



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.

VALID FROM 29/05/2020

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.

VALID FROM 01/12/2018

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,

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“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.

VALID FROM 29/05/2020

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.

VALID FROM 29/05/2020

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

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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).

VALID FROM 29/05/2020

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.

VALID FROM 29/05/2020

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.

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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.

VALID FROM 01/12/2018

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).

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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.

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10 Application of Act to certain public authorities

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

VALID FROM 29/05/2020

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.

VALID FROM 01/12/2018

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—

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- (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.

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SCHEDULE 1

(introduced by section 2)

PUBLIC AUTHORITIES

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VALID FROM 29/05/2020

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.

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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.

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