

GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Gender Representation on Public Boards (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The Bill has 13 sections and 2 schedules. Section 1 of the Bill sets a "gender representation objective" for public boards and requires certain action to be taken in the appointing of non-executive members to public boards. The objective for a public board is that it has 50% of non-executive members who are women.

4. Section 2 provides key definitions for the terms used in the Bill. Sections 3 and 4 of the Bill place a duty on "appointing persons" when appointing non-executive members. Where there are two or more equally qualified candidates for an appointment, at least one of whom is a woman, the Bill requires that an appointing person must usually give preference to a woman if doing so will result in the board achieving or making progress towards achieving the gender representation objective. Section 5 of the Bill requires steps to be taken to encourage women to apply to become non-executive members of a public board.

5. A full outline of the Bill's provisions are provided in the Bill's Policy Memorandum, Financial Memorandum and Explanatory Notes published separately as SP Bill 16.

RATIONALE FOR SUBORDINATE LEGISLATION

6. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, we have carefully considered the importance of each matter against the need to:

- achieve the appropriate balance between the importance of the issue and the need to provide flexibility to respond to changing circumstances (for example the creation of

- a new public authority, or merger of existing public authorities), without the need for primary legislation; and
- ensure the proper use of parliamentary time is made.

7. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

DELEGATED POWERS

Section 7 – Reports on operation of Act

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative

Provision

8. This provision allows the Scottish Ministers to make regulations imposing reporting requirements on public authorities. Section 7(1) requires public authorities, if specified in regulations under subsection (2), to publish reports on the operation of the Act in accordance with provision made in the regulations. Under subsection (2) the Scottish Ministers may by regulations: specify public authorities for the purposes of subsection (1), and make further provision about reports mentioned in subsection (1).

Reason for taking power

9. This provision will allow the Scottish Ministers to ensure that any reporting requirements imposed on public authorities are best aligned with existing requirements on public authorities. The majority of public authorities covered by the Bill already produce two-yearly equality mainstreaming reports, as a requirement of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Those public authorities must already:

- publish a report on the progress the authority has made to make the public sector equality duty integral to the exercise of its functions so as to better perform that duty
- include within that report the number of men and women who have been members of the authority during the period covered by the report, and the steps the authority proposes to

- take towards there being diversity among the authority's members so far as relevant protected characteristics is concerned.

The power will be used to ensure public authorities report on the operation of the Act. Where bodies are exempt from producing a mainstreaming report, they will be required by the regulations to produce an equivalent update in their most relevant corporate documents.

Choice of procedure

10. As the content of any reports will be administrative in nature and used to ensure that public authorities report on the operation of the Act, negative procedure is considered appropriate.

Section 8 – Power to modify schedule 1

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative

Provision

8. This provision allows the Scottish Ministers to modify schedule 1 (Public Authorities), by regulations, so as to add an entry, vary the description of an entry or remove an entry. This means that the Scottish Ministers will be able to add new public authorities, if for example a new public body is created, or to remove a public authority in the event that a body is disbanded. The regulations may: include incidental, supplementary, consequential, transitional, transitory or saving provision; make different provision for different purposes, and modify the Act. The provision includes the power to modify the Act because a future addition to schedule 1 may result in the need for consequential change to the Act (for example an addition to schedule 2 might be needed if there were two different persons responsible for making appointments to the board of the public authority added to schedule 1).

Reason for taking power

9. From time to time new public authorities may be created, renamed, merged with other public authorities, reclassified or dissolved altogether, requiring the Scottish Ministers to modify the schedule of public authorities subject to the Act. Taking a power to modify schedule 1 by regulations as opposed to primary legislation is proportionate and will allow the Scottish Ministers to make any such modifications swiftly.

Choice of procedure

10. Negative procedure is considered appropriate for technical and administrative matters as the power to modify the legislation will only relate to the modification of schedule 1 and that modification itself is limited to the addition, variation or removal of an entry in schedule 1.

Section 12 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: laid, no procedure

Provision

11. This provision allows the Scottish Ministers to commence provisions in the Bill (other than sections 12 and 13, which come into force on the day after Royal Assent) on such day as they appoint by regulations. The regulations can include transitional, transitory or saving provision and may make different provision for different purposes.

Reason for taking power

12. It is standard for the Scottish Ministers to have control over the commencement of a Bill.

Choice of procedure

13. As is now usual for commencement regulations, the default laying requirement applies (as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.

*This document relates to the Gender Representation on Public Boards (Scotland) Bill (SP Bill 16
as introduced in the Scottish Parliament on 15 June 2017*

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