

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Do not publish response	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.

The University's comments are set out in highlighted text below an extract of each paragraph section of the draft Code to which the comment relates.

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.

Para 5: It would be helpful to better understand what is meant by “appropriate arrangements for engaging with the public and the wider communities...” “ If something more than the proposed annual public meeting, then clarify? By what measure will compliance be tested ?

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.

Para 9:

A lot of requirements are being stated here in qualitative not quantitative terms. Will it be acceptable to set voluntary objectives in the absence of any more specific quantitative requirements?

Neither this paragraph or any another in the document includes the important responsibility to ensure delivery of high quality teaching and, where it is relevant to an institution's mission, high quality research.

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.”

Para 10: While the essence of this principle is understood, it should not be a requirement of institutions to provide a greater level of security than is sensible in the course of meeting their strategic and operational objectives, whilst of course meeting all employment legislation requirements.

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.

Para 18: If any increase in size must be fully explained then a decrease in size should similarly be explained.

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.

Section 3: Suggest that "participate" in the last sentence is not the right choice of word. A subject under consideration might be one in which a governing body member has particular experience and also a conflict. The conflict of interest must be declared and should of course preclude that person from voting or contributing to decision-making. The wording unhelpfully suggests that the individual should be barred from discussion also.

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.

Para 28:

Where it is advised that no committee should be restricted to lay members only, this should clarify no standing committee; there could be a good reason why a meeting of only lay members becomes necessary in an ad hoc or short-life committee setting.

The above stipulation should permit audit committees to be excluded. The advice runs contrary to current guidance provided by the in the HM Treasury Audit and Risk Assurance Committee Handbook and the CUC Handbook for Members of Audit Committees in Higher Education Institutions, both of which are clear that members should be independent, objective and not part of the executive team. No other relevant key pieces of guidance or codification in relation to audit committees are promoting the inclusivity of approach now being suggested in the revised Scottish Code. (Members of staff have not historically been appointed to our University's Audit & Risk Committee on the basis of prevailing audit committee governance good practice advice).

Paras 23-27: We are supportive of the sections which emphasise the collective responsibility and the particular qualities that trusteeship demands.

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).

Para 31: This section should clarify gifts and hospitality offered to an individual where the circumstances are related to their position or work as a governing body member.

Section 4: Equality and Diversity

Section 4: This new section is a welcome addition to help support transparency.

5. Effectiveness

Section 5: This section is welcome, helping to support transparency.

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.*

Para 47: Where would there be room for discretion say about issues that might be compromised if discussed in public (issues of competitiveness, planning issues, voluntary redundancy scheme, failed target numbers etc) issues which may not be releasable under FOI but could nevertheless be interrogated at a public meeting?

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.*

Para 48: Rules for minimum frequency of meetings make sense, but not for maximum frequency.

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.*

Para 52: There should not be a constraint on the number of executive officers attending governing body meetings if they are attending for particular items to properly inform the membership on agenda items under discussion.

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.*

Para 72: It should be clarified that panel members should act as objective members of the selection committee as opposed to representing the views of a given constituency.

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.

Para 82: It seems unnecessarily restrictive for the Chair not to be allowed to Chair the Committee where the subject is to recruit a successor, unless the Chair wishes to stand again for the position.

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.

Para 83: The additional wording proposed here is unnecessary and raises questions of integrity and trust. The appointing Committee will undoubtedly in good faith appoint such persons as share the institutional values and who wish for overall success and health of the institution; the Principles of Public Life requirements already cover this adequately.

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.

Paras 86 to 88: The need to seek views of students and staff of the Institution on senior remuneration packages seems unduly cumbersome and liable to deter the best candidates from applying for these posts. By ensuring a spread of stakeholder interests on the remuneration committee surely the wider views can be taken into account without the need for further consultation. Those representing stakeholder interests as members of the committee should make the full decision. This is an area potentially fraught with difficulty with the risk of deadlock and the need for additional measures to manage any deadlock circumstances arising.

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.*

Para 92: This para needs clarification. How can you “ensure” you have mutual understanding and how would this be measured and assessed in terms of compliance.

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

- *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.

Definitions annex: Accountability and Stewardship: There are contradictory statements in this over-defined statement. Democracy will at times mean a governor has considered an issue on its merit but can't 'ensure that the institution uses its resources prudently'; they might have held a different view but then have to take other views into consideration, therefore a governor cannot ensure one minute and also agree to other people's views. A governor, not having executive authority, cannot 'ensure' anything, although they can ask appropriate questions, and can use the Audit process to verify how some actions are taken.

OTHER MORE GENERAL POINTS:

The document is a curious mixture of generic and specific guidance. Comments provided by the University above include examples relating to the latter, where restrictions or requirements seem unnecessary, overly burdensome or over-stated.

The general effect of the Code is to increase the demands on unpaid trustees, carrying the risk that in recruiting universities will become a second choice to corporate non-executive (paid) posts. There is a risk that if universities start to remunerate their governing body chairs, they may have to extend this in time to all lay members.

Thank you for responding to the Review