

Response from the Coalition for Racial Equality and Rights:

Scottish Government Consultation on Introduction of diversity succession planning for board appointments and the lowering of the 150 employees threshold for publishing gender pay gap and equal pay statements etc.

Dear Ms. Flanagan,

The Coalition for Racial Equality and Rights (CRER) welcomes the intent of the Scottish Government in the proposal to introduce diversity succession planning for board appointments and to lower the 150 employee threshold for publishing gender pay gap and equal pay statements. However, we note several concerns about the particulars of the proposals, which we wish to raise with the Scottish Government.

Firstly, CRER recognises that, while encouraging diversity on boards is beneficial, any change will only affect less than a thousand public appointments in Scotland. The issue of employee diversity has a much wider reach and is, we believe, an issue that deserves as much, if not more, legislative attention as the issue of board diversity.

This proposal would change the Scottish Specific Equality Duties to require boards to develop and publish diversity succession plans with the aim of increasing the diversity of board membership. However, in contrast, public bodies are only obligated by the Scottish Specific Equality Duties to gather information on the diversity of their employees with respect to the protected characteristics, and “use” this information to better perform the equality duty. There is no requirement to develop and publish a plan to accomplish this, and reports have demonstrated that many public bodies have not acted upon this information or planned how to actually “use” it.

CRER believes that, if the Scottish Specific Equality Duties are changing to require more of public bodies in relation to planning to increase diversity of their boards, similar regulations should apply to their staff. This would have an effect on a much wider proportion of the population, and would, we believe, have a much stronger effect on equality. The duties placed on public bodies for diversity within their boards and staff should, at least, be consistent and complement each other.

Furthermore, fostering diversity in the public sector workforce will help generate the experience and skills needed to qualify for public appointments within communities which tend to be underrepresented. This will – it follows – break some of the some of the barriers communities may face in application to public appointments, and help to increase diversity

of applications to ensure the boards of public bodies are representative of the population of Scotland.

Additionally, diversity succession plans, although there is not currently, as we understand, a detailed description of what they would entail, should be required to cover all protected characteristics. Equality in Scotland must address all forms of equality, and we know from experience that unless there is a specific requirement to address each and every protected characteristics, some will be neglected.

CRER also believes that, while developing a diversity succession plan, if done properly, could lead to positive outcomes for equality, several other changes could be made to increase diversity in board membership. For example, limiting public board memberships an individual can hold to one, and/or setting an absolute maximum period an individual can serve on a public board, would increase the number of positions available, and give boards an opportunity to plan for diversity and utilise positive action measures to encourage appointments from underrepresented communities.

Additionally, further consideration must be given to the reason minority ethnic applicants are not currently appointed at a rate in line with Scottish population figures.

CRER also notes the additional equality powers that are being considered under the Scotland Bill 2015, including the possibility to introduce quotas for public board membership. This measure, if quotas are adopted for protected characteristics, may prove more effective than current proposals, and it may prove advantageous for the Scottish Government to determine if more effective measures to increase equality on boards can be brought in following the passage of the bill.

Therefore, while making a requirement for listed public authorities to use their board diversity information for succession planning purposes could have a positive result, we believe other measures could lead to better and speedier outcomes.

Regarding data collection, it is likely, given the typical size of a public board, current Statistical Disclosure Control requirements will be made necessary in regards to several protected characteristics to protect the confidentiality of information to mitigate the risk of identifying individuals. Disclosure controlled data may be of little use to a public board, as figures in relation to ethnicity, sexual orientation, or religion, for example, may be too small to report. This will not present the board with accurate data about itself, and will make planning to increase the diversity in relation to certain protected characteristics difficult.

Due to this constraint, aggregating data into sectoral and Scotland-wide statistics may provide a clearer picture of areas in which diversity needs to improve. However, it will not help with diversity succession planning for any one board in particular. For example, one board may have overrepresentation in terms minority ethnic individuals, while another board may have none; averaging these two will disguise the problems one board faces.

As such, CRER believes greater efforts must be made to encourage board members to disclose their characteristics. These individuals are in powerful positions, and disclosing this information may help foster increased diversity. Consideration should also be given to not utilising Statistical Disclosure Control, with the consent of all members of the board, to gain an accurate picture of the diversity of each individual board.

Concerning the second proposal of the consultation, CRER is supportive of the proposal to amend the threshold for gender pay gap and equal pay statement publication to 20 employees, and looks forward to the publication of data in relation to equal pay covering race and disability in 2017. However, we believe that additional guidance will be required to make this reporting robust.

CRER is grateful for the opportunity to respond to the Scottish Government's consultation, and would be happy to provide further information about any of the issues raised in this response.

Kind regards,

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