

# **Gender Representation on Public Boards (Scotland) Act 2018: Scottish Ministers' Report to Parliament 2023**

January 2024

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## Foreword

### Cabinet Secretary for Social Justice



I am pleased to introduce the Scottish Ministers' second report to the Scottish Parliament on the operation of the Gender Representation on Public Boards (Scotland) Act 2018 (the "2018 Act").

Historically, women in Scotland and across the UK have been under-represented in public and political life. From parliament to government, the judiciary and the boardroom, halls of power have traditionally been dominated by men.

Undoubtedly, this has changed considerably over the years. Today there are more women in decision-making positions than at any time in the past.

In the Scottish Parliament, women now account for 46% of Members, more than at any time in the Parliament's history. The Scottish Cabinet, which is the main decision-making body of the Scottish Government, made up of the First Minister and Cabinet Secretaries, comprises 6 women and 4 men.<sup>1</sup>

But, we are not as close to equal representation in other areas. Despite the passing of the Parliament (Qualification of Women) Act in 1918 giving women the right to become MPs for the first time, women are still under-represented in the House of Commons more than 100 years later. Indeed, it took until 1997 for the proportion of female MPs to reach 10%. As of March 2023, 225 MPs are women.<sup>2</sup> While this is the highest number in history, it represents only 35% of MPs.

In Scottish local authorities, 35% of councillors are now women, up from 29% in 2017, but still some way from gender parity. The most recent Judicial Diversity Statistics for Scotland, published in November 2022, show that women continue to be under-represented in judicial positions in Scotland, accounting for just 27% of all appointments.<sup>3</sup>

The 2018 Act is intended to improve women's representation on the boards of listed public authorities in Scotland, using additional powers conferred on the Scottish Parliament by the Scotland Act 2016. I am pleased that, as at December 2022, 68% of listed public authorities had achieved the gender representation objective.

The listed public authorities covered by the 2018 Act carry out a variety of functions and have responsibilities of significant national interest to the people of Scotland. They include regional and special health boards, a range of non-departmental public bodies and agencies, and the boards of higher education institutions and colleges.

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<sup>1</sup> [Who runs government: Cabinet and Ministers](#), accessed on 13 December 2023.

<sup>2</sup> [Women in politics and public life](#), House of Commons Library Research Briefing, Elise Uberoi and Zoe Mansfield, published on 6 March 2023, accessed on 4 December 2023.

<sup>3</sup> [Judicial diversity statistics 2022](#), accessed on 13 December 2023.

Accounting for more than 50% of Scotland's population, women should have an equal voice in these spaces.

Legislation can't always realise an outcome on its own – the passing of the Parliament (Qualification of Women) Act 1918 shows us that, but it is an important enabler of change.

## Introduction

1.1 This is Scottish Ministers' second report to the Scottish Parliament on the operation of the Gender Representation on Public Boards (Scotland) Act 2018 (the "2018 Act"), as required by section 8(1) of the 2018 Act and regulation 6 of the Gender Representation on Public Boards (Scotland) Act 2018 (Reports) Regulations 2020 (the "2020 Regulations").<sup>4</sup>

1.2 Scottish Ministers' first report to the Scottish Parliament was laid in December 2021.<sup>5</sup> It covered the period from 29 May 2020, when the provisions of the 2018 Act came into force, to 30 April 2021. This report covers the period from 1 May 2021 to 31 December 2022.

1.3 In order to provide an overview of the operation of the 2018 Act, Scottish Ministers must consider all published reports by appointing persons and public authorities under the 2020 Regulations.

1.4 This report draws on the information set out in Scottish Ministers' Report in their role as an Appointing Person (the "Regulation 2 report") which was published in August 2023.<sup>6</sup> The Regulation 2 report includes data for 130 listed public authorities, including those where the appointing person is someone other than Scottish Ministers, such as higher education institutions, as well as those where the appointing person is Scottish Ministers.

1.5 The following chapter provides an overview of the 2018 Act itself. Chapter 3 provides an overview of the operation of the 2018 Act, drawing on the information reported for listed public authorities in the Regulation 2 report.

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<sup>4</sup> [Gender Representation on Public Boards \(Scotland\) Act 2018](#), link accessed on 4 December 2023; [Gender Representation on Public Boards \(Scotland\) Act \(Reports\) Regulations 2020](#), link accessed on 4 December 2023.

<sup>5</sup> [Gender Representation on Public Boards \(Scotland\) Act 2018: Scottish Ministers Report to Parliament 2021](#), link accessed on 4 December 2023.

<sup>6</sup> [Gender Representation on Public Boards \(Scotland\) Act 2018: Scottish Ministers' Report in their role as an Appointing Person](#), link accessed on 4 December 2023.

## **About the 2018 Act**

2.1 The 2018 Act was introduced to improve women's representation on public boards in Scotland. It sets a 'gender representation objective' for listed public authorities that 50% of non-executive board members are women.

2.2 A "non-executive member" is a position that is not held by an employee of the public authority and that is not an excluded position.

### **Calculating the gender representation objective**

2.2 The gender representation objective is not a cap. The 2018 Act does not prevent a listed public authority from having more than 50% women non-executive members on its board. Nor does it require listed public authorities to have 50:50 male and female members. A listed public authority with more than 50% women non-executive members has met the gender representation objective.

2.3 If there are an odd number of non-executive members, the gender representation objective applies as if there was one fewer member. In this situation it can be possible for a listed public authority to achieve the gender representation objective if less than 50% of the non-executive members on its board are women. For example, if there are 9 non-executive members, the gender representation objective would be achieved if 4 (44%) of those members are women, and if there are 7 non-executive members, the gender representation objective would be achieved if 3 (43%) of those members are women.

2.4 The 2018 Act also specifies certain 'excluded positions' for individual listed public authorities. Excluded positions do not count towards the gender representation objective and appointing persons and public authorities are not required to take steps in relation to them. Some positions are excluded positions because they are filled through an electoral process rather than an appointment process, or because a person automatically holds a non-executive position by virtue of holding another position.

2.5 In relation to some listed public authorities, the 2018 Act covers all members of the authority's board. The first authority listed in schedule 1 of the 2018 Act, the Accounts Commission for Scotland, is a good example. The Accounts Commission for Scotland has 12 non-executive members, all appointed by Scottish Ministers, and no excluded positions. In relation to other listed public authorities, such as higher education institutions and colleges, only some members of the authority's board are covered by the 2018 Act.

## **Duty to take steps to achieve the gender representation objective**

2.6 In addition to setting a gender representation objective, the 2018 Act requires appointing persons and public authorities to take steps to achieve the objective. This includes steps to encourage women to apply to become non-executive members and a duty to appoint a woman in certain circumstances. If the gender representation objective has not been met and there are at least two equally qualified candidates, at least one of whom is a woman, a woman should be appointed if this would result in the authority achieving the gender representation objective, or making progress towards achieving the gender representation objective.

2.7 The duty to appoint a woman is subject to a provision at section 4(4) of the 2018 Act which requires an appointing person to consider whether the appointment of an equally qualified candidate who is not a woman would be justified on the basis of a characteristic or situation particular to that candidate.

## **What public authorities are covered by the 2018 Act?**

2.8 Schedule 1 of the 2018 Act lists the public authorities covered by the 2018 Act. It includes a range of Scottish public bodies, regional and special Health Boards, higher education institutions, colleges and regional Transport Partnerships.

2.9 The majority of the appointments covered by the 2018 Act are regulated by the Commissioner for Ethical Standards in Public Life in Scotland. These appointments are made by Scottish Ministers and the selection process is run on their behalf by Scottish Government officials.

2.10 The individual public authorities, and the total number of listed public authorities covered by the 2018 Act, may change from time to time, as new bodies are created and added to Schedule 1, and others removed.

2.11 The Scottish Government has published statutory guidance to support appointing persons and public authorities to carry out their functions under the 2018 Act.<sup>7</sup>

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<sup>7</sup> [Gender Representation on Public Boards \(Scotland\) Act 2018: statutory guidance](#), link accessed on 4 December 2023.

## Overview of the operation of the 2018 Act

### The gender representation objective

3.1 As at 30 April 2022, 83 of 130 listed public authorities (64%) had achieved the gender representation objective, and 47 had not (36%). By 31 December 2022, the number of listed public authorities that had achieved the gender representation objective had increased to 88 of 130 listed public authorities (68%).

3.3 Listed public authorities can be categorised into different groupings. The 130 listed public authorities for which data was reported in the Regulation 2 report, are comprised of:

- 78 regulated public authorities, for whom appointments are made by Scottish Ministers and regulated by the Commissioner for Ethical Standards in Public Life in Scotland
- 19 higher education institutions
- 24 colleges
- 4 regional Transport Partnerships
- 5 unregulated public authorities that are not a regional Transport Partnership, higher education institution or college

#### Regulated Public Authorities

3.4 Of the 78 listed public authorities, for whom appointments are made by Scottish Ministers and regulated by the Commissioner for Ethical Standards in Public Life in Scotland, 58 (74%) had achieved the gender representation objective at 31 December 2022, up from 57 (73%) at 30 April 2022.

#### Higher Education Institutions

3.5 Of the 19 higher education institutions, 8 (42%) had achieved the gender representation objective as at 31 December 2022, up from 6 (32%) at 30 April 2022.

#### Colleges

3.6 Of the 24 colleges, 17 (71%) had achieved the gender representation objective at 31 December 2022, up from 15 (62.5%) at 30 April 2022.

#### Regional Transport Partnerships

3.7 Of the 4 regional Transport Partnerships for which data was included in the Regulation 2 report, 1 (25%) had achieved the gender representation objective, with no change from 30 April 2022.



3.8 There are 7 regional Transport Partnerships in Scotland, all of which are listed public authorities for the purposes of the 2018 Act. However, there are a number of excluded positions for regional Transport Partnerships listed in Schedule 1 of the 2018 Act, namely Councillor members and members appointed only by virtue of being nominated for membership by a Health Board, Highlands & Islands Enterprise or Scottish Enterprise.

3.9 Three partnerships, Shetland's Transport Partnership, South-West of Scotland Transport Partnership, and North-East of Scotland Transport Partnership, had no positions on their boards within the scope of the 2018 Act, in other words they had no non-executive members that were not excluded positions.

#### Other unregulated bodies

3.10 Of the 5 other unregulated authorities, 4 (80%) had achieved the gender representation objective at 31 December 2022, with no change from 30 April 2022.

### **Vacancies, competitions, and applications**

3.11 Between 1 May 2021 and 31 December 2022, a total of 391 vacancies for non-executive members arose, resulting in approximately 165 recruitment competitions and attracting approximately 3,700 applications. In some instances, a single recruitment competition was used to fill more than one vacancy.

3.12 The mean, or average, percentage of applications received from women for an individual recruitment competition, where data was available, was 42.6%. The median percentage of applications received from women for an individual recruitment competition was 41%.

### **Appointments**

3.13 The Regulation 2 report provides some information about appointments, including, in relation to vacancies for non-executive members, whether an appointment was made, and where an appointment was made, if a woman was appointed. However, it has not been possible to aggregate this information for all listed public authorities.

### **Steps taken to encourage applications from women**

3.14 The Regulation 2 report provides information on steps taken by appointing persons and listed public authorities to encourage applications from women. The steps reported are:

- Working with third sector organisations, including Changing the Chemistry, to encourage women to apply for certain appointments.
- Promoting vacancies with individuals, professional networks for women, and organisations representing minority ethnic people, young people and disabled people to generate interest and encourage applications from a more diverse range of candidates.

- Including text in the vacancy advert to encourage applications from women and other under-represented groups.

### **Other steps taken to achieve the gender representation objective**

3.15 The Regulation 2 report provides information on other steps taken with a view to achieving the gender representation objective by 31 December 2022.

Scottish Ministers were reported as having taken the following steps:

- Events and communications targeted at women with the aim of demystifying the public appointments process.
- Using role models/current women board members to speak about their experiences.
- Board shadowing and mentoring opportunities for women, particularly for women interested in Chair roles.

3.16 The following strategic work was reported as having been undertaken to diversify public appointments:

- Outreach and engagement, mentoring and shadowing to encourage applications for public appointments.
- An ongoing improvement programme to drive forward the Scottish Government's commitment to boards being more reflective of Scottish society.
- Guidance on succession planning, together with a toolkit of resources to help public bodies reach out to, and develop, potential new board members.
- The provision of a programme of workshops to support diverse groups of people, who are under-represented on public boards, to complete high quality applications and prepare for interviews.
- Work to raise the profile of public appointments as an attractive and accessible way to participate in public life.
- The implementation of a corporate induction for new members to support them into their roles: encouraging them to feel part of Scotland's public service leadership cohort, reinforcing their role in delivering ministerial priorities and encouraging peer support and networking.
- The organisation of peer-learning and networking opportunities for Chairs to help them to create a boardroom culture that harnesses the benefits of board diversity.



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