

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

## **Equality Impact Assessment Record**

## Equality Impact Assessment Record

<b>Title of policy/ practice/ strategy/ legislation etc.</b>	<b>Gender Representation on Public Boards (Amendment) (Scotland) Bill</b>	
<b>Minister</b>	<b>Cabinet Secretary for Social Justice</b>	
<b>Lead official</b>	<b>Gender Equality Policy team</b>	
<b>Officials involved in the EQIA</b>	<b>name</b>	<b>team</b>
		<b>Gender Equality Policy team</b>
<b>Directorate Division Team</b>	<b>Directorate for Equality, Inclusion and Human Rights, Gender Equality Policy team</b>	
<b>Is this new policy or revision to an existing policy?</b>	<b>New policy</b>	

### Screening

#### Policy Aim

The purpose of the Bill is to amend the Gender Representation on Public Boards (Scotland) Act 2018 (“2018 Act”) to remove from the statute book the definition of “woman” in section 2.

This follows the decisions of the Court of Session on 18 February and 22 March 2022 (and which had effect from 19 April 2022) in the judicial review and reclaiming motion brought by For Women Scotland which challenged that definition. The court found that the definition was not within the legislative competence of the Scottish Parliament and therefore was “not law”, so reduced it. However, notwithstanding the court’s decision, the definition has remained on the face of the statute book which could be misleading.

The definition to be removed is: ““woman” includes a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) 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.”

This Bill will otherwise not change the 2018 Act. The 2018 Act set a gender representation objective that 50% of the non-executive members of the boards of listed public authorities should be women. A number of duties are

placed on Scottish Ministers, public authorities and appointing persons requiring action to be taken to achieve the objective.

The scope of this Bill is extremely limited as it is a technical Bill which is being made in light of a court decision, and it simply removes a redundant definition from the statute book. Any legal changes to the 2018 Act were as a result of the court's decisions in February and March 2022. This Bill makes no legal changes to the 2018 Act. Therefore we have carried out an appropriate assessment of the equality issues affected by the Bill which has not required consultation with external stakeholders or the gathering of additional evidence at this stage.

### **Who will it affect?**

The 2018 Act requires a range of activities to be undertaken to increase the representation of women on the boards of Scottish public authorities. However, this Bill does not affect the operation of the 2018 Act. It simply ensures that the text of the 2018 Act reflects the change to that Act which was made by the court's decisions and which has been effective since 19 April 2022.

This Bill will therefore have only limited effect. Removing the redundant definition of "woman" in section 2 of the 2018 Act from the statute book will ensure that no one is misled.

### **What might prevent the desired outcomes being achieved?**

Nothing is foreseen which will prevent the desired outcome of the Bill (to remove a redundant definition from the 2018 Act) being achieved.

## Framing

### Results of framing exercise

Given the extremely limited scope of the Bill, there has been no need to consult externally nor gather in additional evidence.

### Extent/Level of EQIA required

This EQIA has been made with due regard being taken to all the requirements of the public sector equality duty and no further evidence is required at this stage.

### Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

#### Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation			x	The Bill has limited scope and will not impact people based on age.
Advancing equality of opportunity			x	
Promoting good relations among and between different age groups			x	

**Do you think that the policy impacts disabled people?**

<b>Disability</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination, harassment and victimisation			x	The Bill has limited scope and will not impact people based on disability.
Advancing equality of opportunity			x	
Promoting good relations among and between disabled and non-disabled people			x	

**Do you think that the policy impacts on men and women in different ways?**

<b>Sex</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			x	The Bill will ensure that women and men with the protected characteristic of sex are clear that the definition in section 2 of the 2018 Act has been removed from the statute book and will not be misled.
Advancing equality of opportunity			x	
Promoting good relations between men and women			x	

**Do you think that the policy impacts on women because of pregnancy and maternity?**

<b>Pregnancy and Maternity</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			x	The Bill has limited scope and will not impact people based on pregnancy and maternity.
Advancing equality of opportunity			x	
Promoting good relations			x	

**Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)**

<b>Gender reassignment</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			x	The Bill will ensure that people with the protected characteristic of gender reassignment are clear that the definition in section 2 of the 2018 Act has been removed from the statute book and will not be misled. Engagement with LGBTQI+ stakeholders is ongoing to help make clear the limited nature of the amendment being made by the Bill.
Advancing equality of opportunity			x	

Promoting good relations			x	
--------------------------	--	--	---	--

**Do you think that the policy impacts on people because of their sexual orientation?**

<b>Sexual orientation</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			x	The Bill has limited scope and will not impact people based on sexual orientation.
Advancing equality of opportunity			x	
Promoting good relations			x	

**Do you think the policy impacts on people on the grounds of their race?**

<b>Race</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			x	The Bill has limited scope and will not impact people based on race.
Advancing equality of opportunity			x	
Promoting good race relations			x	

**Do you think the policy impacts on people because of their religion or belief?**

<b>Religion or belief</b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			x	The Bill has limited scope and will not impact people based on religion or belief.

Advancing equality of opportunity			X	
Promoting good relations			X	

**Do you think the policy impacts on people because of their marriage or civil partnership?**

<b>Marriage and Civil Partnership<sup>1</sup></b>	<b>Positive</b>	<b>Negative</b>	<b>None</b>	<b>Reasons for your decision</b>
Eliminating unlawful discrimination			X	The Bill has limited scope and will not impact people based on marriage or civil partnership.

## **Decision making and monitoring**

### **Identifying and establishing any required mitigating action**

**Have positive or negative impacts been identified for any of the equality groups?**

A potential positive impact has been identified in respect of all those using the 2018 Act, as the Bill will ensure that they are not misled by erroneous wording in section 2 of that Act.

The trans community may perceive the Bill to have a negative impact on their community, as they could mistakenly view it as a step backwards

---

<sup>1</sup> In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.



from their work to achieve equality or a sign that the Scottish Government is changing its position on support for trans rights. However any substantive impact on the operation of the law is as a result of the Court's decisions, not this Bill which simply clears up confusing wording. Officials are engaging with LGBTQI+ stakeholders to reassure them of the Scottish Government's ongoing commitment to achieving greater equality.

**Is the policy directly or indirectly discriminatory under the Equality Act 2010?**

No

**If the policy is indirectly discriminatory, how is it justified under the relevant legislation?**

N/A

**If not justified, what mitigating action will be undertaken?**

N/A

**Describing how Equality Impact analysis has shaped the policy making process**

No changes have been made to the Bill following this EQIA.

**Monitoring and Review**

The position will continue to be monitored throughout the passage of the Bill through the Parliament, and further review will be undertaken if necessary.

**Stage 5 - Authorisation of EQIA**

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes  No

The Bill was developed solely and specifically in response to the Court decision. No other changes to the 2018 Act are expected.

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes  No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes  No  Not applicable

## Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Gender Representation on Public Boards (Amendment) (Scotland) Bill and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Catherine McMeeken

Position: Deputy Director

Authorisation date: 23/10/23



© Crown copyright 2023

**OGL**

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](https://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](mailto: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](http://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: 978-1-83521-539-5 (web only)

Published by The Scottish Government, November 2023

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA  
PPDAS1372634 (11/23)