



UCU guidance

Gender Equality Duty

The Gender Equality Duty came into force on 6 April 2007. It follows in the footsteps of the duty to promote race equality which came about as a result of the Stephen Lawrence Inquiry, and the disability duty which came into force in December 2006.

The Gender Equality Duty is not simply concerned with women's rights. Gender roles and relationships structure both men's and women's lives. Both sexes suffer from stereotyping of their roles and needs. The duty should help the public sector, and those working with it identify and respond to stereotyping, sex discrimination and sexism, resulting in improvements for all.

The gender equality duty also requires public authorities to have due regard to the need to eliminate unlawful discrimination and harassment against transsexual people in the fields of employment and vocational training (including further and higher education).

Summary of the Gender Equality Duty

The Gender Equality Duty requires public bodies to 'eliminate unlawful discrimination' and harassment and 'to promote equality of opportunity between women and men'. This means that the onus is shifted from individuals having to prove that they have been discriminated against to public bodies, including higher and further education institutions, having to positively promote gender equality.

The Gender Equality Duty should improve gender equality in the following areas:

- Employment issues such as promotion, the pay gap, maternity related discrimination and sexual harassment
- Improved access to services and more focus on the different needs of female and male service users
- Improved data collection and monitoring as a basis for action
- More effective targeting of resources

Who does the Duty apply to?

It applies to all public authorities, including colleges and universities. The duty also applies to private and voluntary bodies who are providing public functions instead of a public authority, such as transport for prisoners. A public authority needs to meet the duty even where services or functions are procured or contracted out, such as in catering provision for staff and students in the college or university canteen.

General duty

All public bodies are required to:

- eliminate unlawful discrimination and harassment
- promote equality between women and men

This is called the 'general duty'.

Specific duties

As well as the 'general duty', higher and further education institutions have *specific duties*. These are:

- To prepare and publish a Gender Equality Scheme, showing how the college/university will meet its general and specific duties and setting out its gender equality objectives
- In preparing the scheme the college/university must:
 - 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, the college/university must consider the need to have objectives to address the causes of any pay gap
- To ensure that the scheme sets out the actions the college/university 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

- To implement the scheme and their actions for gathering and using information within three years of the publication of the scheme
- To review and revise the scheme at least every three years
- To report on progress annually

Gender Equality Scheme – what is involved and what should be included?

A gender equality scheme should identify gender equality objectives and set out the actions to be carried out in order to achieve them. Trade unions should be consulted. The college/university then has to commit to a set of priority objectives which can be selected according to their own discretion, but which focus on the issues that have the greatest importance and impact on gender equality. The objectives should also be based on evidence in relation to this. The scheme should set out realistic outcomes with practical steps to be taken, listing who is responsible for particular areas.

The scheme should be published in a readily accessible format.

Impact assessments

The college/university must ensure that its scheme sets out the actions it has taken or intends to take to assess the impact of its policies and practices, or their likely impact, on gender equality. 'Policies and practices' covers all the proposed and current activities that which the college/university undertakes. The purpose of an impact assessment is to ensure that neither sex is disadvantaged by a college/university's decisions and activities; and to identify where the college/university can promote equality of opportunity between women and men.

The specific duty requires the assessment of existing policies and practices as well as ones which are developed subsequently. For new policies and practices impact assessments are most effective when they are carried out early in the decision-making process in order to inform the process of policy-making and enable any necessary changes.

The specific duties do not prescribe a particular method of impact assessment. A pro-forma for impact assessments is available from the UCU Equality Unit (see Further Information section).

Proportionality and relevance

There is an emphasis within the Duty on 'proportionality and relevance'. This means that in order to comply with the Duty, colleges/universities will need to consider what will make the biggest difference to gender equality and prioritise action to address the most significant gender inequalities within their remit. The need to promote gender equality should be proportionate to its relevance to a particular function. Gender equality will be more relevant to some functions than others. Gender equality will always be relevant, however, to the employment side of any functions.

It's also important to note that the requirement for proportionality and relevance is not simply a question of the numbers of people affected. What should also be taken into account is the seriousness or extent of any discrimination, harassment or gender inequality even if the number of people affected is small (e.g. an issue seriously affecting trans people).

Can a college/university have just one scheme for the gender, race and disability duties?

A college/university may produce one scheme for the above duties, but in order to comply with their legal obligations the scheme must fully satisfy the criteria for all three duties. The desired outcomes for gender, race and disability must all be clearly and comprehensively set out in the scheme.

Key dates

The Gender Equality Duty came into force on 6 April 2007. Colleges and universities were required to publish their first gender equality scheme by 30 April 2007. The scheme must be reviewed at least every three years thereafter and progress should be reported on annually.

How will the Duty be enforced?

If colleges/universities do not comply with their specific duties, they could face enforcement action by the Commission for Equality and Human Rights.

The EHRC can serve a compliance notice on a college/university that is failing to comply with either the general or specific duty. The notice will state that the college/university must meet its duties and tell the EHRC within 28 days what it has done to comply with them. If the EHRC thinks that a college/university has failed to provide any information required by the notice, they can apply to a county court (England and Wales) or sheriff court (Scotland) for an order requiring the college/university to comply with the specific duty.

If a college/university does not comply with the general duty, its actions or failure to act can be challenged through an application to the High Court for judicial review. An application could be made by a person or group of people with an interest in the matter, or by the EHRC.

Meeting the Duty and tackling discrimination

Institutions need to review carefully all the mechanisms which currently create occupational segregation and discrimination which can often underpin unequal pay.

The issues they need to address are:

- Is there a pay gap between men and women doing the same job or jobs of similar value? Although there is no legal requirement within the Gender Equality Duty to carry out an equal pay review, the EOC is clear that this is the best way forward.
- How could flexible working help staff and how will it benefit men and women?
- How are staff recruited and is there a good gender balance of candidates?
- Is there a gender imbalance? If so, how could the situation be rectified?
- Is there a good return rate from maternity leave? If not, why and how can this be improved?

How can union members and representatives make best use of the Gender Equality Duty?

- Use the introduction of the gender equality as part of your bargaining agenda – think about how to use the general and specific duties in any relevant casework and negotiations you are involved in
- Build equality into the way you organise
- Press your employer to run Gender Equality Training for all staff
- Put the Gender Equality Duty on the agenda of your next Equality Committee or Joint Negotiating meeting with your employer
- Branch/LA to take an active part in reviewing all equality policies
- Find out what has been done to date
- Request copies of monitoring information relating to race, disability and gender equality
- Request impact assessment of any proposed changes to policies or procedures
- Tell (other) members about the Gender Equality Duty and let them know about any work you are doing in this area
- The legal requirement to consult trade unions is unique to the Gender Equality Duty and it can be used to encourage management to also consult on race and disability

Positive action

The Gender Equality Duty and the Sex Discrimination Act does allow positive action, but does not allow positive discrimination. Positive *Action* is encouraging people from an under-represented group to apply for jobs, training or promotion.

Positive *discrimination* is unlawful in the UK. Positive discrimination in a recruitment scenario would mean *only* shortlisting people from the under-represented group. This is not allowed under the GED or under the Sex Discrimination Act.

Code of Practice

The Equal Opportunities Commission published a Gender Equality Duty Code of Practice to help public bodies meet the Duty. The Code remains in force although the EOC has been

dissolved and the Commission for Equality and Human Rights (EHRC) has taken over responsibility for promoting and enforcing sex equality legislation. This Code is the indispensable tool for implementing the Duty.

See the EHRC website:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/information-for-public-authorities/codes-of-practice/>

Further information

More information about the Gender Equality Duty is available from:

- Equality Challenge Unit
<http://www.ecu.ac.uk/>
- Women and Equality Unit
http://www.womenandequalityunit.gov.uk/cehr/gender_duty.htm
- University and College Union
www.ucu.org.uk
- Charlotte Nielsen, Equality Unit
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