

Ethical Standards Commissioner

CONSULTATION DOCUMENT

A consultation on potential revisions to the
Code of Practice for Ministerial Appointments
to Public Bodies in Scotland
– questions for consideration

06 August 2020

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Laid before the Scottish Parliament on 6 August 2020 in accordance with section 2(4) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003.
Reference CES/2020/03.

This document is available in alternative formats on request by telephoning 0300 011 0550 or by e-mailing i.bruce@ethicalstandards.org.uk.

CONSULTATION ON THE CODE OF PRACTICE FOR MINISTERIAL APPOINTMENTS TO PUBLIC BODIES IN SCOTLAND

Respondent information

This consultation paper invites comments on the existing Code and, in particular, asks those with a role or otherwise having an interest in the public appointments process whether the Code is operating as effectively as possible or whether they consider any improvements should be made to the Code. This paper should be read in conjunction with the main consultation document, available to download from our website:

<https://www.ethicalstandards.org.uk/publication/consultation-document-prospective-code-revisions>

Comments are invited by **Monday 9 November 2020**.

Please complete the details below. This will help ensure we handle your response appropriately. For information about how we process data we collect, including how we process personal data, please see our privacy policy at www.ethicalstandards.org.uk/privacy-policy.

Name: Jane Macdonald	
Address: NatureScot, Great Glen House, Leachkin Road, Inverness, IV3 8NW	
1. Are you responding as (please tick appropriate box):	
1a. An individual (go to 2a/b, 3)?	<input type="checkbox"/>
1b. On behalf of a group or organisation (go to 2c/d, 3)?	<input checked="" type="checkbox"/>
2. Individuals:	
2a. Do you agree to your response being made public (on the Commissioner's website or otherwise published) (please tick one box)?	
Yes (go to 2b below)	<input type="checkbox"/>
No	<input type="checkbox"/>

2b. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick one box):	
Yes, make my response and name available	
Yes, make my response available, but not my name	
On behalf of groups or organisations:	
2c. Do you agree to your response being made public (on the Commissioner's website or otherwise published) (please tick one box)?	
Yes (go to 2d below)	X
No	
2d. Your organisation's name as a respondent will be made available to the public (on the Commissioner's website or otherwise published) unless you request otherwise. Are you content for your response to be made available (please tick one box)?	
Yes, make my response and organisation's name available	X
Yes, make my response available, but not my organisation's name	
Further contact	
3a. We may wish to contact you again in the future to clarify comments you make.	
Are you content for us to do so (please tick one box)?	
Yes	X
No	
3b. We may wish to contact you again in the future for consultation or research purposes. Are you content for us to do so (please tick one box)?	
Yes	X
No	

Issues on which Views are Invited

Equality and Diversity

Q1 – Should the Code have clear and specific provisions about the measures that the Scottish Ministers should adopt when planning to appoint new members in respect of diversity and should diversity be expanded to include other factors such as household income, sector worked in and skills, knowledge and experience?

Yes.

Q2 – If so, what should those measures be and what other factors should be considered?

The measures adopted will be very similar to those adopted to tackle all areas of under-representation, and groups will overlap:

Identify quantitative data to understand what groups are under-represented in the attraction, application and appointment processes, and the barriers being experienced. Where gaps in data are highlighted, work with representatives from under-represented groups to explore underlying causes of the current lack of diversity. Identify what action will be required to address it.

Develop a range of interventions/measures to widen the appeal of Board roles. These should build on the actions developed to tackle Board gender diversity, and are likely to include:

- Ensuring role descriptions are appealing to under-represented groups
- Removing the need for previous Board experience and instead focussing on potential
- Providing supporting material about the role and the skills, knowledge and experience needed
- Offering opportunities for shadow Board members and mentoring
- Broadening the reach of adverts beyond traditional sectors, including using social media to its full potential, and engaging with groups like *Changing the Chemistry* to support the work. For example using short videos to introduce the organisation's work, advertise Board vacancies and encourage applications. For future recruitment, NatureScot's videos will feature Board members who can bring the opportunities to life and share their experience. We plan to ask our ex-shadow Board member to share his experience of serving on the Board with a visual impairment.
- Working with representatives from under-represented groups to encourage and support applications
- Work to develop role models for the sector in under-represented groups who in turn can encourage others to get involved, including applying for Board positions
- Accommodating virtual attendance at Board meetings

To achieve this, it is important to measure the outcome of actions by asking public bodies and the Public Appointments Unit to widen their reporting on Board diversity to include these new characteristics.

It is also critical that public bodies and the Public Appointments Unit continue to work together to learn and to develop best practice. In addition to the under-represented groups that the Public

Appointments Unit contact about Board opportunities, we will also be contacting specific groups to encourage applications.

Q3 – Please provide reasons for your responses to Q1 and Q2.

NatureScot is committed to creating a more resilient and happy workforce. This includes having a Board that better represents the national demographic, and ensuring that inclusivity is built into the ways we work and our decision making processes. As Scotland's nature agency, the support of a full cross section of the Scottish people is critical to us. It supports our ambition to deliver a nature-rich future, by addressing biodiversity loss and leading on nature-based solutions to tackle climate change and to support the green recovery. These issues affect everyone, and we need everyone's involvement to effectively address them.

Areas of Multiple Deprivation are some of the worst affected with the poorest access to nature - having Board representation from different household income brackets is important.

Removing the need for previous Board experience and focussing on potential will encourage a bigger cross-section of people to apply, including young people (who are also likely to be in the lower income brackets). As well as addressing age-related inequality, this will help address the ReRoute recommendation to widen the influence and involvement of young people in strategic decision making (<https://young.scot/get-informed/national/reroute-reports>).

Having representation from more diverse sectors will also broaden and strengthen our collective understanding.

Supporting virtual attendance at Board Meetings reduces the travel commitment which might prevent some potential applicants from applying due to caring commitments or lack of available time (e.g., those on low incomes /irregular shifts), medical reasons, or geographical location for example.

Thematic Reviews of the Code's Operation and Diversity Delivers Progress

Q4 – Should the Code include more prescriptive requirements to ensure that lessons are learned on an ongoing basis and that decisions taken by panels are always informed by evidence?

No comment.

Q5 – If so, what requirements should be included?

No comment.

Q6 – Please give reasons for your responses to Q4 and Q5.

No comment.

Q7 – Should the Code make reference to other, central activities such as nationwide, regional or characteristic-specific positive action measures that the Scottish Ministers should be engaging in to improve on board diversity?

No comment.

Q8 – If so, what should those be?

No comment.

Q9 – Please give reasons for your responses to Q7 and Q8.

No comment.

Q10 – Should the Commissioner seek ministerial and parliamentary approval to refresh the Diversity Delivers strategy?

No comment.

Q11 – If so, what specifically should be updated/refreshed in the strategy?

No comment.

Q12 – Please give reasons for your responses to Q10 and Q11.

No comment.

Pragmatic, Proportionate and Public Interest Focused

Q13 – Which provisions of the Code and associated Guidance are detracting from the delivery of appropriate outcomes in the context of a fair, transparent and merit-based appointments system?

No comment.

Q14 – Please give reasons for your views.

No comment.

Additional Issues that Code Revisions Could Address

Q15 – Should the Code be more prescriptive in this area and require panels to base appointment plan decisions on evidence of what works well to attract and appoint the right calibre of applicants?

Yes.

Q16 – If so, what should these requirements consist of and what measures should be adopted to achieve board diversity in relation to protected characteristics, sector worked in and socio-economic background?

Please see our response to Q2. Effort should be focussed on encouraging and supporting a wide diversity of applications.

Q17 – Please give reasons for your answers to Q15 and Q16.

Please see our response to Q3.

Q18 – What changes, if any, should be made to the Code as a result of the coming into force of the 2018 Act?

No comment.

Q19 – What legitimate grounds for choice should be specified?

No comment.

Q20 – Please give reasons for your views.

No comment.

Q21 – Should the Code more generally make specific reference to these new duties placed on the Scottish Ministers as well as the ramifications of those for prospective applicants? Appointment plans might, for example, require to include specific positive action measures to be taken for each vacancy to be filled.

No comment.

Q22 – If so, which duties should be included?

No comment.

Q23 – What are your reasons for these views?

No comment.

Q24 – Should the Code place an obligation on the Scottish Ministers to consult the Scottish Parliament on the prospective appointment plan for roles that require parliamentary approval?

No comment.

Q25 – Please give reasons for your views.

No comment.

Q26 – Should information provided to applicants be clear about what parliamentary approval will mean for the appointment round in question?

Yes.

Q27 – Please give reasons for your view.

It is important to be transparent. The applicants should be made aware of the key stages in the appointment process, including the Parliamentary Approval, and any implications that these have.

Q28 – Should the description of the attributes sought in new board members be expanded to include more than skills, knowledge and experience?

Yes.

Q29 – If so, what other attributes should be included?

It is important that applicants are made aware of and commit to the organisation's vision, mission, purpose, values and leadership behaviours.

Q30 – Please give reasons for your answers to Q28 and Q29.

This should be inherent but it adds a check point for applicants to ensure that they can fully commit to serving the organisation that they will be representing.

Q31 – Should the Code be more explicit about the need to match assessment methods to the attributes sought?

It should state that appropriate assessment methods should be used and provide examples but allow panels to select the appropriate method for individual recruitment exercises.

Q32 – Please give reasons for your answer to Q31.

It is important to guide recruitments panels but to give them flexibility.

Q33 – Please say whether you consider any of these issues is appropriate to be included in the Code, guidance or inappropriate for either. Please give reasons for the views you expressed below.

No comment.

Q34 – What should the Code say about panel members, including panel chairs and independent panel members, with a view to achieving the desired outcome on each appointment round? For example, should other competing personal and professional commitments be taken into account in the designation of a suitable member?

No comment

Q35 – Should panel chairs be required to undertake any training, and if so, what should that entail?

Panel chairs should:

- Be signposted to the organisation's most recent equality reports and outcomes.
- Have an understanding of any personal biases and have undergone an unconscious bias test.
- Have an understanding about the impact of unconscious bias on decision making and an awareness of their own biases and mitigation requirements

Q36 – Do you have any strong views about the terms of reference that independent panel members should be subject to (e.g. should they have received training, be paid, not be paid, be limited to a certain number of rounds that they are involved with before losing 'independent' status)?

Our response to question 35 is relevant here too. In addition:

Limiting panel members to a certain number of rounds is more likely to ensure diversity of perspectives are incorporated into the decision making process and can prevent affinity biases impacting on successive appointments. Where possible the panel should be representative of any specific under-represented groups to support inclusive decision making.

Where organisations or social enterprises representing minority groups are approached to be panel members, consideration should be given to payment. Often these organisations are overwhelmed by requests to respond to consultations and to be involved in panels but they are often also under resourced and do not receive consultancy fees.

Q 37 – Please give reasons for the views expressed in response to Q34-36.

Covered above.

Q38 – Should the Commissioner commence audits for a proportion of appointment rounds that will otherwise have had no direct or partial oversight?

No comment.

Q39 – Should the results of such reviews and other relevant matters feature in more regular reports to the Scottish Parliament in order to improve on transparency?

No comment.

Q40 – Please provide reasons for your answers to Q38 and Q39.

No comment.

Q41 – Do you consider the current regulatory model to be appropriate? If not, what should replace it?

No comment.

Q42 – Please provide reasons for your answer to Q41.

No comment.

Q43 – Are there any other issues relating to the Code or associated guidance you wish to raise?

No comment.

Q44 – Are there any other issues relating to appointment practices you wish to raise?

No comment.

Responses

Responses should be submitted by **Monday 9 November 2020**.

They should be sent, ideally by email, to:

Ian Bruce

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Ethical Standards Commissioner

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EH12 5HE

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