



DEBATE: GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) BILL ENGENDER PARLIAMENTARY BRIEFING

Parliament is scheduled to hold Stage 1 debate on the Gender Representation on Public Boards (Scotland) Bill on Thursday, November 30. In anticipation of the debate, Engender has developed the following briefing to highlight why the Bill, and further amendments, are needed to strengthen women's representation on public boards in Scotland.

1. WHAT DOES THE BILL PROPOSE?

The Bill would introduce the 'gender representation objective', which would provide that 50 percent of non-executive members on public boards in Scotland be women. The Bill sets out the duties for considering and appointing candidates, and would require certain public authorities and Scottish Ministers to achieve the gender representation objective by 2022.

2. WHY DOES SCOTLAND NEED A GENDER REPRESENTATION OBJECTIVE?

In Scotland, women make up 52 percent of the population. However, gender parity in public spheres is far from becoming reality. In Engender's 2017 report titled *Sex and Power*, we highlighted that women in Scotland 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.

International evidence suggests that lack of gendered power balance in the public domain has a major impact on equality of outcomes across government. In other words, having women around the table changes the subjects that are discussed and the outcomes of those discussions. In addition to enriching perspectives, representative public boards challenge normative gender roles and perceptions around public authority.

Instituting gender balancing measures to increase women's representation and participation in public life has proven to have a positive impact on attitudes towards women's leadership as well as organisational performance (i.e., greater effectiveness, higher productivity and better

profitability). When it is clear that women are under-represented across Scottish public life, we believe the Government has a duty to pursue equal representation, particularly when research and evidence have shown its positive impact on society as a whole.

The progress in women's representation on public boards to date is due to the strong leadership of the Scottish Government. Voluntary mechanisms have had a positive impact in increasing women's representation, but women are yet to be equally represented on public boards in Scotland. Voluntary mechanisms involving holistic approaches in training and development put the onus on women, rather than on the cultural change needed within organisations and around decision-making tables to increase women's representation. The Bill would legislate a gender representation objective, and prevent rollback should gender balance not be a priority of a future government.

The gender representation objective is a commitment to equal representation on public boards, but it is also an acknowledgment that individuals, communities and Scotland as a whole fare better when women are sitting around decision-making tables. This commitment and acknowledgement will always be met with resistance. In our work to dispel the misconceptions around gender balancing measures (e.g., they undermine meritocracy), we have always made the underlying point that **measures which actively tackle power imbalances will always be contested. That is not to say that all women support gender balancing measures or that all men oppose them. Rather, as demonstrated by the pace of progress against gender inequality, privileged groups with vested interests do not readily yield positions of power and influence.**

WHAT DID THE EQUALITIES AND HUMAN RIGHTS COMMITTEE REPORT?

The Committee welcomed the decision to legislate gender balancing measures on public boards and supported the general principles of the Bill, recognising that it is a measure to contribute to a more equal society in Scotland.¹ The Committee, however, invited the Scottish Government to clarify certain provisions in the Bill, some of which are explored below. While the following themes were discussed in the Committee report, any recommendation made is by Engender, unless stated otherwise.

Gender representation objective

Since its introduction, Engender's understanding of the Bill has been that board membership would include, at a minimum, 50 percent of non-executive members who are women. However, discussions during Committee meetings revealed that there was confusion over whether the current language in the Bill suggested that the 50 percent was a cap on women's representation. **To avoid any misinterpretation over the gender representation objective, the Bill should be amended to clarify that 50 percent is the floor, not the ceiling on women's representation on public boards in Scotland.**

¹ Jamie Greene MSP and Annie Wells MSP do not support the general principles of the Bill.

Unclear also is the rationale for limiting the gender balancing measures to non-executive members of public boards. Women represent only 25 percent of chairs on public boards, significantly lower than the 45 percent of women in non-executive member positions. **Engender supports the Committee's position that further explanation is required on why the gender representation objective has not been extended to include public board chairs.**

Trans women

There is concern that there may be uncertainty around who is included by the term 'women' in the gender representation objective. The possibility exists that trans women without gender recognition certificates may be treated in a discriminatory manner when applying to be non-executive members of a public board. **Engender agrees with Scottish Trans and other LGBTI organisations that it is vital that the Bill be inclusive of all women.**²

Tiebreaker decisions

The Bill includes a provision for a 'tiebreaker' decision to be made between two people – a man and a woman – with equal merit. In such scenarios, the Bill would allow the appointing person to give the position to someone who is not a woman if it could be justified on the basis of a 'characteristic' or 'situation' particular to the other candidate. **At issue is whether the tiebreaker provision provides a loophole for the appointing person to forego compliance with the gender representation objective. To avoid such a situation, clarity is needed on what is meant by 'characteristic' and 'situation'.** If further explanation does not alleviate the aforementioned concerns, the tiebreaker provision should be reconsidered.

Accountability

If the Bill is to be successful, accountability measures must be put in place. **Engender supports the Committee's proposal that the Scottish Government report annually to Parliament on the gender balance of public boards so that comparative progress can be identified.**

However, we believe there is scope to go further. **Efforts should be made to investigate whether the statutory functions of the Commissioner for Ethical Standards in Public Life could be amended to allow the Commissioner to oversee appointments with a view of ensuring they comply with the gender representation objective.** More specifically, whether the Commissioner could be given the power to monitor appointments and, where necessary, investigate appointments which do not comply with the gender representation objective. In cases where appointments do not comply, corrective action would be necessary and the Commissioner would require the power to, for example, nullify appointments. Such powers exist in foreign

² This could be achieved by defining 'woman' as (a) includes a person with the protected characteristic of gender reassignment who is living in the female gender, and (b) does not include a person with the protected characteristic of gender reassignment who is living in the male gender.

jurisdictions, such as in France, where the government introduced the power to nullify a board appointment if it violates gender balancing measures.

Guidance

Success of the Bill's intended objective will require detailed guidance for public boards, including steps that put the onus on the appointing person and the public body to encourage women to apply, to ensure women receive adequate capacity building and to advance women's equality in public life. We know from the performance of the Public Sector Equality Duty that one of the biggest barriers for public bodies is the lack of direction within guidance on the particular actions they should take to advance equality. **As such, we strongly recommend that prescriptive guidance be drafted and published alongside the Bill to support public boards in achieving, at a minimum, 50 percent representation.**

For Further Information

Contact: Emma Trottier, Policy and Parliamentary Manager, Engender

Email: 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.