

**EXPLANATORY MEMORANDUM TO**  
**THE SEX DISCRIMINATION CODE OF PRACTICE (PUBLIC AUTHORITIES)**  
**(DUTY TO PROMOTE EQUALITY, SCOTLAND) (APPOINTED DAY) ORDER 2007**

**2007 No. 1597**

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty. It is subsequent to the explanatory memorandum which accompanied the draft Gender Equality Duty Code of Practice – Scotland which was laid before both Houses of Parliament on 22 March 2007.

**2. Description**

2.1. This Order appoints 27 June 2007 as the day on which the Gender Equality Duty Code of Practice (Scotland), prepared by the Equal Opportunities Commission (EOC), will come into effect.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1. None.

**4. Legislative background**

4.1. Part 4 of the Equality Act 2006 inserted new sections 76A to 76E into the Sex Discrimination Act 1975 (SDA). Section 76A(1) imposes a general duty on public authorities, when carrying out their functions, to have due regard to the need to eliminate unlawful discrimination and harassment and to promote equality of opportunity between men and women.

4.2. Section 76C(3) of the SDA allows Scottish Ministers to impose by order specific gender equality duties on prescribed relevant Scottish public authorities to assist them in carrying out their duty under section 76A(1). This power has been exercised in the Sex Discrimination (Public Authorities) (Statutory Duties) (Scotland) Order 2007 (SSI/2007/32) (the Scottish Order) which was laid before the Scottish Parliament on 1 February 2007.

4.3. Section 76E gives the EOC powers to issue a code of practice about the performance of the general duty at section 76A(1) of the SDA and the duties imposed by the Scottish Order. The draft Code of Practice was approved by the Secretary of State under section 56A(4)(a) of the SDA (as applied by section 76E(2)) and was laid before both Houses of Parliament on 22 March 2007 for a period of 40 days as required by section 56A(5). As neither House resolved that no further proceedings should be taken on the draft, the Secretary of State has made this Order in exercise of the power in section 56A(7) (as applied by section 76E(2)) to appoint 27 June 2007 as the day on which the Code of Practice comes into effect.

## **5. Territorial Extent and Application**

5.1. The parts of the Code of Practice which deal with the general gender equality duty in section 76A(1) of the SDA apply to all Scottish public authorities. The parts of the Code of Practice which deal with the specific duties imposed by the Scottish Order apply only to relevant Scottish public authorities listed in the Schedule to the Scottish Order.

## **6. European Convention on Human Rights**

6.1. As this Order is subject to negative procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1. The new public sector duty on gender equality, which came into effect on 6 April 2007, requires public authorities to have due regard to the need to eliminate unlawful discrimination and harassment, and to promote equality of opportunity between men and women. It follows the earlier public sector duties to promote race equality and disability equality introduced in 2002 and 2006 respectively. On 10 November 2006, the Government laid before Parliament secondary legislation<sup>1</sup> under sections 76B(1) and 76C(2) of the SDA setting out specific gender equality duties applying to public authorities in England, those with public functions in both England and Wales, and cross border authorities (to the extent their functions are not Scottish functions), as listed in the Schedule to that legislation. The related code of practice and an explanatory memorandum were also laid on that date.

7.2. The Scottish Order, laid before the Scottish Parliament on 1 February 2007, imposes additional specific duties from those imposed by the legislation referred to at paragraph 7.1 above in three key areas:

- a different implementation date of 29 June 2007 for publication of the gender equality scheme;
- a duty on Scottish Ministers to set out priority areas for the advancement of equality of opportunity between men and women for the public sector and to report on those priority areas every three years starting from 2010; and
- a duty on listed relevant Scottish public authorities with at least 150 full time (or equivalent) staff to publish an equal pay statement on or before 28 September 2007 and to report on its equal pay policy every three years.

7.3. The EOC's draft Code of Practice which gives assistance and guidance to Scottish public authorities in their compliance with the general duty and the specific duties under the Scottish Order was laid before Parliament on 22 March 2007. It is broadly similar to that for England, Wales and cross-border authorities in England and Scotland but differs to reflect the matters set out at paragraph 7.2 above.

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<sup>1</sup> The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006 (SI 2006/2930.)

- 7.4 EOC Scotland carried out a public e-consultation on a draft of the code of practice as required by section 56A(2) and (3) of the SDA (as applied by section 76E(2)). The consultation took place for over 13 weeks from 20 February to 23 May 2006. 5 consultation events were held in addition to the web-based consultation. Around 102 people registered online for the consultation. The EOC received 27 submissions. Many of the comments and specific suggestions regarding content and layout have been taken into account in the final version of the draft code produced following the consultation process.
- 7.5. In accordance with section 76E(3)(b) of the SDA, both the National Assembly for Wales and Scottish Ministers have been consulted on this Order to appoint 27 June 2007 as the day on which the Code of Practice comes into effect.

## **8. Impact**

- 8.1. As this memorandum concerns the Order which does not itself impose any legal obligations on public authorities, no impact assessment has been produced.

## **9. Contact**

- 9.1. Sonia Bagga, Communities and Local Government, tel 020 7944 6434 or email [Sonia.Bagga@communities.gsi.gov.uk](mailto:Sonia.Bagga@communities.gsi.gov.uk), can answer any queries regarding the Order.