

Gender Representation on Public Boards (Scotland) Bill

EQIA Results Template

June 2017



Scottish Government
Riaghaltas na h-Alba
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EQIA Results Template

Title of policy/ practice/ strategy/ legislation etc.	Gender Representation on Public Boards (Scotland) Bill	
Minister	Cabinet Secretary for Communities, Social Security and Equalities	
Lead official	Eileen Flanagan	
Officials involved in the EQIA	Name	Team
	Eileen Flanagan/ Lesley Cunningham	Equality Unit
	Kirsty Walker	Public Appointments Team
	Vikki Bruce	Public Bodies Unit
Directorate: Division: Team	Directorate for Local Government and Communities: Equalities, Human Rights and Third Sector Division: Equality Policy Team	
Is this new policy or revision to an existing policy?	Both new policy and revision to existing policy	

Executive Summary

The Scottish Government is introducing legislation to redress the under representation of women on public sector boards, to ensure that as far as possible, boards have 50% non-executive members who are women.

On 5 January 2017 the Scottish Government published the draft Gender Representation on Public Boards (Scotland) Bill for consultation. The consultation was intended to provide bodies covered by the Bill, those with a role in public appointments, and other interested parties, with an opportunity to consider and provide feedback on the Bill's provisions, and to put forward suggestions for how the Bill might be strengthened to deliver Minister's objective of gender balanced boards.

The consultation closed on 17 March 2017 and received 101 responses: 35 from individuals and 66 from organisations. Responses to the consultation were independently analysed by Craigforth Research and the analysis and individual responses, where permission was given to do so, have been published on the Scottish Government's website and consultation hub.

An issue raised by respondents has led to a change to the draft Bill in relation to the inclusiveness of the language used in the legislation.

This change relates to the binary definition of gender used in the draft Bill, which therefore made the legislation not inclusive of people who do not identify as either female or male. The Bill has now been changed to require that public authorities achieve 50% non-executive members who are female. This allows non-binary people including people who identify as both female and male to be included.

Another issue raised relating to the inclusiveness of the language used in the Bill was the definitions used for female and male in it, which it was felt should be "identify as female" or "identify as male" to avoid issues for transgender people. The Bill now uses the terminology "are women" and the Scottish Government will consider whether this needs to be expanded.

The consultation also helped us identify areas where further action is needed to ensure as much as possible that any unintended consequences of the legislation for men with other protected characteristics are removed or mitigated.

Background

The Bill is a 2016-17 Programme for Government commitment, and sits as part of the Scottish Government's overarching ambition for the realisation of women's equality. It is a significant step forward to ensuring that women are properly represented in senior and decision making positions. Despite making up over 51 per cent of the population in

Scotland, women continue to be under-represented in political, civic and public life and at senior levels and in the boardroom. Currently, women make up just: 35 per cent of members in the Scottish Parliament; 31 per cent of members of the House of Commons; 29 per cent of local government councillors in Scotland; 26.1 per cent of FTSE 100 boards and 24 percent of Public board Chairs.

As previously stated, the objective of the Bill is to ensure, that as far as possible, women make up 50% of the non-executive membership of public sector boards in Scotland. The Bill seeks to achieve this by setting a gender representation objective for the non-executive member component of public boards and requiring certain action to be taken in the appointing of non-executive members, towards the achievement of the objective.

The legislation sits alongside the Scottish Government's Partnership for Change, 50/50 campaign, whereby private, public and third sector bodies are encouraged to make a voluntary commitment to aim for a 50/50 gender balance on their boards by 2020. Over 90% of public bodies have now signed up to 50/50 by 2020.

The Scottish Government has also made amendments to the [Equality Act 2010 \(Specific Duties\) \(Scotland\) Regulations 2012](#). The amendments require Scottish Ministers, from time to time, to gather information on the relevant protected characteristics of board members of a listed authority, and to provide this information to the listed authority in question. In turn, listed authorities must use this information to better perform the public sector equality duty and specifically use this information to assist them in their Board succession planning.

Guidance on Succession Planning for public body boards¹ has been co-produced by the Scottish Government's Public Bodies Unit and Public Appointments Team, sponsor teams and a range of staff and board members of public bodies, building on good practice. The guidance seeks to help public bodies develop effective succession plans for their boards. In addition to the guidance, a toolkit of resources has been developed to assist public bodies in developing their board succession plans. The toolkit provides information and examples of good practice, which will be updated on a regular basis. The Bill also contributes to the National Outcomes:

- We have tackled the significant inequalities in Scottish society
- Our public services are high quality, continually improving, efficient and responsive to local people's needs

¹ <http://www.gov.scot/Topics/Government/public-bodies/BoardChairs>

Scope of the EQIA

The key data and sources of information used to develop this EQIA were the statistical data made available by the Commissioner for Ethical Standards in Public Life in Scotland and the information included in the responses to the Scottish Governments consultation on the draft Bill. The Scottish Government also met with a number of equality stakeholders and other organisations with an interest in the legislation to gather their views.

One specific area where concerns were raised was in relation to the single focus on the protected characteristic of sex in the Bill.

In response to this, the Scottish Government feels that the promotion of women's representation on public boards gives a platform for public authorities to test their recruitment structures and through addressing the barriers that women face, they can use the learning to help make their board positions more accessible to all potential candidates, irrespective of their protected characteristics.

It is also the case that women make up over half of the population in Scotland and are not a homogenous group. They are from minority ethnic communities, are disabled and LGBTI. While the increased representation of women should not be seen as the sole mechanism to increase the representation of all under-represented groups, the Government does not feel that this policy places additional barriers to those that under-represented groups currently face.

Although the Bill does not set targets for the representation of other under-represented groups, the Scottish Government is prioritising work to address their under-representation.

Demographic profile of board membership - At December 2015²:

Target Group	Profile of board members at the end of 2015 †	Scottish Population (2011 Census)
Female	42.0%	51.5%
Disabled	11.8%	19.6%
Black and minority ethnic	3.5%	4.0%
Aged 49 and under	17.6%	54.3%
Lesbian, gay and bisexual	3.0%	6.0%

² The demographic profile for Board membership at December 2016 will be published by the Commissioner for Ethical Standards in Public Life in Scotland in September 2017

† All board members inclusive of the chair unless otherwise stated. Percentages do not include those who did not make a declaration.

* Scottish Population aged 18 to 49 as a percentage of the whole population aged 18 and over.

** Estimated based on information from Stonewall Scotland website

At February 2017, 24.1% of Chair appointments are held by women.

It should be noted that data on pregnancy and maternity and marriage and civil partnership in relation to public sector board diversity, is not collected. Statistics are collected on religion but historically a national baseline has not been published.

The Public Appointments Improvement Programme and Equality Outcome

The Scottish Government published its latest set of Equality Outcomes at the end of April 2017. Amongst these is the outcome that:

Ministerial public appointments are more diverse reflecting broadly the general population by 2021.

This Outcome will be delivered by the Public Appointments Improvement Programme. The Programme, which is supported by a dedicated Public Appointments Improvement and Outreach Manager, is designed to deliver diversity in regulated Ministerial public appointments. The aim of the Programme is:

'The diverse range of talented people Ministers appoint to the boards of Scotland's public bodies, and the support we offer them, form high performing boards that drive continuous improvement in public services'.

Diversity simply means difference. In relation to board diversity it is used to refer to two distinct, but related, concepts: members' skills, experience, knowledge and other relevant attributes, such as personal values, and diversity of members in relation to their protected characteristics, as defined by The Equality Act 2010. Both concepts of diversity are equally important. Work currently planned in the Programme includes:

- Identifying and engaging key partners / umbrella bodies in promoting and enabling participation of underrepresented groups, including identifying real and perceived barriers to participation and raising awareness of public appointments as a way to participate in public life in Scotland;
- A focus during 2017/18 on working with disabled applicants and applicants under the age of 49;
- The continued delivery of our effective outreach programme, reaching out to the broadest range of potential applicants, and using role models so potential applicants can see themselves in the boardroom;

- Work with existing board Chairs and members to make sure they are diversity confident, and a focus on developing the Chair pipeline;
- A research project, delivered in partnership with the Commissioner's office, to establish a solid evidence base for the benefits of diversity on public boards.

Delivery of this outcome is also supported by the work of the Scottish Government's Public Bodies Unit in supporting and developing board capacity including succession planning, induction and appraisal.

Additionally, the Public Appointments Team has actions linked to participation in public life in the [Scottish Government's Race Equality Framework](#), [BSL National Plan](#) and [A Fairer Scotland for Disabled People](#).

Recommendations and Conclusion

As detailed in the Executive Summary, the Equality Impact Assessment process has helped us identify areas of the Bill's policy where changes were required, and also where further action is needed to ensure that any unintended consequences of the legislation are removed or mitigated. The EQIA will be updated and developed further to reflect any other revisions to the Bill as it makes its way through the Parliamentary scrutiny process.



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