

Gender Representation on Public Boards (Scotland) Act 2018

2018 asp 4

Explanatory Notes have been produced to assist in the
understanding of this Act and are available separately

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Gender Representation on Public Boards (Scotland) Act 2018 2018 asp 4

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 30th January 2018 and received Royal Assent on 9th March 2018

An Act of the Scottish Parliament to make provision about gender representation on boards of Scottish public authorities.

1 Gender representation objective

- (1) The “gender representation objective” for a public board is that it has 50% of non-executive members who are women.
- (2) Where a public board has an odd number of non-executive members, the percentage mentioned in subsection (1) applies as if the board had one fewer non-executive member.

2 Key definitions

In this Act—

“appointing person” means, in relation to the function of appointing a non-executive member of a public board, a person who has that function,

“excluded position”, in relation to a public authority, means a position mentioned in the second column of the table in schedule 1 which corresponds with the public authority mentioned in the first column,

“non-executive member”, in relation to a public authority, means a position on its public board—

- (a) that is not an excluded position,
- (b) that is not held by an employee of the authority,

“public authority” means an authority listed, or within a description listed, in the first column of the table in schedule 1,

“public board” means—

- (a) if the public authority is a company, the directors,

- (b) if the public authority has a statutory board or other equivalent statutory management body, that board or body,
 - (c) in relation to any other public authority, the membership of the authority,
- “woman” includes a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female.

3 Duty when appointing non-executive members

- (1) Subsection (2) applies where there is—
 - (a) a vacancy in a position of non-executive member of a public board,
 - (b) more than one candidate for the position,
 - (c) at least one candidate who is a woman, and
 - (d) at least one candidate who is not a woman.
- (2) The appointing person must, in making the appointment to fill the vacancy, act in accordance with section 4 with a view to achieving (or making progress towards achieving) the gender representation objective immediately after the appointment takes effect.
- (3) When an appointing person is making more than one appointment—
 - (a) both or all of those appointments must be taken into account in identifying the number of non-executive members, and
 - (b) the appointing person must act with a view to achieving (or making progress towards achieving) the gender representation objective immediately after all of those appointments have taken effect.

4 Consideration of candidates

- (1) The appointing person must determine whether any particular candidate is best qualified for the appointment.
- (2) If no particular candidate is best qualified for the appointment, the appointing person must identify candidates it considers are equally qualified.
- (3) Subject to subsection (4), the appointing person must give preference to a candidate identified under subsection (2) who is a woman if appointing that candidate will result in the board achieving (or making progress towards achieving) the gender representation objective.
- (4) The appointing person—
 - (a) must consider whether the appointment of a candidate identified under subsection (2) who is not a woman is justified on the basis of a characteristic or situation particular to that candidate, and
 - (b) if so, may give preference to that candidate.
- (5) In subsection (4), “characteristic” includes a protected characteristic (within the meaning of section 4 of the Equality Act 2010).

5 Encouragement of applications by women

- (1) An appointing person for a public board must take such steps as it considers appropriate to encourage women to apply to become non-executive members of the public board.
- (2) A public authority to which a public board relates must take such steps as it considers appropriate to encourage women to apply to become non-executive members of the public board.
- (3) For the avoidance of doubt, nothing in subsections (1) and (2) prevents an appointing person or a public authority from taking such steps as it considers appropriate to encourage persons with other protected characteristics (within the meaning of section 4 of the Equality Act 2010) to apply to become non-executive members of the public board.

6 Duty to take steps towards achieving objective

- (1) This section applies whenever the gender representation objective is not achieved in relation to a public board.
- (2) An appointing person for the public board must, in addition to anything done under sections 3 to 5, take such other steps as it considers appropriate with a view to achieving the gender representation objective by 31 December 2022.
- (3) The public authority to which the public board relates must, in addition to anything done under section 5(2), take such other steps as it considers appropriate with a view to achieving the gender representation objective by 31 December 2022.

7 Guidance on operation of Act

- (1) The Scottish Ministers must publish guidance on the operation of this Act.
- (2) The guidance must in particular cover—
 - (a) an appointing person's functions in—
 - (i) appointing non-executive members under sections 3 and 4,
 - (ii) encouraging applications by women under section 5(1),
 - (iii) taking any steps under section 6(2),
 - (iv) reporting under section 8(4),
 - (b) a public authority's functions in—
 - (i) encouraging applications by women under section 5(2),
 - (ii) taking any steps under section 6(3),
 - (iii) reporting under section 8(5).
- (3) An appointing person must have regard to the guidance in carrying out its functions under this Act.
- (4) A public authority must have regard to the guidance in carrying out its functions under this Act.

8 Reports on operation of Act

- (1) The Scottish Ministers must lay before the Scottish Parliament reports on the operation of this Act in accordance with provision made in regulations under subsection (6).

- (2) Regulations under subsection (6) must ensure that reports under subsection (1) are laid before the Scottish Parliament at intervals of no more than two years.
- (3) The Scottish Ministers must publish reports on the carrying out of their functions under sections 3 to 6 in accordance with provision made in regulations under subsection (6).
- (4) An appointing person (other than the Scottish Ministers) specified in regulations under subsection (6) must publish reports on the carrying out of its functions under sections 3 to 6 in accordance with provision made in regulations under subsection (6).
- (5) A public authority specified in regulations under subsection (6) must publish reports on the carrying out of its functions under sections 5 and 6 in accordance with provision made in regulations under subsection (6).
- (6) The Scottish Ministers may by regulations—
 - (a) specify appointing persons for the purposes of subsection (4),
 - (b) specify public authorities for the purposes of subsection (5),
 - (c) make further provision about reports mentioned in subsections (1) to (5).

9 Power to modify schedule 1

The Scottish Ministers may by regulations modify schedule 1 so as to add an entry, vary the description of an entry or remove an entry.

10 Application of Act to certain public authorities

Schedule 2 makes provision about the application of this Act in relation to certain public authorities.

11 Equality Act 2010

- (1) Sections 158 and 159 of the Equality Act 2010 (positive action) do not apply to any action taken under this Act.
- (2) Part 5 of the Equality Act 2010 (work) does not prohibit any action taken under this Act.

12 Regulations

- (1) Regulations under sections 8 and 9 may—
 - (a) include incidental, supplementary, consequential, transitional, transitory or saving provision,
 - (b) make different provision for different purposes.
- (2) Regulations under section 9 may modify this Act.
- (3) Regulations under section 8 are subject to the negative procedure.
- (4) Regulations under section 9 are subject to the affirmative procedure.

13 Commencement

- (1) This section and section 14 come into force on the day after Royal Assent.
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

- (3) Regulations under this section may—
 - (a) include transitional, transitory or saving provision,
 - (b) make different provision for different purposes.

14 Short title

The short title of this Act is the Gender Representation on Public Boards (Scotland) Act 2018.

SCHEDULE 1
(introduced by section 2)

PUBLIC AUTHORITIES

<i>Authority</i>	<i>Excluded position</i>
Accounts Commission for Scotland	
Architecture and Design Scotland (company number SC267870)	
Board of Trustees for the National Galleries of Scotland	
Board of Trustees of the National Museums of Scotland	
Board of Trustees of the Royal Botanic Garden, Edinburgh	
Bòrd na Gàidhlig	
British Waterways Board	
Cairngorms National Park Authority	Members elected under article 5(2) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 (S.S.I. 2003/1) Members nominated under article 5(4) of that Order
Caledonian Maritime Assets Limited (company number SC001854)	
Children's Hearings Scotland	
A college of further education other than a regional college (within the meanings given to those terms by the Further and Higher Education (Scotland) Act 1992)	All members other than those appointed under paragraph 3A(2)(a) and (f) of schedule 2 of that Act
A regional college (within the meaning given by the Further and Higher Education (Scotland) Act 1992)	All members other than those appointed under paragraph 3(2)(a) and (f) of schedule 2 of that Act
Common Services Agency for the Scottish Health Service	

<i>Authority</i>	<i>Excluded position</i>
Community Justice Scotland	
Creative Scotland	
Crofting Commission	Members elected by virtue of paragraph 7 of schedule 1 of the Crofting Reform (Scotland) Act 2010
Crown Estate Scotland (Interim Management)	
David MacBrayne Limited (company number SC015304)	
Food Standards Scotland	
A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978	Councillors appointed under paragraph 2(1)(b) of schedule 1 of that Act Members of Health Boards mentioned in regulation 3 of the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (S.S.I. 2001/302) who hold a post in a university with a medical or dental school Members appointed only by virtue of being nominated for membership
Healthcare Improvement Scotland	The member mentioned in paragraph 2(1)(b) of schedule 5A of the National Health Service (Scotland) Act 1978 (the person appointed to chair Social Care and Social Work Improvement Scotland)
A higher education institution (within the meaning given by the Higher Education Governance (Scotland) Act 2016)	All members other than those appointed by the governing body (which has the same meaning as in Part II of the Further and Higher Education (Scotland) Act 1992) (for this purpose a member is not appointed by the governing body if that member is appointed only by virtue of being the winning candidate in an election for membership or by virtue of being nominated for membership by another person)
Highlands and Islands Airports Limited (company number SC097647)	

<i>Authority</i>	<i>Excluded position</i>
Highlands and Islands Enterprise	
Historic Environment Scotland	
ILF Scotland (company number SC500075)	
Judicial Appointments Board for Scotland	
Local Government Boundary Commission for Scotland	
Loch Lomond and the Trossachs National Park Authority	Members elected under article 5(2) of the Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 (S.S.I. 2002/201) Members nominated under article 5(4) of that Order
Mental Welfare Commission for Scotland	
Mobility and Access Committee for Scotland	
National Confidential Forum	
National Library of Scotland	The member mentioned in paragraph 2(2) of schedule 1 of the National Library of Scotland Act 2012 (the member who is selected from persons nominated by the Dean of the Faculty of Advocates)
Newbattle Abbey College (company number SC262968)	A director nominated by the University of Aberdeen, the University of Edinburgh, the University of Glasgow or the University of St. Andrews A director who is also a member of the college
Quality Meat Scotland	
Regional Board for Glasgow Colleges	All members other than those appointed under paragraph 3(2)(a) and (f) of schedule 2B of the Further and Higher Education (Scotland) Act 2005
A regional Transport Partnership created under section 1(1) of the Transport (Scotland) Act 2005	Councillor members (mentioned in section 1(2)(b) of that Act)

<i>Authority</i>	<i>Excluded position</i>
	Members appointed only by virtue of being nominated for membership by a Health Board mentioned in section 6(1)(a)(ii) of that Act
	A member appointed only by virtue of being nominated for membership by Highlands and Islands Enterprise
	A member appointed only by virtue of being nominated for membership by Scottish Enterprise
Revenue Scotland	
Risk Management Authority	
Sabhal Mòr Ostaig (company number SC361752)	A director who is also a student of Sabhal Mòr Ostaig
Scottish Advisory Committee on Distinction Awards	All members other than the Chair, the Medical Director and the lay representatives
Scottish Agricultural Wages Board	Persons nominated or elected under paragraph 1(a) of schedule 1 of the Agricultural Wages (Scotland) Act 1949 (persons representing employers and workers)
Scottish Charity Regulator	
Scottish Children's Reporter Administration	
Scottish Commission for Human Rights	The member appointed to chair the commission under paragraph 1(1)(a) of the Scottish Commission for Human Rights Act 2006
Scottish Courts and Tribunals Service	The Lord President The Lord Justice Clerk The President of the Scottish Tribunals
Scottish Criminal Cases Review Commission	
Scottish Enterprise	
Scottish Environment Protection Agency	

<i>Authority</i>	<i>Excluded position</i>
Scottish Fire and Rescue Service	
Scottish Fiscal Commission	
Scottish Further and Higher Education Funding Council	
Scottish Futures Trust Limited (company number SC348382)	
Scottish Housing Regulator	
Scottish Land Commission	
Scottish Legal Aid Board	
Scottish Legal Complaints Commission	
Scottish Natural Heritage	
Scottish Police Authority	
Scottish Qualifications Authority	
Scottish Social Services Council	The member mentioned in regulation 2(3) of the Scottish Social Services Council (Appointments, Procedure and Access to the Register) Regulations 2001 (S.S.I. 2001/303) (the person who is the chair or a member of Social Care and Social Work Improvement Scotland)
Scottish Sports Council	
Scottish Water	
Skills Development Scotland Co. Limited (company number SC202659)	
Social Care and Social Work Improvement Scotland	The member mentioned in paragraph 2(1)(b) of schedule 11 of the Public Services Reform (Scotland) Act 2010 (the person appointed to chair Healthcare Improvement Scotland)
	The member mentioned in paragraph 2(1)(c) of that schedule (the person appointed as convener of the Scottish Social Services Council)

<i>Authority</i>	<i>Excluded position</i>
A Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978	Councillors appointed under paragraph 2(1)(b) of schedule 1 of that Act Members appointed only by virtue of being nominated for membership
Standards Commission for Scotland	
VisitScotland	
Water Industry Commission for Scotland	
West Highland College UHI (company number SC153921)	A director who is also a student of the college

SCHEDULE 2
(introduced by section 10)

APPLICATION OF ACT TO CERTAIN PUBLIC AUTHORITIES

Judicial Appointments Board for Scotland

- 1 When the Lord President is making an appointment of a judicial member under paragraph 2(a) of schedule 1 of the Judiciary and Courts (Scotland) Act 2008, the Lord President must act with a view to achieving the gender representation objective in relation to the judicial members only.
- 2 When the Scottish Ministers are making an appointment of a legal member or a lay member under paragraph 2(b) or (c) of that schedule, they must act with a view to achieving the gender representation objective in relation to the legal members and lay members only (taken together).

Regional Board for Glasgow Colleges

- 3 When the Scottish Ministers are making an appointment under paragraph 3(2)(a) of schedule 2B of the Further and Higher Education (Scotland) Act 2005 (“schedule 2B”) they may, for the purpose of identifying the number of non-executive members, disregard a vacancy in a position mentioned in paragraph 3(2)(f) of schedule 2B.
- 4 When the board mentioned in paragraph 3(2)(f) of schedule 2B is making an appointment under that paragraph, the board may, for the purpose of identifying the number of non-executive members, disregard a vacancy in a position mentioned in paragraph 3(2)(a) of schedule 2B.

Regional colleges

- 5 When the Scottish Ministers are making an appointment under paragraph 3(2)(a) of schedule 2 of the Further and Higher Education (Scotland) Act 1992 (“schedule 2”) they may, for the purpose of identifying the number of non-executive members, disregard a vacancy in a position mentioned in paragraph 3(2)(f) of schedule 2.

- 6 When the board mentioned in paragraph 3(2)(f) of schedule 2 is making an appointment under that paragraph, the board may, for the purpose of identifying the number of non-executive members, disregard a vacancy in a position mentioned in paragraph 3(2)(a) of schedule 2.

Scottish Criminal Cases Review Commission

- 7 For the purposes of the application of this Act in relation to appointments to the Scottish Criminal Cases Review Commission—
- (a) the Scottish Ministers, in making a recommendation under section 194A(4) of the Criminal Procedure (Scotland) Act 1995, are to be treated as the appointing person (instead of Her Majesty), and
 - (b) references in this Act to the making of an appointment are to be construed as references to the making of a recommendation under that section.