



## **Response to the Scottish Government consultation on the draft Gender Representation on Public Boards (Scotland) Bill**

**March 2017**

### **1. INTRODUCTION**

Close the Gap is Scotland's women and labour market expert, and has 15 years' experience of working with employers, policymakers, trade unions, employees, and sectoral bodies to encourage and enable action to close the gender pay gap.

Evidence shows that voluntary measures have proven to be ineffective in delivering increased gender diversity on public boards. Close the Gap therefore welcomes the opportunity to respond to this consultation on the draft Gender Representation on Public Boards (Scotland) Bill.

Occupational segregation, where women and men do different types of work and different levels of work, is a cross-cutting theme of Close the Gap's work. Vertical segregation, or the 'glass ceiling', which describes women's under-representation in senior roles, is a key cause of the gender pay gap. Occupational segregation functions as a drag on growth, both within individual organisations, and within the wider economy. Achieving gender balance on public boards has the potential to influence wider occupational segregation through challenging gender norms and perceptions around public authority. Equal representation will also drive excellence in public service delivery as decision makers better reflect the populations they serve.

### **2. QUESTIONS**

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

Close the Gap agrees that the present gender representation objective should be set to achieve 50-50 representation of women and men. This sends a clear message that women should be represented equally on public boards, and shows the Scottish Government's commitment to gender equality.

Although the gender representation objective applies to whichever gender is under-represented, given that women only hold 36% of board places, it will be some time before boards will find themselves in the position where men are the under-represented group. Our consultation response focuses on women's under-representation.

As outlined in the Ministerial foreword to this consultation document:

“The decisions made by public boards affect all of us and impact on all aspects of our lives. Women's voices must be part of these decisions. Not only is this a matter of equality and fairness but there is strong evidence to suggest that better balanced boards perform better too.”

Evidence shows that increased representation for women on boards influences both the focus and outcomes of discussions, which is of key significance for public service delivery. Achieving gender balance on public boards has the potential to influence occupational segregation through challenging gender norms and perceptions around public authority, and providing children and young people with a more diverse range of role models. Equal representation will also drive excellence in public service delivery as decision makers better reflect the populations they serve.

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

The current wording “identifies as female” and “identifies as male” may exclude some trans people, as the words “female” and “male” are used to describe biological sex, rather than gender identity. It would be more inclusive to use the wording “identifies as a woman” and “identifies as a man”.

This comment applies to this wording as used throughout the Bill.

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

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

A commonly cited barrier to increasing the number of women on boards is the assumption of a gendered skills gap: that female candidates lack the skills and experience required. This assumption is often held alongside the view that quotas are directly contrary to candidates being appointed based on merit. It is of note that the merit of male candidates is never questioned in this way.

Evidence suggests that gender quotas may increase the skills-levels on the boards of organisations. This is because a more robust and inclusive process identifies candidates outside the norm, which have traditionally been identified through male-dominated informal networks that stretch across sectors and the public sector in its entirety<sup>1</sup>. The idea that women may end up appointed to boards at the expense of more qualified candidates assumes that all of our public board members are subject to standardised selection processes, which is not the case<sup>2</sup>.

It is essential that requirements in relation to consideration of candidates are supported by guidance on transparent and robust recruitment and decision-making processes, and do not allow assumptions about the skills and capabilities of female candidates to function as a barrier to women progressing through the application process. Guidance must be prescriptive, with accompanying support programmes in place to provide operational capacity-building where required. Potentially, there would be a role for the Equality and Human Rights Commission, and third sector organisations to support this work. It is imperative that organisations with this role are adequately resourced to carry out such work.

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

Action to encourage applications from women must be supported by detailed guidance on the practical steps that can be taken to allow women to progress. Close the Gap research shows that even where organisations are supportive of gender equality, this often does not translate into specific actions to advance diversity<sup>3</sup>.

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<sup>1</sup> Close the Gap (2015) *Gender Equality Pays: The economic case for addressing women's labour market inequality*

<sup>2</sup> Engender (2016) *Equal voice, equal power: The case for gender quotas in Scotland*

<sup>3</sup> Close the Gap (2013) *Missing out on the benefits? Summary of the research on reporting of the gender pay gap in Scotland*

Public bodies are already required to publish their plans to increase board diversity as part of their compliance with the public sector equality duty. It is particularly important that these succession plans contain measurable, achievable, relevant, and time-bound actions, and not vague aspirations around compliance with existing law. Weak actions, and generalised commitment statements to equality were identified as common themes in Close the Gap's assessment work of public authorities' compliance with the duty<sup>4</sup>.

Guidance on encouraging applications must be prescriptive; it must place the onus on the appointing person(s), and public body, to ensure that women receive adequate capacity-building and encouragement, as opposed to on individual women. It must also ensure public bodies recognise the wider barriers women face in the workplace, for example access to childcare and a lack of flexible working at senior levels, in particular barriers to skills acquisition and progression. Organisations must ensure they effectively communicate to women that their applications will be taken seriously; evidence indicates that some women have stopped putting themselves forward, following multiple unsuccessful attempts to secure interviews for board positions for which they appear to be amply qualified<sup>5</sup>.

Work to encourage applications from women also overlaps with the public sector equality duty's broader requirement that public bodies gather employee data on recruitment, development and retention, analyse this data, and use the analysis to inform the development of work to address the issues identified. There is an opportunity to align work to support the encouragement of applications with work to support compliance with the duty. In making the links between both pieces of legislation explicit it may help to improve overall compliance, reduce the likelihood of duplication of effort or work within individual organisations, and reduce any perception among public bodies that the Bill presents a new and additional "burden".

**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?**

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<sup>4</sup> Close the Gap (2015) *Making Progress? An assessment of employers' performance of the public sector equality duty*

<sup>5</sup> Engender (2016) *Equal voice, equal power: The case for gender quotas in Scotland*

**7. 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 requirements for reporting. Do you have any comments on reporting arrangements under the legislation, including timescales, location and content of reports?**

It is essential that public bodies are required to report on compliance with the legislation, as otherwise it will be impossible to ensure that activity and progress is measured. It is imperative that the requirement to report is included in the legislation.

We are strongly of the view that reporting arrangements under the legislation should be aligned with existing reporting regulations and timescales under the public sector equality duty, to integrate public bodies' equalities work in a coherent way.

Public bodies are already required to publish their plans to increase board diversity as part of their compliance with the public sector equality duty. Work to encourage applications overlaps with board diversity succession planning, and could be published as a standalone report, or included in mainstreaming reports, as evidence of how public authorities are meeting the duty to mainstream gender, and addressing gender inequalities.

Reports should include a detailed action plan to achieve gender balance, containing measurable, achievable, relevant, and time-bound actions, and not vague aspirations around compliance with existing law. It would be useful to include a narrative detailing how organisational data analysis has informed the development of the action plan, and progress measures.

It would also be helpful to have information on work to comply with this legislation incorporated in public bodies' corporate plans. Again, this would enable them to demonstrate one of the ways in which they have mainstreamed gender, and it would also give strategic prominence to achieving gender balance at board level.

**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?**

The Bill does not specify any date by which time it will be fully implemented. Other countries, including France, Norway and Canada, have all set targets for their respective gender quotas. Targets could be staged, for example, by 2018, have 30% gender parity on boards, and by 2020, have 40% gender parity on boards. Evidence suggests that if gender quotas are to be successful, a target date must be specified.

The Bill also fails to set consequences for non-compliance. Evidence suggests that if governments demonstrate a willingness to impose sanctions for non-compliance with gender quotas, they can increase female representation. Various precedents exist of public bodies failing to comply with legal obligations to advance gender equality, including certain aspects of the public sector equality duty. For example, assessment work on compliance with the duty by Close the Gap<sup>6</sup> found that it was not uncommon for public bodies to have failed to publish any information on their website by reporting deadlines, or to have failed to undertake concrete steps to meet equality outcomes.

Robust enforcement is essential, and without some form of meaningful recourse there is significant possibility that these measures may not be taken seriously. The Equality and Human Rights Commission could have a role in enforcement work; however it is essential to ensure the Commission is adequately resourced to undertake such work.

**10. To help with the development of 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.**

It is important that the full diversity of women in Scotland be represented on public boards. The scope for this Bill to deliver equitable access to boards, and benefits due to members’ increased capacity to reflect experiences and perspectives of service users, will be limited if wider access issues are not also addressed. Otherwise, positions will be simply filled by white, non-disabled, straight women.

Systemic barriers to representation for those facing multiple inequalities must be considered. For example, access to employment is hugely limited for

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<sup>6</sup> Close the Gap (2015) *Making Progress? An assessment of employers’ performance of the public sector equality duty*

disabled women, due to discrimination, stigma and public attitudes. Many women report infantilising treatment in the workplace that is not perceived to be equivalent for men, but based on their identity as disabled women<sup>7</sup>. LBT women face harassment, discrimination and negative stereotypes in the workplace and are excluded from employee networks. Unemployment and underemployment are also a particular problem for women from some minority ethnic communities. Discrimination and racism, which remain prevalent problems across Scotland's labour market and public institutions, and occupational segregation which sees minority ethnic women clustered in low-paid jobs are key factors which drive this<sup>8</sup>.

**11. 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.**

Under the public sector equality duty, public bodies are already obliged to consider gender balance and a wide range of other issues relating to gender equality. Policies to advance gender equality, for example, in relation to recruitment, should be mainstreamed throughout each public body, as outlined in the duty. Costs would therefore be limited to those associated with participation in capacity-building work (see question 4).

The business benefits of action to tackle women's economic inequality, and particularly gender balance on boards, are well rehearsed. Close the Gap research identifies clear and mounting evidence that gender equality at work is not just good for women, but is also a critical driver for improved business performance, and a worldwide catalyst for economic growth<sup>9</sup>. Crucially, closing the gender gap in employment could be worth more than £17bn to the Scottish economy.

Employers that take steps to address women's inequality at work benefit from a reduction in costs through lower turnover, improved employee morale and motivation, and higher levels of productivity. Diverse workforces are more creative as men and women have different experiences and perspectives. Gender balance on boards can therefore drive excellence and efficiency in

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<sup>7</sup> Engender (2016) *Equal voice, equal power: The case for gender quotas in Scotland*

<sup>8</sup> Ibid

<sup>9</sup> Close the Gap (2015) *Gender Equality Pays: The economic case for addressing women's labour market inequality*

public service delivery, as decision-makers better reflect the service-users they serve.