

17. SG Consultation on Gender Balance on Public Boards

1. BACKGROUND

- 1.1** The Scottish Government published a consultation on the draft Gender Representation on Public Boards (Scotland) Bill on the 5th January 2017. The consultation closes on the 17th March. This was made as a key commitment in the Scottish Government's Programme for Government 2016-17.¹
- 1.2** Using new competence transferred to the Scottish Parliament through the Scotland Act 2016, the Bill will require positive action to be taken to: redress gender imbalances on public sector Boards. The purpose of the consultation is to seek views on the practical application of the Bill's provisions and to offer consultees an opportunity to offer views on how the Bill might be strengthened.
- 1.3** The Scottish Government have set out a clear objective to progress to having gender balanced public boards. As laid out in the consultation paper, women make up 35% of members of the Scottish Parliament, 29% of members of the House of Commons, 24% of local government councillors in Scotland and 26.1% of FTSE 100 boards. However, there have been advances made. In 2015, for the first time, Scottish Ministers appointed more women than men to regulated public boards at 53.6%, helping to bring the overall percentage of women to a historic high of 42%.
- 1.4** Scottish Government make a recognition that candidates will still have to demonstrate the relevant qualifications, skills, knowledge and experience that the Board requires.

2. CONSULTATION OVERVIEW

- 2.1** The Gender Representation Objective of the Bill is that a public board has:
 - (a) 50% of non-executive members who are female or who identify as female, and
 - (b) 50% of non-executive members who are male or who identify as male.

Where there is an odd number of non-executive members, the requirement for 50/50 applies as if the board had one fewer non-executive member. No action is required in relation to executive members and there are also certain other members of boards excluded by virtue of being elected to the board.

- 2.2** There is also a tie-breaker provision included within the bill. Where there are two or more equally qualified candidates for an appointment, the appointing person must appoint a candidate of the under-represented sex unless there are exceptional circumstances which tip the balance in favour of another candidate.

¹ <http://www.gov.scot/Resource/0051/00512727.pdf>

- 2.3 Further, the Bill places a duty on all appointing persons and listed public authorities to take steps, as appropriate, to encourage persons of the under-represented gender to apply to become a member of a public body.
- 2.4 There are a total of 11 questions asked in the consultation, although there is no requirement to answer all questions. A list of these questions is included in appendix 1.
- 2.5 Two of the questions seek views on the impact of the draft Bill on equality groups, and the business and financial impacts. Responses to these questions will support the development of an Equality Impact Assessment and a Business Regulatory Impact Assessment.

3. INCLUSION IN THE BILL

- 3.1 The consultation paper states that only bodies that are “Scottish public authorities with mixed functions or no reserved functions” are covered by the Bill. The Bill does not therefore cover private companies or voluntary organisations. Listed bodies are included at Schedule 1.²
- 3.2 Regional Transport Partnerships are not currently included in the Schedule. SEStran have had correspondence with the Scottish Government Equality Unit and they have advised that it was not an unintentional omission and they would be happy to receive representations from SEStran and other RTPs as to why we should be included within the provisions of the Bill.
- 3.3 While SEStran are not currently included in the Bill, the Board would presumably still wish to demonstrate our commitment to the principles laid out in the draft Bill, and would therefore consider signing the Scottish Government 5050 by 2020 pledge. This is a voluntary commitment for organisations to work towards gender balance on their boards by 2020.³ This proposal was taken to the Equalities & Access to Healthcare Forum and P&A Committee, where they supported SEStran in making this commitment.

4. RESPONSE

- 4.1 It is proposed that SEStran should response to the consultation, which closes on the 17th March 2017. The main points of the response will include:

 - The exclusion of RTPs in Schedule 1. Under the Public Sector Equality Duty, SEStran have a requirement to produce a Board Diversity Succession Plan and to publish the gender balance of the Board. It would therefore seem that without the legislative support of the Bill, it may be more difficult to implement the requirements of the Board Diversity Succession Plan under the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 as outlined in Item 19 on this Agenda.

² <http://www.gov.scot/Resource/0051/00512727.pdf> pg. 16

³ <http://onescotland.org/equality-themes/5050-by-2020/>

- The Bill makes no provision within it for those who identify as a non-binary gender. The Bill is therefore not future proofed given the Scottish Government pledge to reform gender recognition law in 2016.

5. RECOMMENDATIONS

5.1 The Board are asked to:

1. Comment on the consultation on the Draft Gender Representation on Public Boards (Scotland) Bill and mandate the Chair to sign off the final consultation response.
2. Agree to support SEStran in signing up to the 5050 by 2020 pledge as recommended by the Equalities & Healthcare Forum and Performance and Audit Committee.

George Eckton
Partnership Director
23rd February 2017

Emily Whitters
Business Support Officer

Appendix 1 – Consultation Questions

Appendix 1

Scottish Government Consultation on the Draft Gender Representation on Public Boards (Scotland) Bill – Consultation Questions

- 1.** What, if any, comments would you make in relation to section 1 [Gender representation objective] of the draft Bill?
- 2.** What, if any, comments would you make in relation to section 2 [Key definitions] of the draft Bill?
- 3.** What, if any, comments would you make in relation to section 3 [Duty when appointing non-executive members] of the draft Bill?
- 4.** What, if any, comments would you make in section 4 [Consideration of candidates] of the draft Bill?
- 5.** What, if any, comments would you make in relation section 5 [Encouragement of applications] of the draft Bill?
- 6.** What if any, comments would you make in relation to Schedule 2 (introduced by section 7) [Application of Act to Certain Listed Authorities] of the draft Bill?
- 7.** What, if any, comments would you make in relation to Schedule 1 (introduced by section 2) [Listed Authorities] of the draft Bill?
- 8.** The draft Bill does not specify any requirement for reporting. Do you have any comments on reporting arrangements under the legislation, including timescales, location and content of reports?
- 9.** Do you have any comments on the draft Bill, not already expressed in response to previous questions, including on how the Bill could be strengthened to deliver Minister's stated objective of gender balanced public boards?
- 10.** To help with the development of our Equality Impact Assessment, please provide any comments on the impact of the draft Bill on people who share certain protected characteristics: age, disability, sex, gender reassignment, sexual orientation, race and religion or belief; or any further information you think is relevant.
- 11.** To help with the development of our Business Regulatory Impact Assessment, please provide any comments on the costs and benefits of the draft Bill, or any further information you think is relevant.