



## **Universities Scotland submission to Equalities and Human Rights Committee: Gender Representation on Public Boards Bill**

Universities Scotland welcomes the opportunity to respond to the Equalities and Human Rights Committee's call for evidence on the Gender Representation on Public Boards (Scotland) Bill. We have taken the opportunity to share our views on what the Bill would mean for Scotland's 19 higher education institutions (HEIs) who will be within the scope of the Bill if it passes into statute in its current form.

Our members, Scotland's 19 HEIs are included in this legislation despite the fact they are autonomous non-profit institutions. This status has been recognised by the Office for National Statistics and has obvious implications for our members' financial and operational capabilities.

### **The impact, if any, for those public authorities responsible for encouraging and recruiting women to public boards as non-executive members**

As currently drafted, we do not envisage any major impact on our members in relation to encouraging and recruiting women to our governing bodies. Our members are committed to diversity. The actions mandated by the Bill are already standard practice across the sector and our member institutions also employ various other measures to encourage and recruit women to their governing bodies. As we note below, these measures have been highly effective in recent years and already women make up nearly half of the sector's governing body members.

A university's governing body (known as the 'Court' or 'Board' depending on the institution) is the highest decision-making body within a university, with overall responsibility for institutional strategy and the oversight of management. The governing body is responsible for selecting and appointing people to what this Bill calls 'included positions'.

HEIs are autonomous organisations and governed separately from the public sector: we are regulated by the Office of the Scottish Charity Regulator and comply with the Scottish Code of Good Higher Education Governance (which will be refreshed later this year) and are subject to separate legislation, including the Higher Education Governance (Scotland) Act 2016. In addition, older legislation places specific requirements on institutions of different kinds, creating a complex picture at the sector level.

One consequence of these complex requirements is that close to half of the members of our institutions' governing bodies occupy 'excluded positions' in the terms of this Bill – i.e. the institutions and their governing bodies have no control over who is appointed to these positions. At some institutions, a clear majority of the governing body is 'excluded'

in this sense. Given this, it is questionable whether legislation on 'included positions' is suitably targeted. Better overall outcomes are more likely to follow from allowing governing bodies to manage gender balance in their recruitment in ways that can take into account, where necessary, the gender balance across the whole governing body.

Members of governing bodies must have the range of high-level skills and experience needed to run complex institutions of national and international significance. It is also important that the governing body is inclusive of all stakeholders and diverse. This helps with the consideration of different perspectives and to improve the scrutiny of decision-making.

HEIs are working hard to ensure diversity and have made substantial progress towards gender balance in recent years. The sector has, over time, developed clear and consistent processes for appointments to its governing bodies, which have been incorporated into the Scottish Code of Good Higher Education Governance. The appointment process is overseen by a nominations committee at each HEI. This is required to have student, staff and independent members.

The sector has made a commitment to aim for gender-balanced governing bodies at every institution. For the purposes of this commitment, 'gender-balanced' was defined as having at least 40% of each gender among those members who are appointed by the governing body. It is important to understand that this is no less ambitious than the Bill's gender representation objective, and is arguably more so, in that, by design, it allows for sensitivity to other underrepresentation issues. The 40% commitment recognises that a 50:50 gender balance is the ideal, other things being equal, but also allows a necessary degree of flexibility for when other things are not equal, whether in terms of required skills or the need to address underrepresentation across other protected characteristics. The Bill also recognises these factors, mandating actions towards the achievement of the 50% objective only where these other things are equal.

The Scottish Code of Good HE Governance, introduced in 2013, also requires all governing bodies to set goals for equality and diversity and to monitor progress. This extends consideration of diversity to other protected characteristics. These elements of the Code are expected to receive more prominence as a result of a review of the Code that is currently in progress.

These measures have proved highly effective. The sector has made significant progress in recent years. Sector-wide, there are 212 positions on governing bodies appointed by the governing body itself. 47% of these positions are held by women. This compares to 42% in January 2017, 39% in January 2016 and 32% in late 2014. Currently 10 HEIs in Scotland meet the Bill's gender representation objective, compared with four in January 2017. Five of our HEIs have more women than men in these included positions.

Given such progress in our sector and others, and given the importance of also addressing under-representation with respect to characteristics other than gender, it remains unclear why the Scottish Government has chosen to take a legislative approach with respect to gender balance.

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### **The impact, if any, on people applying for an appointment as a non-executive member of a public board**

As noted above, our member institutions already employ a range of measures to encourage applications from women and have an excellent record of increasing the appointment of women candidates for governing body membership in recent years. Since our institutions' practices already go above and beyond the requirements of the Bill, the experience of applicants is unlikely to be significantly affected by this Bill passing into law.

Nonetheless, we are concerned that the Bill's exclusive focus on gender could send an unfortunate and no doubt unintended signal to male applicants from other underrepresented groups. We appreciate and welcome the fact that the Bill includes a provision for considering relevant non-gender characteristics when choosing between applicants. However, it should be borne in mind that the decision to enshrine certain actions in law sends certain messages out to society at large. To the extent that the Bill's focus on gender sends a positive message to potential applicants who are women, it also could convey an equal and opposite message to those with other protected characteristics. We believe that a more flexible, non-legislative approach is more appropriate for this reason, in addition to having proven highly effective.

### **The Bill requires public boards to report on the operation of the Act, although Scottish Ministers can regulate how this should happen; what should any reporting requirements cover and why**

Our members are already reporting as a consequence of the Public Sector Equality Duty, which our members regard as appropriate and sufficient. We believe that the Public Sector Equality Duty Amendment Regulations 2016 would benefit from a period of 'bedding in' before being adapted or usurped by other reporting mechanisms.

As a condition of Scottish Funding Council (SFC) grant funding, our members must comply with the Scottish Code of Good Higher Education Governance, which requires each governing body to have policies to further equality and diversity amongst its own membership. These goals have to be monitored too. Furthermore, HEIs are required to report Equality and Diversity data on governing body members to HESA. There would appear to be no requirement for additional reporting from HEIs as Scottish Ministers will be able to request the data directly from the SFC.

Aside from what our members already report as part of the Equality Duty, it is hard to envisage what further details would be necessary and/or add value. Our members work on the principle of continuous enhancement in all our operations.

If the Bill is passed, care should be taken to avoid the duplication of reporting requirements across different legal and regulatory frameworks and the consequent unnecessary administrative burden on institutions.

**Whether there should be penalties for non-compliance with the Bill and what these should be and why**

Our members' governing boards are different to other bodies proposed for inclusion in this legislation as our members are autonomous institutions. We would find it especially inappropriate if any organisation were to be penalised for choosing to address another kind of under-representation where there is not a significant gender imbalance in the composition of its governing body. Given recent progress towards gender balance in our sector and others, we see no motivation to adopt a punitive approach. As stated above, the sector is committed to diversity and is well on course to ensure it complies with the aspirations of the Bill.

**ENDS**

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