



Scottish Funding Council

Promoting further and higher education

Our ref: 247794442

20 June 2017

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Comhairle Maoineachaidh na h-Alba

A' brosnachadh foghlam adhartach agus àrd ìre

Dear Dr Wedgwood,

Consultation on revised Scottish Code of Good HE Governance

I pleasure in setting out the Scottish Funding Council's response to the draft new Code.

In general, we are content with the revised Code and consider it at least meets with generally accepted governance good practice. Further, it also appears to be consistent with the spirit of the new Higher Education Governance (Scotland) Act 2016.

There are some areas which would benefit from further clarification and clearer signposting. We have addressed these in turn.

References to relevant legislation

As currently drafted, the revised Code provides little detail on the requirements of the 2016 Act. Whilst we are clear that the Code is not intended to be a guide to Act, it would be helpful if a link to it was provided early in the document. Similarly it would also be beneficial if a reference to EU law was added to the list of legislative requirements set out in the Foreword.

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Small Specialist Institutions (page 2)

We note the specific reference to Small Specialist institutions (SSIs) in the Foreword: “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”. It is possible that this might create some ambiguity and is arguably unnecessary given the later reference to ‘comply and explain’. In practice, we are not aware of any issue that has presented a specific difficulty to a Small Specialist Institution. However, we do not view this as a significant issue.

Definitions (pages 3 and 4)

We note the helpful ‘Definitions’ section which has been introduced to the revised Code, and in particular the reference in the table to members of the governing body serving in one of the capacities specified in subsections 10(1)(b-d) of the 2016 Act. This reference to staff and trade union members of the governing body, sign-posting the requirements under section 10 of the Act, is useful. Similarly, it would be helpful if the table also included a reference to subsections 10(1)(a) and (e) in respect of the student members and the chair.

‘Governing Body: Membership’ (section 2, pages 7 and 8)

It would be helpful in terms of both clarity and signposting if the references to members of the governing body required under the 2016 Act included all of the members required under subsections 10(1)(a) – (e), rather than making reference to the elected staff members only (in paragraph 17).

Removal of members (paragraph 26, page 9)

The Code is intended to be implemented on a ‘comply or explain’ basis. In that context, it is possible that the reference to the governing body having the power to remove any member if they materially breach the conditions of their appointment is positioning the Code as something closer to regulations. It would perhaps be more helpful simply to make reference to section 13 of the 2016 Act, which requires that rules on removal must make provision for grounds for removal etc.

Members’ roles (paragraph 27, page 9)

Paragraph 27 states all governing body members have the same responsibilities as part of the collective decision-making body, but that the chair, principal and rector have additional responsibilities on top of those collective responsibilities. However, the wording as currently drafted is a little unclear and clarification on this point would be helpful. In particular, the current wording could give the impression that the chair, rector and principal do not have the same level of responsibilities, obligation and rights compared to all other members.

Role of chair (paragraph 58, page 15)

The clarity of the principle that the chair is responsible for the leadership of the body and bears ultimate responsibility for its effectiveness is correct.

In terms of the chair's statutory duties under the 2016 Act, only rectors at the ancient universities can carry out aspects of the chair's role. These are limited to chairing the court and having a deliberative and casting vote, by section 4 of the Universities Scotland 1858 Act and section 5(5) of the Universities Scotland 1889 Act. Given that the rector's role is limited (in the context of the provisions in the 2016 Act), it may be helpful to set that out.

In relation to the phrase "full role of the chair", there is a risk that the implied 'additional' functions could be interpreted as referring to matters which are central to the role of chairs, even though they are not specifically mentioned in the 2016 Act. Since we understand that is not the intention of the paragraph, either the sentence should be phrased differently or additional clarification should be inserted to avoid that risk.

Recruitment and remuneration of the chair (paragraph 66, page 16)

Paragraph 66 refers to the 2016 Act providing "optionally" for the remuneration of the chair, going on to state that "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". This may be interpreted as a suggestion that it is open to an institution not to offer remuneration. This is not the case. Section 4(2)(c)(iv) of the 2016 Act specifies that remuneration and allowances are available in connection with the holding of the position. It would therefore be helpful if the legislative position was clarified. That is, that there must be reference to remuneration in the advertisement and that, as provided by section 9(1) of the 2016 Act, the governing body is, on the request of the senior lay member of the governing body, to pay such remuneration and allowances to the senior lay member as the governing body considers to be reasonable.

We are content for this response to be published in full.

Yours sincerely,

A handwritten signature in black ink that reads "Martin Fairbairn". The signature is written in a cursive style with a large initial 'M'.

Martin Fairbairn
Chief Operating Officer

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