

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

April 2017

Context

In 2016, the Committee of Scottish Chairs (CSC) of Scottish higher education institutions launched an evidence-based Review of the Scottish Code of Good Higher Education (HE) Governance (henceforth 'the Code'). The review was entrusted to a Steering Group whose membership includes all major stakeholder groups. Independent consultants from the [Leadership Foundation for Higher Education](#) were commissioned to collect and analyse evidence from an open public consultation, a survey of governing body members and extensive consultation with stakeholders at each institution and at national level. Full details of the Steering Group and the evidence-gathering process can be found at [scottishuniversitygovernance.ac.uk](#).

The Steering Group has now completed its review and has produced a draft revised Code. This seeks to recognise and reflect the continuous evolution of best practice in governance and to accommodate changes that follow from the [Higher Education Governance \(Scotland\) Act 2016](#). Views are now sought on the draft revised Code.

How to respond

Please complete these questions using the online response form before **21 June 2017**.

Alternatively, please email a response to the consultation, including your completed respondent information details, to dan@universities-scotland.ac.uk or send a written response to the consultation by post to:

Daniel Wedgwood, Universities Scotland, Holyrood Park House, 106 Holyrood Road, Edinburgh EH8 8AS.

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	X
Publish response only (anonymous)	
Do not publish response	

This consultation is an open invitation to comment, not limited to a specific set of questions. We welcome your views on any aspect of the *content* or *structure* of the draft revised Code. (Please do not comment on superficial presentational issues. This draft does not show the final formatting of the document, which will be finalised following the consultation.)

If your response contains multiple comments and/or covers different elements of the Code, please structure your response accordingly, separating different points clearly. Please refer to paragraph or page numbers where possible.

Please see response appended to this form.

Thank you for responding to the Review

GCU response to consultation on Revised Scottish Code of Good Higher Education Governance

Thank you for the opportunity to comment on the draft revised Scottish Code of Good Higher Education Governance (revised Code). We are broadly supportive of the revised Code and recognise that much of this has been taken from the 2013 Code. We have, however, some concerns and suggestions that we wish to raise in relation to what has been proposed.

We would welcome the opportunity to discuss any of these further if this would assist

1. General Comments on revised Code

Over-Prescription and Institutional Autonomy

While we acknowledge the importance and are fully supportive of the main principles contained in the Code, we are concerned that the tone of the revised Code is now highly prescriptive, in a way that the original Code avoided even if the same points were included within it. This causes particular unease when applied to now detailed provisions that might better be approached with more flexibility to accommodate a sector composed of diverse, autonomous institutions of various provenances. We maintain the Code should reflect a set of principles and guidelines with which institutions are expected to comply rather than a highly prescriptive set of rules covering the details of implementation.

Specifically, we note the 2013 Code referred to main principles and supporting guidelines which institutions were expected to observe in an appropriate manner. The language has now shifted to high-level principles and detailed requirements. Detailed requirements are also included without a clear rationale for why they would enhance good governance.

We would maintain that the standard of governance at Scottish HEIs is currently assured through compliance with an extensive regulatory and legislative framework and the demonstrated commitment of HEIs in applying the terms and the spirit of the 2013 Code.

Repetition of existing legislative requirements

The Code appears to recite obligations from the 2016 Act (see for example paragraphs 17 and 65) but not in the exact terms of the legislation. We caution against potentially creating parallel, although not identical, requirements to those already set out in legislation.

'Future-Proofing' the Code

We recommend that specific references to the external regulatory and policy framework are referred to in generic terms to ensure that the Code remains relevant into the future. For example, the revised Code refers, at paragraph 32, to the SFC's Gender Action Plan and, at paragraph 10, to the Fair Work Framework. We do not take exception to what is said in the Code on these points. However, the inclusion of such specific references risks making the Code quickly dated.

2. Comments on specific elements of the revised Code

1. Foreword

- a. The first paragraph refers to preparing 'the next generation'. This language could be more inclusive by taking account of mature students and lifelong learning, as well.
- b. The second paragraph should also recognise that the differences across institutions are a product of an institution's history as well as its institutional autonomy.
- c. The regulatory framework recited in the foreword should refer to the additional compliance required by professional bodies and other regulators.

2. Definitions

'Elected or Union staff member' are defined to include trade union appointees under the 2016 Act. The definition should reflect that the 2016 Act requires these governors to be *nominated* (i.e. not appointed) by trade unions in accordance with a process regulated by the governing body.

3. The Governing Body: Primary Responsibilities

- a. We recommend a more explicit statement about supporting the academic success and education of students as well as their development as productive and active citizens being included within this section.
- b. Paragraph 9 requires an institution's policies 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'. We recommend a stronger emphasis in this statement on contributing to societal good/benefit rather than solely economic development.

4. The Governing Body: Membership

- a. This section refers to staff governors but makes no specific reference to trade union nominated staff governors or student governors. We are not clear on the reason for this distinction.
- b. Main Principle 10 of the 2013 Code provides there should be a clear majority of lay governors. This was to ensure an appropriate level of external, independent oversight. This is a fundamental principle of good governance. The revised code refers to a 'majority of lay members' and a governing body that, among other things, is 'no bigger than is necessary to meet the legal requirements on membership'. This seems to undermine the need for a **clear** majority and so we recommend reinstating the reference to a **clear** majority of lay governors from the 2013 Code.

- c. Paragraph 17 provides further prescription on the process for electing two staff governors to the governing body. We maintain that where legislation provides that the rules for electing or appointing any governors rest with the governing body to decide. Defining how these rules must be made under the Code undermines the legislative intention to allow HEIs to tailor rules to an institution's particular circumstances and needs.
- d. Paragraph 18 requires a statement on the size and composition of the governing body. The annual accounts for HEIs must already contain a detailed corporate governance statement addressing how an institution maintains a coherent and effective governing body. We recommend that the revised Code should refer instead to this comprehensive and readily accessible corporate governance statement rather than seek a new statement focusing just on the size and composition of the governing body, which topics are of course addressed within the existing governance statement.
- e. Paragraph 21 states that consideration should be given to limiting the chair of the governing body to a single term of office where that person has already served on the governing body for an extended period. In line with the requirement in the Code that the person would start a new term of membership linked with their new role, and recognising the differences between the chair and governor roles, we recommend removing this element from the revised Code as it does not seem consistent with the explicit expectation of the Chair role coinciding with a new term of membership. This is a judgment best left to governing bodies to make on a case by case basis.
- f. Paragraph 22 refers to publishing a standard letter of appointment. HEIs publish role descriptions and person specifications setting out the role of governors and the Chair. Moreover the exact terms of appointment of individuals may change, notably as to whether an individual has chosen to seek remuneration or not. We therefore consider it unnecessary to require the use and publication of a standard form letter.

5. Responsibilities of Governing Body Members

- a. Paragraph 24 should be amended to include greater emphasis on the need for collective responsibility for decisions of Court. That is, once a decision of Court has been discussed, debated and resolved, all Court members should be collectively responsible for that decision and, once public, for upholding it and not seeking to undermine it.
- b. Paragraph 28 states that no committee should be restricted to lay members only. Regardless of what individual HEIs may do, this prescription is not consistent with best practice on the independence of the Audit Committees through appointing only external and independent members pursuant to the CUC Handbook for Members of Audit Committees in HEIs as well as the Financial Reporting Council Guidance on Audit Committees.

- c. It is agreed there should be reference to declaring and managing conflict of interests and maintaining a register of interest. We consider, however, the reference in paragraph 31 to what should be recorded is too prescriptive around how each institution best manages their register and any conflicts.

6. *Equality and Diversity*

Including in paragraph 34 a requirement for specific KPIs to be monitored by the governing body cuts across the existing equality and diversity monitoring duties and is overly prescriptive. We recommend referring instead to the need to ensure compliance with the institution's public sector equality duty and related equalities legislation and requirements.

7. *Effectiveness*

- a. Paragraph 47 refers to an annual stakeholder meeting held in public. We consider that this meeting should be focused on staff and students as key internal stakeholders. Wider public accountability is already achieved through compliance with the public reporting framework for HEIs and ongoing engagement by institutions with the wider University community. The promotion of a public meeting for external stakeholders is a different proposition which would have different requirements and stakeholder expectations and, given the diversity of stakeholder interests, would be difficult to make worthwhile.
- b. The requirement in paragraph 57 to publish effectiveness review results should be limited to key findings and actions from any review. This would guard against inhibiting feedback, as it might, if governors believe that their specific feedback will be made public.

8. *Key roles*

- a. Paragraph 72 on the appointment process for the Principal requires staff, student and trade union input to be taken into account as part of that process. We consider that the requirement should be framed to seek feedback from the core constituencies of students and staff, noting that trade union nominated staff governors are also among the staff governors. An institution may very well choose to conduct a wider consultation exercise as part of the recruitment and selection process to include discussion with its TUs as part of its work to gather staff input. However the Code should not mandate the design of this process which requires professional advice and skills in its design to bring to a successful outcome.
- b. While fully supporting the principle of academic representation on the selection panel in paragraph 72, the composition of the selection panel ought to be a matter for the institution to determine rather than a prescription in the Code. As such, we recommend replacing the specific requirements around the composition of the selection panel with a more balanced requirement to ensure there is appropriate

staff and student representation, including academic representation, in considering the appointment of the Principal.

- c. The reference in Paragraph 73 to 'staff, trade union, student and lay members of the governing body' should be amended to 'all governors'. This is to reflect that all governors' views are considered in assessing the Principal's performance. In addition, making the distinction between 'staff' and 'trade union' governors undermines the principles that these are all staff governors under the 2016 Act and that they should not advocate sectional interests, as noted in paragraph 27 of the Code.

9. *Committees and Academic Board*

- a. The University, like many other institutions, receives the views of student and staff in relation to the remuneration of the Principal and senior executives through the student and staff governors on Court. Court considers and approves the remuneration philosophy that is applied in determining senior staff pay and considers the Principal's remuneration in particular. We consider that prescribing how these views are considered is unwarranted as too detailed for a principles-based code.
- b. Paragraph 89 mandates a practice in terms of the payment of pension payments which, if followed, could put an institution in breach of a contractual obligation (either of an institution's or pension scheme's making). We propose that the Code is adjusted to focus instead on ensuring that the arrangements in place with respect to senior staff remuneration represent the public interest, avoid any inappropriate use of public funds and have a documented, evidence-based justification.