

To: Business Committee

From: Jane Hutt AM
Minister for Assembly Business, Equalities and Children

EXPLANATORY MEMORANDUM

SEX DISCRIMINATION

THE SEX DISCRIMINATION ACT 1975 (PUBLIC AUTHORITIES) (STATUTORY DUTIES) ORDER 2006

Summary

This Order places a number of duties on specified public authorities. The duties are to produce a Gender Equality Scheme and to take various actions in relation to such a Scheme.

1. This Memorandum is submitted to the Assembly's Business Committee in relation to The Sex Discrimination Act 1975 (Public Authorities) (Statutory Duties) Order 2006, in accordance with Standing Order 26.
2. A copy of the Instrument is submitted with this Memorandum.

Enabling Power

3. The powers enabling this Instrument to be made are contained in section 76B(1) and 76C(2) of the Sex Discrimination Act 1975. The National Assembly for Wales' agreement to the Instrument is required before it can be made.

Background

4. The Sex Discrimination Act 1975, as amended by the Equality Act 2006, requires the Secretary of State to consult the National Assembly for Wales before making any Order under section 76B(1), which imposes a specific duty on a person who exercises functions in relation to Wales. Furthermore, if the Order imposes a duty on any person all of whose functions are public functions in relation to Wales, the Secretary of State cannot make the Order without the consent of the National Assembly for Wales.
5. The proposed Order is one which imposes duties on persons all of whose functions are public functions in relation to Wales and, therefore, the Assembly's consent is required before the Order can be made.

Effect

6. Section 76A of the Sex Discrimination Act 1975 (inserted by the Equality Act 2006), when it comes into force, will place on public authorities a general duty in relation to gender equality. This general duty requires public authorities, in carrying out their functions, to have due regard to the need to:
 - promote equality of opportunity between men and women; and
 - to eliminate unlawful sex discrimination and harassment
7. Section 76B of the Sex Discrimination Act 1975 (also inserted by the Equality Act 2006) gives the Secretary of State the power to make Orders, which impose specific duties on those public authorities that are subject to the general gender equality duty referred to in the previous paragraph. Such specific duties must be ones which the Secretary of State thinks will ensure better performance by them of their general duty.
8. The Order will require the public authorities to whom it applies to prepare and publish a Gender Equality Scheme (GES) to show how they intend to fulfil their general gender equality duty.
9. The Scheme itself must set out the overall objectives, which the authority has identified as being necessary for it to perform its general gender equality duty and its specific duties under the proposed Order. The Order requires that when authorities are formulating these objectives they must consider the need for those objectives to address the causes of any differences between the pay of men and women that are related to their sex.
10. The Scheme must also set out the actions, which the authority has taken or intends to take to:
 - gather information on the effect of its policies and practices on men and women. In particular, on the extent to which they promote equality between male and female staff and the extent to which the authority's services and functions take account of the needs of men and women. Any such information gathered by the authority must be taken into account by the authority in preparing its Gender Equality Schemes;
 - make use of the above information and other relevant information to assist the authority in the performance of its general gender equality duty, its duties under this Order, its regular review of the effectiveness of the actions it has identified to achieve the fulfilment of the objectives set out in the Scheme, and its regular review of its arrangements for the preparation of subsequent Schemes;
 - assess the impact of its policies and practices, or the likely impact of its proposed policies and practices on gender equality;
 - consult relevant employees, service users and others (including trade unions);

- achieve the fulfilment of the objectives the authority has set out in the Scheme (i.e. those referred to in paragraph 9 above).
11. Authorities must publish their first Gender Equality Schemes by 30 April 2007. They are then under a continuing duty to review and publish a revised Scheme no later than three years from the date the previous Scheme was published.
 12. Authorities have three years from the date their Scheme is published to put in to effect the actions, which their Scheme has set out in relation to the first, second and fifth bullet points of paragraph 10 above. However if, in all the circumstances, it would be unreasonable or impracticable to put the action into effect, the authority is not required to do so.
 13. Authorities must take such steps as are reasonably practicable to publish annual reports, which summarise the actions that they have taken towards achieving the objectives set out in their Schemes.
 14. The list of authorities, which will be subject to the duties set out in the Order, is at Schedule 1 to the Order.

Target Implementation

15. It is intended that this Instrument will proceed to Plenary on 11 October 2006 for the Assembly to consider giving its consent to the proposed Order. If the Assembly does consent, the Department for Communities and Local Government (DCLG) (formerly the DTI) will then lay the Order before Parliament on 13 October 2006. The DCLG intends to bring the general gender duty imposed by section 76A of the Sex Discrimination Act 1975 into force on 6 April 2007, and to bring the proposed Order into force immediately after.

Financial Implications

16. A summary of the costs of the general and specific duty to public authorities throughout the UK are summarised below:

Total one-off implementation costs to public authorities (£ million)		
	Low range (£)	High range (£)
General Duty	0.28	0.29
Specific Duty		
HE/FE Institutions	1.2	1.8
Schools	10.4	20.8
Local Authorities	6.5	9.2
Health Authorities	0.6	1.0
Central Government	1.3	1.8
Others	0.5	1.0

Total ongoing implementation costs to public authorities subject to specific duties (£ million)		
Action Plans: and associated monitoring and reporting back	Low range (£)	High range (£)
HE/FE Institutions	0.1	0.2
Schools	1.4	1.4
Local Authorities	0.7	1.4
Health Authorities	0.1	0.1
Central Government	0.09	0.21
Others	0.18	0.35

Consultation

With Stakeholders

17. A public consultation called "Fairness for All" was carried out by the UK Government between 4 October 2005 and 11 January 2006, although the consultation period was extended for Welsh public authorities until 19 January 2006. One of the consultation events was held in Cardiff on 11 January 2006. Around 50 people representing local authorities, health care trusts, education bodies, internal Welsh Assembly Government and Assembly Parliamentary Service staff attended and the following main points were raised:

- Wales is very much ahead of the game in political terms and in mainstreaming equality in business planning purposes;
- Glad that the move to increase the number of women in senior positions is to be strengthened through duty, but how can public authorities avoid using male dominated interviewing panels for these senior positions;
- Welcome the similarity between race and disability duties;
- Impact assessments should be proportionate to the outcome and size of the public authority;
- Local authorities appreciate the freedom to decide goal priorities and resources;
- EOC statutory guidance must tackle performance management/ measurement issues; and
- Public authorities must engage with Trade Unions early on in the development of gender equality schemes and the impact assessment processes.

18. The attendance list for the event is attached at Annex B.

With Subject Committee

19. The Order was considered by the Equality of Opportunity Committee (EOC) on 14 June 2006 (EOC(2)05-06(p.4)).

20. The Order was also notified to all the other Subject Committees, as follows:

- Culture, Welsh Language and Sport on 23 March 2006, as part of the Minister's Report (CWLS(2)05-06, item no: 10.1);
- Education, Lifelong Learning and Skills (by letter on 30 June 2006);
- Environment, Planning and Countryside on 23 March 2006, as part of the Minister's Report (EPC(2)05-06(p.1), item no: 14);
- Health and Social Services on 23 March 2006, via the list of forthcoming legislation (HSS(2)-06-06(p.5a), item no: HSS16(06));
- Local Government and Public Services on 17 May 2006, via the list of forthcoming legislation (LGPS(2)-08-06(p.2));
- Social Justice and Regeneration on 15 March 2006, via the list of forthcoming legislation (SJR(2)-05-06(p.4) Annex 1, page 8); and
- Enterprise, Innovation and Networks (by letter on 30 June 2006).

21. The Local Government and Public Services Committee identified the Order for detailed scrutiny and discussed it at its meeting on 21 June 2006 (LGPS(2)10-06(p.3)). The Committee agreed to write to the Business Minister to seek clarification regarding guidance to accompany the Order and the process for monitoring and reporting compliance with the Order. The Committee agreed unanimously that the Assembly give consent to the Order.

22. I also wrote to the Presiding Officer on 19 June 2006, enclosing a copy of the draft Order. The Presiding Officer wrote back on 27 June 2006 to say that it would be useful for the House Committee to note the legislation and that he would be forwarding a copy of the letter on to the Chair of the House Committee for his consideration.

23. The Secretary of State for Communities and Local Government sent me a revised draft of the Order on 24 July 2006. I subsequently wrote to all Subject Committee Chairs and the Presiding Officer on 25 August 2006, enclosing a copy of the revised Order. Unfortunately, this letter was not copied to Committee Clerks and it would appear not circulated to all Committee Members. Therefore, the letter was reissued to Committee Clerks on 20 September 2006 for circulation to Members of their respective Committees.

24. The Equality of Opportunity Committee scrutinised the revised draft Order at its meeting on 27 September 2006 (EOC(2)-07-06). A number of Committee Members raised concerns that the equal pay provisions were not as robust as the initial draft. Questions were also raised as to the cost of the duty and

whether additional funding would be provided to public bodies in Wales to enable them to implement the duty.

25. I stated at the meeting that I would speak to Ruth Kelly about the possibility of the Secretary of State agreeing to put through a specific Welsh Order that would contain stronger equal pay provisions. I also stated that I would explore any other legal options available to the National Assembly for Wales before writing to the Committee with this information.

Annex B:

Attendance list – Gender Duty Consultation Event – 11 January 2006, Cardiff Bay

Number	Name	Organisation
1	John Ware	Caerphilly County Borough Council
2	Catherine Martin	Caerphilly County Borough Council
3	Hannah Jenkins	Rhondda Cynon Taff County Borough Council
4	Brian Fraser	South Wales Fire & Rescue Service
5	Rhian Haf Evans	Ceredigion County Borough Council
6	Jackie Hatton-Bell	HEFCW (Higher Education Funding Council for Wales)
7	Joyce Watson	Wales Women's National Coalition (WWNC)
8	Sarah Bell	Wales Women's National Coalition (WWNC)
9	Vincent James	Torfaen County Borough Council
10	Sylvia Howe	Welsh Development Agency (WDA)
11	Rachel Jones	North Wales Fire and Rescue Service
12	Elaine Canniffe	Children's Commissioner for Wales
13	Jenny Powell	Estyn

14	Alex Machin	Pembrokeshire County Council
15	Kevin Pett	Carmarthenshire County Council
16	Paul Allsopp	Mid and West Wales Fire and Rescue Service
17	Sarah Coding	Monmouthshire County Council
18	Julia Evans	General Teaching Council for Wales
19	Emma Raczka	Higher Education Funding Council for Wales
20	Julie Grafton	Powys County Council
21	Rob Beardall	Powys County Council
22	Rhian Jones	Powys County Council
23	Naomi Alleyne	Welsh Local Government Association (WLGA)
24	Norma Barry	Internal WAG – EPC FMDD
25	Janet Whiteman	Internal WAG - HSC – CPCHSD
26	Sharon Linnard	Internal WAG – TIW
27	Hilary Hopkins	Internal WAG – HSC – RD
28	Peter Kennedy	Internal WAG – HR People

29	Voirrey Manson	Internal WAG – NHS WD Carmarthen
30	Ng Mein Lin	Internal WAG – HR People
31	Lynn Allen	Internal WAG – HR People
32	Stephen Harris	Internal WAG – OCMO
33	Katherine Thomas	Internal WAG – CYMAL Aberystwyth
34	Gallina Artisien	Internal WAG – EPC Business Unit
35	Linda Rolfe	Internal WAG – DLS
36	Christine Morgan	Internal WAG – APS PI
37	Anne Rowlands	Internal WAG – WEFO
38	Catherine Keyte	Internal WAG – Statistics Directorate
39	Susan Sky	Internal WAG – OCNO
40	Mary Hughes	Internal WAG – PSMW
41	Ian Shaw	Department of Trade and Industry (Speaker)
42	David Warren	Internal WAG – Equality Policy Unit
43	Rhys Brock	Internal WAG – Equality Policy Unit
44	Heulwen Blackmore	Internal WAG – Equality Policy Unit

45	Stephen Moss	Internal WAG – Equality Policy Unit
46	Rachael Campbell-Lawrence	Internal WAG – Equality Policy Unit
47	Daniel Ballin	Internal WAG – Equality Policy Unit
48	Russell Pope	Internal WAG – Equality Policy Unit