Gender Representation on Public Boards (Scotland) Act 2018

Statutory Guidance

April 2022

Scottish Government
Riaghaltas na h-Alba
gov.scot

Contents

1.	Introduction	Page 3
2.	Terminology used in the Act • The gender representation objective • Public authority and appointing person • Public board • Non-executive member and excluded position • The meaning of “woman” for the purposes of the Act	Page 5
3.	The appointment process • Background • The role of the Commissioner • Appointment on merit • Meaning of “equally qualified” • The “tie-break” provision	Page 8
4.	Encouraging applications by women	Page 11
5.	Taking other steps	Page 12
6.	Reporting on progress • Overview • Reporting on sections 3 and 4 • Reporting on section 5 • Reporting on section 6 • Publication of reports • Connections to the public sector equality duty • Scottish Ministers’ reports to the Scottish Parliament	Page 13
7.	Achieving the gender representation objective • Requirements • Reporting • Future action	Page 17
8.	Good practice guide • Good practice in encouraging applications by women • Good practice in taking other steps	Page 19
9.	Further reading	Page 24
Annex – List of public authorities and appointing persons		Page 25

Introduction

1.1 Women represent over half the population of Scotland - nearly 52%. It is therefore absolutely right that women are part of the decision making of our public bodies, colleges and universities, decisions that can affect all aspects of people's lives in Scotland. We know that greater diversity in the boardroom leads to better decisions and improved performance, by encouraging new and innovative thinking. Evidence shows that greater diversity at senior management level is also linked to happier and more engaged employees and a more ethical and value-based culture. In other words, it is the smart thing to do as well as the right thing.

1.2 Of course we want to have the very best people to sit on Scotland's public boards. Appointments will be and are made on merit. And that means ensuring that public bodies, colleges and universities are reaching out to and attracting diverse and talented people, women included.

1.3 The intention of the Gender Representation on Public Boards (Scotland) Act 2018 is to help address the historic and persistent underrepresentation of women in public life. Legislation is just one measure the government is taking towards a more equal society in Scotland and it is vital that work to ensure participation and representation of women from diverse backgrounds and with intersecting identities creates lasting changes to cultures and the structures that we work within. Only when our public boards do reflect Scotland's diversity can we be sure that we are tapping into the talents of all of our people and that we are successfully breaking down the barriers that we know some people experience in our society.

1.4 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").

1.5 This 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.

1.6 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.

1.7 The Ethical Standards Commissioner 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.

1.8 The requirements of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012[1] 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

1.9 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).

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

[1] The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, SSI 2012 No. 162, as amended by The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016, SSI 2016 No. 159.

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 meaning of "woman" for the purposes of the Act

2.12 There is no definition of "woman" set out in the Act with effect from 19 April 2022[2] and 22 March 2022. By virtue of section 11[3] and section 212(1)[4] of the Equality Act 2010. references in the Act to a "woman" or to "women" are references to a biological woman or women[5].

[2] Decision of the Court of Session in For Women Scotland Limited v. The Lord Advocate and The Scottish Ministers, (2022) CSIH 4.
[3] Under section 11 of the Equality Act 2010, in relation to the protected characteristic of sex, a person who has a particular protected characteristic is a reference to a man or to a woman.
[4] Under section 212(1) of the Equality Act 2010, in that Act, "woman" means a female of any age.
[5] Decision of the Supreme Court in For Women Scotland Limited v. The Scottish Ministers, [2025] UKSC 16.

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 Appointments to public body boards can be ‘regulated’ and ‘non-regulated’. When an appointment is regulated it means that the appointments process for that Board is regulated by the Ethical Standards Commissioner. 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. A list of the public body boards that the Commissioner regulates can be found on their website here.

3.3 It is the Commissioner's role to ensure that appointments are made on merit, using methods that are fair and open. 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 Good practice dictates that public appointments are made on merit. Merit should be defined for each role and set out in the person specification. A person specification should provide a clear and accurate description of the skills, knowledge, understanding and/or experience a person will need to be effective in the role.

The Role of the Commissioner

3.7 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.

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

Appointment on merit when the Act applies

3.9 Where the Act applies, appointments 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

3.10 Section 4(2) of the Act refers to candidates being "equally qualified". Being qualified will be role specific and for the appointing person to define. 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 at the outset for the role.

The 'tie-break' provision

3.11 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 an equally qualified 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.

3.12 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.

3.13 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 can appoint the

candidate. If the appointment is a regulated appointment made by Scottish Ministers and the situation (other than relating to another protected characteristic) forms the decision making by the appointing person to appoint them, the appointing person should seek an exception to the Public Appointments Code of Practice from the Ethical Standards Commissioner.

3.14 This is unless the specific factor(s) or situation have been included in the applicant information pack as something that will be considered at the point where the appointing person makes a decision.

3.15 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.

3.16 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 individual candidate, the board’s skills and diversity requirements, which will have been established at the outset of the appointment round.

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.

4.4 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.

4.5 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 continues to be considered and the Act follows this.

Taking other steps

5.1 If the gender representation objective is not achieved, in respect to a public board, 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 to do all that they can. Additional steps taken under section 6 of the Act 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[6]. 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: Duty when appointing non-executive members and 4: Consideration of candidates

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 at the date of publication; 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:
            - how many applications were received and the percentage of those which were from women,

[6] The Gender Representation on Public Boards (Scotland Act 2018 (Reports) Regulations 2020, SSI 2020 No. 120.

- 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: Encouragement of applications by women

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 by appointing persons or public authorities 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: Duty to take steps towards achieving objective

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. For example, this might include providing training to those participating in recruitment. 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. However, the other reporting requirements will remain in place.

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 6.19-6.21). 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 the Scottish Government mailbox: Genderrepresentationonpublicboards@gov.scot 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 6.22 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[7], as amended (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[8] 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).

[7] The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, SSI 2012 No. 162.
[8] The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016, SSI 2016 No. 159.

6.21 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

6.22 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.

Achieving and maintaining the gender representation objective

7.1 Achievement of the gender representation objective is not a one-off event and for some bodies the gender balance of their board 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 unless the appointment will result in the lapsing of the gender representation objective. For example, if a board has 6 female board members and 3 male members and is recruiting to replace one of the female board members there would be no obligation to appoint a woman in a tie break situation (i.e. where there are at least 2 equally qualified candidates, one of whom is a woman). However, if at the time of the appointment round the board has equal numbers of female and male non-executive members and the board is recruiting to replace one of the female members, then section 3 and 4 would apply with a view to achieving the gender representation objective after the replacement had been appointed. The requirement at section 6, to take other steps towards achieving the objective, does not apply where the gender representation objective has been achieved in respect of a public board.

7.4 However, even when the gender representation objective has been achieved at the time of appointment, 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 already been achieved prior to the reporting period, 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. If the gender representation objective has been achieved during that reporting period through the process set out in sections 3 and 4 of the Act, then this would be required to be reported on.

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.

7.7 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 6.14-6.18 above).

Future action

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 only** will no longer apply even if the gender representation objective has not been achieved).

7.9 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, or in some cases, it may still not have been achieved by 31 December 2022. 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.

Good practice guide

8.1 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 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 an environment within organisations that enables and promotes participation in public and corporate life. It is also important to recognise that women are not a homogeneous group and what interests and encourages one group of women may not resonate with others.

Planning and use of data

- Early engagement leads to better recruitment planning and will deliver more diverse applicants. There are fewer opportunities to deliver a targeted campaign designed to attract a diverse range of applicants when there is pressure to get people into roles quickly.
- Succession planning is critical to meeting the gender representation objective. 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 and develop a strategy for meeting these. This could involve providing mentoring and other development opportunities to potential candidates – please see 'Taking other steps' on page 12.
- The Scottish Government has published Succession Planning guidance (available here) to support this activity.
- Those involved in succession planning and planning for appointment rounds should understand the diversity of skills on the board and diversity of protected characteristics.
- In order to effectively design an appointment round, it is also important to understand who applied for previous appointment rounds and who was successful and interviewed and ultimately appointed. This can give some understanding of what worked previously.
- This data gathered from previous appointment rounds should be considered alongside the previous process so particular parts of the process that were successful or unsuccessful can be identified

Good practice in planning case study: sportScotland

Good practice in planning case study: The Poverty and Inequality Commission

Person specifications and role descriptions

- A person specification details the skills knowledge, understanding and/or experience required to undertake the role. It should set out clear and unambiguous criteria for selection with descriptors explaining what evidence would need to be demonstrated.
- Setting out the skills in this way helps the appointing person to match the criteria for selection to appropriate methods of assessment. It also ensures appointing persons and potential applicants understand what the board's needs are and how applicants will be assessed.
- The language used when setting out the skills or describing the role can inadvertently create barriers for applicants and discourage people from applying. It needs to be clear and written in plain English and avoid the use of jargon.
- This is particularly important where public authorities operate in male dominated sectors.
- A reference list of gendered wording can be found on page 17 of this document.
- Role descriptions should be clear about the anticipated time commitment and if possible broken down into how much time is spent on each aspect of the role.
- To provide further help to applicants, set out what support is given to meet the commitment required in the role.

Good practice in person specification case study: Creative Scotland

Attraction and outreach

- The appointing person should aim to design positive and inclusive publicity strategy which encourages applications from those in underrepresented groups. It can be made clear which groups are being encouraged to apply for example 'we particularly welcome applications from women/disabled people/people from an ethnic minority.'
- It is important to involve the public authority so its brand can be used to attract those interested in the subject. Publicity which appeals to someone's passion for a particular subject or area can encourage them to apply. Be creative!
- Publicity should always include the contact details of someone who is able to answer questions and have informal discussions with potential applicants.

- Positive action measures can be used to encourage applications from people with protected characteristics. This might include targeting outreach activities to networks of women.
- There is nothing to stop individuals being approached to ask to consider applying. This is important particularly for women who may otherwise self-select themselves out of a process based on misperceptions of the level of skills, knowledge or experience required. It is, however, important to stress that the appointments process is based on merit and the recruitment process is fair.
- Some thought should be given to encouraging those not actively seeking a position to consider applying or those who may not have considered that a non-executive role was something that would interest them. Social media can be particularly helpful here.
- Appointing persons, the organisation or both working together should also consider holding public events to talk about the roles or the appointments process. This is a great opportunity to talk about the roles and the process in an informal setting.

Good practice in attraction: NHS Greater Glasgow and Clyde

Good practice in attraction: Scottish Housing Regulator

Application and assessment

- Appointing persons need to agree that the assessments they choose are the most appropriate way to test the skills, knowledge or experience that are required for the role.
- Appointing persons should only seek evidence which meets the requirements of the role as set out in the person specification.
- Appointing persons have a responsibility to identify and recognise their own bias and understand how it may impact selection. At the outset of the process they should specifically discuss how they can mitigate bias at each stage of the appointment round, for example, applications can be anonymised.
- Appointing persons should always act in a positive and encouraging way when meeting candidates and during the interviews.
- Appointing persons should document the assessment, taking notes to ensure they gather evidence on each candidate, this information can be useful in feeding back to unsuccessful candidates.
- Appointing persons should evaluate candidates after their interview instead of evaluating all candidates at the end of the assessment stage. It is a much more effective way of assessing candidates.

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, from under-represented groups, for example minority ethnic women, 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.
- Consider as part of continuous professional development (CPD) creating opportunities for senior women to be supported to take up e.g. shadow board opportunities or have a programme of CPD release to allow them time away from work when they are successful in applying for board positions.
- 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 board experience 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. Otherwise the diverse voices on the board may not be heard and possibly if barriers remain to their involvement they may not want to remain on the board. The UK Financial Reporting Council issued a report in July 2016 on board culture[9] which may provide helpful.
- Identify and address barriers that might prevent access for diverse groups of women such as disabled women and minority ethnic woman. And consider the needs of women who are pregnant or have children.

[9] Corporate Culture and the Role of Boards, Financial Reporting Council, July 2016, URL: https://www.frc.org.uk/getattachment/3851b9c5-92d3-4695-aeb2-87c9052dc8c1/Corporate-Culture-and-the-Role-of-Boards-Report-of-Observations.pdf (last accessed 13/04/2022)

Further reading

9.1 There are a number of existing guidance documents and codes of practice relating to the appointment 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 Ethical Standards Commissioner – 2013 Code of Practice[10] and Revised Guidance on Application of the 2013 Code of Practice[11];
- The Ethical Standards Commissioner– Diversity Delivers[12];
- The Scottish Code of Good Higher Education Governance[13];
- College Sector Board Appointments: 2014 Ministerial Guidance[14];
- The Equality and Human Rights Commission – How to improve board diversity: a six step guide to good practice[15];
- The Equality and Human Rights Commission – Appointments to Boards and Equality Law guidance[16];
- Scottish Government Public Bodies Unit – Guidance on Succession Planning for Public Body Boards[17].

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

[10] 2013 Code of Practice for Ministerial Appointments to Public Bodies in Scotland, The Ethical Standards Commissioner, October 2013, URL: https://www.ethicalstandards.org.uk/publication/2013-code-practice-ministerial-appointments-public-bodies-scotland (last accessed 13/04/2022).
[11] Guidance on the 2013 Code of Practice, The Ethical Standards Commissioner, May 2020, URL: https://www.ethicalstandards.org.uk/publication/revised-statutory-guidance-application-code-2020-version (last accessed 13/04/2022).
[12] Diversity Delivers: A strategy for enhancing equality of opportunity in Scotland's ministerial public appointments process, The Ethical Standards Commissioner, August 2008, URL: https://www.ethicalstandards.org.uk/publication/diversity-delivers (last accessed 13/04/2022).
[13] The Scottish Code of Good Higher Education Governance: Governance Code and Supporting Guidelines for Members of the Governing Bodies of Higher Education Institutions in Scotland, July 2013, URL: http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2013/07/Scottish-Code-of-Good-HE-Governance.pdf (last accessed 13/04/2022).
[14] College sector board appointments – ministerial guidance, The Scottish Government, August 2014, URL: https://www.gov.scot/publications/college-board-appointments-guidance/ (last accessed 13/04/2022).
[15] How to improve board diversity: a six step guide to good practice, The Equality and Human Rights Commission, April 2016, URL: https://www.equalityhumanrights.com/en/advice-and-guidance/how-improve-board-diversity-six-step-guide-good-practice (last accessed 13/04/2022).
[16] Appointments to Boards and Equality Law, The Equality and Human Rights Commission, July 2014, URL: https://www.equalityhumanrights.com/en/publication-download/appointments-boards-and-equality-law (last accessed 13/04/2022).
[17] Succession planning for public body boards: guidance, The Scottish Government, January 2017, URL: https://www.gov.scot/publications/guidance-succession-planning-public-body-boards/ (last accessed 13/04/2022).

Annex

List of public authorities with appointing persons 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 (S.S.I. 2003/1)
		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 regional strategic body	All members other than those appointed under paragraph 3A(2)(a) and

the meanings given to those terms by the Further and Higher Education (Scotland) Act 1992)		(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 (S.S.I. 2001/302) 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 (S.S.I. 2002/201)
		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. Non-executive members are appointed by the Regional Board and approved by Scottish Ministers	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
A regional Transport Partnership created under section 1(1) of the Transport (Scotland) Act 2005	Regional Transport Partnership Board	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[18]
		A member appointed only by virtue of being

[18] This relates only to the single authority Regional Transport Partnerships (RTPs), Swestrans and Zettrans.

		nominated for membership by Highlands and Islands Enterprise[19]
		A member appointed only by virtue of being nominated for membership by Scottish Enterprise[20]
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 Lord President	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	

[19] Ibid
[20] Ibid

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 (S.S.I. 2001/303) (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)
A Special Health Board constituted under section 2(1)(b) of the National Health Service (Scotland) Act 1978		Councillors appointed under paragraph 2(1)(b) of schedule 1 of that Act
	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

© Crown copyright 2022

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit **nationalarchives.gov.uk/doc/open-government-licence/version/3** or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: **psi@nationalarchives.gsi.gov.uk**.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at **www.gov.scot**

Any enquiries regarding this publication should be sent to us at

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80435-355-4 (web only)

Published by The Scottish Government, April 2022

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS1072942 (04/22)