



## RESPONSE TO THE SCOTTISH GOVERNMENT CONSULTATION ON THE DRAFT GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) BILL

Engender welcomes the opportunity to respond to the consultation on the draft Gender Representation on Public Boards (Scotland) Bill.

In Scotland, women make up 52 percent of the population.<sup>1</sup> However, gender parity in public spheres is far from becoming reality. In Scotland, women are currently:

- 35 percent of Members of the Scottish Parliament;
- 25 percent of local councillors;
- 16 percent of council leaders;
- 17 percent of Members of the European Parliament; and
- 28 percent of public body chief executives.<sup>2</sup>

As highlighted by Engender in its response to the call for written evidence on gender balancing measures on public boards in Scotland in 2014, policy changes are needed to tackle gender inequality across the public sector; to break down the barriers to women's equal participation in public life; and to eliminate gender imbalance in leadership, authority and decision-making across public, political, social and cultural institutions.

### ANALYSIS OF THE PROPOSED LEGISLATION

Research shows that gender balancing measures increase women's leadership across sectors, including corporate and public, providing evidence that the primary constraint on female leadership is not a lack of interest in leadership positions by women.<sup>3</sup> In the United States, Catalyst, a non-profit organisation working to accelerate progress for women through workplace inclusion, found that 55 percent of women and 57 percent of men aspired to be in a senior leadership position.<sup>4</sup>

To increase the number of women in leadership roles, several countries have implemented gender balancing measures on public and private boards. Among these countries are Canada, France, Norway, and the Netherlands. The success of gender balancing measures has been attributed to the introduction of deadlines, or targets, by which boards should achieve gender

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<sup>1</sup> Engender. 2017. *'Equal Voice, Equal Power'*.

<sup>2</sup> Engender. 2017. *'Equal Voice, Equal Power'*.

<sup>3</sup> Pande, R. & Ford, D. 2011. *'Gender Quotas and Female Leadership: A Review'*. *Background paper for the World Development Report on Gender*.

<sup>4</sup> Pande, R. & Ford, D. 2011.

parity; the use of penalties for non-compliance with gender balancing measures; and the requirement that companies or agencies take appropriate internal action to improve their recruitment, leadership training and promotion of women. The proposed Bill under consultation does not include any of these features, and we are concerned that it will not realise the Scottish Government's ambitions for gender-balanced boards. In this submission, Engender has commented on and made recommendations around the proposed legislation, including on the existing use of the word 'female' and 'male'. The recommendations, if implemented in the draft Bill, would accelerate progress towards the equal representation of women on public boards in Scotland.

## **1. Current Wording**

The draft Bill uses the following wording: 'who are female or who identify as female' or 'who are male or who identify as male', which implies, and would create a legal difference, between those who 'are' and those who 'identify as' male and female for the purpose of appointments to public boards. The intent of the wording appears to have been to be inclusive of transgender people and, as such, should be amended to simply state 'who identify as female' and 'who identify as male'. This amendment would be more inclusive and respectful.

Further, the existing wording would exclude non-binary people. The term non-binary refers to a person identifying as either having a gender which is in-between or beyond the two categories 'man' and 'woman', as fluctuating between 'man' and 'woman', or as having no gender, either permanently or some of the time. To be inclusive, the draft legislation should be amended to ensure non-binary people can hold positions on public boards.

## **2. Set specific targets**

We have concerns that the absence of targets within the legislation will impede the achievement of the Bill's intended objective.

It is strongly recommended that the Scottish Government include targets, or deadlines, by which public boards will achieve gender parity. More specifically, the Scottish Government should set out in its legislation that gender balancing measures on public boards will be achieved by a specific date. As explained by Catalyst in its research on gender balancing measures, the rationale for setting targets is simple: 'it's impossible to measure progress without first having something to measure it against'.<sup>5</sup>

Moreover, the inclusion of targets in legislation would incentivize public boards to comply with the legislation. In its current format, the draft Bill would give public boards an unlimited timeframe by which to achieve gender parity.

Targets for gender balancing measures have been used by other countries, and were used to ensure compliance with the legislation. As an example, France set out targets for gender balancing measures on boards. Its legislation provided that 20 percent of board members be women by 2013 and that 40 percent of board members be woman by 2016. In 2016, women

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<sup>5</sup> Catalyst. 2016. *'Gender Diversity on Boards in Canada: Recommendations for Accelerating Progress'*.

accounted for approximately 60 percent of board nominations in France.<sup>6</sup> In addition to France, other countries, like Norway and Canada, have also relied on targets when implementing gender balancing measures.

Given the successful use of targets to achieve gender parity on boards, Engender strongly recommends that the Scottish Government introduce targets in its legislation. The Scottish Government must set a date by which gender parity on public boards will be achieved (e.g., 50 percent women on public boards by 2024). Alternatively, the Scottish Government could consider setting out incremental targets in its legislation (e.g., 30 percent women on public boards by 2020; 40 percent women on boards by 2022; and 50 percent women on public boards by 2024).

### **3. Monitoring and Compliance**

Robust enforcement is essential, and without a meaningful recourse for lack of compliance there is significant probability that gender balancing measures will not be taken seriously by those charged with implementing them. Although there has been a recent, welcome shift towards gender-balance on public boards, recent history shows that public board membership and recruitment processes have not reflected legal obligations to advance gender equality, including Scottish-specific duties under the Public Sector Equality Duty (PSED).<sup>7</sup> Instead, the recent leadership of the First Minister could be said to have been decisive in encouraging public bodies to cast a wider net in recruiting and appointing board members.

Several countries with gender balancing measures relied on penalties for non-compliance as part of the measures to successfully reach gender parity on public and/or private boards. In 2003, Norway implemented gender balancing measures for board directors, and required at least 40 percent representation of women on public boards.<sup>8</sup> Companies had a deadline of 2008 to comply with the requirement and were threatened with serious penalties for non-compliance, including dissolution of the company. Though the Norwegian law was met with strong opposition, the government announced full compliance with gender balancing measures in 2008.<sup>9</sup>

Different approaches to ensure compliance with gender balancing measures have been undertaken elsewhere. In France, for example, the government introduced a non-compliance measure whereby a board appointment would be nullified if it violated the legislation on gender balancing measures.

Evidence on gender balancing measures and female leadership shows that 'if governments demonstrate a willingness to punish non-compliance then they can increase female representation'.<sup>10</sup> It is the position of Engender that the Scottish Government should

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<sup>6</sup> Glass Lewis. 2016. *'A Study on German Gender Quotas and Targets'*.

<sup>7</sup> Engender. 2014. *'Scottish Government consultation on the introduction of gender quotas on public boards'*.

<sup>8</sup> Seierstad, C., Huse, M. & Seres, S. 2015. *'Lessons From Norway in Getting Women Onto Corporate Boards'*. The Conversation.

<sup>9</sup> UK Government Department for Business, Innovation & Skills. 2011. *'Women on Boards'*.

<sup>10</sup> Pande, R. & Ford, D. 2011.

introduce a suite of monitoring, enforcement and sanctioning measures to ensure compliance with the legislation. Though Engender does not hold strong views on what form of sanctions should apply, it does advocate that the system, and those implementing it, be adequately resourced and empowered.

#### **4. Accountability**

The proposed legislation speaks very little to the requirement of public agencies to track and report on progress towards gender parity on boards. Further, the draft legislation does not impose a requirement on a public agency to publish its plans on how it intends to achieve gender parity on its board.

Achieving gender parity on public boards will require public agencies to buy-in and commit to the Scottish Government's vision and objective. While introducing targets and penalties for non-compliance would be steps in the right direction, additional measures are needed to ensure that public agencies take action on gender balancing measures. Measures imposed on public agencies could include:

- Use at least one mechanism to facilitate board renewal, including, but not limited to, term limits;
- Establish written policies describing how the agency plans to increase the number of women on its board;
- Review board recruitment strategies and policies, and consider introducing a requirement that women, including women from diverse communities, comprise at least 50 percent of board candidates and/or 50 percent of the interview pool; and
- The creation of a national pool of candidates who have been skilled and prepared for public appointments, rendering a set of equally-qualified candidates for selection by public authorities.

Other measures to bolster the success of gender balancing measures include reviewing gender equality at all levels of public agencies. Recruitment, training and promotion should be monitored and tracked to identify where and how policies and processes can be amended to increase the representation of women across public agencies, including on boards. Such work would enable the better performance of the public sector equality duty.

Research has shown that 'the design of the quota and selection systems matter for increasing female leadership'.<sup>11</sup> Simply imposing a goal for gender representation on public boards is insufficient. Public agencies must be directed to examine existing recruitment and selection policies and processes with a view of achieving equal representation of men and women on boards. Further, public agencies must be required to track and report on their progress towards gender parity on boards.

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<sup>11</sup> Pande, R. & Ford, D. 2011.

## CONCLUSION AND RECOMMENDATIONS

Engender supports the principle behind the draft legislation, but recommends that the Scottish Government amend the draft Bill to include bolder policies. In particular, Engender recommends:

1. Review existing wording around 'female' and 'male' to ensure the Bill is inclusive and respectful;
2. Set out in legislation that women will make up 50 percent of board members on public boards by a specific date. Alternatively, set out incremental targets (e.g., 30 percent women on public boards by 2020; 40 percent women on boards by 2022; and 50 percent women on public boards by 2024);
3. Introduce penalties for non-compliance with gender balancing measures; and
4. Implement measures that ensure accountability by public agencies.

These recommendations, if implemented, would signal a serious commitment to achieving gender parity on public boards, and would accelerate the rate of progress towards the equal representation of women on public boards in Scotland. Legislated gender balancing measures are needed to increase women's representation on public boards. However, if this goal is a genuine one, the Scottish Government must amend its proposed legislation.

### For Further Information

Contact: Emma Trottier, Policy Manager, Engender  
Email: [emma.trottier@engender.org.uk](mailto:emma.trottier@engender.org.uk)  
Mobile: 07889 805787

### About Engender

Engender has a vision for a Scotland in which women and men have equal opportunities in life, equal access to resources and power, and are equally safe and secure from harm. Engender is a feminist organisation that has worked in Scotland for 20 years to advance equality between women and men.