

**Gender Representation on Public Boards (Scotland) Act 2018**  
**Draft Guidance**

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## Introduction

1.1 This guidance has been prepared by the Scottish Government on behalf of Scottish Ministers in accordance with section 7 of the Gender Representation on Public Boards (Scotland) Act 2018 (referred to in this guidance as “the Act”)<sup>1</sup>.

1.2 Guidance is intended to support appointing persons and public authorities to carry out their functions under the Act, and in doing so, appointing persons and public authorities must have regard to this guidance.

1.3 The Act is an Act of the Scottish Parliament and received Royal Assent on 9 March 2018. The Act sets a “gender representation objective” for the boards of listed Scottish public authorities, that 50% of the board’s non-executive members are women, and it requires appointing persons and public authorities to take certain steps towards achieving the objective.

1.4 The Commissioner for Ethical Standards in Public Life in Scotland regulates appointments to the boards of many of Scotland’s public bodies. Many, but not all of the appointments covered by the Act are regulated by the Commissioner.

1.5 The requirements of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012<sup>2</sup> apply to many of the public authorities covered by the Act. Under these regulations there are a range of duties relating to the advancement of equality including in relation to board diversity.

### What is covered by this guidance

1.6 Section 7 of the Act requires Scottish Ministers to publish guidance on the operation of the Act. The guidance must in particular cover:

- (a) an appointing person’s functions in—
  - (i) appointing non-executive members under sections 3 and 4,
  - (ii) encouraging applications by women under section 5(1),
  - (iii) taking any steps under section 6(2),
  - (iv) reporting under section 8(4),
- (b) a public authority’s functions in—
  - (i) encouraging applications by women under section 5(2),
  - (ii) taking any steps under section 6(3),
  - (iii) reporting under section 8(5).

1.7 To ensure that this guidance is as useful as possible, a number of additional areas are also covered, including good practice.

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<sup>1</sup> <http://www.legislation.gov.uk/asp/2018/4/contents/enacted>

<sup>2</sup> <https://www.legislation.gov.uk/ssi/2012/162/contents/made> and as amended by (and add in 2016 Regulations)

## Terminology used in the Act

2.1 This section considers some of the key terms and concepts in the Act.

### The gender representation objective

2.2 Section 1 of the Act sets a “gender representation objective” that a board has 50% of non-executive members who are women. Where a board has an odd number of non-executive members, the objective applies as if the board has one fewer non-executive member.

- If a board has 12 non-executive members, the gender representative objective is that the board has 6 non-executive members who are women.
- If a board has 9 non-executive members, the gender representation objective applies as if the board has one fewer non-executive member – in other words as if the board has 8 non-executive members. Consequently, the gender representation objective is that the board has 4 non-executive members who are women.

2.3 The gender representation objective is not a cap. The Act does not require board non-executive membership to be precisely 50:50 men and women and it does not prevent a board having more than 50% of non-executive members who are women. A board with more than 50% of non-executive members who are women has met the objective.

### Public Authority and Appointing Person

2.4 The Act places duties on public authorities and appointing persons to take action to achieve the gender representation objective.

2.5 For the purposes of the Act, “public authority” means an authority listed, or within a description listed, in schedule 1. This list is reproduced in the Annex to this guidance.

2.6 The “appointing person” is the person who has the function of appointing a non-executive member of a public board. In this context, the word “person” may mean the organisation or position which makes the appointment. For many public authorities, the appointing person is “the Scottish Ministers”. The Annex lists who the appointing person is for all of the public authorities covered by the Act.

## **Public Board**

2.7 The gender representation objective applies in relation to the non-executive members of public boards. The Act defines a public board as:

- if the public authority is a company, the directors;
- if the public authority has a statutory board or other equivalent statutory management body, that board or body;
- in relation to any other public authority, the membership of the authority;

## **Excluded Positions**

2.8 The gender representation objective only covers certain non-executive members of a board. Section 2 of the Act defines “non-executive member”, in relation to a public authority, as “a position on its public board-

- (a) that is not an excluded position,
- (b) that is not held by an employee of the authority”

2.9 Section 2 of the Act defines an “excluded position”, in relation to a public authority, as “a position mentioned in the second column of the table in schedule 1 which corresponds with the public authority mentioned in the first column”.

2.10 Public authorities listed in schedule 1 of the Act and appointing persons for public authorities listed in schedule 1 of the Act, should determine which members of their board are “non-executive members” for the purposes of the Act. It is important that there is no ambiguity about whether or not an individual board member is a “non-executive member” as this forms the basis on which the gender representation objective is calculated.

2.11 Moreover, no action is required under the Act in relation to members who are not “non-executive members” for the purposes of the Act.

## **The definition of ‘woman’ for the purposes of the Act**

2.12 Section 2 of the Act provides that for the purposes of the Act, “woman” includes “a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010<sup>3</sup>) 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”.

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<sup>3</sup> <http://www.legislation.gov.uk/ukpga/2010/15/section/7>

2.13 To be included, a trans woman without a UK Gender Recognition Certificate or without gender recognition from another EU Member State<sup>4</sup> must therefore meet the 3 following criteria:

1. have the characteristic of gender reassignment as defined in the Equality Act 2010.

The definition of gender reassignment in the Equality Act 2010 is – “a person has the protected characteristic of gender reassignment if the person is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attributes of sex”. This definition includes those reassigning their sex from male to female as well as those reassigning their sex from female to male. A person who meets this definition is not covered by the definition of “woman” in the Act unless they also meet the following two criteria. The person does not need to have undergone any specific treatment or surgery<sup>5</sup>

2. be proposing to undergo, undergoing or undergone a process (or part of a process) for the purpose of becoming female

This element of the definition means that the person has taken a decision to undergo a process for the purpose of becoming female.

3. be living as a woman

This would not require the person to dress, look or behave in any particular way. However, it would be expected that there would be evidence that the person was continuously living as a woman, such as – always using female pronouns; using a female name on official documents such as a driving licence or passport, or on utility bills or bank accounts; describing themselves and being described by others in written or other communication using female language.

2.14 This definition in section 2 provides clarity that, for the purposes of applying the provisions of the Act, “woman” includes a trans woman who meets the definition set out. This provision only relates to the meaning of “woman” in the Act. This does not have the effect of creating a new legal definition of woman in any other context.

2.15 The Act does not require an appointing person to ask a candidate to prove that they meet the definition of woman in the Act.

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<sup>4</sup> A trans woman with a UK Gender Recognition Certificate or with gender recognition from another EU Member State is legally a woman.

<sup>5</sup> See <https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-discrimination#what>

## The appointment process

3.1 Sections 3 and 4 of the Act set out the duties on appointing persons when appointing non-executive members under the Act.

### Background

3.2 Many public appointments are made under a system regulated and monitored by the Commissioner for Ethical Standards in Public Life in Scotland. It is the Commissioner's role to ensure that appointments are made on merit, using methods that are fair and open. Whether or not a public body is regulated by the Commissioner depends on the type of body it is, and decisions made at the time it is established.

3.3 The appointment process for regulated appointments is run by Scottish Government officials on behalf of the Scottish Ministers. The appointment process for unregulated appointments, including those to the boards of colleges and Higher Education Institutions, is run by the public bodies concerned.

3.4 In relation to higher education institutions (HEIs) appointments are made by the governing bodies of HEIs in accordance with arrangements set out in their governance documents, and in accordance with section 10 of the Higher Education Governance (Scotland) Act 2016 (which contains provisions on the composition of governing bodies) and, in the case of the ancient universities, with the Universities (Scotland) Acts. In addition, the Scottish Code of Good Higher Education Governance sets out provisions on Higher Education Governance, including best practice in relation to governing body membership and appointments.

3.5 For the college sector, appointments are made in accordance with schedule 2 of the Further and Higher Education (Scotland) Act 1992 (which contains provisions on the composition of incorporated college boards, both for regional and assigned colleges) and with schedule 2B of the Further and Higher Education (Scotland) Act 2005 (which contains provisions on the composition of Regional Boards). In addition, the Scottish Code of Good Governance for Scotland's Colleges, and the 2014 College Sector Board Appointments Ministerial Guidance, sets out provisions on Further Education Governance, including best practice in relation to governing body membership and appointments. Regarding Newbattle Abbey College, Sabhal Mòr Ostaig, and West Highland College UHI, appointment of board members are made by the company.

3.6 Appointments are only made on merit. The definition of merit is not fixed; it is determined at the start of each appointment round and set out in the person specification. The person specification is a clear and accurate description of the skills, knowledge and experience a person will need to be effective in the role. This is agreed by the selection panel.

3.7 Selection panel members assess the merit of applicants against the person specification using the methods they have agreed. Applicants are not assessed against each other. New requirements cannot be introduced during the appointment round.

### **The Role of the Commissioner**

3.8 The Commissioner has produced a Code of Practice underpinned by three principles: merit, integrity, and diversity and equality. The Commissioner has also published guidance on the application of the Code.

3.9 The Commissioner has produced a strategy, entitled Diversity Delivers, intended to enhance equality of opportunity and to increase the diversity of the Boards of Scotland's public bodies.

3.10 The requirements of the Act are consistent with the Commissioner's Code of Practice. The Commissioner will produce guidance on how the requirements of the Act should operate in the context of the Code. The Commissioner does not have a role in determining compliance with the Act.

### **Appointment on merit when the Act applies**

3.11 Where the Act applies, and the gender representation objective has not been achieved, the appointment must be made on merit and the most able candidate should always be appointed. However, in circumstances where there are two or more equally qualified candidates, at least one of whom is a woman, then section 4(2) of the Act requires the appointing person to give preference to a woman if doing so will result in the board achieving (or making progress towards achieving) the gender representation objective. This is however subject to section 4(4).

### **Meaning of equally qualified**

3.12 Section 4(2) of the Act refers to candidates being "equally qualified". To determine whether candidates are equally qualified the appointing person should conduct a full and objective assessment of each applicant against the objective criteria which have been determined for the role.

### **The 'tie-break' provision**

3.13 If there are at least 2 equally qualified candidates, one of whom is a woman, then the appointing person must appoint the woman if doing so would result in the board achieving (or making progress to achieving) the gender representation objective. This is subject to the provision at section 4(4) of the Act which requires the appointing person to consider whether the appointment of a candidate who is not a woman would be justified on the basis of a "characteristic or situation" particular to that candidate, and allows appointment of that candidate.

3.14 The inclusion of section 4(4) in the Act, which provides that an appointing person may over-ride the requirement to give preference to a woman in the circumstances described in sections 3 and 4 of the Act, is required by the jurisprudence of the European Court of Justice which provides that such a requirement cannot be absolute.

3.15 In a tie-break situation, where candidates are identified as equally qualified under section 4(2), the appointing person must then consider, under section 4(4), whether appointing a candidate who is not a woman, is justified on the basis of a characteristic or situation particular to that candidate. If so, they may appoint that candidate.

3.16 The Act does not define “characteristic or situation” but does provide, at section 4(5), that a “characteristic” referred to under section 4(4) includes a protected characteristic within the meaning of section 4 of the Equality Act 2010. These characteristics are – age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

3.17 A characteristic or situation particular to a candidate may be another protected characteristic or a factor such as socio-economic background, caring responsibilities or employment sector. This will be for the appointing person to determine based on the board’s skills and diversity requirements.

## Encouraging applications by women

4.1 Section 5 requires appointing persons and public authorities to take such steps as they consider appropriate to encourage women to apply to become non-executive members.

4.2 The Act does not specify what steps should be taken by appointing persons or public authorities. This is because the relevant appointing person and public authority are best placed to determine the appropriate steps to take in any given appointment round. It may be that appointing persons and public authorities will take different steps given their different functions.

4.3 Ensuring that women apply for non-executive member appointments is key to the achievement of the gender representation objective. The *Good Practice* section of this guidance focusses on the practical steps that can be taken by both appointing persons and public authorities to encourage women to apply to become non-executive members. It includes examples of best practice to illustrate the kinds of steps that could be taken. A key starting point in the process may be to analyse the available data on the diversity of applicants.

4.5 The Act requires appointing persons and public authorities to take such steps *as they consider appropriate*. If it is considered appropriate that no steps need be taken, the Act allows that. However, even if the gender representation objective has already been achieved, it would be good practice to continue to encourage applications from women.

4.6 Section 5(3) states that “for the avoidance of doubt, nothing in subsections (1) and (2) prevents an appointing person or a public authority from taking such steps as it considers appropriate to encourage persons with other protected characteristics (within the meaning of section 4 of the Equality Act 2010) to apply to become non-executive members of the public board”. There is no requirement in the Act to take such steps, but appointing persons and public authorities will want to ensure that wider equality and diversity continue to be considered.

## Taking other steps

5.1 If the gender representation objective has not yet been achieved, section 6 of the Act requires appointing persons and public authorities to take any other steps that they consider appropriate with a view to achieving the objective by 31 December 2022. “Other steps” means steps taken in addition to those required to meet sections 3 and 4 of the Act and any steps taken to encourage applications by women.

5.2 This requirement is in place until 31 December 2022. After that date, it no longer applies.

5.3 Any other steps taken must be lawful under equality legislation. Some examples of other steps include positive action measures such as:

- Providing training or coaching to women candidates prior to interview.
- Providing networking opportunities for women candidates and existing women board members.
- Offering opportunities to women candidates to shadow existing board members or observe board proceedings.

5.4 The Act requires appointing persons and public authorities to take such other steps *as they consider appropriate*. If it is considered appropriate that no steps should be taken, the Act allows that. However, in order to meet the gender representation objective by 31 December 2022, appointing persons and public authorities will wish do all that they can. Additional steps taken under section 6 could have a significant impact.

5.5 The *Good Practice* section of this guidance includes more suggestions for practical steps that can be taken by both appointing persons and public authorities.

## Reporting on progress

### Overview

6.1 Section 8 of the Act makes provision for reporting arrangements 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 publish reports on the carrying out of their functions under the Act.
- Appointing persons must publish reports on the carrying out of their functions under sections 3-6 of the Act.
- Public authorities must publish reports on the carrying out of their functions under sections 5 and 6 of the Act.

6.2 Scottish Ministers may specify public authorities and appointing persons for the purposes of reporting and may make further provision about reports.

6.3 The arrangements for all of these reports are set out in regulations<sup>6</sup>. These arrangements include details of the content, timing and frequency of reports and how they should be published. .

6.4 Public authorities, appointing persons and the Scottish Ministers must act in accordance with the arrangements set out in these regulations. They are not obliged to publish any additional material under the Act.

### Reporting on sections 3 and 4

6.5 Sections 3 and 4 set out obligations when selecting candidates for appointment as non-executive members. The regulations require an appointing person, including Scottish Ministers in their role as an appointing person, to publish a statement containing the following elements:

- stating whether the gender representation objective has been met;
- 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; and
- 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:

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<sup>6</sup> The Gender Representation on Public Boards (Scotland) (Reports) Regulations 2019

- how many applications were received and the percentage of those which were from women,
- whether an appointment was made, and if so, whether the appointment made was a woman.

6.6 There is no requirement for appointing persons, or those acting on their behalf, to be provided with training on the operation of sections 3 and 4, however, appointing persons will want to ensure that they are fully aware of their obligations. The term “training” here could include written, online, verbal or other training options.

6.7 It is not necessary to publish any additional information in the statement. No reference should be made to whether or not the tie-break provision has been used.

### **Reporting on section 5**

6.8 Section 5 requires appointing persons and public authorities to take such steps as they consider appropriate to encourage applications by women. The regulations require that reports should include details of any steps taken.

6.9 Since the Act requires appointing persons and public authorities to take such steps *as they consider appropriate* it is possible that no steps will have been taken. In these circumstances the report should state that no steps were taken in relation to section 5.

6.10 The Act is clear that nothing in section 5 prevents an appointing person or a public authority from taking such steps that they consider appropriate to encourage applications from people with other protected characteristics (as defined in the Equality Act 2010). But there is no obligation within the Act to report on any such activity.

### **Reporting on section 6**

6.11 Section 6 requires appointing persons and public authorities to take such other steps as they consider appropriate with a view to achieving the gender representation objective by 31 December 2022. In this section “other steps” means any steps in addition to those taken to encourage applications by women. The regulations require that reports should include details of any steps taken.

6.12 Since the Act requires an appointing person and public authorities to take such steps as they consider appropriate, it is possible that no steps will have been taken. In these circumstances the report should state that no steps were taken in relation to section 6.

6.13 This section applies until 31 December 2022. After this date, the requirements under section 6 will no longer apply, even where an authority has not met the gender representation objective.

## **Publication of reports**

6.14 The regulations require reports to be published in a manner which is accessible to the public. They also make clear that reports can be published within another published document. This would allow publication as a joint report by an appointing person and relevant public authority. A joint report would need to make clear what the public authority had done and what the appointing person had done. It is for appointing persons and public authorities to make decisions about any joint reporting.

6.15 Publication within another published document could also include within an annual or other corporate report, or within a report under the public sector equality duty (see paragraphs 6.20-6.23). Again, it is for appointing persons and public authorities to make this decision.

6.16 The regulations require appointing persons and public authorities to submit a copy of any report under the Act to the Scottish Ministers within 7 days of publication.

6.17 The submission to Scottish Ministers should be sent to [mailbox] and should include:

- A pdf copy of the report itself (or another format such as MS Word)
- A link to the publication on a relevant website.

6.18 Scottish Ministers will consider the content of reports when making their own reports to the Scottish Parliament on the operation of the Act across Scotland (see paragraph 6.23 below).

## **Connections to the Public Sector Equality Duty**

6.19 Many of the public authorities subject to the requirements of the Act are also subject to the requirements of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, as amended<sup>7</sup> (the 2012 Regulations). Under regulation 3 (reporting on mainstreaming) of the 2012 Regulations, public authorities must publish a regular progress report. If a public authority wishes to combine its reports on progress under the Act within its reports under the 2012 Regulations it can do so.

6.20 The 2012 Regulations were amended in 2016<sup>8</sup> to include new regulation 6A on the use of member information. Under regulation 6A public authorities covered by that regulation must publish in their mainstreaming reports details of the number of men and women who have been members of the authority during the period covered by the report (“members of the authority” means members of the board).

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<sup>7</sup> <https://www.legislation.gov.uk/ssi/2012/162/contents/made>, as amended by [add link to the 2016 Regs]

<sup>8</sup> <http://www.legislation.gov.uk/ssi/2016/159/contents/made>

6.21 Public authorities subject to regulation 6A must also use information provided to them from time to time by Scottish Ministers on the relevant protected characteristics of members of the authority in order to take steps to improve diversity amongst the authority's members. This particular aspect of regulation 6A has not yet been implemented<sup>9</sup>.

6.22 Given the connection between the requirements of the Act and the reporting requirements under the 2012 Regulations, it may be helpful to combine reporting. Doing so would provide a complete picture, in one place, of action to meet legal obligations on board diversity. But there is no requirement to publish a combined report – it will be for appointing persons and public authorities to make this decision.

### **Scottish Ministers' reports to the Scottish Parliament**

6.23 Scottish Ministers must report to the Scottish Parliament on the operation of the Act at intervals of not more than 2 years. It is for Scottish Ministers to determine the content of these reports. But, in preparing their reports to Parliament, Scottish Ministers must consider the reports published by appointing persons and public authorities on their functions under the Act.

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<sup>9</sup> As at August 2018

## **Achieving the gender representation objective**

7.1 Achievement of the gender representation objective is not a one-off event and for some bodies this will fluctuate.

7.2 For some public boards, the gender representation objective will have been achieved prior to the provisions in the Act coming into force; others may achieve the objective in advance of 31 December 2022. It is possible that some boards will not achieve the gender representation objective until after 2022. But because membership of boards can fluctuate over time, and appointments to boards must be made on merit, it is possible that the gender representation objective, having been achieved, subsequently lapses.

### **Requirements**

7.3 If, at the time of recruitment, the gender representation objective has been achieved, the requirements at section 3 and 4 of the Act will not apply. There would therefore be no obligation to appoint a woman in a tie break situation. The requirement at section 6, to take other steps towards achieving the objective, would also not apply.

7.4 However, even when the gender representation objective has been achieved at the time of recruitment, section 5 would continue to apply. Section 5 is the duty to encourage applications by women and this duty is not affected by whether or not the gender representation objective has been met. This section requires appointing persons and public authorities to take such steps as they consider appropriate. Some public authorities or appointing persons might consider that if the gender representation objective has been achieved they do not need to take any steps under section 5. However, in order to maintain the achievement of the objective it would be sensible to continue to take action under section 5.

### **Reporting**

7.5 When the gender representation objective has been achieved reporting on progress is only required under section 5, since the relevant appointing person or public authority would have no functions under sections 3, 4 and 6. Even where an appointing person or public authority had chosen not to take steps under section 5 it would still have to report on progress in relation to its functions under that section, so it would be required to report that it had not taken any steps. This report would be subject to the same publication requirements as any other report (see paragraphs 6.15-6.18 above).

7.6 An appointing person or public authority reporting only on section 5 would need to state that it was doing so because it had already met the gender representation objective.

## **Future action**

7.7 Given that appointments to boards must be made on merit, and are made on a regular basis, achievement of the gender representation objective could lapse at a future date. In those circumstances, section 3 and 4 of the Act would again come into effect and an appointing person would, if all the conditions of sections 3 and 4 are met, be required to appoint a woman in a tie-break situation (subject to section 4(4)). Section 3 and 4 would apply in relation to an appointment round seeking to fill a vacancy created by a woman demitting office, if that departure would result in the board having less than 50% of non-executive members who are women.

7.8 If an achieved gender representation objective subsequently lapses prior to 31 December 2022 then section 6 of the Act will apply until that date. (After that date section 6 will no longer apply even if the gender representation objective has not been achieved).

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## Good practice guide

8.1 Board recruitment is an aspect of bodies' more general engagement with communities. Work to improve the gender balance and diversity of Scotland's public boards has been on-going for a number of years and pre-dates the introduction of the Act. As a result, there is a wealth of evidence and good practice to support appointing persons and listed public authorities to fulfil their duties under the Act and to achieve the gender representation objective.

### Encouraging applications by women

8.2 The following paragraphs in this guidance suggest some practical steps that can be taken by appointing persons and public authorities to encourage women to apply to become non-executive members. It is important to understand that these practical steps may not, on their own, lead to more women on boards – achieving that requires a culture and environment within organisations that enables and promotes the participation in public and corporate life. It is also important to recognise that women are not a homogeneous group, and appointing persons and public authorities should keep in mind that what encourages one group of women may not resonate with others.

### *Planning and use of data*

- Early engagement leads to better planning, delivering better results. When recruitment starts at a late stage and there is pressure to get people into roles quickly, there are fewer opportunities to deliver a targeted process designed to attract a diverse range of applicants.
- Succession planning is critical to meeting the gender representation objective, and to ensuring boards have the skills they need to address future challenges and priorities.
- Working together, appointing persons and public authorities should make sure they understand the board's skills and diversity requirements over the medium to long term, as part of the corporate planning process, and develop a strategy for meeting these.
- A strategy could involve providing mentoring and other development opportunities to potential candidates – please see 'Taking other steps' on p.X.
- The Scottish Government has published Succession Planning guidance ([available here](#)) to support this activity.
- Those involved in succession planning and planning for appointment rounds will find it helpful to understand the current profile of the board in terms of diversity of skills and diversity of protected characteristics.

- In order to effectively design an appointment round, it is also important to understand the profile of previous applicant pools in terms of who was attracted (applicants) and who was successful (those interviewed and appointed).
- This data on the applicant pool should be considered alongside the previous process so particular stages to target for improvement can be identified: for example, if the previous attraction strategy used a print advertising in a national Sunday newspaper and the applicant pool was 80% men, it would suggest trying a different form of advertising to increase the number of applications from women.

*Good practice in planning case study:* [sportScotland](#)

*Good practice in planning case study:* [Scottish Funding Council](#)

### ***Person specifications and role descriptions***

- A person specification should set out clear and unambiguous criteria for selection and a set of transparent descriptors that articulate what evidence which meets the criteria will look like.
- Setting out the person specification in this way helps the selection panel to match the criteria for selection to appropriate methods of assessment.
- A person specification designed in this way ensures the selection panel has a shared understanding of exactly what the board's needs are and exactly how people will be assessed to see if they meet the board's needs. Importantly, it also makes this clear for applicants.
- Over-specifying will lead to a reduced pool of candidates and limited diversity. Selection panels should ask for what the board needs and avoid 'nice to haves'.
- The language used in person specifications and job descriptions can inadvertently create barriers for potential applicants. For example, saying 'cultural fit' may put off applicants who do not see someone who looks like them on the existing board.
- A reference list of gendered wording can be found on p.17 of [this document](#).
- Use of less traditional selection criteria will allow panels to attract applicants from different, non-traditional backgrounds.
- Job descriptions and person specifications should be simple to understand and avoid the use of jargon or sector specific terminology as this may discourage those from outside certain sectors applying.
- This is particularly important where public authorities operate in sectors where there are recognised challenges in gender balance in the workforce.

- Job descriptions should be open and transparent about the anticipated time commitment and how this will be broken down between meetings, preparatory reading and other duties. It would also be helpful to set out any support for board members to meet these commitments, for example attending meetings via tele- or video-conference, and to be clear on where and when the board meets.

*Good practice in person specification case study:* [Creative Scotland](#)

### ***Attraction and outreach***

- The selection panel should aim to design positive and inclusive advertising material which explicitly encourages applications from candidates from underrepresented groups. Statements naming the groups panels seek to encourage are helpful e.g. we would particularly welcome applications from disabled women.
- An appointing person may find it helpful to involve the public authority so its brand can be leveraged; advertising which appeals to someone's passion for a particular subject or area can encourage non-traditional applicants. Think about the headline rather than the job description for advertising purposes.
- Material should include the contact details of someone who is able to answer questions and have informal discussions with potential applicants. It may be helpful to offer two people: an existing board member and a member of the public authority staff team.
- Selection panels should use positive action measures, including undertaking outreach with relevant networks, for example the Ethnic Minority Women's Network or SWAN LGBT, or more specific targeting of individuals from underrepresented groups to encourage applications.
- Individual approaches can be a particularly powerful tool in encouraging applications from women who may otherwise self-select themselves out of a process based on misperceptions of the level of skills, knowledge or experience required.
- Consider how to reach out to passive candidates (i.e. those not actively seeking a position) or those who may not have considered that a non-executive role was a potential opportunity for them. Social media can be particularly helpful here.
- Consider holding open sessions to demystify the role and the appointment process.

*Good practice in attraction:* [NHS Greater Glasgow and Clyde](#)

*Good practice in attraction:* [Scottish Housing Regulator](#)

## ***Application and assessment***

- Match the assessment method to the criteria. For example, a selection panel could use a board paper exercise to allow candidates to demonstrate their analytical skills rather than asking for an example of when they have used the skill.
- Selection panels should be clear with themselves and with applicants as to why methods of assessment have been selected.
- Panels should avoid asking for more information than is needed to make the assessment. This may well lead to sense-making.
- Selection panels have a responsibility to identify and recognise their own bias and understand how it may impact selection.
- Panels should specifically discuss how they can mitigate bias at each stage of the appointment round. For example, a selection panel may have specified a particular skill anticipating one type of response. Candidates who come from a private sector background may interpret the skill differently to candidates from a public sector background and panels should be open and responsive to answers and skills framed in a different way.
- Selection panels should make a conscious decision to use intentionally positive behaviour (or micro-affirmations) to help counteract micro-inequities during interviews.
- Selection panels should take notes during interviews of people's responses to ensure they do not assess on the basis of the general impressions of the applicant. For this reason panels should also evaluate after each interview instead of evaluating all candidates at the end of the assessment stage.

*Good practice in assessment:* [Judicial Appointments Board for Scotland](#)

*Good practice in assessment:* [VisitScotland](#)

## **Taking other steps**

8.3 If the gender representation objective has not yet been achieved, section 6 of the Act requires appointing persons and public authorities to take any other steps that they consider appropriate with a view to achieving the objective by 31 December 2022. “Other steps” means steps taken in addition to those required to meet sections 3 and 4 of the Act.

### ***Raising awareness***

- Public authorities should aim to raise the profile of the board, and board members, so potential applicants can understand what the board does, how members contribute and therefore why they might want to be involved.
- Public authorities can challenge perceptions of ‘traditional board members’ by featuring profiles of the current board on websites or in other materials, focusing on their diversity and the value it adds.
- Public authorities and appointing persons could encourage current board members with protected characteristics to volunteer as role models and take part in outreach and awareness raising activity.
- Appointing persons, the staff of public authorities and current board members should actively be ambassadors for the work of the board, using their networks and contacts to raise awareness.
- Public authorities and appointing persons could engage with equalities organisations to seek their expert advice on reaching underrepresented groups and understanding real and perceived barriers.

### ***Building a pipeline***

- Identify potential applicants from committees, working groups or stakeholder groups who frequently engage with the board.
- Offer opportunities to potential candidates to shadow existing board members or observe board proceedings.
- Ask current board members to mentor potential candidates.
- Provide targeted networking opportunities e.g. for women candidates with existing women board members.
- Use co-option to board committees to build capacity in individuals.
- Providing training or coaching to women candidates prior to interview.
- Engage with organisations whose purpose is increasing diversity on boards e.g. Changing the Chemistry, Women on Boards.

### ***Creating a culture***

- Set up a Succession Planning Committee to keep the needs of the board under review, plan awareness raising and pipeline building activity, and offer advice to appointing persons when a vacancy arises. The Scottish Government has published [succession planning guidance](#) and [a toolkit](#).
- Identify and address potential barriers created by the board culture, for example the timing and location of meetings, how papers are presented and how far in advance.
- Identify and address barriers that might prevent access to diverse groups of women such as disabled women and minority ethnic woman. And consider the needs of women who are pregnant or have children.

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## Further reading

9.1 There are a number of existing guidance documents and codes of practice relating to the recruitment of board members and the use of positive action. The guidance on the operation of the Act has been drafted to align with these.

- The Commissioner for Ethical Standards in Public Life in Scotland – 2013 Code of Practice<sup>10</sup> and Revised Guidance on Application of the 2013 Code of Practice<sup>11</sup>;
- The Commissioner for Ethical Standards in Public Life in Scotland – Diversity Delivers<sup>12</sup>;
- The Scottish Code of Good Higher Education Governance<sup>13</sup>;
- College Sector Board Appointments: 2014 Ministerial Guidance<sup>14</sup>;
- The Equality and Human Rights Commission – How to improve board diversity: a six step guide to good practice<sup>15</sup>;
- The Equality and Human Rights Commission – Appointments to Boards and Equality Law guidance<sup>16</sup>;
- Scottish Government Public Bodies Unit – Guidance on Succession Planning for Public Body Boards<sup>17</sup>.

9.2 The Commissioner for Ethical Standards in Public Life in Scotland will update the Guidance on the Application of the 2013 Code of Practice in order to reflect the requirements of the Act.

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<sup>10</sup> <http://www.ethicalstandards.org.uk/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

<sup>11</sup> <http://www.publicappointments.org/publications/publication/781/revised-guidance-on-application-of-the-2013-code-of-practice>

<sup>12</sup> <http://www.publicappointments.org/site/uploads/publications/9081470494a9d103ac08481.79691631.pdf>

<sup>13</sup> <http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2013/07/Scottish-Code-of-Good-HE-Governance.pdf>

<sup>14</sup> <http://www.gov.scot/Topics/Education/post16reform/hefegovernance/CollegeSectorBoardAppointments2014>

<sup>15</sup> <https://www.equalityhumanrights.com/en/advice-and-guidance/how-improve-board-diversity-six-step-guide-good-practice>

<sup>16</sup> <https://www.equalityhumanrights.com/en/publication-download/appointments-boards-and-equality-law>

<sup>17</sup> <http://www.gov.scot/Topics/Government/public-bodies/BoardChairs>

## List of public authorities with appointing person and excluded positions

Schedule 1 of the Gender Representation on Public Boards (Scotland) Act 2018 lists the public authorities covered by the Act and provides details of any excluded positions. This Annex lists public authorities and also states who the appointing person is for each authority.

Public Authority	Appointing Person	Excluded positions
Accounts Commission for Scotland	The Scottish Ministers	
Architecture and Design Scotland (company number SC267870)	The Scottish Ministers	
Board of Trustees for the National Galleries of Scotland	The Scottish Ministers	
Board of Trustees of the National Museums of Scotland	The Scottish Ministers	
Board of Trustees of the Royal Botanic Garden, Edinburgh	The Scottish Ministers	
Bòrd na Gàidhlig	The Scottish Ministers	
British Waterways Board	The Scottish Ministers	
Cairngorms National Park Authority	The Scottish Ministers	Members elected under article 5(2) of the Cairngorms National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2003 ( <a href="#">S.S.I. 2003/1</a> )
		Members nominated under article 5(4) of that Order
Caledonian Maritime Assets Limited (company number SC001854)	The Scottish Ministers	
Children's Hearings Scotland	The Scottish Ministers	
A college of further education other than a regional college (within the meanings given to those terms by the Further and Higher Education (Scotland) Act 1992)	The regional strategic body	All members other than those appointed under paragraph 3A(2)(a) and (f) of schedule 2 of that Act
A regional college (within the meaning given by the Further and Higher Education (Scotland) Act 1992)	Scottish Ministers appoint the chairing member.	All members other than those appointed under paragraph 3(2)(a) and (f) of schedule 2 of that Act

	Non-executive members are appointed by the college board and approved by Scottish Ministers.	
Common Services Agency for the Scottish Health Service	The Scottish Ministers	
Community Justice Scotland	The Scottish Ministers	
Creative Scotland	The Scottish Ministers	
Crofting Commission	The Scottish Ministers	Members elected by virtue of paragraph 7 of schedule 1 of the Crofting Reform (Scotland) Act 2010
Crown Estate Scotland (Interim Management)	The Scottish Ministers	
David MacBrayne Limited (company number SC015304)	The Scottish Ministers	
Food Standards Scotland	The Scottish Ministers	
A Health Board constituted under section 2(1)(a) of the National Health Service (Scotland) Act 1978	The Scottish Ministers	Councillors appointed under paragraph 2(1)(b) of schedule 1 of that Act
		Members of Health Boards mentioned in regulation 3 of the Health Boards (Membership and Procedure) (Scotland) Regulations 2001 ( <a href="#">S.S.I. 2001/302</a> ) who hold a post in a university with a medical or dental school
		Members appointed only by virtue of being nominated for membership
Healthcare Improvement Scotland	The Scottish Ministers	The member mentioned in paragraph 2(1)(b) of schedule 5A of the National Health Service (Scotland) Act 1978 (the person appointed to chair Social Care and Social Work Improvement Scotland)
A higher education institution (within the meaning given by the Higher Education Governance (Scotland) Act 2016)	The Governing Body	All members other than those appointed by the governing body (which has the same meaning as in Part II of the Further and Higher Education (Scotland) Act 1992) (for this purpose a member is not appointed by the governing body if that member is appointed only by virtue of being the winning candidate in an election for membership or by virtue of being nominated for membership by another person)

Highlands and Islands Airports Limited (company number SC097647)	The Scottish Ministers	
Highlands and Islands Enterprise	The Scottish Ministers	
Historic Environment Scotland	The Scottish Ministers	
ILF Scotland (company number SC500075)	The Scottish Ministers	
Judicial Appointments Board for Scotland	The Scottish Ministers	
Local Government Boundary Commission for Scotland	The Scottish Ministers	
Loch Lomond and the Trossachs National Park Authority	The Scottish Ministers	Members elected under article 5(2) of the Loch Lomond and The Trossachs National Park Designation, Transitional and Consequential Provisions (Scotland) Order 2002 ( <a href="#">S.S.I. 2002/201</a> )
		Members nominated under article 5(4) of that Order
Mental Welfare Commission for Scotland	The Scottish Ministers	
Mobility and Access Committee for Scotland	The Scottish Ministers	
National Confidential Forum	The Scottish Ministers	
National Library of Scotland	The Scottish Ministers	The member mentioned in paragraph 2(2) of schedule 1 of the National Library of Scotland Act 2012 (the member who is selected from persons nominated by the Dean of the Faculty of Advocates)
Newbattle Abbey College (company number SC262968)	Company appointment	A director nominated by the University of Aberdeen, the University of Edinburgh, the University of Glasgow or the University of St. Andrews
		A director who is also a member of the college
Quality Meat Scotland	The Scottish Ministers	
Regional Board for Glasgow Colleges	Scottish Ministers appoint the chairing member.	All members other than those appointed under paragraph 3(2)(a) and (f) of schedule 2B of the Further and Higher Education (Scotland) Act 2005
	Non-executive members are appointed by the	

	Regional Board and approved by Scottish Ministers	
A regional Transport Partnership created under section 1(1) of the Transport (Scotland) Act 2005	The Scottish Ministers	Councillor members (mentioned in section 1(2)(b) of that Act)
		Members appointed only by virtue of being nominated for membership by a Health Board mentioned in section 6(1)(a)(ii) of that Act
		A member appointed only by virtue of being nominated for membership by Highlands and Islands Enterprise
		A member appointed only by virtue of being nominated for membership by Scottish Enterprise
Revenue Scotland	The Scottish Ministers	
Risk Management Authority	The Scottish Ministers	
Sabhal Mòr Ostaig (company number SC361752)	Company appointment	A director who is also a student of Sabhal Mòr Ostaig
Scottish Advisory Committee on Distinction Awards	The Scottish Ministers	All members other than the Chair, the Medical Director and the lay representatives
Scottish Agricultural Wages Board	The Scottish Ministers	Persons nominated or elected under paragraph 1(a) of schedule 1 of the Agricultural Wages (Scotland) Act 1949 (persons representing employers and workers)
Scottish Charity Regulator	The Scottish Ministers	
Scottish Children's Reporter Administration	The Scottish Ministers	
Scottish Commission for Human Rights	The Scottish Parliament	The member appointed to chair the commission under paragraph 1(1)(a) of the Scottish Commission for Human Rights Act 2006
Scottish Courts and Tribunals Service	The Scottish Ministers	The Lord President
		The Lord Justice Clerk
		The President of the Scottish Tribunals
Scottish Criminal Cases Review Commission	The Scottish Ministers	

Scottish Enterprise	The Scottish Ministers	
Scottish Environment Protection Agency	The Scottish Ministers	
Scottish Fire and Rescue Service	The Scottish Ministers	
Scottish Fiscal Commission	The Scottish Ministers	
Scottish Further and Higher Education Funding Council	The Scottish Ministers	
Scottish Futures Trust Limited (company number SC348382)	The Scottish Ministers	
Scottish Housing Regulator	The Scottish Ministers	
Scottish Land Commission	The Scottish Ministers	
Scottish Legal Aid Board	The Scottish Ministers	
Scottish Legal Complaints Commission	The Scottish Ministers	
Scottish Natural Heritage	The Scottish Ministers	
Scottish Police Authority	The Scottish Ministers	
Scottish Qualifications Authority	The Scottish Ministers	
Scottish Social Services Council	The Scottish Ministers	The member mentioned in regulation 2(3) of the Scottish Social Services Council (Appointments, Procedure and Access to the Register) Regulations 2001 ( <a href="#">S.S.I. 2001/303</a> ) (the person who is the chair or a member of Social Care and Social Work Improvement Scotland)
Scottish Sports Council	The Scottish Ministers	
Scottish Water	The Scottish Ministers	
Skills Development Scotland Co. Limited (company number SC202659)	The Scottish Ministers	
Social Care and Social Work Improvement Scotland (known as “the Care Inspectorate”)	The Scottish Ministers	The member mentioned in paragraph 2(1)(b) of schedule 11 of the Public Services Reform (Scotland) Act 2010 (the person appointed to chair Healthcare Improvement Scotland)
		The member mentioned in paragraph 2(1)(c) of that schedule (the person appointed as convener of the Scottish Social Services Council)
		Councillors appointed under paragraph 2(1)(b) of schedule 1 of that Act

A Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978	The Scottish Ministers	Members appointed only by virtue of being nominated for membership
Standards Commission for Scotland	The Scottish Parliament	
VisitScotland	The Scottish Ministers	
Water Industry Commission for Scotland	The Scottish Ministers	
West Highland College UHI (company number SC153921)	Company appointment	A director who is also a student of the college

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