

# **Partial Business and Regulatory Impact Assessment**

## **Gender Representation on Public Boards (Scotland) Bill**

**June 2017**



**Scottish Government**  
Riaghaltas na h-Alba  
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# Partial Business and Regulatory Impact Assessment

## Title of Proposal - Gender Representation on Public Boards (Scotland) Bill

### Purpose and intended effect

**Background** - The Gender Representation on Public Boards (Scotland) Bill, hereafter referred to as 'the Bill', is a key commitment in the Scottish Government's Programme for Government 2016-17: [A Plan for Scotland](#), and represents a further step towards the realisation of women's equality in Scotland, a goal which remains at the heart of the Scottish Government's vision for an equal Scotland.

**Objective and Rationale for Government Intervention** - The Bill is intended to redress the under representation of women on Public Boards in Scotland, and to ensure that Boards aspire to have 50% non-executive directors who are women or as close to 50% as possible in the event that a Board has an odd number of non-executive directors.

Scottish Ministers' commitment to introduce legislation on gender balance on public boards follows the transfer of competence through the Scotland Act 2016, to the Scottish Parliament to legislate on equal opportunities in relation to non-executive director appointments to the boards of Scottish public authorities.

Currently, women make up over 51% of the Scottish population but are under-represented in senior and decision making positions, including in political institutions and on public and private sector Boards. Scottish Ministers have expressed their discontent with this position and have sought to tackle the under-representation of women through key Scottish Government initiatives including the [Partnership for Change 50/50 by 2020](#).

Improving women's representation is part of the Scottish Government's overarching commitment to realising women's equality, and supports the Government's Purpose "*To focus government and public services on creating a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth*", and contributing to our National Outcomes:

- We have tackled the significant inequalities in Scottish society;
- Our public services are high quality, continually improving, efficient and responsive to local people's needs

**Consultation - Within Government** - During the Bill's development officials have discussed and developed its policy objectives with:

- Public Bodies Unit
- Public Appointments Team
- Public Body Sponsor Teams
- Higher Education Governance Team
- Governance, Workforce and College Policy Team
- Regional Transport Partnership Policy Team

Their input supported the formulation of the policy proposals by providing detailed information on the governance structures and board appointment processes of the organisations that they support.

**Public Consultation** - The draft Bill was consulted on between 5 January and 17 March 2017. In total, the consultation received 101 responses, of which 66 were from groups or organisations and 353 from individual members of the public. Most of the respondees were broadly in favour of the Bill's objectives.

Some public authorities who will be subject to the Bill responded to the consultation, including universities and colleges. The consultation included the question - *To help with the development of our Business Regulatory Impact Assessment, please provide any comments on the costs and benefits of the draft Bill, or any further information you think is relevant.*

**Costs identified** - A total of 39 respondents made a comment on this question. Around 1 in 3 respondents (predominantly public bodies) did not identify any additional costs associated with the draft Bill, or did not think additional costs would be significant. The rest of respondents identified but did not quantify minor costs, which included:

- Writing and promoting guidance
- Ensuring that all interviewing staff are trained
- Administrative costs of gathering information
- Encouraging applications
- Staff time to develop mentoring schemes
- Outreach work
- Explaining/defending the objective
- Longer timescales for completing recruitment exercises, including if Ministers choose to see candidates face to face before a final decision
- Provision of child-care for women with children or of appropriate care for women with other caring responsibilities.

**Reporting costs** - The draft Bill did not include a requirement on organisations to report on their progress towards achieving the Bill's gender objective. However a specific question about reporting was asked in the consultation and respondents to this question did identify that there could be costs attached to this aspect of the Bill if a reporting requirement was put in place that established a new, separate mechanism for this purpose. As the Bill's reporting requirements will be met using the existing mechanism of the organisation's Equality Mainstreaming Report or Annual Report, costs will be minimal.

In relation to most of the other areas identified above, the Bill does not include requirements that would lead to additional costs for the organisations that are covered by the Bill. **However, in the areas of encouraging applications, outreach work and childcare expenses, there could be additional financial outlay required.** The details of this is set out in full in the Bill's Financial Memorandum and the estimate of possible costs is included in the table below:

### Summary of Costs Arising from the Bill

|   |  |   |
|---|--|---|
| <b>Additional costs on the Scottish Government</b>  | <b>None</b>  |   |
| <b>Additional costs on Other Bodies, Individuals and Businesses</b>   |  |   |
|   | <b>Potential Range of annual costs</b>   |   |
|   | <b>Lowest-</b> based on eight bodies paying childcare at a cost of £355 per year and 10 organisations undertaking outreach activity per year | <b>Highest</b> - based on 70 organisations (approx. half of all bodies covered by the Bill) |
| <b>Encouraging applications/Outreach work</b>   | £26,300 -£34,500   | £184,100 - £241,500   |
| <b>Provision of childcare for women with children or of appropriate care for women with other caring responsibilities</b> | £2,844   | £24,850   |
| <b>Total</b>  | <b>£29,144 - £37,344</b>   | <b>£208,950- £266,350</b>   |

### Option 1 – The Gender Representation on Public Boards (Scotland) Bill

**Sectors and groups affected** - Public authorities listed in schedule 1 of the Bill.

**Benefits identified** - Evidence indicates that diversity in the boardroom helps organisations to perform better, because:

- The organisation is recruiting from the widest possible talent pool;
- There is greater understanding of customer, stakeholder and workforce requirements;
- The Board benefits from diverse perspectives;
- The Board exercises more balanced decision making and better risk management;
- It will have an improved organisational reputation

Some of the supporting evidence for diverse boards is as follows:

- **Recent IMF research** looked at 2 million firms in 34 countries in Europe, and found strong evidence that companies with a higher proportion of women on the board, tended to be more profitable;

- A 2007 **McKinsey & Company** report “**Women Matter**” also found strong evidence that companies with a strong female representation at board and top management level perform better than those without, and that gender-diverse boards have a positive impact on performance;
- A report published by the **Chartered Management Institute** called “A Moral DNA” linked greater diversity at senior management levels to happier and more engaged employees and a more ethical and value based culture;
- A 2015 report published by **Grant Thornton** showed that listed companies in the UK, US and India with at least one women on their board outperformed companies with all-male boards by £430bn in 2014
- In a study of 2,400 businesses from 2005-2011, the Harvard Law School Forum on Corporate Governance and Financial Regulation noted that: *“large-capital companies with women directors outperformed peers with no women directors by 26%; and small to mid-capital companies with women on the board outperformed their peers with all male boards by 17%”*;
- **Catalyst** (2004) when assessing Fortune 500 companies found that those in the top quartile for the number of women in senior management roles had an 18% return on equity and 128% return to shareholders compared to 13% and 95% respectively for companies in the bottom quartile for the number of women in senior management role

**Costs** – As stated previously, there could be additional financial outlay required in the areas of encouraging applications, outreach work and childcare expenses, for the organisations that are covered by the Bill. The details of this are set out in full in the Bill’s Financial Memorandum and the estimate of possible costs is included in the table included on page three of the BRIA.

**Option 2 – Maintain the Scottish Government’s commitment to its [Partnership for Change 50/50 by 2020](#)**. campaign

**Sectors and groups affected** – Public, private and third sector boards in Scotland.

**Benefits identified** - maintains the Scottish Government’s commitment to achieving 50% representation of women on public boards but is a voluntary commitment that could be rolled back in the future.

**Costs** – As the approach that public authorities have taken towards achieving 50/50 by 2020 is the same as the Bill’s gender objective, the same costs could be experienced by organisations in the areas of child care expenses and awareness raising events.

**Scottish Firms Impact Test** – The issue of universities’ inclusion amongst the bodies covered by this Bill has previously been raised as a concern by the sector as possibly giving weight to the case for their reclassification by ONS. The sector has identified that reclassification would have a significant financial impact on them. However, given the statement made in January 2017 by ONS<sup>1</sup> regarding the scope of the review, and the nature of this Bill’s objective, which is to achieve great representation of women on university governing bodies and not to make changes to university governing bodies’ structure, the Government feels that any risks are low.

Universities have also made a sector wide commitment to achieve the target of 40% female lay person Court members by 2018, with no indication that this would incur a financial outlay for them.

**Competition Assessment - As above**

**Consumer Assessment** - The Scottish Government definition of a consumer is “anyone who buys goods or digital content, or uses goods or services either in the private or public sector, now or in the future.”

When considering the impact of policies, the effect on consumers whose circumstances make them more vulnerable should be given particular weight. In general, there will be a need to carry out a more in-depth assessment if the answer to any of the following questions is yes:

- Does the policy affect the quality, availability or price of any goods or services in a market?
- Does the policy affect the essential services market, such as energy or water?
- Does the policy involve storage or increased use of consumer data?
- Does the policy increase opportunities for unscrupulous supplier to target consumers?
- Does the policy impact the information available to consumers on either goods or services, or their rights in relation to these?
- Does the policy affect routes for consumers to seek advice or raise complaints on consumer issues?

**In relation to the policy of this Bill, the answer is no to all of the above questions.**

**Test run of business forms** - No new forms will be introduced as a result of this Bill.

**Digital Impact Test** - In considering the Bill’s policy objective of increased representation of women on Public boards we do not foresee any inconsistencies with the increasing shift of economic, social and governmental interactions online.

**Legal Aid Impact Test** - This Bill will not give rise to increased use of legal processes or create new rights or responsibilities or have any possible impacts on the legal aid fund.

**Enforcement, sanctions and monitoring** - The Bill will require public authorities to report on progress two-yearly in their Equality Mainstreaming Reports or, if their organisation does not have to produce an Equality Mainstreaming Report, their most relevant corporate document. Currently there are no sanctions attached to non-compliance.

<sup>1</sup> <https://www.ons.gov.uk/news/statementsandletters/classificationreviewofuniversitiesintheuk>

**Implementation and delivery plan - How will the proposal be implemented and in what timescale?** The earliest commencement date for the Bill is 2018. A target for public authorities to achieve the objective of 50% women board members has been set as 2022.

**Post-implementation review** - no set date for review is planned. The Scottish Government will review the legislation within 10 years.

**Summary and recommendation**

Which option is being recommended and why? Refer to analysis of the costs and benefits in reaching the decision. Summarise, using the table below, the information gathered for each option.

• **Summary costs and benefits table**


| Option | Total benefit per annum:<br>- economic, environmental, social   | Total cost per annum:<br>- economic, environmental, social<br>- policy and administrative                                    |
|--------|---|--|
| 1      | Research detailed above shows that increased Board diversity brings increased performance and productivity for the organisation | Public authorities could experience minimal costs in the areas of child care expenses and awareness raising /outreach events |
| 2      | As above  | As above   |

**Declaration and publication**

Sign-off for Partial BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed:**



**Date: 15 June 2017**

**Minister's name: Angela Constance MSP**

**Minister's title: Cabinet Secretary for Communities, Social Security and Equalities**

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