

# **Consultation on the introduction of diversity succession planning for board appointments and the lowering of the 150 employees threshold for publishing gender pay gap and equal pay statements etc.**

**Consultation Analysis and Scottish Government Response**

February 2016

## Introduction

1. The Scottish Government's consultation on the introduction of diversity succession planning for board appointments and the lowering of the 150 employees threshold for publishing gender pay gap and equal pay statements etc. (hereafter referred to as 'the consultation') ran from 5 October 2015 to 29 November 2015.

2. The purpose of the consultation was to seek views on the practical application of Scottish Government proposals to amend the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 to:

- Introduce a new requirement on listed public authorities to publish the gender composition of their boards and to produce succession plans to increase the diversity of their boards, and;
- Lower the threshold for listed public authorities to publish information on their gender pay gap and equal pay statements, from those authorities with more than 150 employees to those with more than 20 employees.

3. Thirty-eight responses were received, all but one of which was received from a group or organisation. The majority of responses were received from public, NHS health, and further and higher education bodies (30) reflecting that the new requirements will only apply to listed public authorities in Scotland<sup>1</sup>. Six responses were received from third sector organisations.

<b>Respondent Type</b>	<b>No. of responses (N = 38)</b>
Public Body	23
Third Sector Organisation	6
NHS Health Body	5
Further or Higher Education Body	2
Private Association	1
Individual	1

4. In addition to setting out the draft regulations the consultation paper invited responses to seventeen questions. Thirty-five consultees provided a structured response, answering some or all of the questions while three consultees provided free-flowing comments.

5. This report presents quantitative and qualitative findings from the consultation. Quantitative findings are presented for all closed questions (those with a yes, no or don't know option). Further qualitative analysis has been undertaken with key themes and specific points outlined.

6. All responses to the consultation, where permission has been given to publish, are available to read in full on the Scottish Government website at <http://www.gov.scot/Publications/2016/01/8382/0>.

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<sup>1</sup> Listed public authorities refers to public authorities who are listed in the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and to whom that Act applies.

## Results

### Part One: Diversity Succession Planning for Board Appointments

7. Part one of the consultation covered the new requirement on listed public authorities to publish the gender composition of their boards and to produce succession plans to increase the diversity of their boards. Consultees were invited to answer six questions. Numbers in brackets refer to the number of respondents making comments.

#### Question 1:

Do you think that making a requirement for listed public authorities to use their board diversity information for succession planning purposes will have a positive impact on the board appointment process? **(Yes, No or Don't Know)**

8. Thirty-four consultees provided a yes, no or don't know answer in response to question 1, with the majority of consultees (21) indicating that they *did* think that requiring listed public authorities to use their board diversity information for succession planning purposes would have a positive impact on the board appointment process.

Q.1	N = 34
Yes	21
No	4
Don't Know	9

9. Thirty-four consultees provided comments in response to question 1. The most commonly cited comment (20), made in favour of the new requirements, were that publishing the gender composition of their boards and producing diversity succession plans would act as a positive driver – focussing boards to reflect on their current diversity and skills and what was required from future appointments.

10. Other comments included:

- That the small numbers of individuals on boards would create some practical barriers to the collecting and reporting of data due to data protection restrictions (5);
- Where Scottish Ministers are responsible for making board appointments, consideration should be given to how they will take the board's diversity succession plan into account (4);
- There is positive learning to be taken from the Higher Education Sector following implementation of the 2013 Scottish Code of Good Higher Education Governance (4);
- That a range of activity was needed to improve board diversity, in addition to the new requirements, including consideration of where and how board appointments are described and advertised (2);

11. A number of other comments were made by a single respondent:

- Concern that requiring bodies to use diversity succession planning could encourage a move towards positive discrimination (1);
- Impact on the resources of public bodies needs to be considered (1);
- Clarification of whether executive directors are included in the definition of members is required (1);
- New requirements will help to build knowledge and understanding of equality and the barriers faced by some groups within public authorities (1);
- Data should also be gathered on characteristics other than protected characteristics, e.g. diversity in relation to geography, education and socio economic factors (1);
- It would be helpful to know the proportion of candidates by protected characteristic called for interview, in addition to figures for applicants and appointees (1);
- Succession planning should be informed by skills requirements in the first instance (1);
- Consideration should be given to expanding the guaranteed interview scheme to other characteristics beyond disability (1);
- Board appointments should only be made on merit (1);
- Caution about complacency – i.e. having an LGBTI or minority ethnic board member does not automatically mean the experiences of the LGBTI or minority ethnic communities have been taken into account by the board (1);
- There is a lack of evidence as to whether a formal diversity succession planning process will affect the desired change or simply create additional bureaucracy (1).

**Question 2:**

Do you agree that the data collected covering individual boards should be aggregated up into sectoral and Scotland wide statistics? **(Yes, No or Don't Know)**

12. Thirty-five consultees provided a yes, no or don't know answer in response to question 2, with the majority (31) of consultees agreeing that the data collected on individual boards *should* be aggregated up into sectoral and Scotland wide statistics.

<b>Q.2</b>	<b>N = 35</b>
Yes	31
No	1
Don't Know	3

13. Thirty-two consultees provided comments in response to question 2. Two reasons were frequently cited in favour of aggregating data:

- That it would provide a useful tool for comparison and to show trends and progress at national level. Individual boards could also benchmark themselves nationally and against their sector (provided individual board data was available) (15);

- That aggregated data was necessary because individual board level data would often refer to numbers too small to publish without identifying individuals (11)

14. Other comments included:

- Aggregated data could mask local or regional patterns (2);
- Aggregated data would allow activity to be targeted appropriately, for example at those sectors showing the greatest under-representation (2);
- It would be helpful to separate the data for colleges and universities because of key differences within these sectors (2);
- It would be beneficial to capture data for territorial and special health boards separately (1)

**Question 3:**

Do you think there are any specific issues for colleges and universities relating to them meeting this new reporting duty? **(Yes, No or Don't Know)**

15. Twenty-six consultees provided a yes, no or don't know answer in response to question 3, with the majority (14) indicating that they did not know if there were any specific issues for colleges and universities in meeting the new reporting duty.

<b>Q.3</b>	<b>N = 26</b>
Yes	6
No	6
Don't Know	14

16. Twelve consultees provided comments in response to question 3. The issue most commonly referred to was the variation of governance structures for colleges and universities and combination of appointed and elected members which could present challenges for reporting (3). A further consultee acknowledged the variation in governance structures but indicated that this was not an impediment to reporting board diversity (1).

**Question 4:**

Do you think that formalising the process of diversity succession planning will help those involved in the board recruitment and selection process to achieve greater diversity on their board? **(Yes, No or Don't Know)**

17. Thirty-four consultees provided a yes, no or don't know answer in response to question 4, with the majority (22) of consultees indicating that they *did* think that formalising the process of diversity succession planning will help those involved in the board recruitment and selection process to achieve greater diversity on their board.

<b>Q.4</b>	<b>N = 34</b>
Yes	22
No	2
Don't Know	10

18. Thirty-three consultees provided comments in response to question 4. Comments reflected similar themes to those made in response to question 1, that:

- Formalising the process of diversity succession planning will have a positive impact by focussing the board to reflect and take diversity into consideration, based upon data (8);
- The success of the formal succession planning process is dependent upon other wider activity, for example: changing role descriptions and removing the need for previous experience (4);
- The success of the formalised process depends on who has control of the process. Where Scottish Ministers are responsible for making board appointments consideration should be given to how they will take the board's diversity succession plan into account (4);
- The principle of equal merit must be applied first and foremost (2)

**Question 5:**

Where and when do you think is the most appropriate place and timing of the publication of diversity succession plans?

19. Thirty-five consultees put forward views about where and when diversity succession plans should be published. Of the three options put forward in the consultation paper, the most popular option was for succession plans to be aligned to reporting under the Public Sector Equality Duty. Some consultees suggested that it would be relevant for succession plans to be published in line with more than one option.

- At intervals of not more than 2 years, to be included in the authority's progress report on mainstreaming the equality duty (15);
- No later than 30 April 2017 and subsequently each second year in their annual reports (4);
- As part of their corporate plan, on a three-yearly cycle (4)

20. Three consultees advocated for flexibility, with the place and timing of diversity succession plans to be determined by individual public authorities. Four consultees were in favour of four yearly publication aligned to the publication of equality outcomes.

**Question 6:**

Please provide details of any additional issues, not addressed in your other responses, that you think should be considered in relation to the introduction of diversity succession planning.

21. Twenty-two consultees answered question 6. Three consultees reiterated the challenges surrounding the small numbers of board members and the personal and sensitive nature of the information involved which would require careful planning and consideration to be given to the methods of data collection and reporting of data to individual boards. Two consultees commented that the Scottish Government should support public authorities with implementation of the new requirements through the publication of guidance.

22. Other comments included:

- Success in achieving diversity should be celebrated and publicised (1);
- There are a range of positive steps that Scottish Ministers, their officials and public bodies themselves can take to improve board diversity, including activity focussed on improving: communication of board opportunities; the publicity and application materials, and the appointments process itself (1);
- The method of recording diversity data should be aligned to existing reporting processes and be as simple and transparent as possible (1);
- Consideration should be given to the development of a comprehensive strategy for Board appointments encompassing all aspects of the appointment process (1);
- Consideration should be given to Board cycles of recruitment which may restrict the pace of improvement for some boards (1);
- Employee diversity is a greater issue than board diversity and consideration should be given to introducing equivalent requirements for employee diversity (1);
- There needs to be greater awareness of the difference between 'positive action' and 'positive discrimination' and an emphasis and clarity throughout the application process that appointments are made on merit (1).

**Scottish Government Response:**

The Scottish Government welcomes the broadly positive response to Part 1 of the consultation on diversity succession planning for board appointments and notes that the new requirements are intended to act as a driver to improve the diversity of the boards of Scotland's public bodies.

The Scottish Government also notes the concerns and comments made regarding data, specifically the need to consider carefully the methods of collecting, storing and reporting the composition of individual boards protected characteristics back to public bodies, so as not to disclose individual's personal information. Guidance will be developed in partnership with the Equality and Human Rights Commission to support implementation of the new requirements and will include data protection considerations.

## Part Two: Amending the figure of “150” employees for publishing gender pay gap and equal pay statements etc.

23. Part two of the consultation covered the lowering of the threshold for listed public authorities to publish information on their gender pay gap and equal pay statements, from those authorities with more than 150 employees to those with more than 20 employees. Consultees were invited to answer two questions in part two.

### Question 7:

Do you agree with the proposal to amend the threshold for gender pay gap and equal pay statement publication from 150 employees to 20 employees? **(Yes, No or Don't Know)** If you do not agree, please tell us why.

24. Twenty-seven consultees provided a yes, no or don't know answer in response to question 7, with the majority of consultees (18) agreeing with the proposal to amend the threshold for gender pay gap and equal pay statement publication from 150 employees to 20 employees.

Q.7	N = 27
Yes	18
No	4
Don't Know	5

25. Seventeen consultees provided comments to question 7. The most commonly cited reasons in favour of lowering the pay reporting threshold were:

- That it would contribute to realising greater equality and a reduction in the gender pay gap (5);
- That it would contribute to greater transparency and accountability across the public sector (4);
- That it was beneficial for smaller authorities to identify their pay gaps and reflect on underlying causes (4) – one consultee indicated that smaller organisations are sometimes the most creative in developing actions to address the causes of the gender pay gap

26. Eight consultees commented that the smaller numbers of individuals involved would prevent some authorities from publishing data, particularly disaggregated data, e.g. broken down by grade. Two consultees proposed that the threshold could be lowered to authorities with over 100 employees or authorities with over 50 employees. Other comments included:

- Consideration should be given to the impact of reporting on the resources of smaller authorities (4);
- The duties to report on the gender pay gap and publish an equal pay statement are unnecessary and bureaucratic (1)

**Question 8:**

Please provide details of any additional issues, not addressed in your other responses, that you think should be considered in relation to the introduction of diversity succession planning for listed public authorities.

27. Thirteen consultees provided comments in response to question 8. On initial publication question 8 of the consultation paper mistakenly asked consultees if they had any additional issues in relation to the introduction of gender quotas. While this error was corrected during the consultation period, seven consultees did provide comments on gender quotas.

28. In April 2014 the Scottish Government published 'Women on Board: Quality through Diversity' a consultation on the introduction of gender quotas on public boards. This consultation paper is available to view on the Scottish Government's website at <http://www.gov.scot/Resource/0044/00449321.pdf>. The consultation analysis is available to view at <http://www.gov.scot/Publications/2014/12/9381/0>. Comments on gender quotas have not been considered further as part of this analysis.

29. Other comments made in response to question 8 were:

- The Commissioner for Ethical Standards in Public Life should produce regular reports on progress on board diversity and help share good practice (1);
- While the intention for the boards of public bodies to be more diverse is welcome, fuller consideration needs to be given to the implications for protected characteristics other than gender (1);
- Extending data gathering to other protected characteristics will help to fill evidence gaps and enable public authorities to better meet the general and specific public sector equality duties (1).

**Scottish Government Response:**

The Scottish Government welcomes the broadly positive response to the lowering of the reporting threshold for public bodies to report on their gender pay gap and publish equal statements etc. Although the gender pay has narrowed substantially in Scotland since the Equal Pay Act was introduced in 1970, a real and persistent pay gap between men and women remains and cases for unequal pay continue to be brought by women to the Employment Tribunal each year. The Scottish Government is committed to tackling the gender pay gap and believes that as one of the biggest employers in Scotland, the public sector should lead the way and set an example through transparent pay reporting. The lowering of the current reporting threshold for pay reporting will impact on approximately thirty listed public authorities who have between 20 and 150 employees.

## Part Three: About this consultation

30. Consultees were invited to answer nine questions in part three on: Business Regulatory Impact Assessment; Equality Impact Assessment, and Privacy Impact Assessment.

### Business Regulatory Impact Assessment

#### Question 9:

What resource issues, if any, will there be for public bodies to gather information on their board's diversity and then produce a succession plan for future board appointments? Please give reasons for your answer.

31. Twenty-eight consultees answered question 9. Most consultees (15) said that they did not anticipate any resource issues, or that the impact on resources would be minimal. Smaller numbers of consultees indicated:

- That there would be some additional resource required to develop a succession plan (5);
- That resources would be a greater challenge for smaller bodies (3);
- That there was no benefit to public bodies devoting any resources to gathering this information (1)

#### Question 10:

Can the impact of any resource issues for public bodies be quantified using existing costing structures? (**Yes, No or Don't Know**) Please give reasons for your answer.

32. Twenty-two consultees provided a yes, no or don't know answer in response to question 10. Nine consultees indicated that the impact of any resource issues for public bodies *could* be quantified using existing costing structures, 3 consultees indicated that it *could not* be, and 10 consultees indicated that they did not know.

Q.10	N = 22
Yes	9
No	3
Don't Know	10

33. Fourteen consultees provided additional comments in response to question 10. Four consultees said that it would be difficult to quantify costs without further detail and assessment being undertaken. Five consultees reiterated that the impact on the resources of public bodies would be minimal.

#### Question 11:

To help with the development of a Business Regulatory Impact Assessment, please provide any other information you think is relevant.

34. Five consultees provided additional information they felt was relevant to developing a Business Regulatory Impact Assessment. Comments included:

- Requests for information should be timely and supported by clear guidance (1);
- Ensure there is a clearly defined framework that all sizes of organisation can use (1);
- Consider the different types of board and involvement in the appointment process (1);

**Scottish Government Response:**

The Scottish Government notes the comments made in relation to resources and acknowledges that while some input of resources will be needed to gather the relevant data and to produce a succession plan, these are not likely to be significant. The Scottish Government will seek to minimise any additional burden on listed public authorities by aligning the new requirements with existing data gathering and reporting requirements under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Guidance will also be produced to support listed public authorities with the implementation of the new requirement and further consideration will be given to 'standardising' some or all of the process as suggested by some consultees.

## Equality Impact Assessment

### Question 12:

The Scottish Government wants the people of Scotland in all of their diversity to be represented on the boards of public bodies. Do you think there are currently barriers that especially impact on certain groups that would stop them applying for board positions? **(Yes, No or Don't Know)** If yes, which groups and what are the barriers?

35. Twenty-nine consultees provided a yes, no or don't know answer in response to question 12, with almost all consultees (27) indicating that they *do* think there are currently barriers to certain groups applying for board positions.

Q.12	N = 29
Yes	27
No	0
Don't Know	2

36. Thirty-one consultees provided comments in response to question 12. Seventeen consultees referred to one or more of a range of 'supply and demand' barriers which are experienced by groups who share protected characteristics. These barriers include:

- Outdated or inaccurate perceptions of what a board position means, including feeling of "board appointments are not for people like me";
- A lack of confidence to apply;
- A lack of understanding by those public bodies and those filling appointments about the benefits of board diversity;
- Systemic recruitment practices favouring traditional networks which lack diversity;
- A lack of consideration given to the visibility and accessibility of board appointments to enable and encourage applications from a diverse range of individuals, including how appointments and person specifications are described and where and how they are advertised.

37. Other comments included:

- Eight consultees made reference to the practical barriers, such as the location and timings of board meetings. These barriers can particularly impact on women, who predominantly provide childcare and other forms of unpaid care, and disabled people who rely on board meetings taking place in accessible venues serviced by public transport;
- Six consultees referred to the barriers experienced by younger people, including perceptions about the level of skills and experience required and the impact of an appointment on other employment, particularly if the appointment is unpaid;
- The fact that some board positions are unpaid and/or travel expenses are not reimbursed can be a barrier to those on lower incomes (2);
- Barriers at interview and selection stages remain for minority ethnic individuals (1);

- Competency based recruitment is not helpful and consideration should be given to defining equivalent experience (1);
- A review of progress made in implementing ‘Diversity Delivers’ should be made (1);
- In order to improve board diversity an individual candidate’s potential experience rather than their existing experience should be focussed on (1);
- Consideration must also be given to improving the diversity of ‘the pipeline’ through grassroots change from schools on (1).

**Question 13:**

Do you think there is additional supporting action that could be taken to help certain groups overcome or mitigate these barriers? **(Yes, No or Don’t Know)** If yes, what action and who should take it?

38. Twenty-nine consultees provided a yes, no or don’t know answer in response to question 13, with all but one consultee (28) indicating that they *do* think that additional supporting action could be taken to help certain groups overcome or mitigate barriers.

<b>Q.13</b>	<b>N = 29</b>
Yes	28
No	0
Don’t Know	1

39. Twenty-seven consultees provided comments in response to question 13. Comments included:

- Consider how and where board appointments are advertised to maximise reach to diverse individuals, including using specific channels if necessary (5);
- Highlight positive case studies of people with protected characteristics who have held board appointments (2);
- Consider remuneration for board chairs and/or members, including providing out of pocket expenses in advance of meetings (2);
- Boards could better use technology to promote different ways of working and enable flexibility (2);
- Make training available on positive action (2);
- A national campaign or awareness raising to encourage people to consider board appointments, including explaining the benefits appointments can bring and dispelling myths about who can apply and skills and experience required (2);
- Additional supporting action is primarily needed around disability, including training on what is meant by the term ‘reasonable adjustment’ and what this means in practice (1);
- Focus needs to be given to improving the transparency of the appointments process, including by making aggregated diversity data and the actions being taken by public bodies to improve their board diversity widely available, including to equalities groups (1);

- Nameless CVs should be considered so that candidates are selected ‘blind’ (1);
- Work with equality stakeholders to develop peer support programmes and strategies to improve participation and engagement (1);
- Consideration should be given to any caring responsibilities that board members may have (1);
- Hold board meetings in the evening (1);
- Encourage diverse individuals to apply for board positions by providing opportunities for mentoring, board shadowing and application and interview skills development (1);
- Maximise the number of board positions available by limiting the number of public board appointments an individual can hold to one, and setting a maximum period an individual can hold a board appointment (1)
- Promote the benefits of diversity to public bodies (1).

**Question 14:**

To help further with the development of our Equality Impact Assessment, please give any further information you think is relevant.

40. Seven consultees provided additional information they felt was relevant to developing an Equality Impact Assessment. Comments included:

- Current equal opportunities check sheets do not include White African or White Caribbean (1);
- Potential board members should be asked for their input in how to overcome barriers (1);
- Events to promote board appointments to diverse audiences, delivered in tandem by public bodies, Scottish Government and partners such as Changing the Chemistry and the Institute of Directors can make significant difference to the numbers and diversity of applications (1);
- Regional differences must be taken into account, particularly in regards to the ethnic minority population (1).

**Scottish Government Response:**

The Scottish Government welcomes the comments put forward by consultees on the barriers to certain groups applying for board appointments and the suggested actions to overcome and mitigate these barriers. The Scottish Government will continue to prioritise improving the diversity of Scotland’s public boards through the Public Boards and Corporate Diversity Programme. A range of activity is being progressed, including making real and practical changes to the public appointments process such as where and how appointments are advertised and the way in which appointments and person specifications are worded.

## Privacy Impact Assessment

### Question 15:

Do you think there are other factors involved in the data collection process that should be taken into account? **(Yes, No or Don't Know)** If yes, what are they?

41. Twenty-three consultees provided a yes, no or don't know answer in response to question 15, with the majority (16) indicating that they *do* think there are other factors involved in the data collection to be taken into account.

Q.15	N = 23
Yes	16
No	3
Don't Know	4

42. Twenty-one consultees provided comments in response to question 15. The majority of comments concerned the requirements to publish gender composition and produce diversity succession plans.

43. Ten consultees acknowledged that the data collection process would be challenging as a result of the small numbers of individual board members involved and the fact that some board members could be reluctant to share personal information. A further six consultees noted that the individual board composition information reported back to boards by the Scottish Government would be restricted by statistical disclosure control requirements.

44. Other comments included:

- The aggregation of data to national level was a positive step (3);
- Sectoral level data in addition to national data would be helpful (2);
- Joint guidance from the Scottish Government and Equality and Human Rights Commission on the implementation of the new regulations, including data protection would be welcomed (1);
- Data on the diversity of people applying for appointments is important, including to compare to the diversity of people being appointed (1).

### Question 16:

Do you think there is additional supporting action that could be taken to help listed public authorities gather and then use board diversity information? **(Yes, No or Don't Know)** If yes, what action and who should take it?

45. Twenty-three consultees provided a yes, no or don't know answer in response to question 16, with the majority (18) indicating that they *do* think that additional supporting action could be taken to help listed public authorities to gather and use board diversity information.

<b>Q.16</b>	<b>N = 23</b>
Yes	18
No	3
Don't Know	2

46. Guidance was the most frequently referenced form of support (10), followed by the sharing of good practice (5). Two consultees advocated for the development of standardised questions, aligned to the census, to support the gathering of diversity information.

47. Other forms of support put forward included:

- Maintenance of the evidence tracker toolkit by the Scottish Government (2);
- Disaggregation of data by region (1);
- In-built review periods (1)

**Question 17:**

To help further with the development of our Privacy Impact Assessment, please give any other information you think is relevant.

48. Six consultees provided additional information they felt was relevant to developing a Privacy Impact Assessment. Comments generally reiterated the sensitivities surrounding data protection and the need for guidance to support the implementation of the new duty on diversity succession planning.

**Scottish Government Response:**

The Scottish Government notes the comments made regarding privacy and the concerns raised throughout the consultation regarding the need to maintain the integrity of individual's personal information. Guidance will be developed in partnership with the Equality and Human Rights Commission to support implementation of the new requirements and will include data protection considerations.



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