

2007 No. 32

EQUAL OPPORTUNITIES

**The Sex Discrimination (Public Authorities) (Statutory Duties)
(Scotland) Order 2007**

Made - - - - - *30th January 2007*

Laid before the Scottish Parliament *1st February 2007*

Coming into force - - - *9th April 2007*

The Scottish Ministers, in exercise of the powers conferred by section 76C(3) and section 81(4) of the Sex Discrimination Act 1975(a), and all other powers enabling them in that behalf, having consulted with the Equal Opportunities Commission in accordance with section 76C(5) of that Act, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007 and shall come into force on 9th April 2007.

(2) In this Order—

“education authority”, “grant-aided school”, “independent school”, “pupil”, “school age” and “school education” have the meanings respectively given by section 135 of the Education (Scotland) Act 1980(b);

“listed authority” means a public authority listed in either of Parts I or II of the Schedule to this Order;

references to “150 full-time staff” are references to such number of staff as would, if the hours they work were aggregated, amount to 150 staff working on a full-time basis;

“relevant Scottish authority” has the meaning contained in section 76C(9) of the Sex Discrimination Act 1975;

“Scheme” means a gender equality scheme prepared in accordance with article 2;

“school” has the meaning given by section 135 of the Education (Scotland) Act 1980, and includes a place (other than a school as so defined) at which an education authority provides school education for pupils who are under school age, but excluding—

- (a) any independent school; and
- (b) such a place (other than a school as so defined) at which school education is being provided by a person with whom that authority has, by virtue of section 35 of the Standards in Scotland’s Schools etc. Act 2000(c) entered into arrangements for the provision of that education; and

(a) 1975 c.65. Section 76C was inserted by section 85 of the Equality Act 2006 c.3. Section 85, insofar as inserting sections 76B and 76C into the 1975 Act for the purpose only of exercising any power to make orders, was commenced by The Equality Act 2006 (Commencement No. 1) Order 2006 (S.I. 2006/1082).

(b) 1980 c.44.

(c) 2000 asp 6.

“section 76A(1) duty”, in relation to a public authority, means its duty under section 76A(1) of the Sex Discrimination Act 1975 (public authorities: general statutory duty);

“staff” includes any person treated as an employee for the purposes of Part 2 of the Sex Discrimination Act 1975 (Employment Field).

Preparation and publication of a gender equality scheme

2.—(1) A listed authority shall, on or before 29th June 2007, prepare and publish a Scheme which shows how it intends to fulfil its section 76A(1) duty and its duties under this Order.

(2) In preparing a Scheme, a listed authority shall consult staff, service users and others (including trade unions), who appear to that authority to have an interest in the way the authority carries out its functions.

(3) In preparing a Scheme, a listed authority shall take into account any information it has gathered of the kind described in paragraph (6)(a) and any other information the authority considers to be relevant to the performance of its section 76A(1) duty and its duties under this Order.

(4) A listed authority shall ensure that its Scheme sets out the overall objectives which that authority has identified as being necessary for it to perform its section 76A(1) duty and its duties under this Order.

(5) A listed authority shall, when formulating its objectives for the purposes of paragraph (4), consider the need to have objectives that address the causes of any differences between the pay of men and women that are related to their sex.

(6) A listed authority shall ensure that its Scheme sets out the actions which that authority has taken or intends to take to—

- (a) gather information on the effect of its policies and practices on men and women and in particular—
 - (i) the extent to which they promote equality between male and female staff, and
 - (ii) the extent to which the services it provides and the functions it performs take account of the needs of men and women;
- (b) make use of such information, and any other information the authority considers to be relevant, to assist it in the performance of its section 76A(1) duty, its duties under this Order and in particular its regular review of—
 - (i) the effectiveness of the actions identified for the purposes of sub-paragraph (e), and
 - (ii) its arrangements for the preparation of subsequent Schemes;
- (c) assess the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality between women and men and (so far as reasonable and practicable to do so) to have due regard to the results of such assessments of impact;
- (d) consult relevant staff, service users and others (including trade unions); and
- (e) achieve the fulfilment of the objectives set out for the purposes of paragraph (4).

Implementation of the gender equality scheme

3.—(1) A listed authority shall within the period of three years beginning with the date when a Scheme or a revised Scheme is prepared and published for the purposes of articles 2 or 4 put into effect the actions identified for the purposes of article 2(6)(a), (b) and (e).

(2) Nothing in this article imposes any requirement on a listed authority where, in all the circumstances, it would be unreasonable or impracticable for it to perform the requirement.

Review of a gender equality scheme

4. A listed authority shall review its Scheme and prepare and publish a revised Scheme—
- (a) not later than the end of the period of three years beginning with the date of publication of its first Scheme; and
 - (b) subsequently at intervals of not more than three years beginning with the date of publication of the last revision of a Scheme.

Annual reporting

5.—(1) A listed authority shall publish reports summarising the actions that the authority has taken towards the achievement of the objectives identified for the purposes of article 2(4)—

- (a) not later than the end of the period of one year beginning with the date of publication of its first Scheme; and
- (b) subsequently at intervals of not more than one year beginning with the date of publication of the last report.

(2) Such an authority may comply with the duty to publish under paragraph (1) by setting out its report within another published document.

Preparation and publication of an equal pay statement

6. A listed authority which has at least 150 full time staff in total shall, on or before 28th September 2007, prepare and publish an equal pay statement which states that authority's policy on equal pay between men and women.

Review of an equal pay statement

7. Where a listed authority is required to publish an equal pay statement in terms of article 6, the authority shall review its equal pay statement and publish a report on its equal pay policy—

- (a) not later than the end of the period of 3 years beginning with the date of publication of its first equal pay statement; and
- (b) subsequently at intervals of not more than 3 years beginning with the date of publication of the last revision of the equal pay statement.

Publication of a gender equality scheme and equal pay statement

8. A listed authority may comply with the duties to publish under articles 2, 4, 6 and 7 by setting out its Scheme or equal pay statement as part of another published document or within a number of other published documents.

Duty on the Scottish Ministers

9.—(1) The Scottish Ministers shall publish reports—

- (a) not later than 1st July 2010; and
- (b) subsequently not later than the end of each successive period of 3 years beginning with 1st July 2010.

(2) These reports shall—

- (a) set out the priority areas across the functions and activities of relevant Scottish authorities that the Scottish Ministers have identified for the advancement of equality of opportunity between men and women in Scotland; and
- (b) provide an overview of progress in those priority areas toward equality of opportunity between men and women.

School education bodies and persons

10. A body or person specified in Part II of the Schedule shall make arrangements for each school under its management to—

- (a) gather information on the effect of its policies and practices in relation to the extent to which they promote equality between male and female pupils;
- (b) assess the impact of its policies and practices, or the likely impact of its proposed policies and practices, on equality between male and female pupils;
- (c) provide such a body or person with an annual report in respect of the matters contained in paragraphs (a) and (b);
- (d) carry out such steps which that body or person proposes to take toward the fulfilment of its section 76A(1) duty; and
- (e) maintain a copy of the Scheme.

St Andrew's House,
Edinburgh
30th January 2007

RHONA BRANKIN
A member of the Scottish Executive

SCHEDULE

PART I

The Accounts Commission for Scotland

Audit Scotland

The Board of Trustees for the National Galleries of Scotland established under section 3 of the National Galleries of Scotland Act 1906(a)

The Board of Trustees of the National Museums of Scotland established by the National Heritage (Scotland) Act 1985(b)

Bòrd na Gàidhlig

The Cairngorms National Park Authority established under section 6 of the National Parks (Scotland) Act 2000(c)

A Chief Constable of a police force maintained under section 1 of the Police (Scotland) Act 1967(d)

A Chief Officer of a relevant authority appointed under section 7 of the Fire (Scotland) Act 2005(e);

A council constituted under section 2 of the Local Government etc (Scotland) Act 1994(f)

Fundable Bodies as specified in schedule 2 to the Further and Higher Education (Scotland) Act 2005(g)

A Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(h)

A joint board within the meaning of section 235(1) of the Local Government (Scotland) Act 1973(i)

A joint fire and rescue board constituted by a scheme under section 2(1) of the Fire (Scotland) Act 2005(j)

The Keeper of the Records of Scotland

The Keeper of the Registers of Scotland

The Law Society of Scotland, in respect of its public functions

Learning and Teaching Scotland

A licensing board constituted under section 1 of the Licensing (Scotland) Act 1976(k)

The Loch Lomond and the Trossachs National Park Authority established under section 6 of the National Parks (Scotland) Act 2000

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- (a) 1906 c.50.
(b) 1985 c.16.
(c) 2000 asp 10.
(d) 1967 c.77.
(e) 2005 asp 5.
(f) 1994 c.39.
(g) 2005 asp 6.
(h) 1978 c.29.
(i) 1973 c.65.
(j) 2005 asp 5.
(k) 1976 c.66.

The managers of a central institution within the meaning of section 135 of the Education (Scotland) Act 1980

The Mental Welfare Commission for Scotland

NHS National Services Scotland

A police authority established under section 2 of the Police (Scotland) Act 1967

The Registrar General of Births, Deaths and Marriages for Scotland

The Scottish Arts Council

The Scottish Commission for the Regulation of Care

Scottish Enterprise and Highlands and Islands Enterprise established under the Enterprise and New Towns (Scotland) Act 1990(a)

The Scottish Further and Higher Education Funding Council

The Scottish Legal Aid Board

The Scottish Ministers

Scottish Natural Heritage

The Scottish Qualifications Authority

Scottish Screen

The Scottish Social Services Council

The Scottish Sports Council

The Scottish Tourist Board

Scottish Water

A Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978

Transport Partnerships established under section 1 of the Transport (Scotland) Act 2005(b)

The Trustees of the National Library of Scotland, constituted under section 1 of the National Library of Scotland Act 1925(c)

PART II

Education authorities

The managers of a grant-aided school

(a) 1990 c.35.
(b) 2005 asp 12.
(c) 1925 c.73.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order imposes specific duties on the Scottish public bodies and authorities listed in the Schedule to the Order (“listed authorities”). The Order is made under section 76C(3) of the Sex Discrimination Act 1975 (“the 1975 Act”) (as inserted by section 85 of the Equality Act 2006). The purpose of the specific duties is to ensure better performance by listed authorities of their duty to have due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women in carrying out their functions under section 76A(1) of the 1975 Act.

Article 2 requires a listed authority to prepare and publish a Gender Equality Scheme (a “Scheme”) by 29th June 2007. This article also prescribes the various components of such a Scheme, the consultation requirements in preparing a Scheme, and the information to be taken into account.

Article 3 requires a listed authority to implement certain components of each Scheme it has published pursuant to Article 2 or Article 4. It should do this within 3 years beginning with the date on which it published the relevant Scheme.

Article 4 requires a listed authority to prepare and publish a revised Scheme within 3 years after the publication of the first Scheme, at the latest, and to continue to publish a revised Scheme every 3 years.

Article 5 requires a listed authority to report annually on the actions taken to meet the overall objectives in its Scheme. These reports can be published as part of another document.

Article 6 requires a listed authority with at least 150 full time staff (as defined in Article 1(2)) to publish, by 28th September 2007, an equal pay statement which states the authority’s policy on equal pay between men and women.

Article 7 requires a listed authority to review its equal pay statement and publish a report on their equal pay policy within 3 years after the publication of the first equal pay statement, and at subsequent intervals of not more than 3 years.

Article 8 provides that a listed authority’s Scheme or equal pay statement can be published as part of one or more other documents.

Article 9 requires the Scottish Ministers to publish a report setting out the priority areas across the functions and activities of relevant Scottish authorities that they have identified for the advancement of equality of opportunity between men and women, and provide a summary of progress in those priority areas. The first report should be published no later than 1st July 2010, with subsequent reports no later than the end of each successive 3 year period after 1st July 2010.

Article 10 requires each listed body that is responsible for management of schools to gather information on the effect of its policies, to the extent to which they promote equality between male and female pupils, to assess the impact of its policies and practices on equality between male and female pupils, and to provide an annual report on these matters.

The regulatory impact of this Order has been assessed and a Regulatory Impact Assessment is available from the Scottish Parliament Information Centre, Scottish Parliament, EH99 1SP.

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