote equality of opportunity between women and men.**

It applies to all functions including policy-making, service provision, employment matters, statutory discretion, as well as decision-making. The promotion of equal opportunities between men and women requires public authorities to recognise that the two groups are not starting from an equal footing and that gender 'neutral' policies and practices can lead to unequal outcomes.

Authorities also have an obligation to eliminate the discrimination and harassment of current and potential transsexual staff. From December 2007 this will also apply to trans people accessing goods and services and it is a matter of good practice for organisations to take steps to address this area in the meantime.

What is the general duty?

The gender equality duty is divided into two areas, the 'general' duty and the 'specific' duties. The general duty is the overall duty to eliminate discrimination and harassment and to promote equality. The specific duties are not an end in themselves but they are steps which are a means of meeting the general duty.

Who is covered by the general duty?

The general duty applies to all public bodies as well as to private and voluntary organisations carrying out public functions. This could include private organisations running prisons, for example. Further information on this issue is set out in the next section on the duty and the voluntary sector.

What are the specific duties?

There are different specific duties for England, Scotland and Wales. This guide sets out the duties for public organisations in Scotland, which require most big public sector bodies to:

1. Prepare and publish a **gender equality scheme**, showing how they will meet the general and specific duties and setting out their gender equality objectives.
2. In formulating their overall objectives, consider the need to include objectives to address the causes of any **gender pay gap**.
3. **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.
4. **Consult** stakeholders (ie. employees, service users and others, including trade unions), and take account of relevant information in order to determine their gender equality objectives.
5. **Assess the impact** of their current and proposed policies and practices on gender equality, and use this information to inform their plans.
6. **Implement** the actions set out in their scheme within three years, unless it is unreasonable or impracticable to do so.
7. **Report** against the scheme every year and **review** the scheme at least every three years.

In addition, Scottish Ministers have a duty to set priorities for the public sector, to promote joined-up action for gender equality across Scotland, and to report against these priorities every three years.

Remember that the duty has been designed with a focus on real outcomes and it is intended that action by public authorities should lead to tangible improvements in the daily lives of women and men.

The duties are a legal requirement, so public bodies cannot ignore them or claim a lack of capacity. Resources must be set aside in their budgetary processes to meet this end, but in reality the duty should lead to services being more effective.

Public authorities in Scotland which are subject to the specific duties must publish their gender equality schemes by **29th June 2007**.

Public authorities on the Scottish list which have 150 or more staff must also publish an **equal pay statement** by **28th September 2007**.

Who is covered by the specific duties?

Organisations covered by the specific duties are identified in a list in the Scottish Code of Practice published by the EOC which is available on the EOC website. This Code gives practical guidance to public authorities on what they must do to comply with their obligations under the duty.

Most major public sector organisations will have to meet the specific duties, including Scottish Executive departments and all councils. Some examples include health organisations like NHS boards. Education authorities and further and higher education institutions are covered. In criminal justice, police authorities, Chief Constables of police forces, the Procurator Fiscal Service and prisons are included. Transport bodies include Passenger Transport Executives and transport partnerships. Other bodies covered by the duties include Sportscotland, Visitscotland, Scottish Enterprise, the Scottish Arts Council and a range of other national organisations.

This means that they will have to publish gender equality objectives within a scheme, and conduct gender impact assessments on all existing and new policies. They will also have to publish an equal pay statement if they have 150 or more staff.

A full list of the bodies covered is available on our website at:

www.eoc.org.uk/genderduty

What impact will the duty have?

The duty will be a key tool for public sector managers to make the public sector more efficient, effective and responsive to the realities of how we live our lives. It should be a catalyst for change in the way that public sector organisations think about their work, and in the way that policy and services are designed and delivered. The duty will help them to understand and address the different needs of women and men and to make the most of their skills in the workforce. The following examples illustrate what kind of effect that mainstreaming gender equality under the duty can have.

Example: better services

Building an understanding of gender equality into service planning will improve service standards. For example, a bus provider in Ireland surveyed non-users as well as users in order to identify unmet needs. The survey showed that women make multiple trips on public transport, bringing children to school or care, shopping, visiting older or sick relatives, as well as travelling to work. For men, the main journey is commuting to the workplace. Factors like income and caring responsibilities limit women's transport choices. This in turn limits their entry into the labour market, leisure activities, and education

and training opportunities. This not only affects women's individual lives, but it also has a negative impact on the economy and on the effectiveness of public policy. New pilot services were introduced which extended bus routes, provided cheaper multi-trip fares and targeted women and older people. There was a 35% increase in usage, particularly by older women. There was a 13% increase in city centre economic activity in 2002, which was believed to be directly linked to the increasing numbers of people coming into the city centre during the day.

Example: Better use of resources

Gender budgeting is a powerful tool for assessing whether policies and services are effective and equitable for male and female users. Gender budget analysis traces the money that an organisation spends and identifies how and to what extent men and women benefit. It can work at many levels from central government to a small voluntary organisation. Gender budgeting can reveal that a programme or service isn't reaching men and women equally and it can demonstrate how addressing this will result in more effective programmes. A project by Oxfam assessed how resources were allocated by an employment support service. Service users thought the service was a high quality and essential service but considerably more men than women benefited from it (3:1). The ratios for clients supported into training or receiving financial support were skewed even further in favour of men (roughly 9:1 and 8:2). This bias was not intended but the evidence resulting from the exercise enabled the organisation to recognise the problem and start to take action to support more women to access the service.

Example: Legitimacy and representation

Women are under-represented in decision-making roles in many public organisations, including public appointments. This has negative implications for the legitimacy, perception, experience and effectiveness of an organisation and prevents organisations from performing in the public interest. In order to encourage and support more women, changes may need to be made to selection processes, meeting times, working cultures, expense claims and training in order to make this a reality.

How does the duty affect single-sex services?

In relation to single-sex services provided directly by public bodies, the law in this area does not change under the gender duty. Where it was previously appropriate for councils, for example, to provide single-sex services, such as women's refuges, rape crisis centres or women-only swimming sessions, in order to preserve privacy or decency, it will continue to be appropriate. The duty does not mean that single-sex services should be cut or that services should be provided on the same scale for women and men.

Where councils or other public bodies are funding the provision of single-sex services by voluntary organisations, while these now come within the scope of the Sex Discrimination Act, the Act makes it clear that separate services for women and men are permissible where this would more effectively meet the needs of women (or men). Further details about the law relating to single-sex services, and the circumstances in which they are permissible, are contained in section 6 of the Scottish Code of Practice on the Gender Equality Duty, which is available on our website.

Indeed, the provision of single-sex services could be an appropriate and sometimes even a necessary way of complying with the gender equality duty if evidence shows that single-sex approaches are needed to allow both women and men to access public services equally, or in order to deliver equality of outcomes. For example, because the majority of victims of domestic abuse and rape are women, it would not be appropriate for a local authority to fund or provide refuge services on an equal basis for men and for women. Again, for further details regarding the circumstances when it may be appropriate or necessary to provide single-sex services in order to comply with the duty, you should consult the Code of Practice.

If you hear about changes being made to single-sex services as a result of an apparent misunderstanding of the duty, please contact the EOC at: scotland@eoc.org.uk

How is the duty enforced?

The duty is enforced by the EOC and then by the new Commission for Equality and Human Rights (CEHR) when it takes over from the EOC in October 2007. Inspection bodies will also play a role by requesting evidence about compliance with the general and specific duties.

The EOC will be looking to see real outcomes for gender equality from public organisations. It will also be looking to see that the specific duties have been met by affected bodies. This includes looking at whether public authorities have collected information to allow them to understand the impact of their work on women and on men. The EOC will examine whether an authority has put its efforts where they will have the biggest impact on gender equality. The EOC will check whether steps have been taken to implement the action in the scheme. It will check whether sufficient consultation has taken place and whether information about the gender equality scheme been widely available through appropriate channels and in a variety of formats.

Voluntary organisations can play an important role in calling public bodies to account in terms of the action they are taking to promote gender equality. For some suggestions about how you can do this, see below.

For further information on enforcement of the duty, please go to the EOC website.

The duty and the voluntary sector

How does the duty affect the voluntary sector?

If you are involved in, or work for the voluntary sector, you could be affected by the duty in two main ways:

1. If you are interested in campaigning or lobbying you can take steps to help make the duty a success.
2. If you deliver public services or provide services to public authorities you may have new obligations under the duty.

1. Are you involved in lobbying/campaign work?

The duty will work best if people in different organisations and sectors and at different levels (national, regional or local) understand its potential and start to take action. The voluntary sector can play a vital role in making the duty effective by promoting awareness, taking part in consultation processes, contributing to partnerships, and gathering information to share with the EOC/CEHR to help with their enforcement of the duty.

Promoting awareness

Increasing awareness of the duty among the voluntary sector is a critical process. If you are keen to take action in this area you could start by looking at the frequently asked questions or other information on the EOC's website, and by circulating this guide to your colleagues and external contacts. Further copies are available from EOC Scotland on request.

Consultation

All public authorities who have to meet the specific duties will need to produce a gender equality scheme. This will involve consulting with stakeholders on the gender equality objectives they will set for the three year duration of their scheme. Voluntary and community organisations have many valuable insights into gender equality issues as a result of their work in service delivery, advocacy and challenging discrimination. For example, rape crisis centres can advise on challenging violence against women, men's health groups can contribute to the planning of GP services, and older women's organisations can give insights into transport design. We expect the voluntary sector to be critical contributors to consultation processes. If you have something to offer, contact the relevant public sector organisation – larger organisations such as local authorities, police, and health boards will often have equality officers, which are a good first point of contact.

Partnerships

More and more public services are being delivered by partnerships such as Community Planning Partnerships and Local Childcare Partnerships. While the partnership itself may not be subject to the duty, most of the members will be. Members of the partnership such as councils, police forces or health boards need to ensure they apply the duty in all of their functions that are delivered via the partnership. If you are a member or observer of a partnership you can help make this a reality by asking what systems are in place to ensure this happens.

The EOC, together with the CRE and DRC, have produced guidance for partnerships on how to make sure they meet their equality duties. We recommend that the council, as lead partner, takes responsibility for ensuring this happens, through the development of partnership-level equalities schemes agreed by all partners, linking into the community plan and into individual partners' own corporate plans. You can read the guidance in full at: www.eoc.org.uk/genderduty

Monitoring and enforcement

The voluntary sector can take action to promote the duty by asking public bodies for evidence of how they are meeting the duty. For those who are covered by the specific duties, this would include copies of gender equality schemes and equality impact assessments. This can be done at the local or national level, eg. your local council, FE college, health board or the Scottish Executive or Scottish Enterprise. If there is evidence that an authority is not meeting the duty, you can raise this directly with the authority themselves, with the relevant inspectorate, or with the EOC/CEHR.

If you are interested to take action, start by asking any of the following questions of public authorities. Standard letters are available on the EOC website to help you do this.

Some questions to ask:***Gender equality objectives***

- Can I see a copy of your gender equality scheme?
- What are your gender equality objectives and how did you select them?
- What evidence did you use to decide on your gender equality objectives?
- What evidence do you have that your scheme is being implemented?

Consultation

- Who are your key stakeholders?
- Who did you consult with?
- How did you use the consultation to inform your objectives?

Services and policies

- Can I see copies of gender impact assessments of current and future policies?

Employment

- What are your plans for tackling the three causes of unequal pay?
- What action are you taking to promote gender equality in employment?

Trans community

- What are your plans for tackling discrimination and harassment towards trans people?

Reporting and revising schemes

Public bodies are required to report annually on the progress they have made towards the objectives in their gender equality scheme, and voluntary organisations will be able to review whether any suggestions they made through consultation have been taken on board, and whether a real difference is being made. Voluntary organisations will also be able to feed into the revision of gender equality schemes every three years, to ensure that lessons are learned and that progress is maintained.

2. Do you deliver public services or provide services to public authorities?

Some voluntary organisations will have new legal obligations under the gender equality duty. In particular, when they are delivering public services (defined under the duty as public functions), when supplying services to public organisations (procurement) or when making grant applications to public bodies.

Even if you are not covered by the duty, remember that tackling discrimination and promoting equality by considering the different needs of women and men, is good practice. It will help you to meet your objectives more effectively and ensure that your services reach the groups they are designed for.

Public functions

The duty applies to any organisation that delivers public functions. This approach recognises that many public functions are now delivered by private or voluntary organisations. In the context of the duty, public functions are services that would otherwise be carried out by the state and where individuals have to rely upon a specific body in that role. The organisation will be covered by the duty in respect of that role, not for every service it delivers. For example, a private company providing secure transport to prisoners would be covered by the duty in that role but not in its role of providing security services to high street retailers.

Whether or not an organisation is exercising a public function is ultimately a matter for the courts, but it would be helpful to ask yourself the following questions:

- Are you wholly or partly funded by public funds?
- Are you exercising powers assigned to you by law?
- Are you taking the place of central or local government in regard to that function?
- Are you providing a public service?
- Are your structures and work closely linked with the contracting-out body?
- Have you got a close relationship with any public authority?
- Are you closely supervised by a government regulatory body?

If you think you might be undertaking public functions we would advise you to protect yourself legally by making sure that you meet the general duty (ie. eliminate unlawful discrimination and harassment and promote equality of opportunity between women and men) with regard to those areas. If you are not sure, we would also recommend that you seek legal advice on the matter.

Procurement

Procurement is the process whereby public organisations contract out services. The public sector in Scotland spends about £8bn a year on procuring goods and services from third parties. This includes goods like vehicles, stationery, foodstuffs and medical supplies as well as internal services like payroll, cleaning, recruitment, training and IT support. Services to the public include school transport, taking elderly or disabled people to daycare centres, school meals, home care, residential care, parking enforcement and refuse collection. With increasing moves to create a mixed economy in public service delivery, this market is likely to grow in years to come.

The gender duty means that public authorities remain responsible for ensuring gender equality in services delivered on their behalf by voluntary or private organisations. If you provide goods or services to the public sector, authorities can ask you to:

- Demonstrate how you meet sex equality legislation like the Equal Pay Act and the Sex Discrimination Act (eg. have you carried out an equal pay review? What are your policies on sexual harassment?).
- Ensure gender equality issues are built into service design (eg. accessible buses or accounting for men's and women's needs in training provision).
- Provide evidence of progress after an employment tribunal loss (and remove you from their list of suppliers if you refuse).

The voluntary sector is well placed to deliver services which promote equality of opportunity. Doing business with public authorities is beneficial to the sector, both financially and in terms of reputation, status and access to further contracts. It also provides an opportunity for the sector to influence the design and delivery of public services. Before tendering for contracts with public bodies you should make sure you have all this information easily available.

Grant applications

Public authorities cannot overlook their obligations under the duty when they are allocating funds to the voluntary sector. This means that public bodies like government departments, councils or health boards are likely to need to build gender equality into their funding guidelines. This also includes National Lottery distributors, as they are covered by the specific duties. Remember that while the majority of grant providers in the voluntary sector (charitable trusts) will not be covered by the duty in this way, it is a matter of good practice for them to act as though they are.

Under the duty, funding bodies can ask you to provide evidence in your application of how you will build gender equality into your work. For example, since men are more likely to fear vehicle theft and women are more likely to fear rape and physical attack, a bid for a community safety initiative should set out how men's and women's different priorities will be taken into account within your project. You may also need to provide evidence of how you meet equal pay and sex discrimination legislation (see section on procurement on page 16).

Further resources on the duty

Where can I get further information about the duty?

The Scottish Code of Practice sets out what public bodies need to do to meet their obligations under the duty. To supplement the Code, the EOC has published a range of guidance on the duty. You can find information on many aspects of the duty at: www.eoc.org.uk/genderduty

There are also many voluntary organisations with expertise in different areas of gender equality and you may have groups in your area who can give you further advice.

Equal Opportunities Commission

Free, confidential and impartial advice and information on sex discrimination and equal pay

0845 601 5901

9am – 5pm Monday – Friday

Calls from BT landlines are charged at local rates

Calls may be monitored for training purposes

Interpreting service available through Language Line, when you call our Helpline

Typetalk service available on 18001 0845 601 5901

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To find out more about the Gender Equality Duty, visit: **www.eoc.org.uk/genderduty**

You can find out more about us by visiting our website **www.eoc.org.uk**

For specialist legal information, visit **www.eoc-law-scotland.org.uk**

If you require this guidance in a different format, for example large print, please contact our Helpline

Please note: from 1 October 2007 the Equal Opportunities Commission (EOC) will be replaced by the new Commission for Equality and Human Rights (CEHR) www.cehr.org.uk



Women. Men. Different. Equal.
Equal Opportunities Commission Scotland