

1 Adhbhar

- 1.1 'S e as adhbhar don Stiùireadh seo a bhith a' soilleireachadh an t-seasaimh a th' aig Bòrd na Gàidhlig (am 'Bòrd') a thaobh a bhith comharrachadh Gàidhlig mar sgil a tha na 'buannachd' no 'riatanach' ann an tuairisgeulan obrach.
- 1.2 Beachdaichidh an Stiùireadh seo air a' bhuidheachadh a bhith aig Achd na Co-ionannachd 2010 ('AC 2010') air modhan-fastaidh. Cuideachd, gabhaidh an Stiùireadh seo ealla ri cùl-fhiosrachadh, comhairle laghail neo-eisimeileach agus comhairle bho Choimisean na Co-ionannachd is nan Còraichean Daonna (CCCD).
- 1.3 Tha am fiosrachadh san stiùireadh seo ceart aig an àm a chaidh a sgrìobhadh mar fhiosrachadh a-mhàin. Cha bu chòir gabhail ris mar chomhairle laghail air dhòigh sam bith. Bu chòir do bhuidheann sam bith a leanas an stiùireadh seo a bhith a' siubhal comhairle laghail fa leth dhaibh fhèin air chor agus gum faod an suidheachadh laghail aca a bhith eadar-dhealaichte.

Purpose

The purpose of this Guidance is to clarify the position of Bòrd na Gàidhlig (the 'Bòrd') on the inclusion of Scottish Gaelic as a 'desirable' or 'essential' skill within job requirements.

This Guidance will consider the effect that the Equality Act 2010 (the 'EqA 2010') may have on recruitment processes. This Guidance will also consider background information, independent legal advice and advice from the Equality and Human Rights Commission (EHRC).

The information contained in this guidance note is correct as at the time of writing for information purposes only. It should not be construed in any way as providing legal advice. Any party who is following the guidance should take their own independent legal advice as their own particular circumstances may be different.

2 Cùl-fhiosrachadh

- 2.1 Tha a' Ghàidhlig na cànan oifigeil ann an Alba fo chumhachan Achd na Gàidhlig (Alba) 2005 (An 'Achd').
- 2.2 Chaidh am Bòrd a stèidheachadh fon Achd gus a' Ghàidhlig adhartachadh. Feumaidh am Bòrd Plana Cànanain Nàiseanta Gàidhlig ullachadh a h-uile 5 bliadhna anns am feum molaidhean a bhith a tha ag innse mar a thèid a chuid dhleastanasan fon Achd a choileanadh.
- 2.3 'S e aon de na toraidhean air a bheil am Plana Cànanain Nàiseanta Gàidhlig ag amas, gum bi barrachd chothroman cosnadh ann far a bheil feum air sgilean Gàidhlig gus seirbheisean a thoirt seachad sa chànan.

Background

The Scottish Gaelic Language is an official language of Scotland, under the terms of the Gaelic Language Act (Scotland) 2005 (the 'Act').

The Bòrd was established under the Act to promote the Gaelic language. The Bòrd must prepare a National Gaelic language Plan every 5 years which must include proposals as to the exercise of its functions under the Act.

One of the aims of the National Gaelic Language Plan is to effect an increase in the number of employment opportunities where Gaelic skills are required in order to enable service delivery in the language.

2.4 Fon Achd, nuair a dh'iarraas am Bòrd air Ùghdarras Poblach Plana Gàidhlig reachdail ullachadh, feumaidh iad sin a dhèanamh mur an do shoirbhich leotha le ath-thagradh a rinn iad ri Ministearan na h-Alba. Mar phàirt den Phlana Ghàidhlig agus a rèir nan toraidhean a thathar a' sùileachadh sa Phlana Cànan Nàiseanta Ghàidhlig, feumaidh an t-Ùghdarras Poblach beachdachadh air mar a tha e a' dol a chuideachadh le bhith toirt leudachadh air cleachdadh na Gàidhlig. Bidh sin a' gabhail a-steach a bhith cruthachadh chothroman cosnaidh far a bheil sgilean Gàidhlig a dhìth, nuair a tha sin freagarrach agus co-rèireach, agus bidh Gàidhlig mar sgil a tha na 'buannachd' no 'riatanach' sna tuairisgeulan obrach sin agus e na amas don ùghdarras seirbheisean a lìbhrigeadh tron Ghàidhlig.

2.5 Tha Ùghdarrasan Poblach ann an Alba air stiùireadh iarraidh a thaobh mar a tha reachdas na Rìoghachd Aonaichte a tha co-cheangailte ri leth-bhreith a' toirt buaidh air a bhith comharrachadh Gàidhlig mar sgil a tha na 'buannachd' no 'riatanach' airson cuid a dhreuchdan, agus iad a' toirt iomradh sònraichte air AC 2010.

3 Cùisean Laghail

3.1 Tha cumhachan AC 2010 a' cur an cèill na diofar dhòighean anns nach bu chòir do dhiofar sheòrsaichean dhaoine a bhith dèanamh 'leth-bhreith'. Tha e mì-laghail a bhith dèanamh leth-bhreith air neach sam bhith air sàillibh:

- aois
- gu bheil iad, no gu bheil iad gu bhith, nan neach tar-ghnèitheach
- gu bheil iad pòsta no ann an companas catharra
- gu bheil [dùil aca ri leanabh](#) no gu bheil iad air fòrladh màthaireil
- gu bheil iad [ciorramach](#)
- cinneadh a' gabhail a-steach dath, nàiseantachd, freumhan cinneachail no nàiseanta
- an creideamh aca, na tha iad a' creidsinn no cion creideimh/no nach eil iad a' creidsinn

Under the Act, a Public Authority, when requested by the Bòrd, must prepare a statutory Gaelic language plan, unless a successful appeal is lodged with the Scottish Government. As a part of the language plan and in accordance with the outcomes of the National Gaelic Language Plan, the Public Authority must consider how it will increase the use of the Gaelic language, including the creation of relevant and proportionate employment opportunities where Gaelic skills are required, by placing Gaelic as a 'desirable' or 'essential' skill within job descriptions, with the aim of delivering a service in Gaelic.

Public Authorities in Scotland have requested guidance with respect to the compatibility with UK discrimination legislation on the designation of certain posts where Gaelic is a 'desirable' or 'essential' job skill, with specific reference to the EqA 2010.

Legal Considerations

The provisions of the EqA 2010 set out various ways in which various categories of person must not 'discriminate'. It is unlawful to discriminate against anyone because of:

- age
- being or becoming a transsexual person
- being married or in a civil partnership
- being [pregnant](#) or on maternity leave
- [disability](#)
- race including colour, nationality, ethnic or national origin
- religion, belief or lack of religion/belief
- sex
- sexual orientation

- gnè
- taobh gnèitheasach

3.2 Canar ‘feartan fo dhìon’ ris na feartan seo.

These are called ‘protected characteristics’.

3.3 Faodar leth-bhreith a dhèanamh sna dòighean a leanas:

Discrimination can come in one of the following forms:

3.3.1 leth-bhreith gu dìreach - a’ dèiligeadh ri cuideigin ann an dòigh nach eil cho math an coimeas ris mar a thathar a’ dèiligeadh ri càch air sàillibh aon de na feartan a tha fo dhìon

direct discrimination - treating someone less favourably than others because of a protected characteristic

3.3.2 leth-bhreith gu neo-dhìreach - a’ stèidheachadh riaghailtean no modhan-obrach a tha buntainn ris a h-uile duine, ach a tha fàgail gu bheil cuideigin le feart(an) fo dhìon a’ fulang anacoithrom

indirect discrimination - putting rules or arrangements in place that apply to everyone, but that put someone with a protected characteristic at an unfair disadvantage

3.3.3 sàrachadh - dòigh-ghiùlain nach eil neach ag iarraidh a bhuineas ri feart fo dhìon agus a tha dèanamh cron air urram cuideigin no a tha cruthachadh àrainneachd shàrachail dhaibh

harassment - unwanted behaviour linked to a protected characteristic that violates someone’s dignity or creates an offensive environment for them

3.3.4 geur-leanmhainn - a’ dèiligeadh ri cuideigin ann an dòigh neo-chothromach seach gun do rinn iad gearan mu leth-bhreith no sàrachadh

victimisation - treating someone unfairly because they’ve complained about discrimination or harassment

3.4 Ged nach eil leisgeul sam bith ann leis an gabh leth-bhreith gu dìreach a dhìon (3.3.1), gabhaidh leth-bhreith gu neo-dhìreach a dhìon air sàillibh cinn-uidhe (3.3.2). Gus leth-bhreith neo-dhìreach a dhìon air sàillibh cinn-uidhe, feumaidh am fastaiche sealltainn:-

Whereas there is no justification possible for direct discrimination (3.3.1) it is possible to objectively justify indirect discrimination (3.3.2). In order to objectively justify indirect discrimination, the employer must be able to show:-

3.4.1 gu bheil an ceann-uidhe cudromach gu leòr agus dearbhadh gum bu chòir còir bhunaiteach a chuingealachadh, me, dìon bho leth-bhreith

that the objective is sufficiently important to justify limiting a fundamental right, i.e. protection from discrimination

3.4.2 gu bheil an rian-obrach no moladh co-cheangailte gu reusanta ris an amas dhligheach (faicibh 3.5)

whether the measure is rationally connected to the legitimate aim (cf. 3.5)

3.4.3 gur iad na modhan a chaidh a roghnachadh na modhan as lugha a ghabhadh cleachdadh gus an ceann-uidhe a choileanadh

whether the means chosen are no more than is necessary to accomplish the objective

3.5 Tha an CCCD den bheachd gur e amas dligheach a

The EHRC considers the promotion of the

th' ann a bhith ag adhartachadh na Cuimris. Ri linn cho coltach 's a tha an ro-ràdh airson Achd na Cuimris 1993 agus an ro-ràdh airson Achd na Gàidhlig (Alba) 2005 ri chèile, tha e glè choltach gun deigheadh adhartachadh na Gàidhlig a mheasadh mar amas dligheach. Ge-tà, cha deach a' phuing sin a dhearbhadh sna cùirtean. Nuair a chuireas Ùghdarras Poblach roimhe seirbheis a thoirt seachad tron Ghàidhlig sa Phlana Ghàidhlig reachdail aca (faicibh 2.4), tha e buailteach gum bi na geallaidhean a nì iad a rèir suidheachadh àraid an Ùghdarrais Phoblaich sin.

Welsh language to be a legitimate aim. Owing to the similarity between the preambles of the Welsh Language Act 1993 and the Gaelic Language (Scotland) Act 2005, the promotion of the Gaelic language is very likely to be considered a legitimate aim. However this point has not been tested in the courts. Where a Public Authority makes a commitment to provide a service through the medium of Gaelic in their statutory Gaelic language plan (cf 2.4), it is likely these commitments will be proportionate to the specific circumstances of that Public Authority.

3.6 A bharrachd air dìon ri linn cinn-uidhe, tha AC 2010 a' ceadachadh corra shuidheachadh far am biodh e laghail a bhith ag iarraidh gum biodh feart sònraichte a tha fo dhìon aig neach. Ann an suidheachaidhean mar sin, gabhaidh dìon a dhèanamh air dòighean-giùlain no modhan-obrach a dh'fhaodadh leth-bhreith a dhèanamh. Cha bhi an leithid riatanasan laghail ach a-mhàin:

In addition to objective justification, the EqA 2010 allows for limited circumstances where it will be lawful for a person to be required to possess a particular protected characteristic. In such circumstances it is possible to justify potentially discriminatory conduct. Such requirements will only be lawful:

3.6.1 nuair a thèid cuid a chumhachan sònraichte a choileanadh, agus

provided certain conditions are satisfied, and

3.6.2 nuair a bhuineas iad ri seòrsaichean ghnìomhan sònraichte

in relation to certain types of action

3.7 Feumaidh an neach a stèidhicheas na riatanasan trì cumhachan a choileanadh le bhith sealltainn (agus iad a' gabhail ealla ri seòrsa no co-theacsa na h-obrach dom buin an riatanas):

The person imposing the requirement must satisfy three conditions, by showing that, having regard to the nature or context of the work in relation to which the requirement is being applied:

3.7.1 gur e 'riatanas dreuchdail' a th' ann (chan eil an abairt seo air a mìneachadh, mar sin bu chòir a tuigsinn a rèir a cèill àbhaistich sa Bheurla), agus

the requirement is an 'occupational requirement' (this phrase is not defined, so it should be interpreted according to its natural English meaning), and

3.7.2 gu bheil mar a tha an riatanas ga chur an sàs na mheadhan cothromach gus amas dligheach a choileanadh (faicibh 3.5), agus

the application of the requirement is a proportionate means of achieving a legitimate aim (cf. 3.5), and

3.7.3 nach eil an neach, a dh'fheumas an riatanas a choileanadh, a' coileanadh an riatanais sin (no gu bheil adhbharan reusanta aig an neach a tha a' stèidheachadh an riatanais a bhith

the person to whom the requirement is applied does not meet it (or the person imposing it has reasonable grounds for not being satisfied that the person to

den bheachd nach eil an neach, a dh'fheumas an riatanas a choileanadh, ga choileanadh)

whom it is being applied meets it)

- 3.8 Tha an dàrna cumha ('na mheadhan cothromach gus amas dligheach a choileanadh') an aon rud ris a' mheasadh a nithear nuair a thathar a' feuchainn ri leth-bhreith neo-dhìreach a dhìon is a mhìneachadh. The second condition ('proportionate means of achieving a legitimate aim') is the same test as is applied in the context of the justification defence against a claim of indirect discrimination.
- 3.9 Chan eil cumhachan sònraichte ann an [AC 2010](#) gus casg a chur air sanasan-obrach a nì leth-bhreith. Ge-tà, ma thèid sanas fhoillseachadh anns am biodh e reusanta a thuigsinn math dh'fhaodte gu robhar a' ciallachadh leth-bhreith a dhèanamh air sàillibh feart a tha fo dhìon, bidh sin fhathast na chomharra air leth-bhreith gu dìreach a tha ga dhèanamh an lùib a' ghnìomh fhastaidh, agus an sanas mar phàirt den ghnìomh sin. Faodaidh an CCCD na cumhachdan reachdail aca a chur gu feum a thaobh shanasan a nì leth-bhreith. There is no specific prohibition regarding discriminatory job advertisements under [EqA 2010](#). However, publishing an advertisement which might reasonably be understood as indicating an intention to discriminate because of a protected characteristic will nonetheless go to show direct discrimination in the recruitment exercise of which that advertisement formed a part. The EHRC can use its enforcement powers in relation to discriminatory adverts.
- 3.10 'S e an eisimpleir a thathar a' cleachdadh ann an Notaichean Mìneachaidh Achd na Co-ionannachd airson an t-seòrsa leth-bhreith dhìrich seo, fastaiche a tha foillseachadh sanas airson dreuchd a tha bàn far a bheil iad a' dèanamh soilleir san t-sanais nach leig Roma leas cur a-steach air a son. 'S e leth-bhreith gu dìreach a bhiodh ann air sgàth cinnidh an aghaidh Roma, a dh'fhaodadh a bhith air beachdachadh gu reusanta cur a-steach airson na h-obrach ach nach do chuir air sàillibh an t-sanais. The Equality Act Explanatory Notes example of this form of direct discrimination involves an employer advertising a vacancy who makes it clear in the advertisement that Roma need not apply. This would amount to direct race discrimination against a Roma who might reasonably have considered applying for the job but was deterred from doing so because of the advertisement.
- 3.11 Chan eil sanasan mì-laghail ma nochdas iad gu bheilear a' ciallachadh leth-bhreith a dhèanamh ann an dòigh a tha *laghail*. Mar eisimpleir, bhiodh e laghail sanas fhoillseachadh airson tagraichean de ghnè shònraichte far a bheil gnè an neach na nì riatanach airson na h-obrach. Advertisements are not unlawful if they indicate an intention to discriminate in a way that is *lawful*. For example, it will be lawful to advertise for applicants of a particular gender where gender is an occupational requirement for the job.
- 3.12 Faodaidh cuid a bhriathrachas ann an sanasan a bhith mar fhianais air poileasaidh fastaidh a tha dèanamh leth-bhreith gu *neo-dhìreach*. Mar eisimpleir, ma dh'iarrar àireamh shònraichte de bhliadhnaichean de dh'èòlas aig a' char as lugha, dh'fhaodadh sin leth-bhreith neo-dhìreach a dhèanamh air tagraichean nas òige. Some advertisement wording might be evidence of a recruitment policy that is *indirectly* discriminatory. For example, requiring a certain minimum number of years' experience may indirectly discriminate against younger candidates.

3.13 Le dreuchdan a tha comharrachadh Gàidhlig mar sgil a tha na ‘buannachd’ no ‘riatanach’, chan eil e coltach gun tèid sin fhaicinn mar leth-bhreith gu dìreach. Tha sin air sàillibh nach eilear a’ coimhead air luchd-labhairt na Gàidhlig mar bhuidhinn chinneadail fon lagh. Ge-tà, tha saorsa aig daoine fa leth tagraidhean a dhèanamh leis an Tribiùnal Chosnaidh feuch an deach leth-bhreith a dhèanamh gus nach deach.

Posts which designate Gaelic as a ‘desirable’ or ‘essential’ skill are unlikely to be considered as direct discrimination. This is because Gaelic speakers are not a distinct racial group in legal terms. However, individuals are free to raise claims to let the Employment Tribunal determine whether or not discrimination has taken place.

4 Molaidhean

Recommendations

4.1 Chan eil e coltach gum biodh e mì-laghail, fo AC 2010, a bhith comharrachadh Gàidhlig mar sgil a tha na ‘buannachd’ no ‘riatanach’, fhad ‘s a tha ‘riatanas dreuchdail’ dha-rìribh ann (faicibh 3.7.1). Thathar a’ moladh gun tèid aire a thoirt gu sònraichte do na trì cumhachan fo 3.7 nuair a thathar a’ stèidheachadh adhbharan gnothachais airson dreuchd sam bith far a bheil Gàidhlig mar riatanas dreuchdail. Thèid amas dligheach (faicibh 3.5) a stèidheachadh a rèir nan geallaidhean a tha an t-Ùghdarras Poblach air a thoirt seachad sa Phlana Ghàidhlig reachdail aca (faicibh 2.4) gus seirbheisean a libhrigeadh tron Ghàidhlig.

It is unlikely to be unlawful, under the EqA 2010, to designate Gaelic as a ‘desirable’ or ‘necessary’ skill, as long as there is a genuine ‘occupational requirement’ (cf 3.7.1). It is recommended that particular cognisance is given to the three conditions listed in 3.7 when drafting a business case for any given role which lists Gaelic as an occupational requirement. The establishment of legitimate aim (cf 3.5) will be driven by commitments made by a Public Authority in their statutory Gaelic language plan (cf 2.4) to deliver a service through the Gaelic language.

4.2 Tha e buailteach gum bi na geallaidhean ann am Planaichean Gàidhlig a’ freagairt gu cubhaidh air suidheachadh sònraichte gach Ùghdarras Poblach fa leth, agus bidh e riatanach gun tèid ealla a ghabhail riutha ann a bhith a stèidheachadh amas dligheach (faicibh 3.5).

Commitments in Gaelic language plans will likely be proportionate to a Public Authority’s specific circumstances and will be essential in terms of determining legitimate aim (cf 3.5).

4.3 Tha eadar-dhealachadh laghail agus pragtaigeach ann eadar cànan mar theisteanas agus cànan mar sgil airson a bhith coileanadh slatan-tomhais airson dreuchd. Tha am Bòrd a’ moladh gum bi Gàidhlig air a comharrachadh mar sgil a thaobh nan slatan-tomhais a dh’fheumar coileanadh airson dreuchd, mura h-eil teisteanas Gàidhlig gu sònraichte a dhìth airson na dreuchd. Cuideachd, gus nach bi mì-thuigse sam bith ann, ‘s e cleachdadh math a th’ ann a bhith dèanamh soilleir san t-sanas-obrach carson a tha a’ Ghàidhlig mar sgil a dhìth.

There is a legal and practical difference between language as a qualification and language as a skill in terms of fulfilling the requirements of a post. The Bòrd recommends that Gaelic be included as a skill in terms of fulfilling the requirements of a post, unless the post has a specific need for a Gaelic qualification. Furthermore, to avoid any possible misunderstanding, it is good practice to clarify the motive behind the required skill in the job advertisement.

4.4 Thathar a’ moladh gum bi Gàidhlig na sgil a tha na ‘buannachd’ ann an dreuchdan far am faodadh

It is recommended that Gaelic be a ‘desirable’ skill in posts where the employee may be

gum feum an neach-obrach:

required to:

4.4.1 Luchd-labhairt na Gàidhlig a chuideachadh, a' gabhail a-steach luchd-obrach no luchd-cleachdaidh na seirbheis;

Assist Gaelic language speakers, including staff or service users;

4.4.2 A bhith ag obair leis a' mhòr-shluagh, gu sònraichte ann an sgìrean far a bheil grunn math de dhaoine aig a bheil Gàidhlig;

Work with the public, particularly in areas where there is a higher proportion of people with Gaelic;

4.4.3 A bhith ag obair ann an sgìre far a bheil Gàidhlig na cànan coimhearsnachd;

Work in an area where Gaelic is a community language;

4.4.4 A bhith dèiligeadh ri luchd-labhairt na Gàidhlig gu tric is minig;

Have a great deal of contact with Gaelic speakers;

No ann an suidheachaidhean far an cuireadh e ris an ìre de sheirbheisean tron Ghàidhlig a tha rim faotainn.

Or in situations where it would increase the level of Gaelic-medium services on offer.

4.5 Thathar a' moladh gum bi Gàidhlig air a comharrachadh mar sgil 'riatanach' ann an dreuchdan far am faodadh gum feum an neach-obrach:

It is recommended that Gaelic be an 'essential' skill in posts where the employee may be required to:

4.5.1 Luchd-labhairt na Gàidhlig a chuideachadh, a' gabhail a-steach luchd-obrach no luchd-cleachdaidh na seirbheis

Assist Gaelic language speakers, including staff or service users;

4.5.2 A bhith ag obair leis a' mhòr-shluagh agus dùil ann gum bi seirbheisean ann am Beurla agus Gàidhlig rim faotainn;

Work with the public and there is an expectation that services in English and Gaelic are available;

4.5.3 A bhith ag obair leis a' mhòr-shluagh ann an sgìrean far a bheil Gàidhlig na cànan coimhearsnachd;

Work with the public in areas where Gaelic is a community language;

4.5.4 A bhith obair far nach urrainn do dh'oifigear eile seirbheis tron Ghàidhlig a thoirt seachad;

Work where it is not possible for another officer to provide a Gaelic language service;

4.5.5 A bhith ag obair còmhla ri buidhnean eile a tha ag obair tron Ghàidhlig taobh a-staigh na buidhne aca;

Work with other organisations who operate through the medium of Gaelic internally;

No ann an suidheachaidhean far a bheil poileasaidh cànan na buidhne a' gabhail ealla ri feuman ionadail, me, mar a dh'fheumar rianachd taobh a-staigh na buidhne a dhèanamh ann am

Or where an organisation's language policy takes into account local considerations, e.g. the need to undertake internal administration in English and Gaelic.

Beurla agus Gàidhlig.

4.6 Tha e cudromach, nuair a thathar a' beachdachadh air na slatan-tomhais seo, gum bi fianais ann a bheir taic don cho-dhùnadh agus do mar a thathar ag ràdh gu bheil riathanas ann a thaobh sgil ann an Gàidhlig.

It is important, when considering these criteria, that evidence is available to justify this decision and support any case for the Gaelic language requirement.

Tuilleadh Stiùiridh

Ma tha tuilleadh stiùiridh a dhìth oirbh a thaobh a bhith sanasachd dhreuchdan far a bheil eòlas air a' Ghàidhlig na 'buannachd' no 'riatanach', feuch gun cuir sibh fios gu Daibhidh@gaidhlig.scot.

Further Guidance

Should you require any further guidance on the advertisement of posts where knowledge of the Gaelic language is 'desirable' or 'necessary' please contact Daibhidh@gaidhlig.scot.

Tha am fiosrachadh san stiùireadh seo ceart aig an àm a chaidh a sgrìobhadh mar fhiosrachadh a-mhàin. Cha bu chòir gabhail ris mar chomhairle laghail air dhòigh sam bith.

The information contained in this guidance note is correct as at the time of writing for information purposes only. It should not be construed in any way as providing legal advice.

'S e an tionndadh Beurla am prìomh thionndadh den sgrìobhainn seo agus tha an tionndadh Gàidhlig dìreach mar stiùireadh airson na dreachd thùsail.

The English version of this document is the primary version and the Gaelic version only provides guidance to the original.