

# 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](http://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 [nicola@universities-scotland.ac.uk](mailto:nicola@universities-scotland.ac.uk) or send a written response to the consultation by post to:

Nicola Cowsill, Universities Scotland, Holyrood Park House, 106 Holyrood Road, Edinburgh EH8 8AS.

## Respondent information

Are you responding as an individual or an organisation?

Individual	
Organisation	✓

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	✓
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Do not publish response	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 of Aberdeen is grateful for the opportunity to further input to the development of the Code. The University recognises and welcomes the need to revise and refresh the Code to ensure it remains fit for purpose as good governance practice evolves. The University is conscious of the number of responses the Steering Group may consider and while we provide more detailed comments on specific sections of the Code, we set out first our key comments on the Code in high level terms. These include those elements of the Code that we welcome and those where we feel further consideration is needed to ensure it can be effective and have the confidence of the sector. The University appreciates the challenge that the Steering Group has had in producing the draft Code given the range of stakeholder interests involved. Overall, however, the University has some fundamental reservations regarding the new approach of the Code and we hope the comments that follow can help the Steering Group to address these points and enhance the Code.

#### **Main Comments**

- **Structure:** The University welcomes the structure of the Code and the seven thematic sections as high-level principles. The principles seem appropriate and relevant to the key components of good governance in higher education.
- **'Comply or Explain Principle':** The University welcomes the Code's commitment to this. This is essential given the diversity of Scotland's universities and their autonomy which is a strength of the sector. It is imperative that the Code recognises and reflects the importance of autonomy and institutional diversity in its approach and allows for flexibility of governance practice within a set of overarching high level principles. This is rendered all the more important, by the need for institutions to be successful in the internationally competitive environment that universities like Aberdeen operate. While therefore welcoming the commitment of the Code to 'comply or explain', the University is concerned that this is then, to all intents and purposes, fundamentally contradicted by the approach, form and wording of the Code that follows.
- **Overall Form and Approach of the Code:** The approach and form is significantly more prescriptive than the current Code. The University recognises there is a difficult balance to be struck between agreeing on certain core principles of governance that institutions should generally adhere to and a level of prescription around these and how they should be met in practice. The University considers, however, that the draft Code has moved to an approach and level of prescription which is unnecessary and whereby it is closer to a compliance checklist rather than a Code of Good Governance. This is exemplified and reinforced by the use of 'must/should'. It is notable that the word 'must' appears 230 times and the word 'should' 83 times. In contrast, in the current Code, the word 'must' appears 26 times and the word 'should' 148 times. As the current draft suggests that adherence with not only the principles but the more detailed supporting provisions will be required and explained in corporate governance statements, and as compliance with the Code is a condition of SFC funding, the sum effect of the 230 requirements is that the Code will significantly extend compliance requirements on universities. Given the HE Governance Act has separately extended common governance

provisions for universities, the approach of the Code may be less supportive to the principles of autonomy and diversity in practice than is intended and to encouraging innovation in governance practice. We would suggest these sound objectives set out in the foreword can be met by the Code through a less prescriptive and detailed approach.

- **Length and Detail of the Code:** Linked to the previous comment, while the University welcomes the principles of the Code, it then becomes too detailed and extends into a number of areas that are not appropriate for a code of this type. This results in the Code being long (it is around a third longer than the current Code). Aside from the issue of the level of detail being overly prescriptive, we would suggest all parties interested in the Code would benefit from it being reduced in size, ideally to be briefer than the current Code.

### **Comments on Specific Sections**

**Page 2, Foreword:** The use of the word “provisions” of the Code should be made clearer as to whether it refers to the “Principles”, the supporting detailed sections of the Code or both. This is particularly important as the Code will be adopted by SFC as the governance requirement as a condition of funding. Currently it is the “Principles” of the Code that SFC refers to but the draft Code needs to be clear as to what it means by “provisions” in this context. The University would suggest that it should be the “Principles” which form the basis of ‘comply or explain’ in corporate governance statements, particularly given the increased level of detailed supporting requirements within the Code which might otherwise have to be reported against.

**Page 6, paragraph 9:** The reference to policies being ethical, while agreed, is highly subjective and open to differing views as to whether that requirement has been met. It is unclear how this requirement would be measured.

**Page 6, paragraph 9:** This states that a university “must aim to contribute to economic development”. Universities, of course, do this in a variety of ways but we would question whether it is relevant to a Code of Governance to specify what part of the mission of an institution should be. These are outputs which are more appropriate for Scottish Government, SFC and individual institutions to agree upon through existing channels of policy and funding.

**Page 6, paragraph 10:** The University is supportive of the Fair Work Framework but does not consider this to be a governance matter to be included in the Code.

**Page 7, paragraph 17:** This in effect seeks to require that the Higher Education Governance Act is applied in a specific and prescribed way with regard to elected staff members. The University agrees with the intention of this section but feels it is inappropriate for the Code to seek to apply this to all universities. It should be a matter for individual governing bodies to determine and the flexibility of the Act in this regard should be respected.

**Page 8, paragraph 18:** The University is unclear as to what this section would mean in practice and would suggest the wording is revised to provide more clarity if it is to be retained.

**Page 8, paragraph 20:** The University welcomes the final sentence of this section to help ensure consistency across different categories of membership.

**Page 8, paragraph 21:** Restricting the term of office of an elected Chair to one term of office would appear to contradict the requirements of the Higher Education Governance Act.

**Page 8, Principle 3 and Page 9, paragraph 24:** The reference to members exercising their responsibilities in the interests of the institution as a whole is both important and welcome, as is the wording of paragraph 24.

**Page 9, paragraph 28:** There is a risk that the wording of this section will be taken to mean that any non-lay individual may have the right to be a member of a committee regardless of skills. The wording

of this section also directly contradicts the CUC guidance on membership of Audit Committees being all lay so as to preserve independence and objectivity. This may be unintended but if so the requirements for Audit Committees should be acknowledged for the avoidance of doubt. If intended, then the Code should explain why a differing approach in Scotland is considered necessary.

**Page 11, paragraph 34:** The matter of which KPIs a governing body considers relevant for its institution to report against should be a matter for the governing body to determine not the Code.

**Page 13, paragraph 50:** This section is an example of where the Code extends into a level of detail which is unnecessary ie stipulating the content of standing orders of a governing body.

**Page 18, Principle 7 and paragraph 93:** The wording of Principle 7 should be made clearer to avoid any interpretation that notwithstanding the interest of academic boards in academic freedom, the final responsibility for academic freedom rests with the governing body.

**Page 19, paragraph 82:** We would suggest it would be appropriate to amend “at least one elected or Union staff member” to allow for members elected by Senates to Court to also be included.

**Thank you for responding to the Review**