



SPT Responses to Scottish Government Consultations on Gender Representation on Public Boards and the Councillor Code of Conduct

Date of meeting 31 March 2017

Date of report 17 March 2017

Report by Assistant Chief Executive (Business Support)

1. Object of report

To recommend approval of SPT draft responses to the following consultations:

- A Scottish Government consultation on the Draft Gender Representation on Public Boards (Scotland) Bill¹. SPT submitted a draft response, subject to Partnership approval, by the closing date of 17 March 2017. This is attached at Appendix 1.
- A Scottish Government consultation on the Councillor Code of Conduct - possible amendments of provisions on conflicts of interest². SPT submitted a draft response, subject to Partnership approval, by the closing of 20 March 2017. This is attached at Appendix 2.

2. Background

Draft Gender Representation on Public Boards (Scotland) Bill

2.1 The consultation sought views on the practical application of the Scottish Government's draft Gender Representation on Public Boards (Scotland) Bill provisions. It also offered consultees an opportunity to give views on how the Bill might be strengthened. The purpose of the Gender Representation on Public Boards (Scotland) Bill is to redress gender imbalances on the boards of public bodies.

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 consultation does not seek views on or set out in detail the arguments in favour of or against legislation in principle rather it is seeking views on the practical application of the Bill's provisions and to elicit views on how the Bill might be strengthened.

Only bodies that are "Scottish public authorities with mixed functions or no reserved functions" are covered by the Bill and only non-executive members appointed to public boards are covered, i.e. elected membership is not covered.

The objective of the Bill is that a public board has:

¹ Details of the consultation can be found at: <https://consult.scotland.gov.uk/equality-unit/draft-gender-representation-on-public-boards/>

² Details of the consultation can be found at: <http://www.gov.scot/Resource/0051/00511362.pdf>

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- 50% of non-executive members who are female or who identify as female; and
- 50% of non-executive members who are male or who identify as male.

The draft Bill also places a duty on all appointing persons and listed public authorities to take steps, as appropriate, to encourage persons of the under-represented gender to apply to become a member of a public body.

Regional Transport Partnerships are not listed under Schedule 1 of the draft Bill, which lists the public authorities to which the Bill applies.

SPT has between seven and nine (currently nine) appointed members (in addition to twenty elected members) at any one time. SPT actively considers gender balance and engagement as part of the recruitment process for appointed members. In doing so SPT has already taken steps to address gender balance and will continue to do so.

Members should also note that SPT, as a listed public authority under the terms of the Scottish Government's Equality regulations, is required, in reporting on its Equality outcomes due for publication in on 30 April 2017, to set out what action it intends to take to in future to promote greater diversity of Board membership. As this is the first time public bodies are reporting on this area of work it is expected that the information given will be a sign-posting of future activity. The Scottish Government has produced new guidance to assist public bodies in meeting this requirement³ This requirement is referred to in the 'Meeting the Public Sector Equality Duty' report being considered at this Partnership meeting.

The Councillors' Code of Conduct - Consultation on possible amendments of provisions relating to conflicts of interest

Section 1 of the Ethical Standards in Public Life etc (Scotland) Act 2000 requires the Scottish Ministers to issue a Code of Conduct for councillors. The current version of the Code was issued in 2010⁴.

Some examples of quasi-judicial or regulatory matters are applications that call before the Planning Committee of a Council, or the Licensing Board. An example of the effect of the proposed change would be that an elected member who is both a member of SPT and a member of the Licensing Board for his/her Council would not be automatically excluded from sitting on and taking part in a discussion about a licensing application to the Licensing Board, where SPT has an interest in that application, solely by virtue of being a member of SPT.

The consultation paper suggests that this could be done by extending the current specific exclusion in the Code for councillor members of a public body, so that it would include quasi-judicial or regulatory matters in which that body had an interest. This would enable councillor members of a public body to take part in their council's consideration of and decision-taking on such matters, although they would still need to declare their interest as a member of that public body. However, the Scottish Government is open to considering other options.

³ <http://www.gov.scot/Topics/Government/public-bodies/BoardChairs>

⁴ <http://www.standardscommissionscotland.org.uk/uploads/files/14424808530109379>.

3. Outline of proposals

Draft Gender Representation on Public Boards (Scotland) Bill

3.1 The draft response is attached at Appendix 1. The key points of the response include:

- Note that RTPs are not currently included as listed authorities under the proposed Bill but that this may be subject to change.
- SPT is concerned as to how this legislation would be enforced against public authorities that have acted in good faith in widely publicising vacancies. It must be noted that individuals have to choose to apply to be members of SPT's Partnership and therefore there may be limits to what a public body can achieve if gender balanced applications are not forthcoming.

Councillor Code of Conduct Amendment

3.2 SPT's draft response is attached at Appendix 2. The key points of the response include:

- SPT's officers provide corporate responses to planning matters in line with the Regional Transport Strategy and SPT governance arrangements;
- The amended Code should improve transparency over decision-making to avoid any conflict of interest arising.
- SPT welcomes in principle the suggested approach that Councillors nominated by their councils to be members of an outside body, such as SPT, should not be prevented from taking part in their council's discussion of a matter of a quasi-judicial or regulatory nature in which that outside body has an interest solely because of their membership of that outside body.
- However, where there is a clear potential conflict of interest, the Code should make it explicit that the Councillor Member has a duty to absent themselves from the decision making process; and
- It is considered that the extension of the specific exclusion should not apply to allow a Councillor to take part in quasi-judicial or regulatory discussions where the outside body on which he/she sits also has an active role in those proceedings, e.g. if SPT were applying to a Council for a consent or approval, or if SPT were making an objection to an application.

4. Conclusions

The Scottish Government has undertaken consultation in relation to the Draft Gender Representation on Public Boards (Scotland) Bill and on amendments to the Councillors' Code of Conduct. The former will have implications for SPT's appointment of Appointed Members and the latter for SPT's Councillor Members. SPT has submitted draft responses to each consultation, subject to Partnership approval, attached at appendices 1 and 2. In relation to the former, SPT's draft response seeks to promote greater Board diversity. In relation to the latter, SPT's draft response seeks to avoid potential conflicts of interest and enhance sound public sector decision making.

Officers will keep the Partnership informed of progress in relation to these two consultations and any emerging changes impacting on the Board and its members.

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5. Committee action

The Committee is recommended to approve the responses at Appendices 1 and 2 of this report.

6. Consequences

Policy consequences	<i>In line with the RTS.</i>
Legal consequences	<i>None directly but amendments governing Gender Equality on Public Boards and the Councillors' Code of Conduct are likely in the near future.</i>
Financial consequences	<i>None at present.</i>
Personnel consequences	<i>None at present.</i>
Equalities consequences	<i>In line with SPT's Equality policy</i>
Risk consequences	<i>None at present.</i>

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For further information, please contact Mary Frances O'Neill, Senior Legal Adviser, on 0141 333 3763 or John Binning, Principal Policy Officer, on 0141 333 3248.

Appendix 1

17 March 2017

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Dear Sirs

A Scottish Government Consultation on the Draft Gender Representation on Public Boards (Scotland) Bill

Thank you for the opportunity to respond to the above consultation.

SPT is the Regional Transport Partnership (RTP) for the west of Scotland and is covered by the Public Sector Equality Duty under the Equality Act 2010, including both the General Equality Duty and Specific Duties. SPT would offer the following comments in relation to the proposed Bill.

SPT notes that Schedule 1 of the draft Bill omits RTPs although we understand this may be subject to change.

SPT has between seven and nine (currently nine) appointed members (in addition to twenty elected members) at any one time. SPT actively considers gender balance and engagement as part of the recruitment process for appointed members. In doing so SPT has taken steps to address gender balance and will continue to do so.

SPT is aware that, as a listed public authority under the terms of the Scottish Government's Equality regulations, it is required to set out what action it intends to take to promote greater diversity of Board membership. However, SPT is concerned as to how this proposed legislation would be enforced against public authorities which have acted in good faith in widely publicising vacancies. Individuals choose to apply to be members of SPT's Partnership and therefore there may be limits to what a public body can achieve if gender balanced applications are not forthcoming.

Finally, SPT also notes that there is currently no provision in the Bill for people who identify as a non-binary gender and consideration should be given to amending this in a redrafted Bill.

I hope these comments are helpful.

Yours sincerely

Valerie Davidson
Assistant Chief Executive (Business Support)

Appendix 2

Scottish Government Consultation

Councillor Code of Conduct Amendment

SPT Response

Question 1.

Do you agree or disagree that the Councillors' Code of Conduct be amended so that councillors who have been nominated or appointed by their councils to membership of a Regional Transport Partnership can take part in discussion of decision-taking on matters of a quasi-judicial or regulatory nature in which that body has an interest?

Agree.

Question 2.

If you agree – How should the amendment be worded?

SPT welcomes in principle the suggested approach that Councillors nominated by their councils to be members of an outside body, such as SPT, should not be automatically prevented from taking part in their council's discussion of a matter of a quasi-judicial or regulatory nature in which that outside body has an interest solely because of their membership of that outside body.

It is considered that the extension of the specific exclusion should not, however, apply to allow a Councillor to take part in quasi-judicial or regulatory discussions where the outside body on which he/she sits also has an active role in those proceedings, e.g. if SPT were applying to a Council for a consent or approval, or if SPT were making an objection to an application.

Where there is a clear potential conflict of interest, the Code should make it explicit that the Councillor Member has a duty to absent themselves from the decision making process.

Question 3.

If you disagree please explain why you do so.

N/A

Question 4.

If you agree - should that amendment apply to all public bodies, not just RTPs?

Yes, subject to the same safeguards where the outside body has an active role in the quasi-judicial/regulatory matter being discussed, in which case it could be perceived that an elected member was exercising two contrary functions, e.g. as applicant/objector and as decision-maker on the application.

Appendix 2

Scottish Government Consultation

Councillor Code of Conduct Amendment

SPT Response

Question 5.

If you have answered no please explain why.

N/A

We would also ask if respondents have any other comments or suggestions about the provisions of the Code on declarations of interest as regards councillors who are also members of other bodies.

N/A