

POLICY NOTE

THE GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) ACT 2018 (REPORTS) REGULATIONS 2020

SSI 2020/120

The above instrument was made in exercise of the powers conferred by sections 8 and 12(1) of the Gender Representation on Public Boards (Scotland) Act 2018⁽¹⁾ and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

The purpose of this instrument is to set out the reporting arrangements for Scottish Ministers and public authorities under the Gender Representation on Public Boards (Scotland) Act 2018.

Policy Objectives

In order to measure whether Public Boards subject to the Gender Representation on Public Boards (Scotland) Act 2018 have achieved the gender objective of 50% women non-executive board members, a reporting structure must be put in place. This instrument will bring into force the reporting arrangements set out in section 8 of the Gender Representation on Public Boards (Scotland) Act 2018. 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.

The date of the first report should be no later than the end of December 2021.

These reports must provide an overview of the operation of the Act by relevant public authorities listed in schedule 1 of the Act and appointing persons. Appointing persons, in this context, would include the Scottish Ministers.

In producing their reports Scottish Ministers must consider information published by public authorities and appointing persons (again, assuming that this term includes the Scottish Ministers in their role as appointing persons) in their reports under sections 8(3),(4) and 8(5) of the Act.

Scottish Ministers' reports on the carrying out of their functions as appointing persons

Scottish Ministers must publish reports at intervals of not more than 2 years. The date of the first report should be no later than the end of April 2021. Reports must cover Scottish Ministers functions under sections 3-6 of the Act.

In relation to sections 3 and 4 the following is required:

- A statement of whether, at the date of publication of the report, relevant public authorities have achieved the gender representation objective. Relevant public authorities being those in schedule 1 of the Act to which the Scottish Ministers make

(1) 2018 asp 4.

appointments. The statement must provide this information for each relevant authority.

- A statement confirming the number of vacancies for non-executive members during the reporting period.
- A statement confirming for each of those vacancies: how many recruitment competitions were held, how many applications were received, how many applications were from women, whether an appointment was made and if so whether a woman was appointed.

In relation to sections 5 and 6 the information required is:

- Details of activity undertaken by Scottish Ministers to encourage applications from women. This must be provided for each relevant authority.
- Details of any other steps taken with a view to achieving the gender representation objective by 31 December 2022. This must be provided for each relevant authority.

Appointing persons' reports on the carrying out of their functions

Appointing persons must publish reports at intervals of not more than 2 years. The date of the first report should be no later than the end of April 2021. This reporting duty will apply to all appointing persons other than Scottish Ministers. The appointing persons are for colleges – the board of management; and for Universities – the governing body.

Reports must cover appointing persons' functions under sections 3-6 of the Act:

In relation to sections 3 and 4 the following is required:

- A statement of whether, at the date of publication of the report, each public authority has achieved the gender representation objective.
- A statement confirming the number of vacancies for non-executive members during the reporting period for each public authority.
- A statement confirming for each of those vacancies: how many recruitment competitions were held, how many applications were received, how many applications were from women, whether an appointment was made and if so whether a woman was appointed.

In relation to sections 5 and 6 the information required is:

- Details of activity undertaken by appointing persons to encourage applications from women. This must be provided for each authority.
- Details of any other steps taken with a view to achieving the gender representation objective by 31 December 2022. This must be provided for each authority.

Public authorities' reports on the carrying out of their functions

Public Authorities must publish reports at intervals of not more than 2 years. The duty applies to all public authorities listed in schedule 1 of the Act. The date of the first report should be no later than the end of April 2021.

Reports must cover public authorities' functions under sections 5 and 6 of the Act and must include:

- Details of activity undertaken by appointing persons to encourage applications from women. This must be provided for each authority.
- Details of any other steps taken with a view to achieving the gender representation objective by 31 December 2022. This must be provided for each relevant authority.

Reporting Method

Publication of each of the above reports must be in a manner which is accessible to the public and must be in accordance with guidance issued by Scottish Ministers under section 7.

The Scottish Ministers and public bodies may meet the reporting duty by setting their report within other published documents if they wish. This provision is intended to permit the following approaches

- i) publication within reports made under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012;
- ii) a public authority and an appointing person may publish reports on their functions under the Gender Representation on Public Boards (Scotland) Act in a single, joint publication if they choose to do so.

Public authorities and appointing persons must provide Scottish Ministers with electronic copies of reports produced under these Regulations within one week of publication. Arrangements for the process will be set out in guidance. Scottish Ministers must consider this information when producing their report to Parliament in December.

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

A full list of those that responded to the consultation and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website. It includes the Ethical Standards Commissioner, Changing the Chemistry, Scottish Ambulance Service, the Care Inspectorate, Strathclyde Partnership for Transport, Engender, Colleges Scotland, University of Aberdeen, the Equality Network, University of St Andrews National Galleries of Scotland, Wise Women, NHS 24, Woman's Place UK and NHS Greater Glasgow and Clyde.

Impact Assessments

A Business Regulatory Impact Assessment has been completed on this draft SSI and is attached. There are no children's or environmental impact issues.

Financial Effects

A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. As the Regulations relate to Public Bodies the impact of this policy has been measured against the public rather than the private sector. This assessment found that the impact on Public Bodies will be minimal.

Scottish Government
Local Government and Communities Directorate

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