

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:

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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.

Draft Response to the Scottish Code of Good Higher Education Governance

General

Thank you for the opportunity to contribute to this consultation exercise.

We welcome the reference to Small Specialist Institutions in the Code's foreword and also the continued commitment to the 'comply or explain' principle, which is essential given the diversity of the higher education sector. However, we believe that the "truly exceptional circumstances" (earlier it is 'rare', which is a marginal improvement) caveat attached to 'comply or explain', combined with what we believe to be the excessive use of the word 'must' throughout the Code, appears to undermine that commitment and creates the impression of an overly prescriptive compliance check-list, ill-suited to a highly diverse (and already very well-regulated) higher education sector.

We believe that the Code should focus on high level governance principles – the means of their adoption should be left to individual institutions to determine in the context of their own specific governance frameworks. We would therefore urge the Steering Group to review the tone of the Code in its entirety, reduce the use of the word 'must' and eliminate unnecessary and overly prescriptive detail that currently sits below many of the principles.

Specific Comments

Foreword

Fourth paragraph – 'Company law' should be substituted for 'business law. Significant 'amongst others' that should be included in the list of laws and regulations quoted include health and safety and child protection and vulnerable adult legislation.

"Chair": The definition of Chair should be changed to state that the Chair is the person who holds the position of Senior Lay Member for the purposes of the 2016 Act. As currently drafted, it refers to the responsibilities rather than defining the position.

There should be a reference to the QAA UK Quality Code for Higher Education.

The Governing Body: Primary responsibilities

Paragraphs 9 and 10: Any Higher Education Institution's primary role in economic development is to contribute to the labour force by producing graduates and, depending on the activities of each institution, to research in general. We must take care that we do not assume responsibilities that we cannot deliver – such as the wellbeing of communities with whom we interact. We may agree to adopt certain standards of care but nothing more.

Paragraph 9: Ethics and sustainability are subjective concepts and therefore not amenable to an objective test in terms of compliance ('must' is used here). A requirement that policies and actions are lawful and have been subject to appropriate risk assessment would be more appropriate.

Paragraph 10: Inappropriate requirement to comply with a Scottish Government Fair Work Framework.

The Governing Body: Membership

Delete the wording "and ensure stakeholder confidence", as impossible to demonstrate compliance.

Paragraph 17: It should be for institutions to determine how to apply the 2016 Act in respect of elected staff members.

Paragraph 22: Repeated (more or less) at Paragraph 44.

Responsibilities of Governing Body Members

The wording should be amended to acknowledge that the Chair, Principal and Rector have additional responsibilities.

Paragraph 28: Specific attention needs to be paid to Audit Committees, the membership of which should be restricted to lay members.

Paragraph 31: The requirement should be to comply with relevant Bribery Legislation - this goes well beyond the bounds of that legislation and will be very difficult to operate in practice, particularly for governing body members who are involved in several other organisations. Why should declined offers be disclosed?

Equality and Diversity

Paragraph 32: Unnecessary – the requirement for governing bodies to ensure that institutions are 'compliant with all relevant legal and regulatory obligations' has already been stated.

Effectiveness

Generally, far too detailed and prescriptive.

Paragraph 44: A prime example of where the Code is overly detailed. Paragraph 42 already covers induction in sufficient detail.

Paragraph 45: ‘.....reviewed at least once a year, and must be reviewed at least every two years’ is confusing.

Paragraph 49 is at odds with Paragraph 24.

Key Roles

Generally, far too detailed and prescriptive.

Paragraph 58: The last sentence should appear in the Definition Section.

Paragraph 59: Suggest delete ‘wellbeing’ as very difficult to evidence. ‘Effective’ is sufficient.

Paragraph 73: Why not simply say ‘all members of the governing body’ instead of specifying different categories of governors (esp. given Paragraphs 23/24/27)?

Committees and Academic Board

‘Suitably inclusive membership’ for Nominations Committee unhelpfully vague.

Paragraph 83: This is another prime example of where the Code is unnecessarily detailed. It is unnecessary to instruct a Nominations Committee to ‘consider whether candidates share the values of the Institution’ ‘Success’ would suffice, rather than introducing the vague notion of ‘health’.

Paragraph 92: ‘Facilitate’ would be better than ‘ensure’.