

## EQUALITY IMPACT ASSESSMENT - RESULTS

<b>Title of Policy</b>	Higher Education Governance (Scotland) Bill
<b>Summary of aims and desired outcomes of Policy</b>	To enable a framework of higher education governance that is more modern, inclusive and accountable.
<b>Directorate: Division: team</b>	Advanced Learning and Science Directorate: Higher Education and Learner Support Division: Higher Education Funding and Governance Team

### Executive Summary

An Equality Impact Assessment (EQIA) is carried out to aid the Scottish Government in discharging its Public Sector Equality Duty under section 149 of the Equality Act 2010. The Scottish Government is required to assess the impact of proposed legislation against the needs in the public sector equality duty - to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations.

The policy intentions as set out in the Higher Education Governance (Scotland) Bill ('the Bill') were subject to an equality impact assessment (EQIA) by the Scottish Government during 2014/15. Discussions to inform the EQIA were held between Scottish Government officials with relevant policy responsibilities. The responses to the Consultation on a Higher Education Governance Bill and dialogue between sector stakeholders and Scottish Government officials have also informed the EQIA process.

The EQIA process has helped the Scottish Government to consider any potential impacts the Bill may have on protected equality characteristics and to increase awareness of the Equality Act 2010. The EQIA has concluded that the Bill's provisions are neither directly nor indirectly discriminatory on the basis of;

- age,
- disability,
- gender reassignment
- pregnancy and maternity
- race,
- religion or belief,
- sex,
- sexual orientation.

This work indicated that most policy areas included in the Bill were likely to have moderate to no significant direct impact on individuals. In some cases there may be positive impacts for some individuals, these being an indirect result of the main purpose of the Bill provisions.

As the Scottish Government does not consider the Bill to be either directly or indirectly discriminatory on the basis of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, or sexual orientation, it has been determined that the Bill will proceed as planned.

## **Background**

The Scottish Government aims to strengthen governance arrangements across the higher education sector. The Bill will support this and the national outcome that public services are high quality, continually improving, efficient and responsive to local people's needs. It will also support the Scottish Government's key aim of creating an inclusive, strong and sustainable economy by enabling more transparent and inclusive participation in higher education governance.

The Scottish Government is committed to excellence in higher education in Scotland. The principal objective of the Bill is to enable a framework of higher education governance that is more modern, inclusive and accountable. It will strengthen existing governance in the higher education sector in Scotland, ensuring it remains, fit for purpose.

An independent „Review of Higher Education Governance in Scotland“ (“the Review”) was commissioned by the Cabinet Secretary for Education and Lifelong Learning in 2011. The Review was undertaken by a panel chaired by Professor Ferdinand von Prondzynski, Principal of Robert Gordon University, and the Review report, containing 17 recommendations, was published in January 2012.

The Scottish Government published a consultation on proposals for inclusion in a Higher Education Governance Bill: “*The Consultation Paper on a Higher Education Governance Bill*” („the Consultation“) which ran from early November 2014 to late January 2015. The Consultation contained 6 proposals all of which originated from the Review recommendations. The Consultation responses were independently analysed and the analysis report was published on 9 April 2015. The responses to the Consultation and subsequent engagement with key stakeholders by officials and the Cabinet Secretary, have informed the development of the Bill provisions.

Through the Bill we intend to achieve the following objectives:

- Require higher education institutions in Scotland („HEIs“) to appoint the chair of their governing body in accordance with a process set out in regulations made by the Scottish Ministers. Regulations may include provision for periods of appointment and means of selection for appointment (for example through public advertisement of the position, selection criteria, interview of candidates, short listing of candidates and holding an election from among candidates

ISBN: 978-1-78544-492-0 (web only)

shortlisted as suitable for appointment). The regulations may also require HEIs to make available to candidates reimbursement of reasonable expenses incurred as a result of attending an interview, should a pre-selection process operate, and to make available to chairs remuneration commensurate with the responsibilities of carrying out the functions of office. The Bill also requires the Scottish Ministers, before making regulations, to consult with HEIs to which the regulations relate and other such persons that the Ministers consider appropriate.

- Require HEIs to include within the membership of their governing bodies: the person appointed as chairing member, two directly elected staff members, one member nominated by academic and related unions, one member nominated by administrative, technical or support staff unions, two students nominated by the students association, and two graduates of the HEI nominated by the graduates' association.
- Require HEIs to ensure that their academic boards are comprised of no more than 120 people and include Principals and Heads of Schools attending ex officio; a majority of elected members representing staff and students; and a minimum of 10% student representation. The Bill also ensures that all board members appointed under the Bill's election process for staff and students are elected by the constituency that they represent.
- Replace the current definition of academic freedom in section 26 of the Further and Higher Education (Scotland) Act 2005, with a view to strengthening it and making explicit the freedom to develop and advance new ideas and innovative proposals.

## **EQIA Development Process**

At the beginning of the EQIA development process, an initial internal framing meeting was held to discuss in detail the Bill provisions. This meeting included analytical colleagues. Meetings were also held with a range of Scottish Government policy officials to provide their perspectives and understanding of the impact of Bill provisions.

## **The Scope of the EQIA**

### **Assessment**

The internal framing workshop considered the potential positive and negative impacts of the policy intentions of the Bill on each of the protected characteristics. The outputs of this workshop were also considered by our analytical colleagues who supported the evidence gathering and preparation of the EQIA.

## Key Data

A variety of information sources were reviewed in developing the assessment including the Review of Higher Education Governance in Scotland report, the Scottish Code of Good Higher Education Governance, the responses to the Consultation, and research into diversity and equality of the governing bodies of HEIs. This was obtained from the Equalities Challenge Unit. The report „Governing Bodies, Equality and Diversity in Scottish HEIs“, which was funded by the Scottish Funding Council (SFC), will be published in June 2015.

## Consultation

The public consultation on proposals for inclusion in a Higher Education Governance Bill took place from 7 November 2014 – 30 January 2015. 131 responses to the consultation were received, just over half (53%) were from individuals, many of whom had a role in an HEI, one quarter were submitted by universities and university representative bodies, with the remaining responses being submitted from other organisations such as unions, student representative bodies, business and industry bodies and local authorities.

Non-confidential consultation responses were published on the Scottish Government website on 2 March 2015 and can be found at:

<http://www.gov.scot/Publications/2015/03/5250/0>

The formal independent analysis of the consultation responses was published on 9 April 2015 and can be found at:

<http://www.gov.scot/Resource/0047/00475036.pdf>

The Consultation directly addressed equality within Annex D “Assessing Impact”. It set out that the public sector equality duty requires the Scottish Government to pay due regard to the need to: eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a relevant protected characteristic.

The Consultation further detailed the protected characteristics and asked respondents to “ *tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the ‘protected characteristics’ listed*”.

Eight responses were received in relation to this question. Each protected characteristic has been explored in full and the views given in response to the Consultation have been incorporated in the EQIA results.

## **Potential Impacts**

ISBN: 978-1-78544-492-0 (web only)

## **Key Findings**

As a whole the aim of the bill is to enable a framework of higher education governance that is more modern, inclusive and accountable. The overall findings in relation to the direct impact of the Bill on the protected characteristics is determined to be minimal to none.

The results of the analysis of the evidence and impacts of the Bill on the protected characteristics are set out in the following sections of this document.

### **Appointment as chairing member**

The provisions in this area are intended to establish a required minimum level of openness, transparency and consistency across all HEIs by setting out in regulations key elements that must be a feature of every appointment process for a chair of a governing body. The provisions are intended to support greater awareness of the position of chairing member of the governing body of an HEI and improve access to that position.

It is expected that these provisions would apply equally to all individuals. The Bill is likely to advance equality of opportunity across all protected characteristics in relation to appointment of the chairing member of the governing body by requiring that the opportunity is publicised widely and by removing potential financial barriers to both attending interview and undertaking the duties associated with the position.

Enabling candidates to recoup interview expenses and having the option of seeking reasonable remuneration for this position may open the role up to a more diverse range of candidates across all protected characteristics, who may not otherwise be able to take up the role without remuneration being made available.

The main groups of individuals for whom it is anticipated that there could be an indirect positive impact are those groups who are currently underrepresented in chairing members of the governing body e.g. women, or those from a minority ethnic background.

### **Membership of Governing Body**

The provisions in this area are intended to ensure effective representation of internal stakeholders on the governing bodies of all HEIs in order to help create a more inclusive environment within the institutions, and to embed a level of consistency across all HEIs. Currently, the legal basis for the composition of the governing bodies of HEIs differs according to the type of institution and the composition of the membership itself is different in each institution.

It is expected that these provisions would apply equally to all individuals. These provisions may have a moderate indirect positive impact across all protected

characteristics by increasing awareness of the positions and thus advancing equality of opportunity for all prospective members of a governing body.

The main groups of people who could see an indirect positive effect as a result of this part of the Bill are those from groups of the population that are under-represented on HEI governing bodies. e.g. those under 50; females; or those from a minority ethnic background.

### **Academic Boards**

The academic board provisions in the Bill are intended to embed a level of consistency across all academic boards and will ensure they are both effective and representative in their decision making. The introduction of a requirement that a minimum of 10% of members must be students will have a positive impact across all protected characteristics by increasing the opportunity for students to become involved in the academic boards of HEIs. In 2013/14, young people aged 16-24 year olds made up almost two-thirds of the student population of HEIs but the provisions apply equally to students of any age.

### **Academic Freedom**

The academic freedom provisions are intended to broaden the definition of academic freedom and strengthen the protection of academic freedom for the benefit of all individuals equally across the protected characteristics. It is not expected that these provisions will have a positive or negative impact on any individual as a result of any of the protected characteristics.

### **Recommendations and Conclusion**

The impacts of the Bill on the protected characteristics have been considered as a result of the EQIA. No changes have been proposed to any of the provisions as a result of this process, as no significant negative impacts were identified.

The EQIA process has highlighted that, beyond advancing equality of opportunity by improving transparency and consistency across HEIs, the Bill will not have a significant impact on the protected characteristics, however, it has also provided encouraging evidence of the work HEI governing bodies are doing independently of the Bill to address diversity and equality within their governance structures.