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Equal Opportunities Commission

Meeting the gender duty in employment

Guidance for GB public authorities

gender
equality duty

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SECTION 1	3
INTRODUCTION	3
Who is this guide for?	3
WHAT IS THE GENDER DUTY?	3
Specific duties in Wales and Scotland	4
What are the benefits of taking action?	4
Why does the public sector need to take action on gender equality in employment?	5
What does the general duty mean for me as an employer?	6
How will I know if I have been successful?	8
Procurement	9
SECTION 2	10
SPECIFIC DUTIES AND EMPLOYMENT PRACTICES	10
Setting your objectives	10
Considering the need to have objectives that address the causes of the gender pay gap	11
Gathering and using information	12
Recruitment and selection of new employees	13
Training and development	13
Promotion and career development	13
Pay and pay structures	14
Working time arrangements	14
Working conditions and the working environment	14
Taking account of other relevant information	15
Assessing the gender impact of your employment policies and practice	15
Consulting with employees and trade unions	16
Taking action	17
Reporting and monitoring progress	17
SECTION 3	18

BEST PRACTICE AND CASE STUDIES	18
Ensuring fair recruitment practices – including progression	18
Work-based training opportunities	18
Tackling pay discrimination	19
Avoiding the concentration of women and men into particular areas of work and addressing it where it exists (occupational segregation)	21
Promoting and managing flexible working	23
Widening access to part-time work at all levels within the organisation and supporting part-time workers	23
Managing leave for parents and carers	24
Managing pregnancy and return from maternity leave	25
Eliminating harassment, including sexual harassment	26
Grievance and disciplinary procedures	27
Redundancy	27
Retirement	27
SECTION 4	28
SOURCES OF FURTHER INFORMATION AND ADVICE	28

SECTION 1

INTRODUCTION

From April 2007 all public sector bodies in Great Britain will be required to comply with the gender equality duty, across all of their functions, including policy development, service delivery and employment. This guide aims to help you to meet the requirements of the gender equality duty as an employer and supplements the Gender Equality Duty Codes of Practice for England and Wales and for Scotland. The Codes of Practice set out the legal obligations of the duty and should be your primary source of information. Service delivery and policy questions are dealt with separately in the Codes of Practice, and in the sector-specific guidance.

This guide sets out why the public sector needs to take action on gender equality in employment and what the benefits of taking action are. The guide provides an overview of the gender equality duty and explains what steps you will need to take as a public sector employer to meet the requirements of the duty.

The guide deliberately does not talk in any length about how to deliver actions that will enable you to meet the requirements of the duty e.g. how to conduct an equal pay review or how to open up an increasing number of jobs to flexible or part-time working. Much of this information is readily available from other sources, including other pages on the EOC website and these are listed in the final section of the guidance.

Who is this guide for?

This guide is intended primarily for human resource or equality staff who will have responsibility for implementing the employment aspects of the duty. It will also be of interest to trade union representatives and line managers.

This guide has been developed to be useful to readers in England, Scotland and Wales. Statistics quoted in this guide refer to the situation for Great Britain as a whole, unless otherwise stated.

WHAT IS THE GENDER DUTY?

The Equality Act 2006 amends the Sex Discrimination Act to place a statutory duty on all public authorities to pay due regard to the need:

- To eliminate discrimination and harassment that is unlawful under the Sex Discrimination Act and discrimination that is unlawful under the Equal Pay Act
- To promote equality of opportunity between men and women

This is what is referred to as the **general duty** and it applies to all public bodies with effect from 6th April 2007.

There is also a series of **specific duties** that apply to major listed public authorities, which set out the steps that those authorities must take to help them meet the general duty. These duties have been finalised for bodies operating in England, and for reserved public bodies operating across Great Britain. In brief these are:

- To prepare and publish a gender equality scheme – showing how you intend to fulfil the general and specific duties and setting out your gender equality objectives
- In formulating your overall gender equality objectives you need to consider the need to have objectives to address the causes of any gender pay gap
- To gather and use information on how policies and practices affect gender equality
- To consult employees, service users and others (including trade unions)
- To assess the impact of current and proposed policies and practices on gender equality
- To implement the actions set out in the scheme
- To report against the scheme each year and review the scheme at least every three years

You can find more detail on what the specific duties require you to do in the Code of Practice. If you are unsure whether you are covered by the specific duties, you should look at the list of bodies covered which can be found in the Code of Practice for England and Wales which is on the EOC website.

Specific duties in Wales and Scotland

Public bodies in Scotland will be subject to their own set of specific duties – these will be detailed in the forthcoming Code of Practice for Scotland. This guidance will be useful preparatory information to help Scottish public sector employers meet their duties. Any additional or different requirements for Scotland will be flagged up on the EOC website.

The Welsh Assembly Government is due to draft a set of specific duties for public authorities in Wales. These will not be finalised before April 2008. In the meantime, the EOC's recommendation, supported by the Welsh Assembly Government is that public authorities in Wales publish a Gender Equality Scheme outlining their gender equality objectives and the action that is being taken to achieve them. They should prioritise action to address the most significant gender inequalities within their remit. This should include action to close the pay gap between women and men.

All future references in this guidance to the requirements of the specific duties (e.g. the need to publish a gender equality scheme by 30th April 2007), apply only to public authorities listed in the Code of Practice (England and Wales) and do not include authorities all of whose functions are public functions in relation to Wales.

What are the benefits of taking action?

Aside from ensuring that you meet your general legal responsibilities, taking action on gender equality as an employer will help you to maximise the potential of all your staff and help to close any gender pay gap. It will help you to attract and retain staff and to develop a more productive and motivated workforce that is better able to deliver high quality public services.

The benefits of taking action include:

- Increased staff retention– the cost of replacing staff has been estimated to be between £4,300 and £6,800 per employee and could be significantly more for senior members of staff.
- Tackling skill shortages could help you fill vacancies through widening the range of applicants applying for jobs, especially those traditionally done predominantly by one sex.
- Maximising your investment in staff training – making sure that all staff (especially those working part-time or returning from maternity leave) are working to their full potential will ensure you get the best possible return on the investment you have made in their training and development.
- Resolving or reducing the need for internal disputes and reducing the risk and cost of litigation – litigation is costly not just in monetary terms but also in terms of your reputation. Taking action will enable you to minimise and manage this risk effectively.

Brent Council has increased the percentage of women in jobs paying more than £50,000 from 30% in 2001 to 48% in 2004. Action they took included training women to join recruitment panels in service areas where few women were employed and introducing mentoring programmes to boost the confidence and skills of women to equip them to apply for more senior roles and ones in non-traditional areas. The council also introduced a work-life balance scheme, inclusive to all staff. As well as increasing the number of women in senior roles sickness absence across the authority had dramatically decreased - saving the Council an estimated £1.5 million over the past three years. (EOR No 151 April 2006)

Why does the public sector need to take action on gender equality in employment?

Women make up 65% of the public sector workforce¹. Despite women making up the majority of the public sector workforce, women working full-time within the public sector earn on average 14% less than their male counterparts, but women working on a part-time basis in the public sector earn 33% less per hour than their full-time male counterparts².

The full-time pay gap within the public sector has barely changed since 1998 whilst the part time pay gap has reduced slightly. (Figures for the full and part time pay gap in 1988 are 14.3% and 37% respectively³).

As well as measuring the gap between the earnings and opportunities of men and women, the gender pay gap is an indication of a productivity gap within the public sector – women's skills are not being utilised fully and many women in the public sector are working below their capabilities.

Taking action on key gender equality issues will enable the public sector to maximise the potential of its entire workforce, promote equality between male and female staff and address

¹ ONS 2005

² ASHE 2005

³ ONS 2004

discrimination against transsexual staff. You can find further guidance on how to address discrimination against transsexual staff in the separate guidance on this which can be found on the EOC website.

Key gender equality issues for the public sector include:

Pay: delivering equal pay for like work, work rated as equivalent, and work of equal value by eliminating discrimination in pay systems.

Pregnancy or maternity discrimination: 30,000 women a year still lose their jobs due to pregnancy discrimination. The best employers achieve return rates from pregnancy of over 90%, enabling them to retain valued staff and reducing staff turnover costs.

Harassment: is still prevalent in UK workforces and is one of the top five reasons for calls to the EOC helpline. Public sector employers must consider the steps they need to prevent harassment and sexual harassment occurring to all their staff, including transsexual staff and must implement effective procedures for addressing complaints, and appropriate disciplinary actions.

Occupational segregation: many areas of public sector employment are highly gender segregated – high levels of occupational segregation may put public authorities at higher risk of equal pay claims. Reducing segregation with fair and objective recruitment processes and removing barriers to employment will enable public sector employers to reduce this risk and may help to fill vacancies

Flexible working: Over a third of mothers and more than one in ten fathers have given up or turned down a job due to their caring responsibilities - making work more flexible will enable all your staff to balance their work and caring responsibilities.

There has been significant action across the public sector on gender equality in recent years, most notably Agenda for Change in the NHS, the development of the Equality Standard in English Local Government and the current Ten Point Plan within central government departments that includes specific targets on gender equality.

The Women and Work Commission, set up in 2004 to examine the causes of the gender pay and opportunity gap, noted the persistence of a glass ceiling, despite the action that has already been taken within the public sector, and that there was still a significant amount of segregation of women and men into traditional roles in the public sector. The Commission went on to say 'we are persuaded that in a significant number of public sector workplaces, women are at risk of substantial pay inequality'⁴.

The gender equality duty will require public authorities to take pro-active steps to achieve greater gender equality in their employment practices.

What does the general duty mean for me as an employer?

The general duty has three parts:

⁴ Shaping a Fairer Future, Women and Work Commission 2006

- Eliminating unlawful discrimination
- Eliminating harassment
- Promoting equality of opportunity between men and women

Unlawful discrimination includes sex discrimination as defined by the Sex Discrimination Act and pay discrimination as defined by the Equal Pay Act, and includes such issues as direct and indirect discrimination on grounds of sex or gender reassignment and discrimination on grounds of pregnancy or maternity-related reasons. Harassment on grounds of sex (harassment) and harassment of a sexual nature (sexual harassment) are also unlawful under the SDA, as is victimisation. The SDA's employment provisions are wide-ranging and deal with sequential aspects of employment, from the arrangements made for recruitment and selection to dismissal and "any other detriment".

The Equal Pay Act enables differences in pay between a man and woman for comparative work to be challenged. Comparative work means work that is the same or broadly similar, work rated as equivalent, or work of equal value. Pay includes bonuses and other contractual benefits or allowances.

The three parts of the duty support each other and may in practice overlap. You need to consider and deal with each of your employment practices in light of the three parts of the duty. If as an employer you are also subject to the specific duties you need to remember that the specific duties are simply a framework to follow to enable you to meet the three parts of the general duty. The most important thing to bear in mind is that as an employer you will be expected to take a pro-active approach to meeting the duty - the aim of the duty is to make visible, faster progress towards the elimination of discrimination and the promotion of gender equality.

You are also required under the general duty to take action to eliminate unlawful discrimination and harassment towards the transsexual people you employ and potential recruits. Although there is no legal requirement under the duty for you to promote equality of opportunity between transsexual and non-transsexual staff, as a matter of good practice you should aim to do this. You also need to bear in mind that, as an employer, you can be held legally liable for any unlawful actions of your employees, whether you know about them or not. Taking reasonable, practical actions to prevent such actions arising can help you to defend this liability. You can find more information on the sort of steps you can take and about this aspect of the duty in the EOC guidance on the gender equality duty and transsexual staff, which you can find on the EOC website at www.eoc.org.uk/genderduty.

Since gender equality will always be relevant to your role as an employer, having **due regard** to gender equality means that, as an employer, you will be expected to prioritise action that will address the most significant gender inequalities in your employment practices, bearing in mind the three parts of the duty. Significance cannot be determined solely by the numbers of people affected. You will also need to consider the seriousness of the discrimination or harassment or extent of inequality and/or what will have most impact on the promotion of equality between men and women.

The duty also means that you may need to take action to tackle the consequences of decisions made in the past that have failed to take issues of gender equality into account e.g. addressing disadvantages caused by always providing certain training on a residential basis, which made it difficult for staff with caring responsibilities to participate, or taking action to resolve any gender bias in your job evaluation system.

You will, therefore, need to gather sufficient evidence to enable you to understand the impact of your employment policies and practices, analyse the data, develop an action plan, implement the plan and monitor outcomes to inform further action. You can find out more on gathering and using information in the EOC guidance on gathering and using information, which you can find on the EOC website at www.eoc.org.uk/genderduty.

The following issues are the most likely ones that you will need to consider when deciding what your priorities for action should be:

- Ensuring fair recruitment practices – including progression
- Work-based training and development opportunities
- Avoiding the concentration of women and men into particular areas of work and addressing it where it exists
- Tackling pay discrimination
- Promoting and managing flexible working
- Widening access to part-time work at all levels within the organisation and supporting part-time workers
- Managing leave for parents and carers
- Eliminating discrimination towards pregnant women and successfully managing pregnancy and return from maternity leave
- Eliminating harassment including sexual harassment
- Eliminating discrimination against, and harassment of, transsexual staff and potential staff
- Grievance and disciplinary procedures
- Redundancy
- Retirement

You can find more information in this guide on these issues, including the positive steps you can take.

How will I know if I have been successful?

You will be able to demonstrate whether you have discharged your obligations under the general duty as an employer by:

- The extent to which you have sufficient information to understand the impact of your employment policies and practice on men and women;
- The extent to which you have identified the key gender equality issues in employment for your organisation and
- the effectiveness of the action that you have taken to address these.

Indicators of the effectiveness of your action might include:

- The gender pay gap in your organisation narrows and is eventually eliminated
- Women and men are proportionately represented at all levels in the workforce and in all areas of work
- The organisation accommodates different working patterns at all levels enabling all staff, both male and female, to balance their caring roles with work and flexible working becoming the norm rather than the exception
- An increasing number of jobs at senior levels are available on a part-time basis
- Your return rate after maternity leave increases
- The incidence of and tolerance towards harassment, including sexual harassment, reduces through demonstrably effective policy and procedures and initiatives to promote a culture of respect for the dignity of individuals
- Transsexual people feel supported and valued as staff and there are support mechanisms to protect the health and welfare of transsexual people in the workplace and associated locations.

Procurement

You may well use outside contractors to help you deliver some of your HR functions e.g. recruitment agencies, external training providers etc. You will need to make sure that your contractors have the necessary technical skills to enable you to deliver the requirements of the gender duty – i.e. that they are able to adequately deliver the contract, paying due regard to gender equality.

You will need to make sure that you have made your contractors aware of the requirements of the gender equality duty and specify appropriate performance conditions to enable you to meet the requirements of the duty.

Examples of this might include:

- If you are running an advertising campaign to attract people into your organisation, you may want the advertising company to specifically include images to attract non-traditional candidates;
- If you contract with external training providers you should specify that they can provide training at times that suit all staff, regardless of the hours/days they work, to accommodate those working part-time or anti-social hours e.g. night time shifts

You can find more information about how to incorporate the duty within your procurement mechanisms in the EOC guidance on the gender equality duty and procurement, which will be available on the EOC website.

SECTION 2

SPECIFIC DUTIES AND EMPLOYMENT PRACTICES

The aim of the specific duties is to set out a framework to assist you meeting the general duty – central to this is the setting of objectives, which in terms of employment means objectives to achieve specific identifiable improvements in your employment policies and practices and outcomes for your workforce.

The specific duties relate to you as an employer in the following way:

- You need to set out within your gender equality scheme your objectives for meeting the duty in your employment policies and practices.
- In formulating your overall gender equality objectives you need to consider the need to have objectives to address the causes of any gender pay gap.
- You need to gather and use information on the effect of your employment policies and practices on men and women – this includes assessing the impact of your current and any future policies and practices on gender equality.
- You need to consult with employees and trade unions and any other relevant stakeholders, such as trans voluntary groups.
- You need to implement the actions set out in the scheme.
- You need to report against the scheme each year and review the scheme at least every three years.

Setting your objectives

The purpose of the gender equality duty is to bring about gender equality in employment (and policy and service delivery) practices and outcomes. Systemic change is achieved with a practical approach: objective setting, review and evaluation, and actions to address aspects of employment policy or practice which apparently disadvantage one sex. The specific duties require you to set out the objectives you have identified as necessary to meet the duty within your gender equality scheme.

The duty does not prescribe which objectives you should choose – it is up to you as employer to identify these, using the information you have gathered and in consultation with employees and trade unions. Your objectives are intended to cover a three-year period. It is not expected that you will be able to resolve all issues of gender equality in your employment practices in this time but you will be expected to have identified what the significant issues are, and to have prioritised these for action.

Not taking any action on what is clearly a significant gender equality issue in your employment practices may lay you open to enforcement action by the EOC or CEHR. For example, if the evidence you have gathered highlights that you are at risk of discriminating through your policies and practice, you must include an objective to rectify this. Without taking action you cannot be considered to be paying due regard to the need to eliminate discrimination.

Considering the need to have objectives that address the causes of the gender pay gap

In preparation of your gender equality scheme and in considering overall objectives, you need to consider the necessity for a specific objective that addresses the differences in pay between the men and women you employ. This includes consideration of pay discrimination, but is not restricted to it. There may be wider questions of occupational segregation and the impact of caring responsibilities which affect the pay gap in your organisation which you should be considering as issues to address.

The first step in this consideration will be to establish whether you have a gender pay gap within your organisation – you can calculate this by calculating women's overall average pay as a percentage of men's. You should also do this calculation based on the average pay of women working part-time, as a percentage of men working full time, to assess the size of any part-time pay gap. Given that the majority of part-time staff are women, any inequalities that surface are likely to be related to their gender.

Once you have established if there is a pay gap, you will need to gather further information to identify what the main cause or causes of any gender pay gap are (see section below and the accompanying guidance on gathering and using information). In terms of looking at pay discrimination as a potential cause of the pay gap, this would involve drilling down to calculate the average pay for each grade by gender for full and part time employees and assessing that part-timer's pay and benefits are pro-rated with full-timers.

The information you gather will also help you to identify what action you can take to help you close any gender pay gap.

For example:

You have a significantly larger part-time than full-time gap and you have identified that the majority of your part-time staff are women employed in back-office, fairly junior roles. The lack of availability of part-time job opportunities at senior levels is, therefore, a major contributory factor in your pay gap. Taking action to increase the availability of part-time work at all levels in the organisation and ensuring that you provide development opportunities for all part-time staff will help you to reduce your gender pay gap.

As the Gender Equality Duty Code of Practice points out, the main factors that contribute to the gender pay gap are:

- Discrimination, including pay discrimination
- The impact of women's disproportionate share of caring responsibilities
- The concentration of women in particular occupations

The evidence that you have gathered may well suggest a number of potential areas in which you could take action. If this is the case, it is not expected that you will have to take action on all these issues at once. The gender duty is not prescriptive in determining exactly what action you should take, but it is expected that you will prioritise areas for action that will have the most significant impact on the gender pay gap within your own organisation. You need to remember that significance should not be judged simply by the number of people affected but also by the seriousness or extent of the discrimination and/or what will have most impact on the promotion of equality between men and women.

Taking account of other relevant information will also help you in terms of prioritisation. In addition to the above, you may also be subject to pre-existing collective agreements (such as the 2004 Single Status Agreement for local government or the Higher Education Framework Agreement) and if you are yet to fulfil these agreements, doing so should form part of your objectives. It will also be important to ensure that these agreements are implemented equitably for both male and female workers.

It is possible that after you have collected your information and consulted with your employees and trade unions, you decide that there is no need to include any objectives around the causes of the pay gap within your gender equality scheme. There is no explicit requirement for you to include gender pay gap objectives within your gender equality scheme. You will, however, be expected to provide sufficient evidence to demonstrate that there was no need to include any such objectives and give the reasons for such a decision in your gender equality scheme. Absence of data will not be considered sufficient justification for the lack of an objective.

Gathering and using information

Under the gender equality duty you are required to gather and use information on the extent to which your employment policies and practice effectively eliminate discrimination and harassment and promote equality between men and women. In practice this means that you will have to develop a strategy for effectively reviewing your employment policies and practice. This will enable you to identify and deal with any potential sex discrimination or harassment issues and highlight what you can do to promote gender equality. How policies are communicated, the adequacy of the training provided and how policies are applied in practice should also be reviewed.

Good employment policies and procedures and actions to ensure a positive work culture and positive management style are a means to promoting gender equality.

If you do not already have the processes in place to effectively collate this information or to analyse the data, you will need to set them up. It is recommended that you ensure your systems allow you to cross-reference data by ethnicity, disability, age and other categories, so that you know what the issues are for different groups of women and men.

The accompanying EOC guide on gathering and using information provides more detailed guidance on the sort of data that you will need to collect and use.

In addition to quantitative or 'hard' data, it will also be useful to look at 'soft' data e.g. from staff surveys or exit interview data that will also reveal how staff feel. This will enable you to assess the impact on gender equality of the custom and practice of your organisation as well as its written policies. This will also help you to effectively interpret the data you have e.g. a rise in complaints regarding sexual harassment may be as a result of staff feeling more confident in voicing their concerns and knowing that effective action will be taken, as opposed to a rise in the incidence of harassment occurring.

You should also involve the workforce and trade union representatives in this process. Larger organisations may have staff networks in place e.g. women's networks, carers' networks that can be valuable sources of information.

Gathering data for certain groups of staff needs to be handled sensitively e.g. monitoring of transsexual staff, due to relatively low numbers and privacy concerns. Some information may also be sensitive personal data for the purposes of the Data Protection Act 1998 (e.g.

information about an employee's racial origin, religious beliefs, physical or mental health, or sexual life). You can find more information on this in the EOC guide on the gender equality duty and transsexual staff, which you can find on the EOC website. Trade Unions, Acas and transgender groups (you can find a list of these groups in the gender reassignment guidance) are also useful sources of information and advice. Stonewall have also produced some useful guidance on employee monitoring.

Gathering sufficient data to answer the following questions will put you in a good position to be able to identify the extent to which you are meeting the duty already, in your employment policies and practice, and should flag up areas that you will want to prioritise for action.

This is not intended to be an exhaustive list, but does focus on what are likely to be some of the key gender issues that you will need to think about.

Recruitment and selection of new employees

- Are all jobs open to suitably qualified people, irrespective of their sex or of the hours they wish to work – in practice as well as theory?
- How do you ensure that fair and objective recruitment and selection procedures are applied consistently across the organisation? For example, do you provide training on the principles of equal opportunity recruitment to all staff involved in recruitment, that includes looking at issues around transsexual potential recruits?

Training and development

- Do you regularly audit the skills of all employees, including those who work part-time and flexibly?
- Do both men and women take up training and opportunities for career development, at all levels within the organisation and irrespective of the hours they work?
- Do you provide training in avoiding gender bias to all staff involved in recruitment and selection, performance appraisal, and pay and grading?

Promotion and career development

- Is there a balanced representation of women and men at all levels of seniority and in all job areas in the organisation?
- How do performance and progression systems work in practice?
- Do women progress as quickly as men through incremental scales?
- Do women receive similar performance ratings on average to men?
- Do part-time and flexible workers receive similar performance ratings on average to full-time workers?
- What mechanisms do you have in place to ensure that staff are provided with opportunities to develop skills and expertise regardless of hours of work and pregnancy?

Pay and pay structures

- What kind of pay structure do you have?
 - Does the same scheme cover all employees?
 - Are part-time staff treated equitably compared to full-time staff in regard to pro-rated pay and work-related benefits?
 - What method do you use to evaluate jobs and assess job demands? Have you checked your method is analytical and that it is free from sex bias?
- Is your pay system transparent?
 - Are your pay scheme and pay procedures published internally?
 - Do your employees know how their pay is determined? This includes knowing what they have to do in order to get premium or performance payments or to progress through a pay scale.
 - Is the pay slip easily understandable so that pay components are identifiable?
- Is your pay system consistent?
 - Can you be sure that your policy and practice on starting salaries does not give rise to anomalies in pay between men and women employed in comparable work?
 - Are women paid the same as men for doing the same or a similar job?
 - Are women paid the same as men for doing comparable jobs involving similar levels of skills and knowledge?
 - Do women and men have equal access to work-related benefits? E.g. bonuses and performance related payments
 - Do any arrangements for pay protection favour one sex over the other?
 - Have anomalies in pay arising from historical circumstances been identified and addressed?
 - How often do you review your pay system for differences in pay between individual men and women in comparative work?

Working time arrangements

- Is there accessible guidance that clearly explains the flexible working policy to all staff?
- Do managers receive training in how to open up flexible working in a way that meets the needs of the business and of employees who want to work flexibly?
- Is there a protocol in place to help ensure flexibility is not provided at the expense of valued responsibilities or career responsibilities?
- Do both men and women work part-time and flexibly at all levels and in all types of jobs within the organisation?

Working conditions and the working environment

- Does the organisation have an effective and detailed dignity at work policy that applies to all? Is the policy supported by an effective complaints procedure for dealing with harassment and sexual harassment?

- Do employees use the policies and procedures aimed at preventing and dealing with allegations of sexual harassment?
- Do employees return to work after a period of maternity and/or parental leave? If so, do they return to the same roles and do they return on a part-time or flexible basis? Where there are genuine and objectively justified reasons for returning to a different role, have they suffered any detriment in their pay, grading or any other terms and conditions of employment?
- Do male employees take up paternity and parental leave?

Taking account of other relevant information

As well as collecting and using information from within your own organisation the gender equality duty also requires you to take account of any other information you consider to be relevant. This could include:

- Existing collective agreements within your sector e.g. 2004 Single Status Agreement, Higher Education Framework Agreement, Agenda for Change
- Any public service agreements or national policy frameworks that relate to employment practices
- Published guidance from EOC/CEHR
- Local labour market information

Assessing the gender impact of your employment policies and practice

The requirement under the duty to conduct gender impact assessments includes all existing and proposed employment policies and practice. The purpose of an impact assessment is to:

- Ensure that neither sex is disadvantaged by your employment policies and practice
- Identify where you as an employer can promote equality of opportunity between men and women

Since the gender duty to eliminate discrimination and harassment extends to transsexual staff, you will also need to ensure that your transsexual staff and/or applicants are not disadvantaged in your employment policies and practice. You can find more information on how to conduct gender impact assessments in the accompanying EOC guide which you can find on the EOC website.

The requirement to gender impact assess all your policies and practices under the duty, including your employment policies and practices is likely to be a significant task. In order to manage this, the Code of Practice recommends that public authorities carry out a two-stage process. This involves undertaking an initial screening to identify the most relevant policies and then prioritising these for full assessment – aiming to complete the full process of assessing all existing policies over the first three years of your gender equality scheme, starting with the most relevant.

Since gender equality is likely to always be relevant to your employment policies and practice you will need to ensure that your employment policies and practices are given sufficient priority in this process. While this process is being completed, however, you should not delay, however, in taking all reasonably practicable steps to prevent unlawful acts of discrimination and promote equal opportunities. Your initial process of information gathering and consultation to develop objectives for your gender equality scheme, and of initial screening, should have identified the major issues which need to be addressed.

If during this process you identify a negative impact on either men or women or transsexual staff, or you identify a missed opportunity to promote gender equality between men and women, this will indicate that in order to meet the general duty you will need to modify this policy or practice. Under the duty you are also required to assess any new policies or practices – the most effective way of doing this is early in the decision making process.

Examples of changes in workforce policies and practices where you will need to consider the gender impact include:

- Any changes in your pay structure e.g. introduction or removal of allowances, introduction of performance related pay.
- If you are planning a programme of redundancies.
- Changes to retirement ages – or other changes made in light of the age regulations.
- Transfer of staff via contracting out.
- Implementation of childcare vouchers or changes to access to other benefits in kind.

Consulting with employees and trade unions

You will need to consult with your employees and trade unions, and any other relevant stakeholders, in the preparation of your gender equality scheme. Your employees and unions will also be important partners helping you to gather the information you need to inform your priorities – especially in terms of qualitative data.

It is recommended that you consult and where possible, involve, your employees and trade unions at the earliest possible opportunity in the development of your objectives and your equality scheme. Working with staff and unions will help you not only to identify the key gender equality issues for your organisation but working in partnership will also help you to deliver on your gender equality objectives.

You need to make sure that your consultation mechanisms also enable staff, including non-unionised members of staff, to participate. This will be of particular importance if either men or women are significantly underrepresented in membership of your recognised unions.

In addition to consulting transsexual employees during this process, we also recommend you consult voluntary sector trans groups. More information, and contact details, are contained in the guidance on the gender duty and transsexual employees.

Taking action

Once you have decided what your objectives are going to be, you need to identify a clear plan of action of how you are going to achieve those objectives – wherever possible you should work in partnership with your unions to help you to achieve these. You will be expected to implement these actions within the three-year period of your scheme.

The exception to this is that authorities will not be under any obligation to implement scheme objectives if, in all circumstances, it would be unreasonable or impracticable to do so – these words are intended to apply to particular or unforeseen circumstances e.g. where particular difficulties arise that could not have been foreseen, or where the costs associated with an action unexpectedly escalate so as to be out of proportion to the benefit.

Rather than simply taking no action where this situation arises, public authorities will be expected to consider what alternative actions could be taken in order to achieve the objective.

Reporting and monitoring progress

You need to report against your gender equality scheme on an annual basis and review your scheme at least every three years.

The clearer the outcomes you set yourself the easier it will be to measure your success and demonstrate your compliance with the duty. You will need to have decided what outcomes you want to see, decided how you will get there and publish this within your equality scheme. (For English public authorities, this means by 30th April 2007.) You will need to have fully implemented your action plan within three years of publication of your scheme, so you need to agree outcomes that are both achievable and measurable over this timescale.

The best way in which to monitor your progress is to establish clear outcomes for what you want to achieve and set out clear milestones along the way. As well as any quantitative data that you will need to collect to assess the extent to which you are meeting your goals, you may also want to gather information via staff surveys, exit interviews or other 'softer' measures.

You are required to report on progress and you may wish to include this within your annual report or any other human capital reporting mechanisms you may have.

SECTION 3

The aim of this section of the guidance is to look in more detail at the most common employment issues that you are likely to need to consider when deciding what your employment priorities for action should be under the gender equality duty. You should read this section of the guide in conjunction with Section 1, which details the requirements of the gender equality duty.

The guidance will briefly outline what the issues are, and provide you with ideas of what action you can take that will make a difference, and enable you to demonstrate your compliance with the gender equality duty.

The issues are not listed in any order of priority – only you will be able to determine the extent to which each of these are issues that you need to prioritise for action in your own organisation, in consultation with staff and unions and other stakeholders.

BEST PRACTICE AND CASE STUDIES

Ensuring fair recruitment practices – including progression

Making sure that your recruitment practices are fair and objective is an important part of fulfilling the duty to ensure that you have eliminated discrimination – this will be of particular importance in terms of your new responsibilities to take active steps to eliminate discrimination towards transsexual applicants. This is also true of the way in which you manage progression and internal recruitment within the organisation.

There is more information on the steps you can take to ensure that your recruitment practices are non-discriminatory on the EOC website, but positive steps you can take include:

- Ensure that all staff (and any others involved in recruitment such as Schools Governors, elected members etc) involved in recruitment are trained in equal opportunities recruitment. You may want to update this training in light of your new responsibilities under the gender equality duty.
- Change your recruitment policy and procedures so that all jobs are assumed to be available on a part-time or job-share basis, unless there are objectively compelling reasons why this cannot be done without a workable compromise.
- Check your performance appraisal system for any gender bias and provide training for all line managers in avoiding gender bias in performance appraisal.

The same principles also apply to the way in which public appointments are made. Further guidance on this is available from the EOC.

Work-based training opportunities

It is important that both male and female staff, including transsexual staff, have equal access to work-based training opportunities. Some groups of workers, e.g. those with caring responsibilities, may find it harder to take up training opportunities. You will need to monitor the

take up of training opportunities and ensure that male and female and full and part-time staff have equal access to training opportunities.

Positive steps you can take include:

- Ensure that training is carried out on a variety of days so that staff who only work certain days of the week or at certain times during the day can take part
- Where necessary provide child care support to enable people to access training opportunities.

Tackling pay discrimination

Pay discrimination or unequal pay remains a significant cause of the gender pay gap. As an employer you are already responsible for providing equal pay and ensuring that your pay system is transparent. Taking action to address pay discrimination will not only reduce the risk of litigation, but will also ensure that your pay system is working efficiently and you are rewarding your staff fairly for the work they do.

Ensuring that you have eliminated discrimination in your pay systems is an essential part of meeting the duty in employment. To meet the specific duties you will also need to consider the need to have an objective to address the causes of the gender pay gap. This includes, but is not restricted to, the need to tackle any pay discrimination where it exists.

Whilst carrying out an equal pay review is not a specific requirement of the duty, the EOC's Code of Practice on Equal Pay makes clear that conducting an equal pay review is the most effective way of establishing whether your pay policies and pay systems are delivering equal pay.

The fundamental components of an equal pay review are:

- Comparing the pay of women and men doing equal work. You need to check for one or more of the following: like work; worked rated as equivalent and work of equal value.
- Identifying any gender pay gaps, including the differences between part-time and full-time workers' pay.
- Eliminating those gaps that cannot satisfactorily be explained on grounds other than sex.

If you have already done a pay review:

Public authorities who have completed equal pay reviews, as outlined above, in the recent past and taken action as a result will be in a far better position to be able to demonstrate that they have paid due regard to the need to eliminate unlawful pay discrimination.

If you have already completed a review, as a matter of good practice you should already have arrangements in place to monitor pay regularly in partnership with your unions. If you do not have such arrangements in place you should set them up.

If you have not done an equal pay review:

If you have not conducted a review, the most effective way in which you can demonstrate that you have eliminated discrimination from your pay system and complied with the gender duty is to conduct one.

If you do not want to proceed immediately to conducting a full review, you may wish to collect information from a selected sample of staff or a selected sample of departments. Alternatively you may initially wish to carry out an initial screening process, looking at areas that pose a high risk of pay discrimination e.g. starting salaries and bonus payments.

If either the sampling or screening processes indicate that you may be at risk of discrimination in your pay systems, you must take action to resolve this in order to comply with the general duty. This would also indicate that you should undertake a full equal pay review so that you can be sure that you have eliminated pay discrimination within your pay system.

If you do not set your own pay systems:

Not all public organisations set the pay rates for the staff they employ as these are set nationally e.g. the majority of schools. Often these national pay rates are set by pay review bodies who now have a responsibility for considering equal pay issues within their remit.

It is important to note that, regardless of whether you set rates of pay, as an employer you are still responsible in law for ensuring that your employees receive equal pay. It is also important to remember that public authorities that employ staff subject to national pay scales may also be responsible for determining some elements of pay, e.g. performance or additional responsibility payments.

In order to discharge your obligations under the duty, you need to ensure that you are not discriminating within these elements. You will need, therefore, to collect and analyse sufficient data to ensure that you are not discriminating, and where you do identify problems, take appropriate action to remedy the situation. If in this process you become aware that there are particular elements within the pay system that are causing or are likely to cause pay discrimination, you should alert the relevant pay body.

Positive steps you can take include:

- Ensure all your staff know how the pay system works and how their own pay is determined and ensure that you make widely available current pay scales e.g. by publishing them on your intranet or ensuring staff know where they can access this information.
- Ensure all individuals involved in determining pay or any elements of pay are trained on equal pay and the requirements of the gender equality duty – this should include non-staff members, such as school governors or Board members who are involved in pay decisions.
- If you already monitor pay on a regular basis, you should include monitoring on ethnicity and other equality strands – this will help you to identify any particular pay issues for different groups of women and men.

There is extensive help and guidance on how to deliver equal pay available on the EOC general website, at www.eoc.org.uk.

Avoiding the concentration of women and men into particular areas of work and addressing it where it exists (occupational segregation)

Occupational segregation occurs when men or women predominate in a particular job. Horizontal segregation can crowd women into female-dominated occupations, often at lower rates of pay than men who have similar levels of skill but have jobs in a different type of work e.g. dinner ladies and refuse collectors.

Vertical segregation limits career development that would enable women to progress up career structures and to earn more.

High levels of job segregation can also adversely affect the quality of services you deliver and your ability to fill vacancies. Employers who have strongly segregated workforces may also be at higher risk of having equal pay claims taken against them. In a highly segregated workforce it can be easy for pay arrangements to evolve in which women are paid less than men when they are doing work of equal value, giving rise to equal pay tribunal claims.

Some areas of public sector employment are highly gender-segregated, with women predominating in caring, administration, teaching and nursing, and men pre-dominating in manual trades and uniformed services. In addition, in all parts of the public sector women are significantly under-represented at senior levels – even in those sectors where they make up most of the workforce. Only 20.6% of local authority CEOs are women; 26.3% of civil service top management and 13.2% of University Vice-Chancellors⁵.

There are various positive steps that you can take to tackle both horizontal and vertical segregation – including using the provisions set out in the Sex Discrimination Act on positive action. The Sex Discrimination Act allows you to provide women-only training, which would help fit women for particular work or encourage women to apply for opportunities to undertake particular work in the organisation, where at any time in the previous 12 months the number of staff of that sex doing such work is comparatively small. (Similar action can be taken in relation to men where the number of men in particular jobs is comparatively small at any time in the previous 12 months.) You can find out more about how to manage successful positive action on the EOC website.

Positive steps you can take include:

- Changing where, and the way in which, you advertise vacancies to help to attract non-traditional applicants.
- When vacancies arise, take the opportunity to review the post and encourage managers to open it up to people working on a part-time, job share or flexible basis.
- If men predominate at senior levels:
 - Review the pathways to senior levels and think about setting up management development training targeted at women.

⁵ Sex and Power: who runs Britain, EOC 2007

- Ensure that women have the same access to training and promotion prospects – including informal development or networking opportunities.
- Develop and promote information internally about senior female role models.

Tackling horizontal segregation:

Sheffield Children's Centre

To encourage more male employees, the Sheffield Children's Centre targeted their recruitment at men by circulating publicity to venues such as leisure centres and working men's clubs. A number of men have now been recruited, some of who were unemployed as a result of the decline of Sheffield's traditional industries. Male applicants are given mentors who reflect their gender, social and cultural backgrounds and the centre's induction programme also acknowledges their minority status.

(Action for Change, EOC 2005)

Leicester City Council

Leicester City Council has made a concerted effort to encourage women and people from ethnic minorities to take up careers in building trades that are traditionally dominated by white men. The Council offers apprenticeships targeted at women. It now employs 35 women in its housing maintenance team and has offered a further six apprenticeships to women. As a result of this policy, the repairs service can offer a more responsive service that better meets tenants' needs. Female tenants can request that their repairs are carried out by women-only teams: this is particularly valuable for some groups of tenants such as elderly women living alone, some ethnic minority women and women who have been victims of domestic violence. This initiative was praised by the Audit Commission when awarding Leicester's housing department top marks in an inspection in 2002.

(Delivering quality services, meeting different needs, EOC 2004)

Tackling vertical segregation:

Leeds Metropolitan University

In 1999 the University set itself a corporate target to fill 35% of senior academic positions with women by 2004. A survey conducted in 1999 found that 85% of women across all functions in the university said they were frustrated by the lack of promotion opportunities or felt that they had hit a glass ceiling. Following staff consultation the university developed a women-only development programme, Widening Opportunities for Women (WOW). More than 400 women from all grades have participated in the programme and 34.7% of participants achieved a promotion following their involvement in WOW. The University exceeded its target and in 2004 38.2% of senior positions were held by women.

(EOR No 143 July 2005)

Promoting and managing flexible working

Although women still do the majority of childcare, some fathers are doing more or want to do more. Over a third of all male employees have dependent children and the average time spent by fathers with young children on childcare activities has increased eight-fold since the 1970s⁶. It is also likely that an increasing number of your staff will be caring for elderly relatives.

As an employer, you can promote gender equality by ensuring that both your male and female staff are able to balance their work and caring responsibilities appropriately. Traditional jobs that were designed, primarily for men, on the assumption that they have 'stay at home wives' are becoming increasingly unattractive to both men and women.⁷ An increasing number of employers are re-designing jobs to attract a wider pool of candidates and to retain them.

Positive steps you can take to increase the use of flexible working include:

- Pro-actively encourage flexible working, especially at senior levels. You could consider using role models to help you do this. If you do not already have one, develop a flexible working policy and publicise it among your staff.
- Train all managers on how to manage flexible workers and deal with requests for flexible working.
- Think about whether you can offer flexible working to all staff, regardless of their caring responsibilities.
- If your flexible workers are predominantly women, think about what you can do to encourage men to take up the flexible working options available
- Take action to reduce long working hours culture by encouraging staff, especially at senior levels, to work smarter not longer.

Widening access to part-time work at all levels within the organisation and supporting part-time workers

Far more women than men work on a part-time basis⁸ due to their caring responsibilities - but often they have to settle for low-paid work with poor prospects, and can be denied access to training and development opportunities and to promotion. The lack of good quality part-time work, and poor prospects for part-timers, is a major cause of the gender pay gap within the public sector.

EOC research has also revealed that many men and women working part-time are working below their potential – around 1 in 5 of the working population. You will need to ensure that you are not limiting the potential of your part-time workers and should aim to improve the routes both into and out of part-time work within your organisation.

Positive steps you can take include:

⁶ Twenty-First Century Dad, EOC 2006

⁷ ibid

⁸ 44% of women in employment work part-time, as opposed to 11% of men (EOC Facts about women and men in Great Britain 2005).

- Whenever vacancies arise, consider whether you can open these up to people who want to work on a part-time basis or job share basis.
- Don't insist that people wanting to work on a job-share basis have to find their own job share partner.
- Accommodate requests, as far as you are able, for part-time work for women returning from maternity leave.
- Increase the number of opportunities to work on a part-time basis at senior levels.
- Make sure that all training is accessible to part-time workers so that people receive the training they need to maximise their potential and to help you to deliver your business objectives.

Paul Turner, Senior Professional, People First, Harrow Local Authority

"Harrow Local Authority has worked with our 70 schools to promote part-time working and job sharing options as ways to assist teacher recruitment and retention locally. We offer advice, guidance and encouragement to head teachers and governors to consider requests creatively, emphasising the benefits to the whole school workforce, staff well-being and benefits to teaching and learning for pupils. Advice is given about how to brief co-workers and parents in a positive light, emphasising the benefits.

As a result of monitoring the levels of part-time working and involvement in research as to why teachers stayed and left Harrow, Harrow sought to spread and embed the best practices, contracting with Flexexecutive to help promote the options with case studies, as well as providing a route to help schools find 'the other half' of anyone reducing their hours from full-time.

Our latest teacher workforce profile (Jan 05) identified 23% of teachers working part-time, a far higher percentage than national averages. We believe the options available have significantly helped with the recruitment and retention of teachers".

(Britain's hidden brain drain EOC Sept 2005)

Managing leave for parents and carers

Providing flexible working to both men and women to enable them to manage their work and caring responsibilities is one way in which you can promote equality between men and women. Making available and successfully managing other forms of leave for carers, such as paid and unpaid carers leave and emergency leave will enable you to promote equality between men and women. It also makes good business sense as EOC research shows that 38% of mothers, 11% of fathers & 18% of carers have either left a job or been unable to take a job due to caring responsibilities.

Positive steps you can take include:

- If you don't already do so, start to collect data on how many of your staff have caring responsibilities
- Do more to promote the carers' leave that you offer, to encourage take up – especially amongst men who may not be taking their entitlements

- Develop a carers' policy and publicise it – larger organisations may also want to set up carers/parents networks for their staff

Managing pregnancy and return from maternity leave

Discrimination against pregnant workers and women returning to work after maternity leave is widespread in Britain: around 45% of pregnant women experience disadvantageous treatment at work (such as being threatened with dismissal or actually dismissed, denied pay rises or opportunities for promotion or training).

Tackling discrimination against pregnant workers, and those returning from maternity leave is thus a vital element of eliminating unlawful discrimination. You should aim to create a positive working culture for pregnant staff and those with family responsibilities at all levels of management and back this up with written guidance on managing pregnancy and maternity. Return-to-work rates can provide a good indicator of how well your organisation is managing pregnancy, with some of the best employers achieving rates of over 90%. Look at your return rate from maternity leave and consider what can be done to improve it.

There is significant evidence that many women who return after maternity leave are obliged to take jobs at lower levels of pay and responsibility in exchange for a move to part-time working. You should monitor the extent to which this is happening and take steps to address and prevent it, for example, by encouraging more part-time work at higher levels in the organisation. Failure to address this problem could lead to a widening of the gender pay gap within your organisation and unlawful discrimination.

Central Manchester and Manchester Children's University Hospitals NHS Trust

The trust developed a maternity support programme. Each month within the trust there are more than 200 staff on maternity leave. The programme was established following requests from staff to have either one-to-one discussions or information sessions in the form of quarterly meetings. On submission of their Mat B1 forms, staff receive a letter offering the support of the childcare co-ordinator that includes an information booklet about the childcare options, financial support and family friendly working practices available to them. A support network, via drop-in sessions, is held to advise pregnant staff about childcare options. A quarterly support group is also held for staff that are on maternity leave.

(NHS Employers website)

Steps you could take to make the culture of your organisation a positive one for pregnant staff and those returning from maternity leave include:

- Training line managers to manage pregnant employees effectively.
- Ensuring all pregnant workers are consulted on their health and safety needs and receive a written risk assessment which is reviewed regularly.
- Planning well in advance for periods of maternity leave, for example, by upgrading the skills of other staff to cover duties.
- Keeping in touch with women on maternity leave and informing them of any vacancies or training opportunities.
- Providing suitable facilities for breastfeeding mothers.

- Making the transition back into work after maternity leave as smooth as possible by initiating conversations about any possible changes in working patterns in good time.

In March 2007, the EOC will publish a Pregnancy Toolkit on its web site. The toolkit is a comprehensive web-based tool that will enable employers to find out whatever it is that they need to know to effectively manage pregnant employees and new parents. It provides summaries of the law on key topics and links to more detailed information on legal obligations. It contains example letters, templates and links to on-line calculators. It also provides real life examples of the ways that employers have managed pregnant employees and new parents.

Eliminating harassment, including sexual harassment

Sexual harassment and harassment on the grounds of sex remain widespread. Tackling harassment is thus an essential element of discharging the general duty.

You will need to develop and regularly review a clear policy for preventing and tackling sexual harassment of employees and service users. You should also actively promote the policy to ensure that everyone is aware of and understands it.

Sexual harassment can have a serious impact on the physical and mental well-being of victims and public authorities should treat the prevention of sexual harassment as part of their health and safety duties. It may be appropriate to carry out risk assessments for certain groups of staff. Some groups may be particularly vulnerable to sexual harassment. These include women working in jobs predominantly done by men, new entrants to the labour market (both male and female), gay men and transsexual people.

You should encourage line managers to lead by example, and provide training so that they are equipped to deal with instances of harassment should they occur. You should also adopt complaints and investigations procedures for dealing both informally and formally with sexual harassment. You should monitor the number of complaints of harassment and their outcome. You should also review practices and procedures periodically to ensure they are working effectively.

Barnsley Hospital NHS Foundation Trust

The trust appointed 10 harassment support workers in November 2003. They provide emphatic assistance to employees with complaints of bullying and harassment, explain how the procedures for making a complaint operate both informally and formally and help establish and support both alleged harassers and complainants through the process.

The support workers are representative of all levels in the organisation and their appointment followed a rigorous selection process designed to ensure a thorough understanding of the role and the boundaries within which it operates and that management and union roles were not undermined.

Since introducing the new service, levels of staff bullying and harassment in the trust have decreased from 7% in 2003 to 5% in 2004 (in respect of staff experiencing harassment bullying or abuse from their manager/supervisor) and from 9% in 2003 to 4% in 2004 (in respect of staff experiencing harassment, bullying or abuse from their colleagues)

(NHS Employers guidance – bullying and harassment April 2006)

It is recommended that procedures for investigating sexual harassment complaints are linked to grievance and disciplinary procedures and conform to the accepted standards for disciplinary action in the Acas Code of Practice. Serious sexual harassment (including the victimisation of someone who has made a sexual harassment complaint) should normally be treated as gross misconduct.

There is new detailed guidance available from the EOC on how to deal with sexual harassment when it occurs, also what steps you can take to prevent it.

Positive steps you can take include:

- Have an effective, well communicated policy.
- Train all staff and managers on the policy and their responsibilities under it.
- Make harassment or sexual harassment a disciplinary offence.
- Monitor the policy and its success regularly.
- Develop clear procedures for investigating complaints confidentially and compassionately without delay.
- Train staff who will be investigating complaints to handle them sensitively and in accordance with the procedures.

It is also important to ensure that you are taking steps to eliminate discrimination against, and harassment of, transsexual staff and potential staff. You can find more information on this in the separate guidance document on the gender duty and transsexual staff.

Grievance and disciplinary procedures

In order to fulfil the duty you will need to ensure that there is no gender bias operating within your grievance and disciplinary procedures, including towards transsexual staff.

Redundancy

You will need to ensure that there is no gender bias in your redundancy procedures. If you are planning a large redundancy programme, you should assess the impact of this on both male and female staff, including part-time workers, those on maternity leave and transsexual staff. If you do find that any programme of redundancies disproportionately affects either men or women, or transsexual staff, you may need to re-think your strategy in order to comply with the gender duty.

Retirement

You will need to ensure that there is no gender bias in the way in which you operate your retirement policies, including towards transsexual staff. If there are groups of workers that are under-represented in your scheme, e.g. part-time workers, you may want to take steps to encourage them to join the scheme.

SECTION 4

SOURCES OF FURTHER INFORMATION AND ADVICE

EOC

There is further guidance on how to put equality into practice in the workplace on the EOC website, including: extensive guidance on equal pay and how to carry out an equal pay review; new guidance on sexual harassment; a series of checklists for line managers and, from March 2007, a comprehensive web-based toolkit on how to effectively manage pregnancy and new parents.

<http://www.eoc.org.uk/Default.aspx?page=15420>

Acas

Acas aims to improve organisations and working life through better employment relations. They provide up-to-date information, independent advice, high quality training and work with employers and employees to solve problems and improve performance.

<http://www.acas.org.uk/index.aspx?articleid=301>

Working Families

Working Families is the UK's leading work-life balance organisation and their website features a number of case studies from a range of employers.

http://www.workingfamilies.org.uk/asp/home_zone/m_welcome.asp

Carers UK

Carers UK is working with a partnership of major employers who want to help staff with caring responsibilities. Their website provides good practice tips for employers and case study examples.

<http://www.carersuk.org/Employersforcarers>

NHS Employers

NHS Employers is responsible for workforce and employment issues, working on behalf of NHS organisations in England.

<http://www.nhsemployers.org/>

LGE – Local Government Employers

LGE was created by the Local Government Association (LGA) in April 2006. They work with local authorities, regional employers and other bodies to lead and create solutions on pay, pensions and the employment contract, to ensure the provision of excellent and affordable local services.

<http://www.lge.gov.uk/lge/core/page.do?pagelId=1>

Equality Challenge Unit

The ECU works with and provides advice to higher education institutions and the higher education sector.

<http://www.ecu.ac.uk/index.html>