



Public Authorities

26 April 2018

THE GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) ACT 2018

I am writing to provide you with an update on the implementation of the Gender Representation on Public Boards (Scotland) Act 2018¹ which received Royal Assent on 9 March.

Requirements

The purpose of the legislation is to improve the representation of women on the boards of Scottish public authorities. The Gender Representation on Public Boards (Scotland) Act 2018 sets a "gender representation objective" for the non-executive member component of public boards. The objective is that 50% of non-executive members are women.

Only non-executive members appointed to public boards are covered by the Act. Schedule 1 of the Act lists the public authorities covered and specifies where some members are excluded from the Act's provisions.

The Act places duties on public authorities, appointing persons and Scottish Ministers in connection to their role in achieving the gender representation objective.

Appointments must be made on merit. But where there are two or more equally qualified candidates for an appointment, at least one of whom is a woman, the appointing person must appoint a candidate who is a woman if doing so will result in achieving or making progress towards the gender representation objective. There is however scope to consider whether the appointment of a person who is not a women is justified on the basis of a characteristic or situation particular to that candidate and to give preference to that candidate.

¹ [Gender Representation on Public Boards \(Scotland\) Act 2018](#)



In addition, public authorities and appointing persons must take such action as they consider appropriate to encourage applications from women. And, where the gender representation objective has not been achieved, must take such additional steps as they consider appropriate.

An important element of the legislation is a requirement to report on progress. The purpose of reporting is to highlight action that is being taken and ensure transparency. Reporting duties are placed on public authorities, appointing persons and Scottish Ministers in relation to their functions under the Act. Scottish Ministers are under an additional duty to lay a report before the Scottish Parliament on the operation of the Act.

To support the implementation of the Act, Scottish Ministers must publish guidance and those with duties under the Act must have regard to the guidance.

Proposed Implementation Timetable

Although the Act has received Royal Assent the new duties in relation to the gender representation objective are not yet in force. They will be brought into force in due course at a date (or dates) to be determined by Scottish Ministers. However, public authorities may wish to take steps now with a view to achieving the Act's objective, for example by taking steps to encourage women to apply for non-executive member positions which are being filled before the Act is brought into force.

The new duties will be brought into force when Scottish Ministers have published guidance and made regulations setting out the reporting arrangements. At this stage, the anticipated timetable is as follows:

Royal Assent	9 March 2018
Development and drafting of guidance and of regulations setting out reporting arrangements.	Spring 2018
Consultation on draft guidance and draft regulations	Summer/Autumn 2018
Publish final guidance	Around the end of 2018
Make the reporting regulations	Around the end of 2018
The duties on public authorities to meet the gender representation objective come into force.	Spring 2019

The proposed period of consultation will allow public authorities subject to the new requirements to comment on draft guidance and on draft regulations setting out the arrangements for reporting.

Public Sector Equality Duty

The Equality Act 2010 places a duty on public authorities to have due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations. To enable Scottish public authorities to do this more effectively the Scottish Ministers made "specific duties" setting out a framework of activities and reporting obligations. Most, but not all, of the public authorities covered by the Gender Representation on Public Boards (Scotland) Act 2018 are also covered by these specific duties.

It is the intention to avoid duplication as far as possible. The relationship between reporting under the Gender Representation on Public Boards (Scotland) Act 2018 and reporting under the specific duties will be explored further through the proposed consultation.

Next Steps

Consultation on the guidance and the reporting arrangements will take place later this year. The Scottish Government will write to you again when this happens.

In the meantime, please feel free to contact Lesley.Cunningham@gov.scot or Graeme.Bryce@gov.scot if you require any further information or clarification on any wider aspects of the implementation of the Act.

Yours faithfully

Gender Equality Team
Equality, Human Rights and Third Sector Division
Scottish Government

