

Partial Business and Regulatory Impact Assessment

Title of Proposal - The Gender Representation on Public Boards (Scotland) Act 2018 (Reports) Regulations 2020

Purpose and intended effect

The Gender Representation on Public Boards (Scotland) Act 2018 (Reports) Regulations 2020, hereafter referred to as 'the Regulations' set out the reporting arrangements under the Gender Representation on Public Boards (Scotland) Act 2018, hereafter referred to as "the Act".

The Act is intended to redress the under representation of women on Public Boards in Scotland, and to ensure that Boards aim to have 50% non-executive directors who are women or as close to 50% as possible in the event that a Board has an odd number of non-executive directors.

Scottish Ministers' commitment to introduce legislation on gender balance on public boards follows the transfer of competence through the Scotland Act 2016, to the Scottish Parliament to legislate on equal opportunities in relation to non-executive director appointments to the boards of Scottish public authorities.

Improving women's representation is part of the Scottish Government's overarching commitment to realising women's equality, and supports the Government's Purpose "*To focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth*", and contributing to our National Outcomes:

- We have tackled the significant inequalities in Scottish society;
- Our public services are high quality, continually improving, efficient and responsive to local people's needs

Objective and Rationale for Government Intervention

In order to measure whether Public Boards subject to the Act have achieved the gender representation objective of 50% of non-executive board members who are women, a reporting structure must be put in place. This instrument will bring into force the reporting arrangements set out in section 8 of the Act. These are as follows:

- Scottish Ministers must lay reports before the Scottish Parliament on the operation of the Act at intervals of no more than two years
- Scottish Ministers' must report on the carrying out of their functions as an appointing person under the Act
- Appointing persons' other than the Scottish Ministers must report on the carrying out of their functions under the Act
- Public authorities must report on the carrying out of their functions under the Act

Consultation - Within Government - During development of the Regulations officials discussed its policy objectives with the Scottish Government's:

- Public Bodies Unit
- Public Appointments Team
- Public Body Sponsor Teams
- Higher Education Governance Team
- Governance, Workforce and College Policy Team
- Regional Transport Partnership Policy Team

Their input supported the formulation of the policy proposals by providing detailed information on the governance structures and board appointment processes of the organisations that they support.

Public Consultation – The Scottish Government launched a consultation on the draft Regulations and implementation of the Act which opened on 13 May 2019 and closed on 4 August 2019. The consultation sought views on two elements of implementation of the Act:

- Draft Regulations setting out the arrangements for reporting on progress under the Act.
- Draft statutory guidance on the operation of the Act.

An independent analysis was carried out by EKOS consultants, with a final report completed on 18 November 2019.

In total 310 responses were received to the consultation (272 individuals and 38 organisations). It should be noted that much of the feedback focused on concerns raised regarding terminology and definitions used in the Act, rather than issues relating to the content of the Regulations.

There was overall support for the majority of the proposals in the consultation, including:

- The proposed reporting timescales for appointing persons and Scottish Ministers reporting to Parliament
- The proposals for what should be included in the content of the reports from appointing persons and Scottish Ministers.

Less than half of respondents reported that appointing persons and other public authorities should be able to publish their reports on carrying out their functions under the Act within another document if they wish to do so (42%).

Higher levels of support was expressed by organisations, particularly by public sector organisations.

The main feedback from respondents in support of this proposal was that it seemed a sensible approach, and that “*full transparency*” and “*visibility*” of reporting was crucial.

Given these results the weight of evidence suggests support for this proposal, however, additional efforts to ensure accessibility and transparency will be considered.

Reporting costs - As the reporting requirements for public authorities will primarily be met using the existing mechanism of the organisation's Equality Mainstreaming Report or Annual Report, costs will be minimal.

Flexibility of reporting was welcomed, by consultation respondents, including among smaller organisations, where the need for a separate report could be viewed as an *"administrative burden"* or be *"unduly onerous"* (i.e. limited resources). The option to include reporting within another document would allow for a more efficient use of resources and was generally viewed as *"advantageous"*. The following quotes demonstrate this point.

"Being able to integrate the reporting requirements under the Act with other equality reporting requirements will help simplify information gathering and analysis and reduce duplication of effort".

"By reducing the requirement to produce new and distinct corporate documents this arrangement minimises bureaucracy for the public authority. It also reduces the proliferation of documents that members of the public may need to search through in order to find information of this nature".

Option 1 – The Gender Representation on Public Boards (Scotland) Act 2018 (Reports) Regulations 2020

Sectors and groups affected - Public authorities listed in schedule 1 of the Act.

Benefits identified - Evidence indicates that diversity in the boardroom helps organisations to perform better, because:

- The organisation is recruiting from the widest possible talent pool;
- There is greater understanding of customer, stakeholder and workforce requirements;
- The Board benefits from diverse perspectives;
- The Board exercises more balanced decision making and better risk management;
- It will have an improved organisational reputation

Some of the supporting evidence for diverse boards is as follows:

- **Recent IMF research** looked at 2 million firms in 34 countries in Europe, and found strong evidence that companies with a higher proportion of women on the board, tended to be more profitable;
- A 2007 **McKinsey & Company report "Women Matter"** also found strong evidence that companies with a strong female representation at board and top management level perform better than those without, and that gender-diverse boards have a positive impact on performance;
- A report published by the **Chartered Management Institute** called "A Moral DNA" linked greater diversity at senior management levels to happier and more engaged employees and a more ethical and value based culture;

- A 2015 report published by **Grant Thornton** showed that listed companies in the UK, US and India with at least one women on their board outperformed companies with all-male boards by £430bn in 2014
- In a study of 2,400 businesses from 2005-2011, the Harvard Law School Forum on Corporate Governance and Financial Regulation noted that: *“large-capital companies with women directors outperformed peers with no women directors by 26%; and small to mid-capital companies with women on the board outperformed their peers with all male boards by 17%”*;
- **Catalyst** (2004) when assessing Fortune 500 companies found that those in the top quartile for the number of women in senior management roles had an 18% return on equity and 128% return to shareholders compared to 13% and 95% respectively for companies in the bottom quartile for the number of women in senior management role

Costs – As stated previously, public authorities, who will be subject to the new duties, either did not identify any additional costs associated with the draft Regulations, or did not think additional costs would be significant. Minor costs identified by the bodies included:

- Administrative costs of gathering information, and
- Reporting

Scottish Firms Impact Test – No impact identified.

Competition Assessment - As above

Consumer Assessment - The Scottish Government definition of a consumer is “anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future.”

When considering the impact of policies, the effect on consumers whose circumstances make them more vulnerable should be given particular weight. In general, there will be a need to carry out a more in-depth assessment if the answer to any of the following questions is yes:

- Does the policy affect the quality, availability or price of any goods or services in a market?
- Does the policy affect the essential services market, such as energy or water?
- Does the policy involve storage or increased use of consumer data?
- Does the policy increase opportunities for unscrupulous supplier to target consumers?
- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?
- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

In relation to the policy of these Regulations, the answer is no to all of the above questions.

Test run of business forms - No new forms will be introduced as a result of these Regulations.

Digital Impact Test - In considering the Regulation’s policy objective of measuring the increased representation of women on Public boards we do not foresee any inconsistencies with the increasing shift of economic, social and governmental interactions online.

Legal Aid Impact Test - This Act will not give rise to increased use of legal processes or create new rights or responsibilities or have any possible impacts on the legal aid fund.

Enforcement, sanctions and monitoring - The Regulations will require public authorities to report on progress two-yearly in their Equality Mainstreaming Reports or, if their organisation does not have to produce an Equality Mainstreaming Report, their most relevant corporate document. Currently there are no sanctions attached to non-compliance.

Implementation and delivery plan - How will the proposal be implemented and in what timescale? The commencement date for the Regulations is 29 May 2020. A target for public authorities to achieve the objective of 50% board members who are women has been set as 31 December 2022.

The impact of COVID-19 on the delivery of this timetable cannot be accurately assessed at this time but will be monitored as the situation progresses.

Post-implementation review - no set date for review is planned. The Scottish Government will review the legislation within 10 years.

Summary and recommendation

Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Research detailed above shows that increased Board diversity brings increased performance and productivity for the organisation	Public authorities could experience minimal costs in the areas of Administrative costs of gathering information and reporting.
2	As above	As above

Declaration and publication

Sign-off for BRIA:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Christina McKelvie

Date: 1st April 2020

Minister's name: Christina McKelvie MSP

Minister's title: Minister for Older People and Equalities

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