

Open consultation: Review of the Scottish Code of Good Higher Education Governance

August 2016

Context

The Committee of Scottish Chairs (CSC) of Scottish higher education institutions is conducting an evidence-based Review of the [Scottish Code of Good Higher Education \(HE\) Governance](#) ('the Code'). Part of the evidence-gathering for the Review is this open consultation. CSC welcomes views from any individuals or organisations with an interest in higher education governance.

From its inception, the Code was intended to recognise and accommodate the continuous evolution of best practice, given that Scottish higher education operates in a challenging and rapidly developing global context. Consequently, CSC committed to reviewing the Code after three years. In addition, the intervening period has seen the [Higher Education Governance \(Scotland\) Act 2016](#) passed by the Scottish Parliament. This Review is therefore also considering to what extent and how the Code should accommodate changes to the governance of HEIs as a result of this new legislation.

Independent consultants from the [Leadership Foundation for Higher Education](#) are collecting and analysing the evidence for the Review, including from this public consultation, and will report to a [Code Review Steering Group](#) by December 2016. Thereafter the Steering Group will report back to CSC during 2017.

For further information about the Code and this Review, please see the Annex to this consultation and the [Code website](#).

How to respond

Please complete these questions using the [online response form](#) before **1 October 2016**.

Alternatively, please email a response to the consultation, including your completed respondent information details, to helen.baird@lfhe.ac.uk or send a written response to the consultation by post to:

Helen Baird, Leadership Foundation for Higher Education, Peer House, 8-14 Verulam St, London WC1X 8LZ.

Respondent information

Are you responding as an individual or an organisation?

Individual	
Organisation	X

Please enter your full name or the organisation's name here

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

NOTE – If you are responding on behalf of an organisation, anonymous publishing refers only to your name, not your organisation's name. If this option is selected, your organisation name will still be published.

Publish response with name	
Publish response only (anonymous)	X
Do not publish response	

We welcome your views on any or all of the questions below

Review questions

1 How well has the Scottish Code of Good HE Governance served its purpose?

The Code served a useful purpose at its time of issue. While the University was already compliant in nearly all aspects, it made some changes to practice as a result.

2 What effects has the Code had on the governance of Scottish higher education? Please provide specific examples of any improvements it has brought, or ways in which it has failed to serve its purpose.

Following the introduction of the Code, the University of Edinburgh took the opportunity to review its governance processes and found that existing governance arrangements were already broadly compliant with the Main Principles of the Code. Some changes were made to governance arrangements but most of these were not directly related to the Code.

3 What (if any) changes to the Code would help to improve the governance of Scottish higher education? Please provide evidence of how any suggested changes would improve governance.

The context of Scottish higher education governance has changed with the recent passage of the Higher Education Governance Act. To reflect the changed context, the Code could be significantly shortened to focus on a high-level statement of governance principles. The eighteen main principles in the Scottish Code of Good Governance (2013) would be a good basis for the new Code, with such minor amendments as are considered necessary to comply with – but not go beyond – the new Governance Act. This would enable governing bodies to decide how best to implement the principles appropriate to their diverse institutions taking account of the new legislative requirements.

4 Should the Code be changed to reflect the Higher Education Governance (Scotland) Act passed by the Scottish Parliament in 2016, or any other legislative or regulatory changes made since 2013? If so, what changes would you like to see?

The Governance Act has changed the context of Scottish higher education governance and the revised Code should not increase complexity by going beyond the requirements of the Act. As suggested above, the Code could be shortened to focus on a high-level statement of governance principles. The Code should avoid prescription in specifying which Court members should fulfil governance responsibilities beyond the requirements of the Governance Act.

5 Does anything need to change in the current Code to improve its clarity or presentation, even if not changing the substance?

The Main Principles should be high level statements that remain largely constant over time and form the basis of the Code.

6 Is there any good practice, in higher education or other sectors and from Scotland or

elsewhere, which you would particularly highlight?

The 'comply or explain' approach is effective and well understood and should be kept in the revised Code.

7 Please provide any other relevant comments you may have.

Thank you for responding to the Review

Annex

Development of the Scottish Code of Good Higher Education Governance

The creation of a Scottish Code of Good Higher Education Governance was a recommendation of the 2012 Report of the Review of Higher Education Governance, which was chaired by Professor Ferdinand von Prondzynski. Some further recommendations of this report were fulfilled in the content of the Code, while others were implemented, in modified form, through the Post-16 Education (Scotland) Act 2013 and the Higher Education Governance (Scotland) Act 2016.

By agreement with the Scottish Funding Council and the then Cabinet Secretary for Education and Lifelong Learning, Michael Russell MSP, the Committee of Scottish Chairs (CSC) was given responsibility for the production of the Code. To achieve this, the CSC established a Steering Committee, chaired by Lord Smith of Kelvin, which in turn commissioned expert consultants to collect evidence that would inform the content of the Code. A draft Code was published for open consultation in April 2013 and the Code in its final form was published in July 2013 and came into force on 1 August 2013.

The Code was adopted by the Scottish Funding Council (SFC) as constituting the principles of good practice in governance with which institutions are required to comply in the terms of the Post-16 Education (Scotland) Act 2013. This means that compliance with the Code has become a condition on the payment of HEIs' primary public funding.

The Current Code

The Code consists of 18 Main Principles and supporting guidelines for each. In addition, the document includes some examples of good practice from around the Scottish higher education sector and provides, in an annex, detailed guidance on whistleblowing (which is reproduced from other sources).

The Code operates according to the commonly employed approach of 'comply or explain'. This is outlined in Part 1 of the Code as follows:

'The Code is not a prescriptive set of rules, but rather a set of Main Principles supported by Guidelines and examples of Good Practice which should be added to over coming years. It is expected that all Institutions will comply with the Main Principles and observe the provisions set out in the supporting Guidelines. The examples of Good Practice are offered to guide Institutions in setting out to meet these provisions. The Scottish Funding Council will require Institutions to follow the Code as a condition of a grant of public funding. Given the diversity of Scottish Higher Education Institutions it is possible that certain of the Main Principles can be met by means different to those envisaged in the Guidelines. Accordingly the Code is issued on a "comply or explain" basis. This approach is widely accepted as the most suitable means of achieving good governance in an effective and transparent way.'

The Review Process

From its inception, the Scottish Code of Good Higher Education Governance was intended to recognise and accommodate the continuous evolution of best practice, given that Scottish Higher Education operates in a challenging and rapidly developing global context. The Committee of Scottish Chairs (CSC) committed to reviewing the Code after three years.

In addition, the intervening period has seen the [Higher Education Governance \(Scotland\) Act 2016](#) passed by the Scottish Parliament. The review of the Code is therefore also considering to what extent and how the Code should accommodate changes to the governance of HEIs that this new legislation has brought about.

To carry out this review, the CSC has commissioned a [Code Review Steering Group](#), which includes both independent members and representatives of key stakeholder groups, who collectively bring a wide range of experience from governance roles in HE and other sectors.

This public consultation forms one part of this evidence-based review process. In addition, evidence is being gathered through:

- A series of stakeholder meetings at every Scottish Higher Education Institution (HEI) which are taking place between July and October 2016; and
- A survey of all serving and recent members of those HEIs' governing bodies (during September 2016).

The evidence-gathering work will be carried out during the period June to October 2016 by independent expert consultants from the [Leadership Foundation for Higher Education](#), who will report to the Steering Group.

Consultation Outcomes

The consultants will complete the evidence gathering by the end of November 2016 and present the findings to the Code Review Steering Group. Thereafter the Steering Group will report back to CSC during 2017.
