



Women. Men. Different. Equal.
Equal Opportunities Commission

**Enforcing the Gender Equality Duty
A Toolkit for Individuals in Scotland**

gender
equality duty

June 2007

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Enforcing the Gender Equality Duty - A Toolkit for Individuals

Introduction

The Gender Equality Duty (GED) which came into force in April 2007, places a legal obligation on public authorities not just to eliminate unlawful gender discrimination and harassment, but also to promote equality of opportunity between women and men. It represents the largest change in gender equality legislation in 30 years and for the first time public bodies have to be proactive in eliminating inequalities between women and men, instead of relying on individuals to take action after discrimination has occurred.

We have designed this toolkit to enable you to take steps to check whether a public authority is complying with the GED and, if not, to call for the authority to comply.

Before using this toolkit, please see the Scottish Code of Practice on the Gender Equality Duty and related guidance on the EOC website at www.eoc.org.uk/genderduty.

What do the duties involve?

The GED consists of two duties – the ‘general duty’ and the ‘specific duties’.

The general duty

Under the GED all public bodies are subject to a general duty - see [Appendix A](#) for a definition of which public authorities are covered by the general duty. This means that when a public body carries out its functions - such as providing health care, education, housing, transport, social services or local government – it must have due regard to the need to:

- Eliminate unlawful sex discrimination and harassment
- Promote equality of opportunity between women and men
- Eliminate discrimination and harassment in employment and vocational training for transsexual people

The specific duties

Many public bodies are also required to undertake specific duties. These are a series of steps that a public body is legally required to take to meet the duty, including having a Gender Equality Scheme in place by 29th June 2007, setting out its gender equality objectives. See [Appendix B](#) for further detail on the specific duties required under the GED and those public bodies that are subject to them.

Using the toolkit

Check the public body's legal obligations under GED

If you are unsure whether or not a public body has complied with its legal obligations under the GED, the first step is to check to confirm whether the public body is subject to the specific duties or only to the general duty.

If the public body is subject to the specific duties then you would expect to see:

- Evidence that it has gathered information and used this information to decide on its objectives
- Evidence that it has consulted with relevant service users and other stakeholders in setting its gender equality objectives
- A published version of its gender equality scheme, which must contain its gender equality objectives, usually on its website
- Arrangements for gender impact assessing all its new and existing policies
- An equal pay statement

What if I am not happy with its GED scheme or arrangements?

The GED is legally enforceable but individuals cannot themselves take legal action against public bodies to enforce the specific duties. Enforcement of the *general duty* can only be achieved by judicial review in the Court of Session. Responsibility for enforcement of the *specific duties* resides with the EOC (and from October 2007, the new Commission for Equality and Human Rights or CEHR).

However, individuals have an important role to play in ensuring that the GED is implemented effectively. You can usefully remind public bodies of their obligations under the GED, find out whether they are attempting to comply, and let them know that individuals in the community expect the GED to be complied with and real action to be taken on the gender equality issues affecting their employees and service users.

If you feel that the public authority has not complied with the GED the following letters in this toolkit can be used as a template and sent to the public body by post or email to remind it of its obligations. Keep copies of all correspondence.

- [Letter 1](#) is for use if you feel that a public authority has not complied with the general duty.
- [Letter 2](#) could be used if you can't find a public authority's Gender Equality Scheme.
- [Letter 3](#) could be used if you can't find a public authority's Equal Pay Statement.
- [Letter 4](#) could be used if a public authority has a Scheme but it is unclear

how stakeholders have been involved or what influence this has had on the actions in the Action Plan.

- [Letter 5](#) could be used if you think a public authority's Gender Equality Scheme does not include the right objectives or actions.
- [Letter 6](#) could be used if you have not received a response to your inquiries from a public authority, after sending one of the above letters, and would like to take this further. This letter will take your enquiry to the next stage, by initiating the public authority's formal complaints procedure.

What if I'm not satisfied with the public authority's response?

If you have exhausted the formal complaints procedure of the public authority and are still not satisfied with the public authority's progress in meeting the GED, you may want to consider taking the matter further.

You can put pressure on the public body through the influence of your MP or councillor.

Write to your MSP at the Scottish Parliament, Edinburgh, EH99 1SP. If your complaint is about your local authority, then contact your local councillors.

If the public body in question is covered by an inspectorate, you could also ask your MSP or councillors to write to the inspectorate. Some examples of inspectorates are: Audit Scotland, HM Inspectorate of Education, Social Work Inspection Agency, HM Prisons Inspectorate, HM Inspectorate of Constabulary, Inspectorate of Prosecution.

If you as an individual have actually suffered personal injustice, hardship or financial loss, due to the public authority not having complied with its GED duties, you could complain to the Scottish Public Services Ombudsman. See www.spsso.org.uk

You are also welcome to bring the situation to the attention of the EOC (or, from, October 2007 to the CEHR) by forwarding details of your initial complaint and all subsequent communications to the EOC Helpline. Due to the large number of public authorities we are monitoring, we will only have the resources to follow up a proportion of the individual complaints we receive. We will use our discretion to prioritise taking up those issues that are likely to have significant impact for men and women.

We will let you know if we are intending to follow up your specific complaint against that authority. In any event, however, we will make use of the information you supply to help us monitor trends, and as part of an evidence base to decide which issues and sectors we need to investigate and direct our efforts towards.

Enforcement of the Gender Equality Duty

Virtually every public authority is covered by the Gender Equality Duty, and over 306 Scottish public authorities will be required to produce Gender Equality Schemes, setting out their gender equality objectives and equal pay statements. The EOC will be appraising public authorities' Schemes to see how they meet the GED and will be following the progress of different public bodies in implementing their schemes. The EOC will take enforcement action against public authorities who do not comply.

If, due to the large number of enquires we receive, the EOC has not been able to investigate your enquiry or complaint, there is still the potential for you as an individual, or as part of a group or organisation of individuals, to challenge a public authority in the courts if you have evidence that the general duty is not being met. This would be by means of a judicial review in the Court of Session in Scotland. An individual cannot take legal action against non-compliance with the specific duties.

However, you would need legal advice to enable you to take judicial review proceedings because the legal process is complex and costs can be awarded against the losing party. Any legal advice should be sought quickly because an application for a judicial review must be made promptly, and no later than 3 months after the action or decision of the public body that you are concerned about. Time extensions are rare.

For more information on enforcement of the GED please see Chapter 4 of the Scotland Gender Equality Duty Code of Practice at <http://www.eoc.org.uk/genderduty>

Freedom of information

The Freedom of Information (Scotland) Act 2002 gives any person the right to request official information from public authorities. This right is subject to certain exemptions.

The Freedom of Information (Scotland) Act applies to all public bodies including government departments, the police, local authorities, schools and hospitals/surgeries etc. It entitles an individual to be supplied with copies of information, documents and records held by the public authority, subject to certain exemptions.

We suggest that you combine your letter requesting information about the GED with a Freedom of Information (Scotland) Act request because that means that the public authority must reply and supply any documents within 20 working days (except where exemptions apply).

There will normally be no charge for making a request for information. It will only be if the request asks for an excessive amount of documentation to be supplied, or the information would take an excessive amount of hours work to be retrieved, that a charge might be levied, in which case the authority would notify you in advance.

Letter 1 –‘I don’t think a public authority has given due regard to promoting gender equality in something that it has done, or has failed to do’

[Your address]

[Date]

[Public authority/ organisation address]

Dear Sir/Madam

Re: [insert here name of policy, practice, or initiative where you feel due regard hasn’t been given]

I am concerned that your authority/organisation has not given due regard to the general duty of eliminating unlawful gender harassment and discrimination, and/or promoting equality of opportunity between women and men in one of its functions. [Insert details of policy, practice, or initiative where you feel due regard hasn’t been given].

As you know the Sex Discrimination Act places upon public authorities an obligation to eliminate unlawful gender discrimination and harassment, and to promote equality of opportunity between women and men. This means that you are required to consider gender equality in relation to every function of the authority. Conducting an impact assessment is the means by which an authority can ascertain how effectively to comply with the duty.

Please can you tell me how you have had due regard to the need to promote gender equality in all the elements of your decision to [insert details].

In addition, please can you send me a copy of the gender equality impact assessment you conducted before taking this decision / amending this policy / continuing with this practice [delete as appropriate]. If you have not conducted such an assessment, please say why not, whether the arrangements are in place for conducting one, and when it will be carried out.

Please forward this information to me within 20 working days. I will contact you again if I have not received more information from you in this time.

Please also treat this request as one under the Freedom of Information (Scotland) Act.

Yours faithfully

[*your signature*]

Letter 2 – ‘I can’t find a public authority’s Gender Equality Scheme’

[Your address]

[Date]

[Public authority/ organisation address]

Dear Sir/Madam

The Authority's Gender Equality Scheme

As a resident / student / employee / service user / voluntary sector representative / other [delete as appropriate] of this authority/ organisation, I am interested in your gender equality work, and would like to read a copy of your Gender Equality Scheme. I have tried to obtain a copy of your Gender Equality Scheme on your website / in your offices / by ringing your main number / other [delete as appropriate] but have not been successful.

As you know the Sex Discrimination Act (SDA) places an obligation upon public authorities to eliminate unlawful gender discrimination and harassment, and to promote equality of opportunity between women and men. Specified public authorities, including this authority, are also required to comply with a series of specific duties by the SDA 1975 (Public Authorities) (Statutory Duties) (Scotland) Order 2007. These include the development and publication of a Gender Equality Scheme with specific gender equality objectives, consultation with stakeholders in the development of that Scheme, and the gender impact assessment of new and current policies.

Please can you send me a copy of your authority’s Gender Equality Scheme within 20 working days. I will contact you again if I have not received a copy of your Gender Equality Scheme in this time.

Please also treat this request as one under the Freedom of Information (Scotland) Act.

Yours faithfully

[your signature]

Letter 3 – ‘I can’t find a public authority’s Equal Pay Statement’

[Your address]

[Date]

[Public authority/ organisation address]

Dear Sir/Madam

The Authority's Equal Pay Statement

As a resident / student / employee / service user / voluntary sector representative / other [delete as appropriate] of this authority/ organisation, I am interested in your gender equality work, and would like to read a copy of your Equal Pay Statement. I have tried to obtain a copy of your Equal Pay Statement on your website / in your offices / by ringing your main number / other [delete as appropriate] but have not been successful.

As you know the Sex Discrimination Act (SDA) places an obligation upon public authorities to eliminate unlawful gender discrimination and harassment, and to promote equality of opportunity between women and men. Specified public authorities, including this authority, are also required to comply with a series of specific duties by the SDA 1975 (Public Authorities) (Statutory Duties) (Scotland) Order 2007. These include the development and publication of an Equal Pay Statement.

Please can you send me a copy of your authority’s Equal Pay Statement within 20 working days. I will contact you again if I have not received a copy of your Equal Pay Statement in this time.

Please also treat this request as one under the Freedom of Information (Scotland) Act.

Yours faithfully

[your signature]

Letter 4 – ‘How have stakeholders been involved in the development of the Gender Equality Scheme and how this has influenced the actions in the Scheme?’

[Date]

[Public authority/ organisation address]

Dear Sir/Madam

The authority's/ organisation's Gender Equality Scheme and involvement of relevant stakeholders

As a resident / student / employee / service user / voluntary sector representative / other *[delete as appropriate]* of this authority/organisation I am interested in your gender equality work, and have read a copy of your Gender Equality Scheme. I would like to know how stakeholders have been involved in the development of your Gender Equality Scheme, or how this consultation has influenced the actions under your Scheme.

As you know the Sex Discrimination Act (SDA) places an obligation upon public authorities to eliminate unlawful gender discrimination and harassment, and to promote equality of opportunity between women and men. Specified public authorities, including this authority, are also required to comply with a series of specific duties by the SDA 1975 (Public Authorities) (Statutory Duties) (Scotland) Order 2007. These include the development and publication of a Gender Equality Scheme with specific gender equality objectives, consultation with stakeholders in the development of that Scheme, and the gender impact assessment of new and current policies.

Please can you send me more details on how you undertook this process of consultation in the development of your Scheme? I would like more information on:

- The stakeholders that you consulted with, as well as individuals
- What mechanisms (e.g. meetings) and methods (e.g. online forums) you used
- How you used these consultations to influence your Action Plan.

Please can you send me this information within 20 working days. I will contact you again if I have not received more information from you in this time.

Please also treat this request as one under the Freedom of Information (Scotland) Act.

Yours faithfully

[*your signature*]

Letter 5 – ‘I don’t think a public authority’s Gender Equality Scheme includes the right priorities for action’

[Your address]

[Date]

[Public authority address]

Dear Sir/Madam

The authority's/ organisation's Gender Equality Scheme

As a resident / student / employee / service user / voluntary sector representative / other [delete as appropriate] of this authority/ organisation, I am interested in your gender equality work. However, having read your scheme, I do not think it includes the right actions. It does not cover *[insert more info on areas that the Action Plan does not cover e.g. there is no reference to strategies to tackle violence against women, policies on maternity discrimination or sexual harassment, or other issues of particular concern to women or men, including those who are transsexual]*.

As you know the Sex Discrimination Act (SDA) places upon public authorities an obligation to eliminate unlawful gender discrimination and harassment, and to promote equality of opportunity between women and men. Specified public authorities, including this authority, are also required to comply with a series of specific duties by the SDA 1975 (Public Authorities) (Statutory Duties) (Scotland) Order 2007. These include the development and publication of a Gender Equality Scheme with specific gender equality objectives, consultation with stakeholders in the development of that Scheme, and the gender impact assessment of new and current policies.

Please inform me why the actions I mention above are not included in the authority's Gender Equality Scheme or action plan and whether any consideration has been given to including them. If there is a reason for not including them, please explain why they are not priorities for promoting equality of opportunity between women and men.

Please can you send me this information within 20 working days. I

will contact you again if I have not received more information from you in this time.

Please also treat this request as one under the Freedom of Information (Scotland) Act.

Yours faithfully

[*Your signature*]

Letter 6 – ‘I haven’t received a response to my original letter (letter 1- 5) and want to proceed with a formal complaint’

[Your address]

[Date]

[Public authority/ organisation address]

Dear Sir/Madam

The authority's/ organisation's Gender Equality Scheme

I wrote to you on [insert date of last letter/email] about [insert details of last letter] and asked you to forward [insert details of information you requested, e.g. a copy of your Gender Equality Scheme] within 20 working days.

I have not received any more information from you and, as I believe you are potentially in breach of your obligations under the Gender Equality Duty and Freedom of Information (Scotland) Act, I would like to lodge a formal complaint. Please take this letter as the first stage in the complaint process and provide me with information on how to progress this complaint within 14 days.

Yours faithfully

[Your signature]

Appendix A: Who is covered by the general duty?

For the purposes of the gender duty, public authorities are bodies whose functions are those of a public nature. The most obvious examples of this are government departments, local authorities, the police and the armed forces. They will generally possess special powers, be democratically accountable, be publicly funded in whole or in part, be under an obligation to act only in the public interest, and have a statutory constitution.

'Public authority' also includes any person who has functions of a public nature. This will include private bodies or voluntary organisations who are carrying out public functions on behalf of a public authority. An organisation will be carrying out a public function where it is in effect exercising a function which would otherwise be exercised by the state – and where individuals have to rely upon that person for the exercise of that function. These bodies are sometimes referred to as 'functional public bodies'. Whether or not an organisation is exercising a function of a public nature will ultimately be a matter for the courts.

For more in depth information, please see Appendix A of the Gender Equality Duty Code of Practice for Scotland at <http://www.eoc.org.uk/genderduty>

Appendix B: The specific duties and who is covered

All public bodies are subject to a general duty, but only those public bodies that are specifically listed¹ are subject to the specific duties.

The specific duties are designed to assist specific public bodies with the implementation of the general duty. The specific duties are:

- **prepare and publish a Gender Equality Scheme** showing how it intends to fulfil the general and specific duties and setting out its gender equality objectives
- **in preparing a scheme:**
 - **consult employees, service users and others** (including trade unions)
 - **take into account any information it has gathered or considers relevant** as to how its policies and practices affect gender equality in the workplace and in the delivery of its services
 - in formulating its overall gender equality objectives, **consider the need to have objectives to address the causes of any gender pay gap**
- **ensure that the scheme sets out the actions** the authority has taken or intends to take to –
 - gather information on the effect of its policies and practices on men and women, in employment, services and performance of its functions
 - use the information to review the implementation of the scheme objectives
 - assess the impact of its current and future policies and practices on gender equality
 - consult relevant employees, service users and others (including trade unions)
 - ensure implementation of the scheme objectives
- **implement the scheme and their actions for gathering and using information** within three years of publication of the scheme, unless it is unreasonable or impracticable to do so
- **review and revise the scheme** at least every three years
- **report on progress annually**
- Listed public authorities with 150+ full time equivalent staff must **publish a statement which outlines their policy on equal pay between men and women**, no later than 28 September 2007.

¹ SDA 1975 (Public Authorities) (Duty to Promote Equality, Scotland) Order 2007

Public bodies covered by the specific duties include:

SECTOR	EXAMPLES OF BODIES COVERED
Scottish Government	Scottish Executive, government directorates, Scottish Enterprise, government agencies eg Communities Scotland
Health	All regional Health Boards, special Boards including: NHS 24, NHS Education, NHS Health Scotland, NHS Quality Improvement Scotland, Scottish Ambulance Service, Golden Jubilee National Hospital, the State Hospitals Board for Scotland, NHS National Services Scotland, The Mental Welfare Commission for Scotland, The Scottish Commission for the Regulation of Care, Scottish Social Services Council
Education	All Education Authorities, Managers of Grant-Aided Schools, all colleges and universities, Learning and Teaching Scotland, Scottish Funding Council, Scottish Qualifications Authority
Criminal justice	Chief Constables of police forces, Joint Boards and Police Authorities, Scottish Prison Service, Crown Office and Procurator Fiscal Service
Local government	All councils, including:, Fire Authorities, joint fire and rescue boards, licensing boards, joint valuation boards
Housing	Local authority housing departments
Transport	Transport Partnerships
Inspectorates	Audit Scotland, HM Inspectorate of Education, Social Work Inspection Agency, HM Prisons Inspectorate, HM Inspectorate of Constabulary, Inspectorate of Prosecution
Non-departmental public bodies	The Scottish Arts Council, VisitScotland, SportScotland
Other	The Law Society of Scotland, The Board of Trustees for the National Galleries of Scotland, The Board of Trustees of the National Museums of Scotland, Bord na Gaidhlig, The Cairngorms National Park Authority, The Keeper of the Records of Scotland, The Keeper of the registers of Scotland, The Trustees of the National Library Scotland, The Loch Lomond & the Trossachs National Park Authority, The Registrar General of Births, Deaths & Marriages for Scotland, Scottish Legal Aid Board, Scottish Natural Heritage, Scottish Screen, Scottish Water

A full list is available in the schedule to the SDA 1975 (Public Authorities) (Statutory Duties) (Scotland) Order 2007 on the Office of Public Sector Information website at

http://www.opsi.gov.uk/si/si2007/uksi_20071597_en.pdf

Appendix C: Glossary of terms

Action Plan

A list of action points showing the steps that the authority is going to take to fulfil its general duty

Compliance notice

A legal notice served on a public authority requiring them to do certain things to meet the duty within a set time

Equal Pay Statement

A statement setting out the authority's policy on equal pay between men and women

Gender impact assessment

The process by which a public authority assesses the impact of policies, practices or procedures for their effect on men and women, including transsexual men and women

Gender Equality Scheme

A document bringing together all the work the authority has done, and plans to do to fulfil its general and specific duties to promote gender equality

General duty

A requirement on public authorities to have due regard to the need to eliminate unlawful sex discrimination and harassment, and to promote equality of opportunity between women and men

Judicial review

A claim to the Scottish Court of Session asking the court to review the way a public authority made a decision

Public authority

All bodies of whose functions are of a public nature

Specific duties

Requirements that certain listed public authorities must meet to assist them in meeting the general duty, including setting gender equality objectives and gender impact assessing all new and active policies and procedures