

# **Gender Representation on Public Boards (Scotland) Act 2018: Scottish Ministers' Report to Parliament 2021**

**August 2023**

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# Foreword

## **Cabinet Secretary for Social Justice, Housing and Local Government**

The fight to achieve equal representation of women has taken place over centuries, with the most notable battle being over the right to equal suffrage. It seems unthinkable now that women were once denied the right to vote. But there is still a long way to go to achieve a truly gender equal society, in which women have an equal share in decision-making power.

I am therefore pleased to present the Scottish Government's first progress report to the Scottish Parliament on the operation of the Gender Representation on Public Boards (Scotland) Act 2018, which came into force in May 2020.

This legislation, the only such legislation in any of the nations in the United Kingdom, is intended to ensure that women have a voice in the boardrooms of Scotland's public bodies, colleges and universities, and that their representation is fair.

Women make up over 50% of Scotland's population, but historically have been under-represented in public life, and in senior and decision making positions, including in the boardroom.

The 2018 Act seeks to address this under-representation by setting a gender representation objective for public boards in Scotland, namely that 50% of Non-Executive members are women; and it requires certain steps to be taken to achieve the objective, initially by 31 December 2022, and to encourage applications from women.

I am also pleased to note that the majority of listed public authorities subject to the 2018 Act (65%) have achieved the gender representation objective at the time of reporting.

Although this report represents the bench mark year for data on the 2018 Act, I want to also recognise the excellent progress that has been made over the last 7-8 years. In 2013-14 when my government began its concerted programme of work on addressing the lack of women's representation on public boards, the percentage of women Non-Executive board members of Regulated boards was 36%, at

31 December 2014. This has increased to an overall figure of 52% in 2020-21, as of 30 April 2021.

I am also encouraged by the range of proactive steps taken to support women to apply for board positions. We want the very best people to sit on Scotland's public boards. And that means ensuring that public bodies, colleges and universities are reaching out to and attracting people who have valuable skills and talents but who have not previously had equal opportunities to participate, including women of all ages and backgrounds.

Although Scotland's public boards have made significant progress in redressing the historical imbalance of women's representation, we can see from the data included in this report that they still have some distance to travel before every board achieves the gender representation objective. Over a third of the boards for which we have data have not yet met this objective. The Scottish Government urges boards to do all they can to make further significant progress over the next year as we move towards the 2022 milestone for initially achieving gender balance on Scotland's public boards.

The journey towards equal sharing of power is a long one. This report represents an important juncture. But there is a lot further to travel. I commend Boards for the progress made thus far; and urge them to continue with their efforts to improve women's representation, because Boards which better reflect the population of Scotland are better able to serve the people of Scotland, benefiting us all.

# Introduction

This is Scottish Ministers' first report to the Scottish Parliament on the operation of the Gender Representation on Public Boards (Scotland) Act 2018 (henceforth referred to as "the 2018 Act"), in accordance with the Gender Representation on Public Boards (Scotland) Act 2018 (Reports) Regulations 2020 (henceforth referred to as "the 2020 Regulations").

In order to provide an overview of the operation of the 2018 Act, we have considered all available individual reports for the 133 boards listed in the 2018 Act, published by appointing persons and public authorities in accordance with the 2020 Regulations. The Scottish Government has not received data from 9 of the 133 Boards. Therefore this report is based on the remaining 124 Boards' reports and the percentages are calculated using this baseline figure.

In the following chapter we provide an overview of the operation of the 2018 Act in relation to the gender representation objective; vacancies; appointments; the steps taken to encourage applications from women; and other steps taken with a view to achieving the gender representation objective. This report and the Scottish Ministers' report in their role as an Appointing Person, under regulation 2 will be published in January 2022.

It should be noted that the COVID-19 pandemic began just two months before this new legislation on gender representation on public boards came into force, and that the pandemic continued throughout the period covered in this report. Indeed, it is still a very present public health concern at the time of writing this report. It may therefore be the case that public bodies who have not yet met the gender representation objective were hampered in their efforts by challenges posed by responding to the pandemic.

However, the pandemic highlighted the damaging effects of inequality in our society, making it more critical than ever for efforts to advance equality to be prioritised across the public sector. The Scottish Government would urge Boards to incorporate considerations re: improving Board diversity into their COVID-19 recovery plans. High performing boards help drive effective public bodies and continuous improvement in public services. Diverse boards are more likely to be better able to understand their stakeholders and to benefit from fresh perspectives, new ideas, vigorous challenge and broad experience, all of which are needed as we recover from the pandemic and move forward.

# Overview of the operation of the 2018 Act

## Gender representation objective

The 2018 Act sets a “gender representation objective” for listed public authorities, namely that 50% of the authority’s non-executive board members are women. If the authority has an odd number of non-executive board members, the gender representation objective applies as if there was one fewer non-executive member. For example, if there are 9 Non-Executive members on a board, the gender representation objective would be achieved if 4 of those members are women.

Of the 133 listed public authorities<sup>1</sup> covered by the 2018 Act, 81 stated that they had achieved the gender representation objective at the time of reporting. The period of the report is from the date the relevant provisions in the 2018 Act came into force, 29 May 2020, up to the reporting deadline set out in the regulations of 30 April 2021. Please note that the Scottish Government does not have data for 9 public bodies.

The remaining 43 listed public authorities had not achieved the gender representation objective at the time of reporting.

Of regulated boards, 48 met the Gender Representation Objective and 22 did not. For unregulated boards, 30 met the objective and 22 did not.

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<sup>1</sup> There are 133 public bodies subject to the Gender Representation on Public Boards (Scotland) Act 2018. Nine boards did not complete a report. For this reporting period, 81 met the objective, 43 did not meet the objective.

## Vacancies

It is not possible from the data received from boards to give robust figures on the percentage of applications that were from women as there are gaps. Also a number of listed public authorities reported that they did not ask applicants for their gender as part of the recruitment competition.

Where information was available in Board reports, listed public authorities reported 199 vacancies for Non-Executive members arising during the period covered by their reports, resulting in 56 reported recruitment competitions.

The majority of vacancies arising were for a single Non-Executive member and the majority of vacancies were filled through a single recruitment competition.

Scottish Ministers are clear that reporting on the number of applications which were from women is a legal requirement placed upon authorities under regulation 3(3)(c) of the 2020 Regulations and is also an essential component to ensure they are complying with the 2018 Act itself. Scottish Ministers would urge Boards to gather the necessary data to meet their legal duties and give a clearer understanding of who is applying for their vacancies and use it to help ensure they can encourage a diverse cohort of applicants as possible.

# Appointments

The appointment process across the different types of boards subject to the 2018 Act varies. Appointments to public body boards can be 'regulated' and 'non-regulated'.

## Regulated appointments

When an appointment is regulated it means that the appointments process for that Board is regulated by the Ethical Standards Commissioner. Whether or not a public body is regulated by the Commissioner depends on the type of body it is, and decisions made at the time it is established.

It is the Commissioner's role to ensure that appointments are made on merit, using methods that are fair and open. The appointment process for regulated appointments is run by Scottish Government officials on behalf of the Scottish Ministers.

## Unregulated appointments

Each appointment process for unregulated appointments, including those to the boards of colleges and Higher Education Institutions, is run by the public body concerned.

In relation to higher education institutions (HEIs) appointments are made by the governing bodies of HEIs in accordance with arrangements set out in their governance documents, and in accordance with section 10 of the Higher Education Governance (Scotland) Act 2016 (which contains provisions on the composition of governing bodies) and, in the case of the ancient universities, with the Universities (Scotland) Acts.

In addition, the Scottish Code of Good Higher Education Governance sets out provisions on Higher Education Governance, including best practice in relation to governing body membership and appointments.

For the college sector, appointments are made in accordance with schedule 2 of the Further and Higher Education (Scotland) Act 1992 (which contains provisions on the composition of incorporated college boards, both for regional and assigned colleges) and with schedule 2B of the Further and Higher Education (Scotland) Act 2005 (which contains provisions on the composition of Regional Boards).



In addition, the Scottish Code of Good Governance for Scotland's Colleges, and the 2014 College Sector Board Appointments Ministerial Guidance, sets out provisions on Further Education Governance, including best practice in relation to governing body membership and appointments. Regarding Newbattle Abbey College, Sabhal Mòr Ostaig, and West Highland College UHI, appointment of board members is made by the company.

## Good practice in appointments

Good practice dictates that public appointments are made on merit and appointments by Scottish Ministers must be made on merit. Merit should be defined for each role and set out in the person specification. A person specification should provide a clear and accurate description of the skills, knowledge, understanding and/or experience a person will need to be effective in the role.

## Appointments and equality mainstreaming

In 2017, the Scottish Government [published a suite of equality outcomes](#) for the 2017 to 2021 reporting period under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. This included an equality outcome on participation in decision making, which states "Ministerial public appointments are more diverse reflecting broadly the general population by 2021".

Since this outcome was created in 2017 the Public Appointments Team have made changes to their processes and used data, management information and lessons learned to drive improvement in the appointments process. The team have delivered an outreach and engagement programme with the aim of increasing interest in public appointments and addressing the barriers that people from the protected groups face. As a result we have seen improvements in the rate of applications from people from an ethnic minority background, disabled people and people under 50. The most significant improvement we have seen is that women now make up 50% of public appointees. Our [summary of progress](#) towards achieving this outcome was published in March 2021.

Where listed public authorities gave information, they reported that 102 appointments of Non-Executive members were made during the period covered by their reports. Of these, 93 appointments, or 91% of appointments were of women.

Regulated Boards - 48 Boards (68%) met the Gender representation objective and 22 did not.

Unregulated Boards - 30 Boards (53%) met the Gender representation objective and 22 did not.

NHS Regional Health Boards and other Health Related Boards - 17 Boards (74%) met the Gender representation objective and 6 did not.

Colleges - 17 Boards (63%) met the Gender representation objective, 6 did not and data is not held for 4 Boards.

Universities - 8 Universities (44%) met the Gender representation objective, 9 did not and data isn't held for 1 University.

## Encouraging applications from women

The 2018 Act requires appointing persons and public authorities to take steps to encourage applications from women to become non-executive members.

Some steps taken to encourage applications from women, highlighted by appointing persons and public authorities in their reports, included promoting member vacancies to a range of organisations and individuals with a view to enhance the interest among and secure applications from a more diverse range of candidates. This included reaching out to organisations representing women, minority ethnic groups, young people and disability groups.

In another case, text was included in the advertisement of the roles to emphasise the diversity of the particular body and encourage applications from women and individuals from protected characteristics groups currently under-represented. The range of advertising networks used beyond mainstream print media was reviewed and included professional networks for women and other under-represented groups.

One public body which appointed a female candidate to a Non-Executive vacancy in 2020 was the Scottish Courts and Tribunal Service (SCTS).

A recruitment round commenced on 19 December 2019 and closed on 21 January 2020. Notices inviting applications were advertised on the SCTS website, the Scottish Government's Public Appointments website, the S1 Jobs website and the [Women on Boards](#) website.

In addition notification of the vacancy was shared with the Council of Ethnic Minority Voluntary Organisations in Scotland. Seventy-two applications were received, with 30 of them from females. The successful candidate was female.

The SCTS go on to outline in their board report that in taking forward future appointments to the Board, members will continue to ensure that diversity of membership is promoted. As the categories of Board membership vary the precise action taken in relation to each vacancy that arises may vary. Specific activity to encourage applications from the broadest pool of candidates will include:

- the selection panel in all future appointments being invited to consider the steps that should be taken in relation to promoting applications from those with protected characteristics – ensuring this is consciously considered by those involved in the process and that the specific vacancy in question is taken into consideration;
- using the networks and outreach provided by members of their Equality Advisory Group to ensure that Board vacancies are publicised and shared amongst the broadest range of potential applicants – in addition to publicising these through traditional recruitment channels and via social media; a review of the relevant person specifications, skills requirements and general application material used for board recruitment, to ensure that this is not inadvertently creating barriers to application for any group; and
- continuing to support their Board and Committee members as they attend relevant training, events and outreach activity – acting as advocates for the SCTS and increasing interest both in the organisation and the desire to serve on its Board.

Other examples of approaches taken to encouraging applications from women include (but are not limited to):

- Skills Development Scotland - the use of gender neutral language in all associated documentation (e.g. advert, information pack, application forms)
- Scottish Enterprise (SE) – work undertaken on board procedures and meetings to make them more gender accessible. Over recent years, the number and frequency of SE Board meetings has reduced from 10 meetings, held monthly, to 6 meetings per year, held every 2 months. In 2019, the venues for Board meetings were changed from only being held in Glasgow and Edinburgh, to various SE office locations throughout the country. Over the last year, due to COVID-19, the meetings have moved to a virtual setting and

the Board will be considering future ways of working, which includes options for a blend of physical and virtual meetings going forward. Their steering group also considers how unconscious bias training and diversity succession planning can be used to encourage greater board diversity.

- Bòrd Na Gàidhlig - a forthcoming campaign which will include specific steps to attract more women to the Board, including short video presentation for social media from one of the female board members and distribution of information through existing board members to women who may be interested in these roles. This is in addition to general advertising of the roles.
- University of Edinburgh: Action was taken to encourage applications from women prior to the 2018 Act. The gender balance of members appointed by the University Court reached a 50:50 female: male ratio for the first time in 2017. Action has continued since the implementation of the 2018 Act, with advertisements posted on board recruitment platforms such as [Changing the Chemistry](#) and [Women on Boards](#). There is also a statement within the text of all advertisements of the University's commitment to equality and diversity and the encouragement of applicants from diverse backgrounds.
- Scottish Ambulance Service: They have been able to develop potential good candidates by providing opportunities to observe Board activities in order to gain a better understanding of the role. They have also utilised opportunities to engage with community groups in order to discuss vacancies when they have arisen and plan to seek advice from equality organisations in order to address any potential barriers for candidates.
- University of the Highlands and Islands: Took several measures to increase applications, including changes to the role description, diverse advertising and specifying the need to demonstrate a commitment to equality. This resulted in more skilled applicants, more female applicants and ultimately to a stronger Court in terms of skill and gender balance.
- NHS Healthcare Improvement Scotland: Have recently formed a Succession Planning Committee to help to continue to improve the diversity of their board. The Committee will be reviewing and evaluating the current skills, knowledge, diversity and expertise of our board members and considering recruitment approaches to help to attract a diverse applicant pool for future board member appointments.
- Crown Estate Scotland: Following the conclusion of the process for the recruitment of two Non-Executive members in May 2019, the Board agreed to offer an opportunity to two women, who did not have extensive public board experience, to each spend six months observing the work of their Board and

its committees. In preparation for this, the observers undertook the same induction and training process as the newly appointed Non-Executive members and were encouraged to travel with the Board to meetings and events. The COVID-19 pandemic enabled an extended shadowing opportunity. During the reporting period their Chair participated, as a mentor, in a Board Chair Mentoring Scheme run by the Scottish Government. Their Board and Executive team attended an unconscious bias workshop in January 2021 delivered by the organisation Changing the Chemistry, and took forward a range of actions as a result, including action to consider what additional support can be provided to potential candidates to help them with the board recruitment process. These included:

- workshops on application forms / CVs and cover letters and additional opportunities to enable people to learn more about the organisation (e.g. 30 minute sessions via video call with an Executive).
- investigating further possible outreach to share details of board vacancies with relevant communities. These actions will form part of their wider organisational Diversity & Inclusion plan being developed in 2021-22.
- Advertising roles on social media, including LinkedIn and Twitter, using a recruitment video from their Chair, showcasing the organisation.

## Other steps taken to achieve the gender representation objective

If the gender representation objective has not been achieved, the 2018 Act requires appointing persons and public authorities to take any other steps they consider appropriate, with a view to achieving the gender representation objective by 31 December 2022.

The most common steps taken with a view to achieving the gender representation objective, highlighted by appointing persons and public authorities in their reports, were:

- events and communications targeted at women which aimed to demystify the public appointments process
- the uses of role models/current women board members to speak about their experiences, and
- board shadowing and mentoring opportunities for women.

This complements other work undertaken to diversify public appointments, including:

- Outreach and engagement, mentoring and shadowing - these have all proved successful in encouraging people to apply for public appointments.
- An ongoing improvement programme, currently underway, to drive forward the Scottish Government's commitment to having Boards more reflective of Scottish society.
- The creation of a 'Future Chair' mentoring scheme, which is targeted at groups currently under-represented at Chair level.
- Guidance on succession planning, together with a toolkit of resources to help public bodies reach out to, and develop, potential new Board members.
- The provision of a programme of workshops to support people from protected groups to complete high quality applications and prepare for interviews.
- Work to raise the profile of public appointments as an attractive and accessible way to public life.
- Working in partnership with Inclusion Scotland to offer six people with a disability the opportunity to shadow a public body Board for a year. Women are not a homogenous group, some women are disabled, so targeted opportunities like this one also have the potential to enhance gender representation.

- The implementation of a corporate induction for new members to support them into their roles: encouraging them to feel part of Scotland's public service leadership cohort, reinforcing their role in delivering Ministerial priorities, and encouraging peer support and networking.
- The organisation of peer-learning and networking opportunities for Chairs to help them to create a Boardroom culture that harnesses the benefits of Board diversity and gets the best from the new members.

Some examples of steps taken to achieve the gender representation objective include, but are not limited to:

- The Crofting Commission: The Commission has taken a variety of pro-active steps since May 2020, including setting up a Short-Term Working Group to encourage women to apply for appointed posts and also to come forward for election to the Board of the Commission in 2022. The Commission also circulated a questionnaire to gauge women's views.
- Napier University: Applications from women were encouraged through the roles being widely advertised using a variety of channels including use of the specialist board role advertising sites [Women on Boards](#) and [Changing the Chemistry](#); and a specialist board search consultancy was engaged during the process with a brief to identify and bring forward a more diverse range of candidates, which was achieved.

The Scottish Government would urge public bodies to continue to take steps to achieving the gender representation objective by December 2022.

# Terminology used in the 2018 Act

This section explains some of the key terms and concepts in the 2018 Act. Further information on this is available in the Scottish Government's Gender Representation on Public Boards (Scotland) Act 2018 Statutory Guidance. The helpful links section of this report provides a web link to the guidance.

## Public board

The gender representation objective applies in relation to the non-executive members of public boards. The 2018 Act defines a public board as:

- if the public authority is a company, the directors;
- if the public authority has a statutory board or other equivalent statutory management body, that board or body;
- in relation to any other public authority, the membership of the authority.

## Non-Executive Board member

A Non-Executive member as a position on an authority's public board that is not an excluded position and is not held by an employee of the authority. "Excluded position" is defined by reference to schedule 1 of the 2018 Act which lists the particular excluded positions in relation to each authority.

## The gender representation objective

Section 1 of the 2018 Act sets a "gender representation objective" that a board has 50% of non-executive members who are women. Where a board has an odd number of non-executive members, the objective applies as if the board has one fewer non-executive member. If a board has 12 non-executive members, the gender representative objective is met where the board has 6 non-executive members who are women.

If a board has 9 non-executive members, the gender representation objective applies as if the board has one fewer non-executive member – in other words as if the board has 8 non-executive members. Consequently, the gender representation objective is met where the board has 4 non-executive members who are women. The gender representation objective is not a cap. The 2018 Act does not require board non-executive membership to be precisely 50:50 men and women and it does not prevent a board having more than 50% of non-executive members who are women.



A board with more than 50% of non-executive members who are women has met the objective.

## Public Authority and Appointing Person

The 2018 Act places duties on public authorities and appointing persons to take action to achieve the gender representation objective. For the purposes of the 2018 Act, “public authority” means an authority listed, or within a description listed, in schedule 1.

The “appointing person” is the person who has the function of appointing a Non-Executive member of a public board. In this context, the word “person” may mean the organisation or position which makes the appointment. For many public authorities, the appointing person is “the Scottish Ministers”.

# Helpful links

[Commissioner for Ethical Standards in Public Life website](#)

[Scottish Government's Gender Representation on Public Boards \(Scotland\) Act 2018 Statutory Guidance](#)

[The Gender Representation on Public Boards \(Scotland\) Act 2018 \(Reports\) Regulations 2020](#)



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