

Response ID ANON-AZE6-VXW2-D

Submitted to **A Scottish Government Consultation on the Draft Gender Representation on Public Boards (Scotland) Bill**

Submitted on 2017-03-16 14:49:41

About You

What is your name?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

Mental Welfare Commission for Scotland

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response only (without name)

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Questions

1 What, if any, comments would you make in relation to section 1 [Gender representation objective] of the draft Bill?

What, if any, comments would you make in relation to section 1 [Gender representation objective] of the draft Bill?:

We understand why the objective is phrased in this way, but it may result in a mis-match between the policy aims of the Bill and the duties the Bill creates. A fundamental aim of the Bill is to increase the level of representation of women on public boards. But the objective is gender-neutral, and applied to individual bodies rather than the whole public sector. In the significant number of Boards where women are already more than 50% of the membership (including the National Confidential Forum, which is part of the Mental Welfare Commission), the Board and the appointing person will have duties designed to increase the number of male members.

2 What, if any, comments would you make in relation to section 2 [Key definitions] of the draft Bill?

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3 What, if any, comments would you make in relation to section 3 [Duty when appointing non-executive members] of the draft Bill?

What, if any, comments would you make in relation to section 3 [Duty when appointing non-executive members] of the draft Bill?:

We have no objection to this duty but, for the reasons set out in our responses to questions 1, 4 and 9, we think it likely that, taken on its own, it will have a relatively marginal impact on the overall balance of gender representation on public boards.

4 What, if any, comments would you make in relation to section 4 [Consideration of candidates] of the draft Bill?

What, if any, comments would you make in relation to section 4 [Consideration of candidates] of the draft Bill?:

Clearly, no two candidates are identical, and there is considerable scope for subjective judgement in determining that they are 'equally qualified' or one is marginally the 'best qualified'. Ensuring that appointment panels are appropriately experienced and trained will be crucial, as will a transparent and objective process.

However, it will be important to avoid creating an overly bureaucratic scoring system. These may appear more 'fair' but in practice favour applicants with experience of the system.

In most cases, the appointing person will be the Minister, but they will be appointing on the basis of recommendations from an appointing panel. In our experience, and for good reason, Ministers rarely challenge the advice of appointing panels. This duty may mean that Ministers feel obligated to question recommendations that the best qualified person is from the over-represented gender. Care will need to be taken that this does not bring the objectivity and fairness of the process into question.

It may also be desirable for Ministers to give a clear steer at the beginning on the skills and experience they believe the member (particularly a Chair) should have.

In assessing who is 'best qualified', we feel appointing panels and Ministers should be able to take into account the broader aim of representing the diversity of Scotland and the inclusion of other under-represented groups. For example, in a Board where men are under-represented, the choice may be between a man and an equally qualified disabled young woman. An inflexible approach which does not allow consideration to be given to the benefits to the Board of appointing the disabled young woman in this scenario would be a retrograde step.

We would go further and say that it should be possible to appoint a candidate from an under-represented group who scores less highly than another candidate on their current ability, but has the potential to make an equally good or better contribution with suitable mentoring or support. That would particularly apply where that group represent an interest which is significant to the Board in question (in our case, people with lived experience of mental health issues)

5 What, if any, comments would you make in relation to section 5 [Encouragement of applications] of the draft Bill?

What, if any, comments would you make in relation to section 5 [Encouragement of applications] of the draft Bill?:

A limitation of this duty is that it only kicks in once a Board does not have equal gender representation. Boards will move in and out of this status over time, and it might make more sense for this to be couched as an ongoing duty to promote diversity.

That might ensure that the focus is not simply on the way a recruitment round is advertised, but other, systematic and long term initiatives such as mentoring, shadowing, inviting people onto Board sub-committees to get experience of governance, as well as addressing barriers such as the time of meetings, access for people not living in the central belt and so on.

6 What if any, comments would you make in relation to Schedule 2 (introduced by section 7) [Application of Act to Certain Listed Authorities] of the draft Bill?

What if any, comments would you make in relation to Schedule 2 (introduced by section 7) [Application of Act to Certain Listed Authorities] of the draft Bill?:

7 What, if any, comments would you make in relation to Schedule 1 (introduced by section 2) [Listed Authorities] of the draft Bill?

What, if any, comments would you make in relation to Schedule 1 (introduced by section 2) [Listed Authorities] of the draft Bill?:

8 The draft Bill does not specify any requirement for reporting. Do you have any comments on reporting arrangements under the legislation, including timescales, location and content of reports?

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For individual bodies, the bureaucratic burden should be minimised by allowing this to be included in existing reporting requirements, such as the production of annual reports.

9 Do you have any comments on the draft Bill, not already expressed in response to previous questions, including on how the Bill could be strengthened to deliver Minister's stated objective of gender balanced public boards?

Do you have any comments on the draft Bill, not already expressed in response to previous questions, including on how the Bill could be strengthened to deliver Minister's stated objective of gender balanced public boards?:

Consideration should be given as to whether there is value in setting out other principles for public appointments in legislation, rather than only this objective. These might include that appointments should always be made on merit, rather than by quotas, that the barriers to under-represented groups securing public appointments be mitigated, that public Boards should generally reflect the diversity of Scottish society, and that those Boards which serve particular populations or groups should normally include representation from those groups.

It should be recognised that the very process of public appointments may be a barrier to certain groups. The widespread use of competency based interviews can disadvantage those not familiar with this approach. Consideration should be given to the greater use of co-option where necessary to appoint people with a vital skill or background which may not otherwise be easy to find - within the bounds of best recruitment practice.

10 To help with the development our Equality Impact Assessment, please provide any comments on the impact of the draft Bill on people who share certain 'protected characteristics': age, disability, sex, gender reassignment, sexual orientation, race and religion or belief, or any further information you think is relevant.

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11 To help with the development 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.

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Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

Consultation is quite narrowly focused on a set of rather limited Bill proposals. It's not obvious that there has been much engagement on the wider policy objectives, and other ways of achieving these

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:

Neither satisfied nor dissatisfied

Please enter comments here.:

Online response is fiddly, when hard to review totality of response before submission