

## About You

### What is your name?

**Name:**

Coalition of Racial Equality and Rights

### What is your email address?

**Email:**

lesley@crer.org.uk

### Are you responding as an individual or an organisation?

Organisation

### What is your organisation?

**Organisation:**

Coalition of Racial Equality and Rights

### The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

**We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?**

Yes

## Questions

### 1 What, if any, comments would you make in relation to section 1 [Gender representation objective] of the draft Bill?

**What, if any, comments would you make in relation to section 1 [Gender representation objective] of the draft Bill?:**

CRER welcomes this Bill and its positive actions laid out to improve representation. CRER is concerned that the 50% representation target may prove too rigid to implement and would recommend that instead of working towards 50% representation, that a minimum level of 40% of board members be female (and 40% male). This could remove the need for special provisions for boards with uneven numbers and by setting a minimum representation standard rather than a 50% target it may also allow for up to 60% representation of women on a board. It is probable that the majority of executive Board members, who are not affected by this Bill, are likely to be male, and allowing for up to 60% of non-execs to be women may be useful to ensure a truly balanced Board.

Further to this, not all roles within a board are equal. In particular, the chair of the board is likely to have more responsibilities and influence. Some boards recruit the role of a chair separately and at present there is under representation of women (and other minority groups) in chair positions on public boards. It would be useful to see if a gender representation objective could be drawn up for these positions as well.

### 2 What, if any, comments would you make in relation to section 2 [Key definitions] of the draft Bill?

**What, if any, comments would you make in relation to section 2 [Key definitions] of the draft Bill?:**

n/a

### 3 What, if any, comments would you make in relation to section 3 [Duty when appointing non-executive members] of the draft Bill?

**What, if any, comments would you make in relation to section 3 [Duty when appointing non-executive members] of the draft Bill?:**

n/a

### 4 What, if any, comments would you make in relation to section 4 [Consideration of candidates] of the draft Bill?

**What, if any, comments would you make in relation to section 4 [Consideration of candidates] of the draft Bill?:**

n/a

### 5 What, if any, comments would you make in relation to section 5 [Encouragement of applications] of the draft Bill?

**What, if any, comments would you make in relation to section 5 [Encouragement of applications] of the draft Bill?:**

This section must be expanded to include wider representation considerations. Whilst the Bill itself is exclusively focussed on gender representation, there should

be wider equalities considerations within this. For example if representation of women is already above 50% on a certain board, then it may arise that a white male is appointed over a BME woman, or a woman with a disability. If such a circumstance were to arise, then it may potentially inhibit diversity rather than improve it.

Encouraging a wider pool of candidates will not be subject to any legal barriers, so there should be no reason that other protected characteristics could not feature in this section.

There is also no mention of board chairs in this section, which is another area which needs positive actions to improve representation. According to The Commissioner for Ethical Standards' annual report and accounts for 2015-16, applications from BME candidates for chair positions are not progressing in the appointment process. They recommended that more must be done to increase the number of applications from women into chair positions, as this too is under-represented at present.

**6 What if any, comments would you make in relation to Schedule 2 (introduced by section 7) [Application of Act to Certain Listed Authorities] of the draft Bill?**

**What if any, comments would you make in relation to Schedule 2 (introduced by section 7) [Application of Act to Certain Listed Authorities] of the draft Bill?:**

n/a

**7 What, if any, comments would you make in relation to Schedule 1 (introduced by section 2) [Listed Authorities] of the draft Bill?**

**What, if any, comments would you make in relation to Schedule 1 (introduced by section 2) [Listed Authorities] of the draft Bill?:**

n/a

**8 The draft Bill does not specify any requirement for reporting. Do you have any comments on reporting arrangements under the legislation, including timescales, location and content of reports?**

**The draft Bill does not specify any requirement for reporting. Do you have any comments on reporting arrangements under the legislation, including timescales, location and content of reports?:**

We would expect that public boards to publish details of all applications that have been processed. This should include details of the applicants protected characteristics and whether they have been successful in gaining an interview or being appointed to the board, similar to the current PSED specific duty requirements for reporting on workforce data.

**9 Do you have any comments on the draft Bill, not already expressed in response to previous questions, including on how the Bill could be strengthened to deliver Minister's stated objective of gender balanced public boards?**

**Do you have any comments on the draft Bill, not already expressed in response to previous questions, including on how the Bill could be strengthened to deliver Minister's stated objective of gender balanced public boards?:**

This Bill must make greater considerations of intersectionality. There are too many potential loopholes that may exclude persons with a certain protected characteristic which may create a barrier to improved representation across the other protected characteristics.

We strongly feel that the Bill as it currently stands is a real missed opportunity to embed the provisions laid out in the Equality Act. This could be done by including the full range of protected characteristics within the proposed legislation, and by making the intentions of the Bill clearer through statutory guidance which would support its implementation.

Additionally, as the Bill stands, there are no sanctions for boards that do not follow these rules. It could be argued that without sanctions there is no enforcement of this legislation which may allow for non-compliance. Furthermore, there is nothing outlined to give protection to candidates who may feel that they have been unfairly discriminated against. There should be an independent overseer of this new legislation to ensure that it is implemented as intended and help offer guidance to all candidates and public boards.

**10 To help with the development our Equality Impact Assessment, please provide any comments on the impact of the draft Bill on people who share certain 'protected characteristics': age, disability, sex, gender reassignment, sexual orientation, race and religion or belief, or any further information you think is relevant.**

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As mentioned above, there may well be unintended discrimination due to the current wording of this Bill. As it stands, when there is more than one candidate that is as equally qualified, gender and gender alone must be the defining characteristic when appointing a new board member. This may result in candidates belonging to a minority ethnic group, or a candidate with a disability not being offered a position in order to achieve a 50/50 quota of men and women. Were this to occur it may actually stagnate equal representation across other protected groups.

**11 To help with the development our Business Regulatory Impact Assessment, please provide any comments on the costs and benefits of the draft Bill, or any further information you think is relevant.**

**To help with the development our Business Regulatory Impact Assessment, please provide any comments on the costs and benefits of the draft Bill, or any further information you think is relevant.:**

n/a

## **Evaluation**

**Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)**

**Matrix 1 - How satisfied were you with this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**

**Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?:**

Neither satisfied nor dissatisfied

**Please enter comments here.:**