

# Scottish Code of Good HE Governance

## *Revised Code 2017: Consultation draft*

### Foreword

Higher education institutions (HEIs) form a critical part of Scotland's national fabric, with significant impact locally, nationally and internationally. They prepare the next generation of highly educated and skilled individuals, opening doors and transforming lives in the process. They address the major social and scientific issues facing the country and the wider world and play vital roles in communities and the nation's cultural life. Collectively, HEIs form one of Scotland's leading economic sectors and are key to producing sustainable, inclusive economic growth.

While they have in common the core activities of teaching, research and knowledge exchange, the missions, strategic priorities, and constitutions of HEIs are highly diverse, reflecting their status as autonomous institutions.

HEIs receive substantial amounts of funding from both public and private sources, to deliver diverse outcomes to many beneficiaries. This means that they, and those involved in their governance, are accountable to a particularly wide range of stakeholders. These include the institutions' students and staff, its alumni, employers of graduates, partners in research and development, the Scottish and UK governments (through the Scottish Funding Council and the UK Research Councils in particular), and other funders, including international partners.

The unique position and status of HEIs places special responsibilities on their governing bodies. HEIs exist to serve the common good. As autonomous organisations, they have to generate income, innovate and invest to develop and sustain excellence in all their activities. Those involved in the governance of higher education institutions therefore must balance the need for coherent strategy and sound financial management with the responsibility to bring benefit to higher education's many stakeholders and society in general. In addition, all of Scotland's HEIs have charitable status, placing on their governing bodies the legal responsibilities of trustees.

Reflecting these responsibilities and expectations, this Code underpins the sector's commitment to high standards of governance. Governing bodies have a responsibility to lead by example, guiding the development of the institution's ethics and values and demonstrating these in the governing body's own actions. This means that they must show leadership and integrity not only in the decisions they make but also in the way they conduct their business. In particular, the governing body must both lead and exemplify the institution's approach to equality and diversity and to social responsibility.

The Code applies in a complex context of other regulatory and legislative requirements with which HEIs must comply. These include not only Scottish and UK laws relating specifically to higher education, but also (among others):

- charities law and regulations overseen by the Office of the Scottish Charity Regulator (OSCR);
- the requirements of the Scottish Funding Council, including those laid down in its Financial Memorandum and Accounts Direction;
- the Statement of Recommended Practice for Further and Higher Education (SORP2015);

- relevant business law;
- equality law and associated duties;
- Freedom of Information and Data Protection legislation;
- procurement law;
- complaints handling requirements overseen by the Scottish Public Sector Ombudsman.

A part of the wider legal framework, the Scottish Funding Council requires Institutions to comply with principles of good governance as a condition of a grant of public funding. This Code sets out an appropriate set of principles for this purpose.

Balancing the diversity and autonomy of Scotland’s higher education institutions with the need for a common understanding of the highest standards of governance, the Code contains both high-level principles and more detailed provisions. In such a diverse sector it is possible that certain of the principles can be met in ways that are different from those envisaged in the specifics of the Code. In particular, in the case of the Small Specialist Institutions, the Code should be applied with attention to the principles of proportionality and of relevance to the nature of the individual Institution.

Accordingly, the Code is issued on a ‘comply or explain’ basis. This approach is widely accepted as the most effective way of achieving good governance. Institutions must report in the corporate governance statement of their annual audited financial statements (Annual Reports) the extent of their compliance with the Code. If an institution’s practices are not consistent with particular provisions of the Code, a full explanation must be published in that statement. Such exceptions should be rare and must be explained in terms of the institution’s particular circumstances and operating model.

## The form of this Code

This Code is organised into sections thematically. Each section starts with the high-level principles of good governance in the relevant area. Under these, more detailed provisions are provided. Sub-parts of the high-level principles are repeated in the text to indicate how the general and more detailed parts of the Code relate to one another. [Note for consultation draft: currently this repetition is shown in italic typeface. In the published version of the Code, alternative formatting may be used to convey this structural element of the Code.]

The more detailed parts of the Code specify elements of best practice which all institutions are usually expected to adopt. While the whole Code is subject to the ‘comply or explain’ approach, most of the requirements in it are expected of all institutions. The strength of this expectation is indicated in the modal verbs used:

- Where *must* is used, this indicates something that is considered to be essential to good higher education governance. Institutions are therefore expected to comply with any such requirement unless in truly exceptional circumstances.
- Statements that include that verb *should* also bring an expectation of compliance in most circumstances, but with a recognition that it would be reasonable and acceptable in certain cases to meet the principles of good governance in alternative ways.

This Code does not list examples of good practice, which can be expected to vary widely across such a diverse set of institutions and over time. HEIs should work together, and with stakeholder representatives, to create and maintain a public repository of examples of best practice as a live resource and so to promote continuous improvement in governance practices across the sector. Student representatives should also, in conjunction with their institutions, develop their own best

practice to help support student governing body members to meet the particular challenges of their short terms of office on governing bodies.

## Definitions

Governance arrangements in HEIs reflect the uniqueness and complexity of higher education. Many of their numerous stakeholders are directly involved, enhancing governance by contributing a wide range of skills, perspectives and experience. Give the variety of participants and roles, it is helpful to define some terms in advance, to allow for a more concise Code.

Throughout this Code, the following definitions of key terms are assumed, except where an alternative definition is given explicitly:

Staff member (of the governing body)	Anyone serving on the governing body who is employed by the institution, except for those whose membership is on an <i>ex officio</i> basis (e.g. Principal or Vice Principal). At certain points in the Code, the following sub-category of 'staff member' is specified.
Elected or Union staff member	Anyone serving on the governing body in one of the capacities specified in subsections 10(1)(b-d) of the Higher Education Governance (Scotland) Act 2016. These are: 1. Elected staff members: at least two members of the governing body must be appointed "by being elected by the staff of the institution from among their own number". 2. Trade union appointees, of which at least one must be appointed by a union representing academic staff and one by a union representing a non-academic staff.
Student member	A member of the governing body who is a registered student of the Institution. This includes sabbatical officers of student associations appointed to the governing body by those associations and/or on an <i>ex officio</i> basis.
Chair	The responsibilities of the position of 'Senior Lay Member' in fulfilling the role of Chair are set out in the Higher Education Governance (Scotland) Act 2016. The specific duties of the role of Chair at many institutions extend beyond the statutory responsibilities of the Senior Lay Member.
Principal	The Head of Institution, including the position of Director of the Glasgow School of Art and the position of Principal and Vice Chancellor at other institutions.
Lay member	A member of the governing body who is neither an employee nor a student of the Institution. Where appropriate, a further distinction is

	<p>drawn in the text of the Code between lay governing body members who are appointed by the governing body and other lay members (the latter group including the Senior Lay Member, any members appointed by alumni groups, and any representative of the local or regional authority appointed in accordance with the statutes of a particular HEI).</p>
<p>External lay committee member</p>	<p>A lay member of one of the governing body's committees who is not a member of the governing body itself. It is common practice to appoint such external members to committees in order to bring in specific expertise. Committee membership can also provide individuals with experience of HE governance without taking on the full responsibilities of governing body membership.</p>

## 1. The Governing Body: Primary responsibilities

**The governing body must ensure the effective management of the Institution, taking responsibility for planning the Institution's strategic direction and future development and for advancing its mission. The governing body has ultimate responsibility for all the affairs of the Institution and must ensure that there are appropriate arrangements for financial management. It must ensure that the Institution is compliant with all relevant legal and regulatory obligations and operates with high levels of social responsibility. The governing body must adopt and publish a Statement of Primary Responsibilities.**

*The governing body must ensure the effective management of the Institution, taking responsibility for planning its future development and for advancing its mission. The governing body has ultimate responsibility for all the affairs of the Institution.*

1. The governing body must enable the Institution to achieve and develop its mission and primary objectives of learning and teaching and research.
2. The members of a governing body, collectively and individually, must act in accordance with the Nine Principles of Public Life in Scotland.<sup>1</sup> These principles must be the foundation for the governing body's behaviour and its decisions. They are:
  - Duty
  - Selflessness
  - Integrity
  - Objectivity
  - Accountability and Stewardship
  - Openness
  - Honesty
  - Leadership
  - Respect
3. The governing body must be involved in the development of, and take responsibility for, the Institution's strategic plan, which sets the aims and objectives of the Institution and identifies the financial, physical and staffing strategies necessary to achieve these objectives. It must also approve an annual plan that identifies those aspects of the strategic plan being implemented in the year in question. The governing body must also monitor performance against the strategy.
4. The governing body must ensure that the Institution has appropriate procedures to identify and actively manage risk. The governing body itself must be attentive to risks which could threaten the sustainability of the Institution. This includes attention to the risk of inaction in the face of threat or opportunity. The governing body is responsible for determining the nature and extent of the principal risks it is willing to take in pursuing its strategic objectives. Institutions should maintain a risk register and must provide an annual disclosure about risk management in audited financial statements.

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<sup>1</sup> While higher education institutions are not public bodies, the Nine Principles of Public Life in Scotland, which incorporate the seven 'Nolan Principles', provide an appropriate and recognised definition of ethical and responsible behaviour for those involved in higher education governance. Suitable definitions of the Nine Principles, adapted for use in the higher education sector, are provided in an Annex to this Code.

5. The governing body must ensure that the Institution has in place appropriate arrangements for engaging with the public and the wider communities which it serves.

*The governing body must ensure that Institutions have appropriate arrangements for financial management.*

6. The institution's financial regulations must specify the financial responsibilities and authority of the governing body, its committees, and staff. Financial procedures should specify processes to be followed in day-to-day financial transactions. There should be clear policies on a range of systems, including (but not limited to) treasury management, investment management, risk management, debt management, and grants and contracts. These should be monitored to enable continuous improvement.

*The governing body must ensure that the Institution is compliant with all relevant legal and regulatory obligations*

7. Legal and regulatory obligations include compliance with all relevant laws, the governing instruments of the Institution, relevant financial standards including the Scottish Funding Council's Financial Memorandum, and any legal obligations arising in connection with the Institution's charitable status, in addition to the observance (on a comply or explain basis) of this Code.
8. The governing body must regularly review its policies relating to compliance with statutory duties.

*The governing body must ensure that the Institution operates with high levels of social responsibility.*

9. The governing body must ensure that the Institution's policies and actions are ethical and sustainable. It must aim to contribute to economic development while seeking to improve its environmental impact and the wellbeing of its students, workforce and the other communities with whom it interacts, whether local or more distant.
10. The governing body must aim to support the principles of fair work across the institution. This is defined in the Fair Work Framework as "work that offers effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers and that can generate benefits for individuals, organisations and society."

*The governing body must adopt and publish a Statement of Primary Responsibilities.*

11. The Statement of Primary Responsibilities must, as a minimum, include provisions relating to:
  - protecting the reputation and values of the institution;
  - ensuring, in conjunction with the academic board, the quality of the Institution's educational provision and that adequate provision has been made for the general welfare of students;
  - approving the mission and strategic vision of the Institution, its strategic plan, key performance indicators (KPIs) and annual budgets, ensuring that they have due regard to the interests of students and staff, and monitoring institutional performance in terms of these;
  - appointing the Secretary to the governing body and appointing the Head of the Institution (the Principal) as chief executive officer of the Institution and putting in place suitable arrangements for monitoring his/her performance;
  - ensuring the establishment and monitoring of systems of control and accountability, including financial and operational controls, risk assessment, means of evaluating the

governing body's own performance and clear procedures for handling internal grievances and "whistleblowing" complaints and for managing conflicts of interest.

12. This Statement must be included in the Institution's Annual Report. It must also be published on the Institution's website, along with a broad summary of the responsibilities that the governing body delegates to management, its committees and the academic board.
13. The governing body may delegate authority or allocate some of its work to committees, grant delegated authority to the Chair or a committee to act on its behalf, and delegate responsibility to the Principal and other officers of the Institution. Such delegations must be clearly defined in a schedule of delegation and must be formally approved by the governing body. Having delegated authority to other bodies or individuals to act on its behalf, the governing body is nevertheless still ultimately accountable and has to accept collective responsibility for the actions taken.
14. In deciding which tasks or responsibilities should be delegated to committees, the governing body must retain a formal schedule of matters reserved to it for its collective decision.<sup>2</sup> Such matters are likely to include final decisions on issues of institutional strategy; the review and approval of the Institution's annual budget and Annual Report; and the appointment and dismissal of the Principal and of the Secretary to the governing body.

## **2. The Governing Body: Membership**

**The governing body must have a balance of skills and experience among its members sufficient to enable it to meet its primary responsibilities and ensure stakeholder confidence. It must have a majority of lay members and should be no larger than is necessary to meet legal requirements on membership and to ensure appropriate coverage of skills and stakeholder involvement. The recruitment of members appointed by the governing body must proceed through an open and inclusive process that is based on a skills evaluation.**

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15. The governing body must draw up and make public a register of the balance of skills, attributes and experience required in the membership of the governing body, which must inform the recruitment of appointed lay members of the governing body. The membership of the governing body must be regularly assessed against this skills register.
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17. By law, governing bodies must include at least two members "appointed by being elected by the staff of the institution from among their own number". The process or processes for appointing these members must have regard to the importance of maintaining adequate representation from both the academic and non-academic staff bodies and should build on current practice where this achieves representation from both academic and non-academic staff bodies.

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<sup>2</sup> The governing instruments of some Institutions list key powers that the governing body may not delegate.

18. All institutions must include in their annual reports a statement on how the size and composition of the governing body contributes to maintaining a coherent and effectively functioning governing body, as well as meeting statutory requirements on membership and the need for an appropriate range of skills and experience. Any increase in the size of the governing body must be fully explained.

*The recruitment of members appointed by the governing body must proceed through an open and inclusive process that is based on a skills evaluation.*

19. Vacancies for appointed lay members must be advertised within and outside the institution. A job specification and a clear indication of the skills, knowledge and experience required must be included.
20. Lay members who are appointed by the governing body must be appointed for a given term, which may be renewable, subject to satisfactory performance. The renewal of any appointment must not be automatic, but should be recommended by the nominations committee or equivalent (see section 7). Service beyond three terms of three years, or two terms of four years, should be avoided (exceptions, such as retention of a particular skill or expertise, may be permitted, but must be fully explained). After this point members should normally retire and be replaced by new members. Such limits on periods of office should also be observed by those constituencies which appoint or elect members to the governing body.
21. Where an existing member of the governing body is elected to serve as Chair, he/she should automatically begin a new term of membership linked to the office. However, consideration should be given to limiting the new Chair to a single term of office where that person has already served for a substantial period on the governing body. The governing body or relevant committee should consider this point when formulating the rules for eligibility to stand for election to the Senior Lay Member position.
22. Details of the terms of appointment of a member must be set out as appropriate in that member's letter of appointment. Each Institution must publish on its website the wording of its standard letter of appointment for lay members.

### **3. Responsibilities of Governing Body Members**

**Governing body members must take collective responsibility for the governing body's decisions. All members must exercise their responsibilities in accordance with accepted standards of behaviour in public life and in the interests of the Institution as a whole, rather than as a representative of any constituency. With the exception of the Chair, Principal and, where there is one, the Rector, all governing body members assume the same responsibilities as part of the collective decision-making body. Conflicts of interest must be considered and may affect a member's ability to participate in some governing body business.**



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23. All governing body members are collectively responsible and accountable for all the governing body's decisions. Members should take an active part in all governing body business and should not confine their contributions to matters that appear relevant to their background or the particular constituency that appointed or elected them.
24. Members appointed or elected by a particular constituency must not act as if delegated by that particular constituency. No member may be bound, when speaking or voting, by mandates given to him/her by others, or drawn from an electoral platform. This requirement is not only in line with principles of good governance but also essential to members' responsibilities as charity trustees.<sup>3</sup>
25. Members of the governing body must also take care not to become involved in the day-to-day executive management of the Institution, excepting those who are employed by or students of the Institution, and in these cases only to the extent that they have executive responsibilities in the course of their employment or their activities as students or trade union representatives.
26. The governing body, acting as a whole, must have the power to remove any member of the governing body from office,<sup>4</sup> and should do so if the member materially breaches the conditions of his/her appointment, including the requirements of this Code.

*With the exception of the Chair, Principal and, where there is one, the Rector, all governing body members assume the same responsibilities as part of the collective decision-making body. Conflicts of interest must be considered and may affect a member's ability to participate in some governing body business.*

27. All governing body members must be considered full members of the governing body and treated as such. The roles of the Chair, Rector (where there is one) and Principal have distinctive aspects, which are prescribed in legislation, in institutional protocols and in this Code. Otherwise, there are different categories of member only in that there exist distinct routes to appointment to the governing body. Once appointed, all members assume the same responsibilities, obligations and rights and must therefore be expected and supported to participate fully in all governing body business, unless a clear conflict of interest is identified.
28. Governing body members must not be precluded from membership of any of the governing body's committees purely on the basis of the category of governing body member (in the sense of who appointed or elected that member). In some cases, there may be requirement for the majority of a committee to be lay members (for example, in the case of audit committees; see section 7), but no committee should be restricted to lay members only. A conflict of interest may prevent a governing body member from taking up membership of a particular committee. Other than this, the primary determinant of committee membership must be that its members have the ability (the required skills and the time) to contribute effectively to the committee.

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<sup>3</sup> On this point and other aspects of the charity trustee role, see <http://www.oscr.org.uk/charities/guidance/guidance-and-good-practice-for-charity-trustees>

<sup>4</sup> The Higher Education Governance (Scotland) Act 2016 sets out conditions on the rules that Institutions may adopt in respect of removal of any governing body member, including the Chair.

29. A member of a governing body who has a financial, family or other personal interest in any matter under discussion at any meeting of the governing body or one of its committees at which he/she is present must, as soon as practicable, disclose the fact of his/her interest to the meeting and, if requested by the Chair, must withdraw from that part of the meeting. A member of the governing body is not, however, considered to have a financial interest in matters under discussion merely because he/she is a member of staff or a student of the institution. Nor does the restriction of involvement in matters of direct personal or financial interest prevent members of the governing body from remaining at a meeting which is considering, and voting, on proposals to insure the governing body against liabilities which it might incur.

*The Institution must maintain and publicly disclose a current register of interests of members of the governing body.*

30. The register of interests must be published on the Institution's website, suitably redacted to take account of data protection duties, and must be kept up to date. The Secretary and any other senior officer closely associated with the work of the governing body, for example the finance director, must also submit details of any interests to be included in the register.

31. The Institution must also maintain a public register of gifts and hospitality offered to governing body members (including offers that were declined and why).

#### **4. Equality and Diversity**

**The governing body must provide leadership in equality and diversity across all protected characteristics. It must assume responsibility for strategy and policy on equality and diversity that applies to the whole institution, which should not only ensure compliance with all relevant legislative and regulatory requirements but also actively promote and facilitate equality and diversity goals.**

**In addition, the governing body must monitor its own composition and establish appropriate goals and policies regarding the balance and diversity of the members it appoints and must regularly review its performance against these goals and policies.**

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32. The governing body must ensure that the institution is compliant with all relevant legislative and regulatory requirements. These include (but are not limited to) the requirements of the Equality Act (2010), the Public Sector Equality Duties (Scotland) and the SFC's Gender Action Plan.

33. The governing body must approve the institution's equality and diversity policy and receive an equality monitoring report at least annually. This report should include clear goals in relation to specified characteristics and actions taken to towards achieving these goals. Institutions must work to eliminate unlawful discrimination, promote and facilitate equality and foster good relations across all protected characteristics. The governing body must satisfy itself that relevant policies have been implemented throughout the institution.

34. The KPIs by which the governing body monitors overall institutional performance must include indicators of progress on equality and diversity, including aspects of recruitment, progression and remuneration.
35. The governing body's equality and diversity responsibilities must be included in the induction of new members. The need for additional training in matters of equality and diversity should be assessed as part of regular reviews of the development needs of governing body members (see section 5).

*The governing body must monitor its own composition and establish appropriate goals and policies regarding the balance and diversity of the members it appoints and must regularly review its performance against these goals and policies.*

36. Having due regard to applicable law and the need for appropriate skills and experience, the governing body must establish appropriate goals and policies on equality and diversity with respect to the members it appoints.<sup>5</sup> The governing body, through its nominations committee or equivalent, should aim to open opportunity of membership to the widest possible range of well qualified potential members and to remove any unnecessary barriers to membership.
37. When setting goals relating to gender equality, governing bodies must take into account the commitment made in 2015 by the Chairs of all governing bodies of Scottish higher education institutions to aim to achieve and maintain a gender balance across governing body members who are appointed by the governing body, such that a minimum of 40 per cent would be female and a minimum of 40 per cent male
38. Notwithstanding the importance of gender balance, the relevant goals and policies must also deal with equality and diversity with respect to other characteristics.
39. Equality and diversity across the entire governing body should also be taken into account. The governing body should monitor this. External organisations or electorates that appoint or elect governing body members should be made aware of any significant imbalances and should consider how they can contribute to increasing the diversity of the governing body where appropriate.
40. An annual report must be presented to the governing body on progress made towards achieving its equality and diversity goals regarding its own composition.

## **5. Effectiveness**

**New members must receive a full induction on joining the governing body. Opportunities for further development for all members should be provided regularly, in accordance with their individual needs and responsibilities. The proceedings of the governing body must be conducted in a timely and appropriately transparent manner. Key officers of the executive should attend meetings to support effective decision-making, but must not unduly influence the business of the governing body. The governing body must review its effectiveness regularly. The results of effectiveness reviews and associated actions must be reported upon publicly. In addition, the**

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<sup>5</sup> The Equality Challenge Unit offers a range of useful resources including key guidance for governance at: <http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity>.

**governing body must ensure that it has discharged its responsibilities through its annual review of the Institution's overall performance which forms the core of the Annual Report.**

*New members must receive a full induction on joining the governing body. Opportunities for further development for all members should be provided regularly, in accordance with their individual needs and responsibilities.*

41. Governing bodies must provide all those responsible for making appointments or overseeing elections to the governing body with a clear description of the responsibilities of and expectations placed upon governing body members. This must also be published in a form that is accessible to potential electors of governing body members.
42. On taking up office, all new members must receive the Institution's standard letter of appointment and must be briefed on the terms of their appointment and be made aware of the responsibilities placed on them for the proper governance of the Institution. Each new member should have a programme of induction covering both general aspects of the role and specific issues facing the particular institution, including its current strategy and performance.
43. Special attention should be paid to induction for student members and any others who may lack experience of comparable roles. Governing bodies should work with student organisations to mitigate any challenges caused by the usually short tenure of student governing body members (who are usually office-bearers of the student association with a one-year term). As part of this, particular care should be given to ensuring that their induction is comprehensive and, as far as possible, completed before they take on any governance responsibilities.
44. Induction should cover conflicts of interest, questioning skills, relevant financial knowledge and skills, and the nature of higher education institutions, except where the governing body member has sufficient relevant experience to render some part of this unnecessary.
45. Members' individual contributions should be reviewed at least once each year, and must be reviewed at least every two years, through a standardised process with the active involvement of the member concerned. Opportunities for relevant personal development should be identified. The timing of this review process should be carefully considered for student members in particular, in order to maximise its usefulness during their limited terms of office. These need not all be carried out by the Chair, though the Chair retains ultimate responsibility for the effectiveness of the governing body (see section 6).

*The proceedings of the governing body must be conducted in a timely and appropriately transparent manner.*

46. The governing body must meet at least four times a year. Members should attend all meetings where possible. Details of the number of meetings of the governing body and its main committees, and rates of attendance of members, should be reported publicly.
47. In addition to normal meetings of Court, an annual stakeholder meeting must be held in public at which the Principal and the governing body must give a public account of the institution's performance and should be available to answer questions. This event may or may not also include regular governing body business.

48. The governing body must draw up standing orders to regulate the conduct of its business. To function efficiently, the governing body must have rules for the conduct of its meetings. Issues for which rules are required include, but are not restricted to:
- procedures for voting, rescinding decisions, calling extraordinary meetings, and declaring business reserved;
  - requirements for a quorum; and
  - frequency of meetings.
49. On rare occasions, certain items may, for reasons of confidentiality, not be open to discussion by the whole governing body. Such business must be kept to a minimum because of the general need for transparency and openness, but would normally include matters relating to an individual member of the Institution or commercially sensitive material.
50. The agenda and supporting papers must be circulated in advance and the decisions minuted. The agenda and minutes of governing body meetings must be published in a timely manner on the Institution's website. Standing orders must specify the kinds of matter that may not be recorded in the minutes for reasons of confidentiality. The papers considered at meetings should be made available on the institution's website or intranet, unless this would breach confidentiality or would not be in the interests of the Institution. The Institution's Annual Report must also be published on the Institution's website.
51. Institutions must make available on their website a list of all members of the governing body, along with a brief biography of each member, the Secretary's email address, which may be used to contact members of the governing body, and the membership and terms of reference of key committees, including the audit, remuneration and nominations committees (or equivalents).

*Key officers of the executive should attend meetings to support effective decision-making, but must not unduly influence the business of the governing body or its committees.*

52. Decisions of the governing body must be made only by its members, acting collectively. Officers of the executive who are not members of the governing body should provide information and advice when called upon (allowing that the Secretary may need to take a more active role in order to fulfil his or her responsibilities; see Section 6). At governing body meetings, the number of executive officers present should not exceed the number of lay members present. Any member of the governing body must be able to raise issues relating to Institutional management, notwithstanding the presence of senior officers. In order to ensure this, the Chair should be aware of any connections between, or other relevant issues concerning, governing body members and members of the senior executive.
53. The Chair must ensure that the distinct roles for senior executives and members of the governing body are maintained and respected. The Chair and the Principal should discuss and reach a clear understanding of the extent and nature of senior executives' involvement in meetings, including which parts of the meeting each individual should attend. Ultimately the Chair is responsible for the conduct and effectiveness of governing body business.

*The governing body must review its effectiveness regularly. The results of effectiveness reviews and associated actions must be reported upon publicly.*

54. The governing body must review its own effectiveness each year and must undertake an externally facilitated evaluation of its own effectiveness and that of its committees, including size and composition of membership, at least every five years. The academic board (also known as Senate, Senatus Academicus or academic council), must also conduct effectiveness reviews in the same way. These reviews must be reported upon appropriately within the Institution and outside. Externally facilitated reviews should be held following any period of exceptional change or upheaval (allowing suitable time to see the effects of changes made), the usual timetable for externally facilitated review being brought forward if necessary in these circumstances.

55. Given the short terms of office served by student members, externally facilitated effectiveness reviews should, where possible, take evidence from recent student members as well as those currently serving on the governing body.

*In addition, the governing body must ensure that it has discharged its responsibilities through its annual review of the Institution's overall performance which forms the core of the Annual Report.*

56. The governing body must reflect annually on the performance of the Institution as a whole in relation to its strategic plan, with reference to agreed KPIs. Where possible, the governing body should benchmark institutional performance against equivalent metrics of other comparable institutions.

57. The results of effectiveness reviews, as well as of the Institution's annual performance against KPIs and its progress towards meeting its strategic objectives, must be published widely, including on the Institution's website and in its Annual Report.

## **6. Key roles**

**The Chair is responsible for the leadership of the governing body, and is ultimately responsible for its effectiveness. The Chair must act so as to maintain the confidence of the governing body and ensure the Institution is well connected with its stakeholders, including staff and students.**

**The four Ancient universities must have a protocol to define the division of responsibilities between the Rector and the Chair.**

**The Principal must be accountable to the governing body. The governing body must make clear, and regularly review, the authority delegated to the Principal as chief executive, having regard also to that conferred directly by the instruments of governance of the Institution.**

**The Secretary to the governing body must ensure compliance with all procedures and must ensure that the governing body is appropriately supported such that it is able to discharge its duties. All members must have access to the advice and services of the Secretary to the governing body, and the appointment and removal of the Secretary shall be a decision of the governing body as a whole.**

*The Chair is responsible for the leadership of the governing body, and is ultimately responsible for its effectiveness. The Chair must act so as to maintain the confidence of the governing body and ensure the Institution is well connected with its stakeholders, including staff and students.*

58. The Higher Education (Scotland) Act (2016) specifies the responsibilities of what it terms the 'Senior Lay Member' in fulfilling the role of Chair. This position may bear different names at different institutions. The Act stipulates that the holder of this post is responsible for the leadership and effectiveness of the governing body and for maintaining an appropriate balance of authority between the governing body and the Principal. The specific duties of the role of 'Chair of the governing body' at many institutions extend beyond the statutory responsibilities of the Senior Lay Member and the full role of Chair is one which may be associated with more than one individual under the legislation that covers different parts of the higher education sector. In particular, the Rector at the Ancient universities may carry out certain elements of the Chair role. References to the Chair in this Code therefore refer to the Senior Lay Member or the individual who bears the relevant responsibility according to legislation and/or institutional arrangements.
59. Having responsibility for leadership of the governing body and as chair of its meetings, the Chair must promote its wellbeing and efficient operation, ensuring that its members work together effectively and have confidence in the procedures laid down for the conduct of business. Like all other members, the Chair must contribute to collective decision-making and must act only in the interests of the Institution, not on behalf on any electoral constituency or interest group.
60. The Chair may delegate duties to other members of the governing body, but must do so with the consent of the governing body and with due regard to the Chair's statutory responsibilities. Any such delegation must be clearly recorded.
61. As part of responsibility for the governing body's overall effectiveness, the Chair should ensure that student members are given the necessary support to participate effectively, bearing in mind their short terms of office.
62. Through leadership of the governing body, the Chair plays a key role in the business of the Institution, but must not be drawn into the day-to-day executive management. The Chair must strive to maintain a constructive and challenging working relationship with the Principal and, by extension, between the governing body and the Principal. These relationships should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles each has within an Institution's constitution.
63. The governing body may grant delegated authority to the Chair to act on its behalf between meetings. Alternatively, other arrangements may be made for action between meetings, such as the use of an Exceptions Committee or equivalent and/or protocols around decision-making by correspondence. Policy on this matter should be clearly defined in the governing body's standing orders. The Chair is answerable to the governing body for any action taken on its behalf. Where chair's action is taken, a report must be made to the next meeting of the governing body.
64. The governing body must appoint one of its lay members to serve as an intermediary for other members who might wish to raise concerns about the conduct of the governing body or the Chair. Led by this lay member, the members of the governing body must meet without the Chair present at least annually to appraise the Chair's performance. Prior to this, the member with the intermediary role must offer all governing body members the opportunity to provide such feedback individually and in private. Like other members, the Chair must be assisted to identify

professional development needs in relation to his/her governance responsibilities and seek opportunities to address them.

65. The Higher Education Governance (Scotland) Act 2016 sets out the process by which a Senior Lay Member must be appointed, via election. The criteria for eligibility to stand for election to this position must be published in advance of the commencement of any recruitment process. Each Institution must establish rules and procedures for this election that comply with the requirements of the Higher Education Governance (Scotland) Act (2016). Under the terms of this Act, the governing body is required to delegate to a committee the responsibility of ensuring the efficiency and fairness of the process for filling the position. The process of formulating these rules and procedures must involve consultation with relevant stakeholders and the rules and procedures, along with the membership of the relevant committee, must be published on the Institution's website.
66. The Higher Education Governance (Scotland) Act 2016 provides, optionally, for the remuneration of the Chair. Governing bodies should consider whether offering remuneration (at a given level) when advertising a vacancy for a Chair might affect positively or negatively the field of applicants, including in terms of the equality and diversity, or the culture and cohesion of the governing body.

*The four Ancient universities must have a protocol to define the division of responsibilities between the Rector and the Chair.*

67. A distinction needs to be drawn in the four Ancient universities (the Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews) between the role of the Chair and the specific role of the Rector in 'presiding' at governing body (Court) meetings. The exact interpretation of the Rector's role with respect to the governing body is a matter for agreement by the governing body of the individual institution concerned. Each governing body must set that agreement out clearly in a protocol, the content of which must be published and made clear to candidates for the posts of Rector and Senior Lay Member and reflected in the job descriptions for these posts.<sup>6</sup>

*The Principal must be accountable to the governing body. The governing body must make clear, and regularly review, the authority delegated to the Principal as chief executive, having regard also to that conferred directly by the instruments of governance of the Institution.*

68. Throughout this Code, the term Principal is used to designate the Head of Institution (including the position of Director of the Glasgow School of Art and the position of Principal and Vice Chancellor at other institutions). The Principal is responsible for management of the Institution and for providing the governing body with advice on its strategic direction.
69. The Principal is the designated officer in respect of the use of Scottish Funding Council funds and compliance with that Funding Council's Financial Memorandum. He/she must alert the governing body if any actions or policy under consideration would be incompatible with the

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<sup>6</sup> Note that this section does not apply to the Rector at the University of Dundee or the University of the Highlands and Islands (UHI). At the University of Dundee, the Rector is elected by the student body and is an *ex officio* member of the governing body, but does not automatically preside at its meetings. UHI's Rector also has *ex officio* ordinary membership of the governing body. This is a quite distinct position from that of Rector at the Ancient universities: UHI's Rector is elected by and chairs the UHI Foundation.



terms of the Financial Memorandum. If the governing body nevertheless decides to proceed, then the Principal has a duty to inform either the Chief Executive of the Scottish Funding Council, or other appropriate officer.

70. The Principal must ensure that the decisions of the governing body are implemented appropriately.
71. When formulating proposals concerning the Institution's future development, the Principal must initiate appropriate discussion and consultation and ensure that such proposals are presented to the governing body. The Principal must ensure that key stakeholders' representative bodies, including recognised trade unions and student associations, are kept informed about and regularly consulted on the on-going development of the Institution and any significant proposals regarding relevant institutional policies.
72. The governing body must ensure that the appointment process for the Principal enables student, staff and trade union input to be taken into account, taking into consideration the academic and non-academic aspects of the Principal's role. The majority of the membership of the selection committee for the appointment of the Principal must be lay members. It must also include at least one Elected or Union staff member, at least one student member of the governing body and adequate representation from the academic community.
73. Assessment of the performance of the Principal, normally led by the Chair, must take place on an annual basis. Views must be sought from staff, trade union, student and lay members of the governing body.

*The Secretary to the governing body must ensure compliance with all procedures and must ensure that the governing body is appropriately supported such that it is able to discharge its duties. All members must have access to the advice and services of the Secretary to the governing body, and the appointment and removal of the Secretary shall be a decision of the governing body as a whole.*

74. The Secretary to the governing body must be appointed to that post by the governing body and, in carrying out his/her role as Secretary to the governing body, must be solely responsible to the governing body. When dealing with governing body business, the Secretary must act on the instructions of the governing body itself. Only the governing body, as a whole, is empowered to remove the Secretary from these duties.
75. The Secretary must have a direct reporting link to the Chair of the governing body for the conduct of governing body business (i.e. agendas, papers, minutes etc.) and must be available and accessible to all members of the governing body. All members of the governing body should be proactive in seeking advice from the Secretary when it is required.
76. The Secretary must draw to the attention of the governing body any conflict of interest, actual or potential, between the Secretary's administrative or managerial responsibilities within the Institution and his/her responsibilities as a Secretary to the governing body. If the governing body believes that it has identified such a conflict of interest itself, the Chair should seek advice from the Principal, but must offer the Secretary an opportunity to respond.

77. The Secretary must ensure that papers are supplied to members in a timely manner and contain such information, in such form and of such quality, as is appropriate to enable the governing body to discharge its duties efficiently and effectively.
78. The Secretary should be solely responsible for commissioning legal advice for the governing body, and advising it on all matters of procedure. The Chair and members of the governing body should look to the Secretary for guidance about their responsibilities under the charter, statutes, articles, ordinances and regulations to which they are subject, including legislation, this Code and the requirements of the Scottish Funding Council, and on how these responsibilities should be discharged. It is the responsibility of the Secretary to alert the governing body if he/she believes that any proposed action would exceed the governing body's powers or be contrary to legislation, this Code or to the Scottish Funding Council's Financial Memorandum (notwithstanding the Principal's responsibility as accountable officer in the latter case).
79. The Secretary must advise the Chair in respect of any matters where conflict, potential or real, may occur between the governing body and the Principal. The Secretary should also keep the Principal fully informed on any matter relating to governing body business (other than in relation to the Principal's own performance and reward).
80. The governing body must safeguard the Secretary's ability to carry out these responsibilities.

## **7. Committees and Academic Board**

**At a minimum, the governing body's committees must include a nominations committee, an audit committee, and a remuneration committee, or equivalents. All committees must be provided with a clear remit and written terms of reference.**

**The governing body must establish a nominations committee with a suitably inclusive membership to oversee the appointment of new members to the governing body.**

**A suitably qualified audit committee must be appointed.**

**The governing body must establish a remuneration committee to determine and review the salaries, benefits and terms and conditions (and, where appropriate, severance payments) of the Principal and such other members of staff as the governing body deems appropriate. The policies and processes used by the remuneration committee shall be determined by the governing body, and the committee's reports to the governing body shall provide sufficient detail to enable the governing body to satisfy itself that the decisions made have been compliant with its policies.**

**The governing body must ensure the effectiveness of the Institution's academic board, including its responsibility to uphold academic freedom.**

*At a minimum, the governing body's committees must include an audit committee, a remuneration committee and nominations committee, or equivalents. All committees must be provided with a clear remit and written terms of reference.*

81. Committee remits and terms of reference must state the extent and limits of the committee's responsibilities and authority and must be published on the Institution's website. Committees must not exceed their terms of reference and should be so advised by the Secretary to the governing body. Committees must distinguish between issues on which they are empowered to take decisions, and issues that they must refer to the governing body for decision. Where a committee is acting under delegated powers it should submit regular written reports to the governing body on decisions that it has taken on the governing body's behalf.

*The governing body must establish a nominations committee with a suitably inclusive membership to oversee the appointment of new members to the governing body.*

82. The membership of the nominations committee should have a lay member majority. The membership should include the Chair (who should normally chair the committee, except where the committee is managing the appointment of the Chair's successor), the Principal, at least one Elected or Union staff member and a student member of the governing body.
83. The nominations committee must keep a skills register against which to consider the field of candidates and must also consider whether candidates share the values of the Institution and whether they will add to the overall success and health of the Institution. The nominations committee must also give due consideration to issues of equality and diversity, in line with Principle 3, and to the appropriate inclusion in the governing body of relevant stakeholder groups.

*A suitably qualified audit committee must be appointed.*

84. The governing body must appoint an audit committee and set up internal and external audit arrangements in accordance with the appropriate Audit Code and the Scottish Funding Council's requirements. The audit committee should be a small, authoritative body which has the necessary financial expertise and the time to examine the Institution's financial and risk management control and governance under delegation from the governing body. The committee must produce an annual report for the governing body, including its opinion on the adequacy and effectiveness of governance arrangements (not confined to financial arrangements), financial control and arrangements for promoting economy, efficiency and effectiveness.
85. The governing body should also receive reports on the Institution's risk management arrangements. These may be the responsibility of the Audit Committee or of a separate Risk Committee (or equivalent).

*The governing body must establish a remuneration committee to determine and review the salaries, benefits and terms and conditions (and, where appropriate, severance payments) of the Principal and such other members of staff as the governing body deems appropriate. The policies and processes used by the remuneration committee shall be determined by the governing body, and the committee's reports to the governing body shall provide sufficient detail to enable the governing body to satisfy itself that the decisions made have been compliant with its policies.*

86. Membership of the remuneration committee should have a majority of lay members. A majority of these lay members must be members of the governing body (others may be external lay committee members). The membership should include the Chair of the governing body. The committee chair should be a lay member of the governing body and should not be the Chair of the governing body. The Principal must be consulted on remuneration relating to other senior post-holders and should attend meetings of the committee, except when the committee discusses matters relating to his/her own remuneration.
87. The policies and processes used by the remuneration committee in reaching decisions on individuals must be discussed by the whole governing body and be approved by that body. The remuneration committee's reports to the governing body must provide sufficient detail of the broad criteria and policies against which decisions have been made.

88. In addition, the remuneration committee must seek the views of the students and staff of the institution, including through recognised trade unions, in relation to the remuneration package of the Principal and the senior executive team. This requirement may be implemented in part through relevant members of the governing body serving as members of the remuneration committee or attending its meetings, or may be achieved through separate consultation with representatives of the student and staff communities. The relevant process should form part of the policies and processes approved by the whole governing body, as outlined above.
89. In discussing these issues, and if considering severance arrangements for senior staff, the remuneration committee must represent the public interest and avoid any inappropriate use of public funds. The remuneration committee must seek and make use of sufficient relevant information to reach well informed evidence-based decisions. This should include relevant comparative information on salaries and other benefits and conditions of service in the Higher Education sector, national pay awards and rates of pay used throughout the institution, and assessments of relevant individuals' performance. The remuneration committee should oversee contracts of employment for senior staff and should ensure that these do not specify periods of notice of more than 12 months and do not require the payment of pension enhancements.
90. The remuneration committee must identify those posts in the senior team which are regarded as forming the senior executive team, and it must publish the salaries of this group of staff by salary band.

*The governing body must ensure the effectiveness of the Institution's academic board, including its responsibility to uphold academic freedom.*

91. The governing body must ensure that the academic board (also known as Senate, Senatus Academicus or academic council) is appropriately constituted according to relevant legislation and the Institution's statutory instruments and must receive and consider the academic board's reviews of its own effectiveness (see Section 5).
92. The Institution must have appropriate measures in place to ensure a high level of mutual understanding between the governing body and the academic board.
93. As part of its role in relation to the academic board, the governing body must ensure that academic freedom is upheld, in line with relevant legislation.

## **Annex: The Nine Principles of Public Life in Scotland defined for the higher education sector**

While higher education institutions are not public bodies, the Nine Principles of Public Life in Scotland provide an appropriate and recognised definition of ethical and responsible behaviour for those involved in higher education governance. The Nine Principles, which incorporate the Nolan Principles for public life in the UK, are defined for members of public bodies in the Scottish Government's Model Code of Conduct for Members of Devolved Public Bodies.<sup>7</sup> This annex provides versions of these definitions which are adapted for higher education institutions, as autonomous institutions with multiple funders and stakeholders.

### **Duty**

You have a duty to uphold the law and act in accordance with the law and the trust placed in you. You have a duty to act in the interests of the body of which you are a member and in accordance with the core functions and duties of that body.

### **Selflessness**

You have a duty to take decisions solely in terms of interest of the institution. You must not act in order to gain financial or other material benefit for yourself, family or friends.

### **Integrity**

You must not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

### **Objectivity**

You must make decisions solely on merit and in a way that is consistent with the functions of the institution when carrying out business including making appointments, awarding contracts or recommending individuals for rewards and benefits.

### **Accountability and Stewardship**

You are accountable for your decisions and actions to the public and the institution's stakeholders. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the institution uses its resources prudently and in accordance with the law.

### **Openness**

You have a duty to be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when other duties clearly demand, such as the duty to protect personal or commercially sensitive information or to defend the wider public interest.

### **Honesty**

You have a duty to act honestly. You must declare any private interests relating to your duties and take steps to resolve any conflicts arising in a way that protects the interests of the institution, the public and other stakeholders.

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<sup>7</sup> <http://www.gov.scot/Resource/0044/00442087.pdf>

**Leadership**

You have a duty to promote and support these principles by leadership and example, and to maintain and strengthen trust and confidence in the integrity of the institution.

**Respect**

You must respect fellow members of your governing body and employees of the institution and the role they play, treating them with courtesy at all times. Similarly you must respect members of the public when performing duties as a member of the governing body.