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Scottish Parliament  
Edinburgh  
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By email:

15 December 2017

Dear Christina,

I would like to thank the Equalities and Human Rights Committee members for their constructive scrutiny of the Gender Representation on Public Boards (Scotland) Bill.

Ahead of the Committee's Stage 2 scrutiny on Thursday 21 December, I thought it would be useful to set out in advance an explanation of the Scottish Government's amendments which were lodged on Wednesday 13 December and to highlight how I am taking forward the Committee's recommendations.

I very much look forward to this next stage of the Bill's passage and to continuing to work with the Committee going forward.

Yours sincerely

**ANGELA CONSTANCE**

## Scottish Government stage 2 amendments

1. The Scottish Government lodged 8 amendments on Wednesday 13 December. The majority of these amendments are directly in response to recommendations made by the Equalities and Human Rights Committee in their stage 1 report published on 20 November 2017.

### *Guidance*

2. The Committee was strongly of the opinion that statutory guidance was needed to support the operation of the Bill and made a recommendation to this effect in its stage 1 report and its written response to the Committee, the Scottish Government accepted the Committee's recommendation that statutory guidance was required.

3. Amendment 3 requires Scottish Ministers to publish guidance on the operation of the Act. It will apply equally to regulated and non-regulated appointments, as the Committee recommended. Furthermore, the amendment sets out a number of aspects of the Bill that guidance must in particular cover as the Committee requested in its stage 1 report. For example: the functions of an appointing person in appointing non-executive members under section 3 and 4, and the functions of both appointing persons and public authorities in encouraging applications by women under section 5.

4. The Committee should also be reassured that the Scottish Government's intention is to draft guidance in consultation with public authorities and relevant parties including the Commissioner for Ethical Standards in Public Life in Scotland.

### *Reporting*

5. The Scottish Government's amendments to section 7 of the Bill ('Reports on operation of Act') are in response to the two recommendations on reporting made by the Committee at stage 1, namely:

- That Scottish Ministers should lay before the Parliament an annual report which draws together the gender balance within both regulated and non-regulated boards so that comparative progress and sharing of best practice can be easily identified, and;
- Reporting should include a duty to report on the steps taken to encourage applications from women under section 5.

6. Amendments 4 and 7 require Scottish Ministers to lay before the Scottish Parliament reports on the operation of the Act in accordance with provision made in regulations and at intervals of no more than two years.

7. Biennial reporting ensures the reporting requirements which flow from the Act can be aligned with existing reporting requirements which flow from the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, as amended in 2016.

8. Amendments 4 and 5 respond to the Committee's recommendation that reporting should include a duty to report on the steps taken to encourage applications from women under section 5.

## *Regulations and power to modify the Act*

9. Both the Delegated Powers and Law Reform and the Equalities and Human Rights Committees recommended that regulations made by Scottish Ministers under section 8 should be subject to the affirmative procedure rather than the negative procedure as currently drafted. Amendments 8 and 9 ensure that regulations made under section 8 will be subject to the affirmative procedure.

## *Schedule 1 technical amendment*

10. Amendment 2 is a technical amendment which adds a small number of members who are nominated to the boards of regional transport partnerships to the excluded positions in schedule 1.

## *Aggregate gender representation objective*

11. In its stage 1 report, the Committee asked the Scottish Government to consider putting in place an aggregate gender representation objective across all public boards for chair positions. The Scottish Government has considered this carefully, and concluded that such an objective is not practicable and could not be meaningfully applied across all of the boards covered by the Bill. However we understand the Committee's reasoning and wish to reassure the Committee that we will keep a close eye on how the Bill impacts on the gender balance of chairs and examine how we can share and encourage best practice in this area.

## *Action plans*

12. We would like to thank the campaign organisation Women 50:50 for its support for the Bill and would like the Committee to note we have carefully considered their recommendations for amendments. We would like the Committee to be aware that section 7 of the Bill provides for Scottish Ministers to make provision for reporting by way of regulations. Our intention is ensure that our overall reporting framework is coherent and aligned with existing reporting requirements, including those which flow from the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (amended 2016).

13. The Scottish Government intend to develop regulations on reporting in consultation with public authorities and other relevant stakeholders and we will at that stage fully consider issues including those raised by Women 50:50, for example that public authorities should be required to publish reports on the number of applicants and the percentage of applicants by gender, taking into account any associated data protection issues.

## *Inclusion of trans women*

14. The inclusion of trans women in the Bill has been raised throughout stage 1 by stakeholders and by the Committee and the Scottish Government has also consistently maintained its position that the Bill should be as inclusive of trans women as possible within the legislative competence of the Scottish Parliament.

15. We have worked with Mary Fee MSP and the Scottish Trans Alliance on this issue and the amendment in her name ensures that the term "woman" will include 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.

## *Characteristics*

16. Some stakeholders expressed uncertainty during stage 1 as to whether the term “a characteristic or situation particular to that candidate” in section 4(4) of the Bill would include a protected characteristic within the meaning of section 4 of the Equality Act 2010. We have worked with Alex Cole Hamilton MSP on this issue and Amendment 1 in his name provides clarity that “characteristic” would include a protected characteristic.

17. The Scottish Government will also support Amendment 11 in Alex Cole Hamilton’s name.