



Gender Representation on Public Boards (Scotland) Act 2018

2018 asp 4

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.