

# **GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) ACT 2018**

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## **EXPLANATORY NOTES**

### **THE ACT**

#### ***Section 2 – Key definitions***

5. **Section 2** defines the Act’s key terms:
- “appointing person” means, in relation to the function of appointing a non-executive member of a public board, a person who has that function. For example, the Scottish Ministers;
  - “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. Where a position is an “excluded position”, it is not a “non-executive member” position as defined in the Act. As a result, “excluded positions” are discounted for the purposes of calculating the percentage of non-executive members who are women under section 1 and no action is required under the Act in relation to “excluded positions”. Non-executive members who are appointed by virtue of having been nominated or by virtue of holding an elected position have been excluded;
  - “non-executive member”, in relation to a public authority, means a position on its public board that is:
    - o not an excluded position;
    - o not held by an employee of the authority, i.e. an executive member;
  - “public authority” means an authority listed, or within the description listed, in the first column of the table in schedule 1;
  - “public board” means:
    - o if the public authority is a company, the directors;
    - o if the public authority has a statutory board or other equivalent statutory management body, that board or body;
    - o 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. This means that it is not necessary for a trans woman to have a Gender Recognition Certificate to be included as a woman for the purposes of the Act, provided they –
    - o have the protected characteristic of gender reassignment,

*These notes relate to the Gender Representation on Public Boards  
(Scotland) Act 2018 (asp 4) which received Royal Assent on 9 March 2018*

- o are living as a woman, and

- o are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of becoming female.

A trans man without a Gender Recognition Certificate would not be included as a woman for the purposes of the Act if they -

- o are not living as a woman, or

- o are proposing to undergo, are undergoing or have undergone a process (or part of a process) for the purpose of becoming male.