



Law Society
of Scotland



Consultation Response

Implementation of the Gender Representation on Public Boards (Scotland) Act 2018

August 2019



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Equalities Law sub-committee welcomes the opportunity to consider and respond to the Scottish Government's consultation: implementation of the Gender Representation on Public Boards (Scotland) Act 2019. The sub-committee has the following comments to put forward for consideration.

Consultation questions

Question 1: Do you think that public authorities and appointing persons should be required to report on the carrying out of their functions under the Act at intervals of no more than 2 years, with the first reports being published not later than the end of April 2021?

We would recommend that reporting timelines are aligned with those for the reporting obligations under the public sector equality duty. There will be overlap between the bodies subject to both sets of reporting, and it would be helpful for the duties under each set of regulations to complement each other.

Question 2: Do you think that Scottish Ministers should report to the Scottish Parliament on the operation of the Act at intervals of not more than 2 years, with the first report being laid before Parliament not later than the end of December 2021?

We refer to our response to question 1, above, and note that aligning reporting obligations with existing frameworks would be helpful.

Question 3: Do you think that appointing persons should include within their reports a statement containing the following 3 elements:

- 1. Stating whether the gender representation objective has been met.**
- 2. Providing information on any training received by or on behalf of an appointing person on the operation of sections 3 and 4 of the Act.**
- 3. Providing information on:**
 - **how many vacancies for a non-executive member of the board arose during the period covered by the report**
 - **for each such vacancy:**
 - **how many competitions were run to fill the vacancy**
 - **for each competition:**
 - **how many applications were received and the percentage of those which were from women, where the numbers will not identify individuals**
 - **whether an appointment was made and if so, whether a woman was appointed.**

Yes. In relation to questions 3-5, these are reasonable basic details to include in a reporting obligation. It will be important to balance the need for meaningful reporting with the need to avoid unnecessary administrative burdens on those with reporting obligations. Seeking to harmonise reporting obligations when possible, including as discussed at questions 1 and 2, above, would be helpful.

Question 4: Do you think that appointing persons and public authorities should report on the activity they have undertaken to encourage applications from women?

Yes.

Question 5: Do you think that appointing persons and public authorities should, if the gender representation objective has not been met, report on the details of any other steps taken with a view to achieving the gender representation objective by 31 December 2022?

Yes.

Question 6: Do you think 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?

Yes. Provided that the information is publicly available and clearly signposted, it may be appropriate for such a report to be included within another document.

Question 7: Do you think that Scottish Ministers, in preparing their report to Parliament, must use information published by public authorities and appointing persons in their reports on carrying out their functions under sections 3-6 of the Act?

We have no comments at this stage.

Question 8: The draft regulations do not specify the content of Scottish Ministers' reports to Parliament other than that they contain an overview of the operation of the Act. Do you have suggestions on the content of these reports?

We have no suggestions at this stage.

Question 9: What, if any, comments do you have on the relationship between the proposals for reporting on the Act and reporting under the 2012 Regulations in relation to the public sector equality duty specific duties?

As mentioned in our response to questions 1-3 above, we support the alignment of the reporting obligations with those under the 2012 Regulations.

Question 10: Please tell us any other comments you have on the draft regulations.

We have no further comments at this stage.

Question 11: Do you have any comments on the terminology section of the guidance? If so, please let us know.

In general, we are supportive of the terminology section and examples of good practice in the guidance. However, we would comment that the third criterion for inclusion of a trans woman without a UK Gender

Recognition Certificate noted at paragraph 2.13 of the guidance, that a person be living as a woman, puts significant emphasis on the use of a female name and pronouns. This may not be the most helpful choice of indicator, as there are a wide range of gender neutral names and increasing use of gender neutral pronouns that would not necessarily conflict with a person's identity as a trans woman for these purposes.

Question 12: Do you have any comments on the guidance on meeting the duties under sections 3 and 4 of the Act? If so, please let us know.

We have no comments at this stage.

Question 13: Do you have any comments on the guidance on section 4(4) of the Act which considers when a 'characteristic or situation particular to a candidate who is not a woman' may be used to select that candidate? If so, please let us know.

Additional guidance on the definition of a 'characteristic or situation particular to a candidate' would be helpful. The phrase is not one in common use at the moment, and there may be difficulties in assessing how it should be considered and applied in practice. Consideration should also be given to how to ensure that personal data relating to a person's 'characteristic or situation' is not revealed through published reports relating to gender balance, while retaining open and meaningful accountability in decision making in such cases.

Question 14: Do you have any comments on the guidance on meeting the duties under section 5 of the Act? If so, please let us know.

We have no comments at this stage.

Question 15: Do you have any comments on the guidance on meeting the duties under section 6 of the Act? If so, please let us know.

We have no comments at this stage.

Question 16: Do you have any comments on the guidance on meeting the reporting requirements? If so, please let us know.

We have no comments at this stage.

Question 17: Do you have any comments on the guidance on how the Act applies when the gender representation objective has been achieved? If so, please let us know.

We have no comments at this stage.

Question 18: Do you have any comments on the guidance on good practice examples of steps to encourage women to apply to become non-executive members and examples of other steps that could be taken? If so, please let us know.

We have no comments at this stage.

Question 19: Please tell us any other comments you have on the draft guidance.

We have no comments at this stage.

For further information, please contact:

Marina Sinclair-Chin
Policy Team

Law Society of Scotland

DD: 0131 476 8136

marinasinclair-chin@lawscot.org.uk