

# **GENDER REPRESENTATION ON PUBLIC BOARDS (AMENDMENT) (SCOTLAND) BILL**

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## **POLICY MEMORANDUM**

### **INTRODUCTION**

1. As required under Rule 9.3.3 of the Parliament’s Standing Orders, this Policy Memorandum is published to accompany the Gender Representation on Public Boards (Amendment) (Scotland) Bill introduced in the Scottish Parliament on 7 November 2023 (“the Bill”).
2. The following other accompanying documents are published separately:
  - Explanatory Notes (SP Bill 37–EN);
  - a Financial Memorandum (SP Bill 37–FM);
  - statements on legislative competence by the Presiding Officer and the Scottish Government (SP Bill 37–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government’s policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

### **POLICY OBJECTIVES OF THE BILL**

4. The purpose of the Bill is to amend the Gender Representation on Public Boards (Scotland) Act 2018 (the 2018 Act) to remove the definition of “woman” in section 2, following decisions of the Court of Session of 18 February<sup>1</sup> and 22 March 2022<sup>2</sup> (and which had effect from 19 April 2022) in the judicial review and reclaiming motion brought by For Women Scotland.
5. The definition in section 2 which is to be removed is: ““woman” includes a person who has the protected characteristic of gender reassignment (within the meaning of section 7 of the Equality Act 2010) if, and only if, the person is living as a woman and is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of becoming female.”

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<sup>1</sup> [2022csih4.pdf \(scotcourts.gov.uk\)](#)

<sup>2</sup> [Interlocutor.pdf \(forwomen.scot\)](#)

## **BACKGROUND**

6. When the Gender Representation on Public Boards (Scotland) Bill was introduced to Parliament in 2017, it did not include a definition of “woman”. An amendment to include a definition was made at Stage 2 of the Bill’s scrutiny<sup>3</sup>, following the Equality and Human Rights Committee’s stage 1 report<sup>4</sup>, to make the Bill more inclusive by including trans women who were living as trans women even if they did not have a full gender recognition certificate under the Gender Recognition Act 2004.

7. Following the judicial review and reclaiming motion brought by For Women Scotland, the Court of Session decided that the definition which had been added was outwith the legislative competence of the Scottish Parliament, and therefore reduced it as it was “not law”.

## **ALTERNATIVE APPROACHES**

8. The Scottish Government takes the view that there are no suitable alternative approaches to remove the definition from the statute book following the Court’s decision. The Scottish Government is taking necessary steps in light of a court decision to ensure that the definition, which no longer has legal effect, is removed from the face of the statute book. The alternative would be to leave the redundant definition on the face of the statute book, which could be misleading and cause confusion about the legal position.

## **CONSULTATION**

9. As this is a single issue Bill to remove a redundant definition from the statute book in light of a court order, the Scottish Government will not conduct a formal consultation but has spoken, and will speak further, to stakeholders to confirm why the Bill is being introduced.

## **EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

### **Equal opportunities**

10. This Bill does not change the principles or purpose of the 2018 Act. The 2018 Act works to ensure public boards better reflect the population of Scotland by requiring that 50% of the non-executive membership should be women.

11. An Equality Impact Assessment Record for the Bill has been completed and identifies a potential positive impact for all users of the 2018 Act as it will ensure that no one is misled by erroneous wording in section 2 of the 2018 Act. No negative impacts for the Bill were identified for equality groups, although it was noted that the trans community might perceive a negative impact by the removal of the section 2 definition. However this removal was by the Court’s decision, with effect from 19 April 2022, and is not due to the Bill. An appropriate and proportionate Equality Impact Assessment, as set out in the Equality Impact Assessment Record,

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<sup>3</sup> [Official Report - Parliamentary Business : Scottish Parliament](#)

<sup>4</sup> [Stage 1 report on the Gender Representation on Public Boards \(Scotland\) Bill | Scottish Parliament](#)

has been carried out for the Bill, to fully assess the equality impact of the Bill and which reflects the Bill's narrow scope and limited effect.

### **Human rights**

12. The Bill makes no substantive legal provision. The legal changes were made by the Court's decision, with effect from 19 April 2022. The Scottish Government has considered whether there are human rights implications of the Bill and has concluded that there are none as the Bill makes no substantive legal provision.

### **Island communities**

13. The Bill makes no substantive legal provision. The legal changes were made by the Court's decision, with effect from 19 April 2022. Therefore the Scottish Government has considered and confirms that the Bill will have no impact on an island community which is different from its effect on other communities (including other island communities). It was therefore not considered necessary to conduct an Island Communities Impact Assessment.

### **Local government**

14. The Bill makes no substantive legal provision. The legal changes were made by the Court's decision with effect from 19 April 2022. Therefore the Scottish Government has considered and confirms that the Bill will have no impact for local government.

### **Sustainable development**

15. The Bill makes no substantive legal provision. The legal changes were made by the Court's decision with effect from 19 April 2022. Therefore the Scottish Government has considered and confirms that the Bill will have no impact on sustainable development.

### **CROWN CONSENT**

16. It is the Scottish Government's view that the Bill as introduced does not require Crown consent. Crown consent is required, and must be signified during a Bill's passage, where the Bill impacts the Royal prerogative, the hereditary revenues of the Crown or the personal property or interests of the Sovereign, the Prince and Steward of Scotland or the Duke of Cornwall. The Scottish Government's view is that this Bill does none of those things.

*This document relates to the Gender Representation on Public Boards (Amendment) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 7 November 2023*

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