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Lesley Cunningham
The Equalities Unit
Scottish Government

By email: Lesley.cunningham@gov.scot

Alex Paterson
Chief Executive
Longmore House
Salisbury Place
Edinburgh
EH9 1SH

T: 0131 668 8693

ChiefExecutive@hes.scot

15 March 2017

Dear Lesley

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

Historic Environment Scotland (HES) welcomes the opportunity to respond to the Scottish Government's consultation on the Draft Gender Representation on Public Boards (Scotland) Bill.

Established by the Historic Environment Scotland Act 2014, HES is the lead public body for the historic environment in Scotland. We are a Non-Departmental Public Body and registered Scottish Charity. Our general functions under the 2014 Act are to investigate, care for and promote Scotland's historic environment and we have a statutory duty to carry out our functions with a view to promoting the diversity of persons accessing the historic environment and its collections. Our 2016-19 Corporate Plan¹, which sets out our vision, values and strategic objectives, also includes a clear commitment to promoting equalities. Further information on HES can be found on our website at www.historicenvironment.scot.

We are one of the authorities listed in schedule 1 of the draft Bill. Our Board members are recruited through the public appointments process and our 'appointing person' is the Cabinet Secretary for Culture, Tourism and External Affairs. We support the Scottish Government's commitment to gender equality on Boards and have made a commitment to work to achieve the Scottish Government's aspiration for equal representation for men and women on Boards, known as the '50/50 by 2020' pledge.

¹ <https://www.historicenvironment.scot/about-us/who-we-are/corporate-plan/>



We support the draft Bill. We have therefore only commented on two matters which we hope will be of assistance in the development of the final bill.

Reporting on gender representation

HES is subject to the Equality Act 2010 and Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. We are required to report on mainstreaming the equality duty, publish equalities outcomes and report on our progress in achieving them. We are also required under the Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2016 to develop a Board Diversity Succession Plan and to publish the gender balance of our Board.

Like other organisations that are subject to the public sector equality duties, we will be publishing our first Equalities Outcomes and Mainstreaming Report (EQMR) in April 2017, with the next report due in April 2019. From an organisational perspective, it would seem sensible to use the EQMR, and associated biennial reporting timetable, to report on our progress in meeting the requirements of this legislation. This route might usefully be considered for reporting more widely across the public sector.

In addition, we are also required to produce an Annual Report and Accounts that includes a report on our corporate performance. Our last Annual Report includes our commitment to 50/50 by 2020. We, and other organisations, could use future Annual Reports to report on the gender representation of our Board.

Statistical breakdowns of the membership of public boards in terms of gender, and other protected characteristics, could be collated and reported through the Scottish Government's online Equalities Evidence Finder which provides a very useful 'central' resource for reporting and accessing national equality statistics and reports.

Equalities Impact Assessment

With regard to the development of your Equality Impact Assessment, the EqIA will need to carefully consider whether the legislation's focus on achieving gender diversity might inadvertently, impact negatively on individuals and groups, including those covered by the 'protected characteristics'. We suggest that care would need to be taken to ensure that the prioritisation of gender in 'tie-breaker' situations does not have unintended consequences, particularly for candidates with other 'protected characteristics' and others.

We recognise that at 4(3) the draft Bill includes reference to the possibility that there may be 'exceptional circumstances' wherein the appointing person may legitimately consider making a decision that does not prioritise the gender representation objective. It might be



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helpful if 'exceptional circumstances' were commented on in any explanatory notes that might accompany the Bill.

We are aware that the Scottish Government has made a commitment in the 2016/17 Programme for Government to consult on reforming the Gender Recognition Act by summer 2017, the outcome of which might influence this Bill.

Overall, we support the policy aims of this Bill, and are pleased to have the opportunity to contribute to the consultation.

Yours sincerely

ALEX PATERSON



A SCOTTISH GOVERNMENT CONSULTATION ON THE DRAFT GENDER REPRESENTATION ON PUBLIC BOARDS (SCOTLAND) BILL

RESPONDENT INFORMATION FORM

Please Note this form must be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Historic Environment Scotland

Phone number

0131 668 8600

Address

Longmore House, Salisbury Place, Edinburgh

Postcode

EH9 1SH

Email

ChiefExecutive@hes.scot

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

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

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
 No