

Gender Representation on Public Boards (Scotland) Act 2018

Guidance

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Introduction

1.1 Women represent over half the population of Scotland - nearly 52%. It is absolutely right that women are part of the decision making of our public bodies, colleges and universities. These decisions which 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.

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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 we are reaching out to and attracting diverse and talented people, women included. It is when boards don't reflect the diversity of Scotland's communities that we should be concerned about merit.

1.3 This 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 should create 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 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.

1.8 The requirements of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012¹ apply to many of the public authorities covered by the Act. Under

¹ <https://www.legislation.gov.uk/ssi/2012/162/contents/made> and as amended by (and add in 2016 Regulations)

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.

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 2010²) 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”.

² <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 State³ 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 surgery⁴

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

This element of the definition means that the person is undergoing or undergone a process of reassigning their sex to female. This element of the definition means that a person with the protected characteristic of gender reassignment is only covered if they are undergoing or have undergone a process to reassign their sex to 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; using female titles; updating the gender marker to female on official documents such as a driving licence or passport; describing themselves and being described by others in written or other communication as a woman.

³ A trans woman with a UK Gender Recognition Certificate or with gender recognition from another EU Member State is legally a woman.

⁴ See <https://www.equalityhumanrights.com/en/advice-and-guidance/gender-reassignment-discrimination#what>

Commented [A1]: Of course, for the purposes of the Act, only a trans woman would be included. She would also only be included from the point in which she is living permanently as woman, and not from the point of proposing to do so. So there are limitations on the direction of reassignment, and the stage of reassignment, to meet the definition of 'woman' for the purposes of the Act that are narrower than that of the protected characteristic.

We suggest some small changes to the wording to make this clearer at point one, as follows: 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”. The person does not need to have undergone any specific treatment or surgery. This definition includes all those reassigning their sex, from the point at which they propose to do so, and regardless of the direction of their reassignment.

A person who meets this definition is therefore not necessarily covered by the definition of “woman” in the Act unless they also meet the following two criteria. We also suggest some changes to the wording for the “be proposing to undergo, undergoing or undergone a process (or part of a process) for the purpose of becoming female.” We would suggest that in this section, the definition underneath only mentions those who are “undergoing or have undergone a process”, as this is compatible with step three of the definition, that a person “be living as a woman”. If a trans woman was only proposing to undergo a process, she would not meet the threshold for the definition of 'woman' for the purposes of the Act.

We would also suggest using the language of “reassign their sex to female” as the term ‘reassign’ is the language used in the Equality Act 2010 and the definition of the protected characteristic, so can be more easily understood than “becoming female”. Our suggested changes would be as follows:

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 a person with the protected characteristic of gender reassignment is only covered if they are undergoing or have undergone a process to reassign their sex to female. In other words, the direction of their reassignment must be from male to female. Finally, we'd then suggest some small changes to the wording for the “be living as a woman” section of the definition. These would indicate some of the additional ways that a trans woman may demonstrate that she is living as a woman, such as having updated gender markers on official documents like a passport or driving licence, or using female titles on utility bills or bank accounts. Our suggested changes would be as follows:

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; using female titles; updating the gender marker to female on official documents such as a driving licence or passport; describing themselves and being described by others in written or other communication as a woman.

Section 2.15 We would also like to state our support for the position outlined at section 2.15, that the Act does not require an appointing person to ask a candidate to prove that they meet the definition of woman in the Act. We think that the definition at section 2.13 provides a clear and useful framework for how to deal with any uncertainty about a candidate's eligibility, or to settle any later disputes about a person's legitimacy to have been appointed to a board for the purpose of meeting the gender representation objective. It would however be disproportionate to require all candidates to prove they met the definition of 'woman' before being appointed. This would place a needless additional

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.

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 made solely on merit. The definition of merit is not fixed; it is agreed by the selection panel during the planning process in each appointment round. It is set out in the person specification which details the skills required for the role. It is a clear and accurate description of the skills, knowledge, understanding and/or experience a person will need to be effective in the role.

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 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

3.10 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

3.11 Section 4(2) of the Act refers to candidates being "equally qualified". Being qualified will be role specific and for the selection panels to define. To determine whether candidates are equally qualified the appointing person selection panels 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

3.12 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.

3.13 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

Commented [A2]: As there is no precise definition of "equally qualified" provided in the guidance (nor in the Act itself) it would be helpful if the means by which qualification for board membership can be evidence could be described in sections 3 and 4 of the guidance. Though beyond the scope of the guidance document, the Scottish Government should seriously explore avenues to prepare candidates for public appointment which demonstrates that candidates are "equally qualified" at the point of application, such as standardised training. While the concept of 'merit-based appointment' provides the starting point for appointments under the Act, it is worth noting that the implication that women may end up appointed to boards at the expense of "more qualified" candidates is deeply flawed and a barrier to equal representation in public life. Furthermore it presumes that there is a standard appointment process and criteria for board membership, which is evidently not the case. Without clearer definition s.4 may create an unintended loophole by leaving the concept of merit based qualification open to the judgement and biases of the appointing barrier to avoid the use of the 'tie-breaker' provision in the Act. "Equally qualified" should therefore not be limited to the precise same experience of qualifications or years of service in a particular capacity but fleshed out in such a manner as to include skillset, performance and competence, including gender or equalities competence.

We also welcome the clarity around the definition of 'women' for the purposes of the Act, which secured broad agreement at bill stage. This definition aligns with the Equality Act 2010 and the specific circumstances relevant to the Act's application. Given that individual public boards will be required to publicly report on numbers of men and women appointed to board positions, to define women so as to exclude trans women without a GRC would risk disclosing an individual's trans status. Given the importance of accurate and timely reporting for the Act's success and women's increased representation on public boards, it is vital that reporting requirements do not conflict or appear to conflict with individuals' right to privacy. We would however like to see a definition of 'equally qualified candidate' as per s.4 of the Act provided for in the guidance. The guidance does state that the "appointing person should conduct a full and objective assessment of each applicant against the criteria which have been determined for the role."

Commented [A3]: the initial proposals for the Bill referred to "exceptional" circumstances where the tie-break measure in s.4(2) could be over-ridden. The Act itself does not reflect this language, and instead allows appointing persons to justify not appointing the equally qualified woman where there is a "characteristic or situation particular to that candidate." Accordingly, the wording used in the guidance at 3.14 to 3.15 should reinforce that s.4(4) does not render this mandatory. The guidance should underline that the intention of the 2018 Act is to address the historic and persistent underrepresentation of women in public life and that it may be appropriate to have a majority of board members be women. The guidance should limit the potential loophole enabling the appointing person to forego compliance with the gender representation objective by more strictly elaborating the meanings of 'characteristic' and 'situation'. The definition proposed in paragraph 3.16 is exceptionally vague and further increases the discretion of the appointing person by offering three 'such as' examples of a 'situation' that do not necessarily relate to legally protect characteristics. This could include the opportunity to outline steps to encourage an intersectional approach to increasing women's representation by including measures to target women from diverse communities and backgrounds, including disabled women, Black and minority ethnic women, lesbian, bisexual and trans women, working class women, and older and younger women

jurisprudence of the European Court of Justice which provides that such a requirement cannot be absolute.

3.14 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.

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 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.

Commented [A4]: The guidance must therefore be robust and prescriptive so as to indicate the multitudes of areas that public bodies and appointing persons should examine prior to vacancies arising. The draft guidance currently refers to "practical steps that can be taken" as outlined in the Good Practice section. The Scottish Government should consider more robust language such as "indicative steps which should inform those adopted by the public body or appointing person." This would indicate the expectation that specific steps will be taken under s.5 of the Act. The draft guidance also comments on "how and in what ways new board members are welcomed" may need to be considered as part of necessary cultural changes. Whilst this is important it is equally important for boards to understand retention rates of women on their boards and the practical and cultural changes to enable women to remain in post. This may include aspects such as childcare and meeting times as well as the importance of gender competence and training for public body chairs. Training for public boards should be conducted on outreach, equality and diversity, and unconscious bias. The guidance should also refer to changes that may be necessary to improve application visibility such as linking up with third sector national and community groups that work with and represent women (e.g. SEStran advertising positions through Equate Scotland). The Government should ensure that any networks or projects which aim to prepare women for board appointments are suitably supported and resourced. The Guidance must also stress the importance of appropriate recruitment criteria and its publication well in advance of the vacancy in the audience itself, not just the Good Practice Guide examples. This should include the importance of setting out clear and accurate expectations for board members in terms of time commitment, meeting agendas and the role expected to be played in and outside of board meetings. PSED requirements relating to board diversity overlap with the need for succession planning processes. These are vital to the preparedness of the board to implement necessary changes to the recruitment processes and policies in advance of vacancies arising. However, succession planning is not mentioned in section 4 of the draft guidance. Paragraph 4.8, which states that boards "will want to ensure that wider equality and diversity continue to be considered", is not strong enough to stress the importance of engaging with diverse groups of women and should be redrafted to ensure intersectional measures are front and centre of public body steps under s.5. The guidance may also wish to highlight that the monitoring and evaluation of measures to encourage applications from women is also likely to be of benefit to reporting under PSED.

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 regulations⁵. 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; 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,

⁵ The Gender Representation on Public Boards (Scotland) (Reports) Regulations 2019

- 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 amended⁶ (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 2016⁷ 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).

⁶ <https://www.legislation.gov.uk/ssi/2012/162/contents/made>, as amended by [add link to the 2016 Regs]

⁷ <http://www.legislation.gov.uk/ssi/2016/159/contents/made>

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 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 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.

The guidance could benefit from some worked examples at section 7.3 and 7.4 and to be clearer on what the Act specifically requires in terms of section 3 (2) and 3(3). For example, it would be helpful to illustrate what “at the time of recruitment” means in terms of the gender objective having been met in relation to the wording of section 3 (2) and 3(3). If, for instance, a board had 6 female and 6 male non-executive members but went out to recruitment for a vacancy that was due to arise from the future retirement of one of those female members, would section 3 and 4 of the Act apply or not? It might also be helpful to include, perhaps at this point of the text and at other points in the document, a high profile reminder that the appointing person must appoint first of all on the basis of who is the best candidate and not on the basis of their gender.

Reporting

7.5 When the gender representation objective has already been achieved before 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. 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 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).

7.8 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.

Commented [A5]: Section 6.13 might benefit from clarifying why section 6 of the Act ceases to exist after December 2022 and cross referring to what reporting requirements remain in place thereafter ie for example, if correctly interpreted, to explain that section 3 (2) of the regulations requires reporting every 2 years after April 2021. More explanation of the operation of the Act in regard to Section 6 would be welcome.

Linked to the comment above at 15, it may be helpful to highlight in this guidance that a report must be made every two years as stated in the regulations at section 3 (2).

Commented [A6]: EMPHASISE THAT ONLY SECTION 6 AFTER 31 DECEMBER 2022 WHAT DURIES APPY RATHER THAN WHAT REPORTING IS REQUIRED.

Commented [A7]: As outlined at question 15 this requirement is in place only until December 2022. This implies that once gender balance has been achieved it will be maintained. However, it may be that, particularly in small boards, a woman leaves the board and a man (who is the best candidate at the subsequent appointment round) is appointed. There is a continuing need to ensure that, while appointment is always based on merit, subsequent recruitment aims to re-establish gender balance. This principle is well covered in section of the guidance - "Achieving the gender representation objective" - but appears contrary to the need for this requirement only to apply to 2022.

Good practice guide

8.1 Board appointments are 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 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 the 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 planning and will deliver better results. When there is pressure to get people into roles quickly, there are fewer opportunities to deliver a targeted and planned process which will be 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 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 11](#).
- 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 was successful previously.

Commented [A8]: It may be wise to update the good practice guide to reflect innovative or successful measures introduced and reported on at the first cycle. Measures recommended within the guidance – such as mentoring as an aspect of succession planning – should be more thoroughly explained and use made of examples.

- 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: [Scottish Funding Council](#)

Person specifications and role descriptions

- A person specification is the skills 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 selection panel to match the criteria for selection to appropriate methods of assessment. It also ensures they understand what the board's needs are and how applicants will be assessed to see if they meet the board's needs. It also makes this clear for applicants.
- 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 sectors where there are recognised challenges in gender balance in the workforce.
- 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.

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

Attraction and outreach

- The selection panel 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.
- It is important to involve the public authority so its brand can be used to attract those interested in the subject or area. Publicity which appeals to someone's passion for a particular subject or area can encourage them to apply. Be creative!

Commented [A9]: The Commissioner was invited to and contributed to the good practice guidance prior to this consultation exercise. Since that time, the Commissioner has published a number of new case studies on good practice in diversity in governance. They are one of the outputs of a research project which the Commissioner is running in partnership with the Scottish Government. These case provide examples of how diversity is harnessed effectively by disparate boards following the appointment of more diverse members. The case studies might helpfully be included in the final version of the guidance as an additional resource for appointing persons considering potential improvements to their practices. They will be particularly relevant to reviews of prevalent board culture.

- Publicity should always include the contact details of someone who is able to answer questions and have informal discussions with potential applicants. It can be more than one person if that would be helpful to applicants.
- Selection panels, the organisation or both working together should use positive action measures, including undertaking outreach events with relevant networks as a way of publicising the appointments and increasing the diversity of the field of applicants.
- 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 any resultant applications would be treated in the same way as all other applicants.
- 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.
- Selection panels, 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

- Selection panels need to be clear that the assessments they are using are the most appropriate way to test the skills, knowledge or experience that are required for the role.
- Selection panels should only seek evidence which meets the requirements of the role.
- Selection panels have a responsibility to identify and recognise their own bias and understand how it may impact selection. They should specifically discuss how they can mitigate bias at each stage of the appointment round.
- Candidates from different sectors may interpret skills differently to candidates from other sectors. Therefore, selection panels need to be flexible and open and responsive to answers and evidence being framed in different ways.

Commented [A10]: Whilst the case studies are useful, it would be even better to extract the key learnings from those to give public bodies clearer guidance on what has worked to date in encouraging more women to both apply and succeed in being appointed. There are already case studies available on the commissioner's website but Changing the Chemistry has observed on multiple occasions, organisations either not being aware of these or not having the time to extract the key points that they demonstrate. For instance, if holding a board information event to attract a wider range of applicants, make sure this is at a suitable time of the day and week that suits the candidates being targeted. Role descriptions can be put through a gender decoder – there are free online ones – which will provide organisations with feedback on whether their wording could be putting off women from applying. Women tend to prefer more information and context. Rather than referring to another paper with off-putting words, it would be much easier to include the words in the guidance (and quote the research paper). CtC's experience is to make the process as simple as possible. There should also be advice on considering the make-up of the selection panel, whether this is done by the sponsor team or the body, to ensure it is as diverse as possible. Additionally when advertising or doing outreach, it is worth promoting the benefit to the applicant of being on a board – ie developing their leadership skills, widening their network in addition to giving back. There should be much more on creating the right culture in the boardroom and ensuring everyone is listened to otherwise having more board diversity will not deliver the benefits that should come. What exactly is meant by structural and systemic bias in this context? This should be explained in simple language so that it is clear to all and the right action and training implemented. Advice should also be given to the support provided for new board members such as a buddy of an existing board member. NOTE: Changing the Chemistry is a charity, headquartered in Scotland, that seeks to improve diversity of thought in the boardroom (diversity of thought being identity, cognitive and experiential diversity). It provides advice and support to boards seeking help in diversifying their board and more details can be found at www.changingthechemistry.org or email contact@changingthechemistry.org. The charity will also share details of board vacancies to its membership (as of July 2019 there are more than 450 members of whom over 80% are female and predominantly based in Scotland) for free. Any adverts should be emailed to board.vacancy@changingthechemistry.org. Changing the Chemistry (CtC) operates as a peer-support network charging no membership fee but expecting members to contribute to help individuals from diverse backgrounds secure board roles and then supporting them to perform in those roles. In addition to developing the supply side of board recruitment, CtC is also working to influence the demand side by making those hiring board members more aware of the biases and stereotypes impacting their decision-making and reiterating the business case that diverse teams perform better. CtC has filled over 190 board roles from our membership across all three sectors – from FTSE 250 companies to a broad range of public-sector and other private-sector boards to a wide variety of charities. CtC has also had great results working with organisations to help them make significant shifts in the diversity of their Boards by attracting a more diverse range of candidates and supporting these candidates through the recruitment process. CtC's membership is made up of those seeking board roles, those on boards with a desire to continuously improve their boardroom skills and those who want to support the cause of diversity of thought in the boardroom.

- Selection panels should always act in a positive and encouraging way when meeting candidates and during the interviews.
- Selection panels should take notes during interviews to ensure they gather evidence on each candidate. It is beneficial to note evidence at the time rather than trying to remember later.
- Selection panels 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 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.
- 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 where women 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 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.

Commented [A11]: As previously noted around the reporting, there should be more than just commenting in paragraph 4.3 about how new board members are welcomed. The advice around behaviours and culture should be expanded in this area given how important these aspects are to ensuring a diverse board is effective. Otherwise the diverse voices are not heard and worst case they do not want to remain on the board. CtC is aware of multiple examples of this. The UK Financial Reporting Council issued a report in July 2016 on board culture (<https://www.frc.org.uk/directors/the-culture-project>) which may provide some help.

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 Commissioner for Ethical Standards in Public Life in Scotland – 2013 Code of Practice⁸ and Revised Guidance on Application of the 2013 Code of Practice⁹;
- The Commissioner for Ethical Standards in Public Life in Scotland – Diversity Delivers¹⁰;
- The Scottish Code of Good Higher Education Governance¹¹;
- College Sector Board Appointments: 2014 Ministerial Guidance¹²;
- The Equality and Human Rights Commission – How to improve board diversity: a six step guide to good practice¹³;
- The Equality and Human Rights Commission – Appointments to Boards and Equality Law guidance¹⁴;
- Scottish Government Public Bodies Unit – Guidance on Succession Planning for Public Body Boards¹⁵.

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.

⁸ <http://www.ethicalstandards.org.uk/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

⁹ <http://www.publicappointments.org/publications/publication/781/revised-guidance-on-application-of-the-2013-code-of-practice>

¹⁰ <http://www.publicappointments.org/site/uploads/publications/9081470494a9d103ac08481.79691631.pdf>

¹¹ <http://www.scottishuniversitygovernance.ac.uk/wp-content/uploads/2013/07/Scottish-Code-of-Good-HE-Governance.pdf>

¹² <http://www.gov.scot/Topics/Education/post16reform/hefegovernance/CollegeSectorBoardAppointments2014>

¹³ <https://www.equalityhumanrights.com/en/advice-and-guidance/how-improve-board-diversity-six-step-guide-good-practice>

¹⁴ <https://www.equalityhumanrights.com/en/publication-download/appointments-boards-and-equality-law>

¹⁵ <http://www.gov.scot/Topics/Government/public-bodies/BoardChairs>

Annex

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 (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 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 (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.	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	<u>Regional Transport Partnership Board</u> <u>The Scottish Ministers</u>	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 the 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 representative
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

Commented [A12]: Can I ask in the context of regional transport partnerships and Scottish ministers being the appointing person as outlined in the consultation document, I had always thought the "appointing person" was the RTP board and that the appointment was semi regulated after the first appointment round in 2005/6 with ministers giving consent for subsequent appointments?
<https://www.webarchive.org.uk/wayback/archive/20180516222332/http://www.gov.scot/Publications/2005/12/21113337/33380>

That appears to be different in the published consultation, could you advise at some point before I submit an individual response if my recollection was incorrect or if the appointment process is or has changed?

Commented [A13]: Who is the appointing person

Commented [A14]: It is a curious one, Eileen. The "other members", as they are called, are appointed by the RTP subject to the consent to the Scottish Ministers. In practice, the RTPs do the advertising, interviewing and selections then write to the SMs for approval.

Commented [A15]: The Table listing public authorities with appointing person and excluded positions makes reference at page 64 to "Members appointed only by virtue of being nominated for membership by: • A Health Board • Highlands and Islands Enterprise • Scottish Enterprise." Having reviewed the Transport (Scotland) Act 2005 Section 6(1)(a)(ii) we cannot find any right of nomination for membership of a Transport Partnership in favour of any of these bodies. We would appreciate clarification on this point.
John Binning, Strathclyde Partnership for Transport

Commented [A16]: This relates only to the single authority RTPs, Swestrans and Zettrans, not to SPT. Scottish Ministers expectations in this regard was set out in the guidance on membership at the time the RTPs were established. Para 63 refers.
<https://www.transport.gov.scot/media/47165/scotlands-transport-future-regional-transport-partnerships-guidance-on-membership.pdf>

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 (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