

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 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	Yes

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	Yes
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Do not publish response	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 Edinburgh welcomes the opportunity to comment on the draft revised Governance Code following the earlier consultation in Autumn 2016.

We are very disappointed that the draft Code does not take account of our key concern: that the Code should focus on core high level principles of good governance rather than seeking to prescribe uniform ways of meeting those objectives. This is important and necessary as there is wide diversity in the sector and our priority must be to concentrate significant effort on finding appropriate ways of implementing the recent Higher Education Governance (Scotland) Act 2016.

At the University of Edinburgh we have recently reviewed our overall approach to governance to ensure that our processes and systems are appropriate for an institution which has a turnover of £890 million, 37,510 students and 13,604 staff. Our Court is committed to sector leading standards of corporate governance and seeks to improve continuously through self-assessment and learning from other examples of good practice to ensure that it fulfils its three distinct roles in an effective and appropriate manner: its representative role, with key stakeholder groups nominating or electing members of the Court and lay members appointed from outside the University with a diverse range of skills and experiences; its governance/oversight role, providing assurance that the University is delivering its strategic objectives and meeting its charitable purposes; and decision-making role, taking strategic decisions with the long term best interests for the University and broader society in mind.

The revised draft is disappointing, inappropriate and may actually have the perverse effect of impeding our efforts to ensure strong and robust governance. It is disappointing to see a revised draft that is overly directive in tone and content and goes significantly beyond what is needed. As others will no doubt point out, the revised draft includes 230 statements using the term 'must' and 83 statements using the term 'should' – an order of magnitude greater than the current Code and indicative of a requirement for conformity at odds with the sector's diversity in type, size and governance arrangements linked to the unique historical evolution of each institution. The Code should avoid prescription in specifying which governing body members should fulfil governance responsibilities beyond the requirements of the Governance Act, as there is no clear rationale for this in terms of good governance and it would needlessly inhibit the diversity of the sector.

The length of the revised draft, at nearly 10,000 words, illustrates the overly detailed nature of the document and renders it impractical for governors to use to assess their institution's compliance with the principles of good governance. The revised draft is more akin to an operational checklist for administrative staff than high level statements of governance principles to facilitate effective oversight by governors in their institution-specific context.

While there is no explicit mention of when a revised Code might come into effect, it will not be possible for an institution to comply in full until after they have fully transitioned to a new governing body

composition. It significantly increases the implementation burden that is already very significant in terms of compliance with the new Governance Act.

In addition to our core concern about the level of detail and direction in the Code, we have a number of concerns on points of detail. These include the following:

- There are additional reporting requirements which would make Corporate Governance statements unnecessarily long without providing added value, such as including a statement on how the size and composition of the governing body contributes to maintaining a coherent and effectively functioning governing body. The size and composition of the University of Edinburgh Court is set in Ordinance, which is subject to a wide range of internal and external consultation and scrutiny, including by Scottish Ministers and ultimate approval by Her Majesty in Council – inclusion in the Corporate Governance statements would not improve upon these arrangements and is unnecessary.
- There are a wide range of references to compliance with specific Scottish and UK government policies, regulation and legislation but the Code itself acknowledges that institutions must be compliant with all relevant legal and regulatory obligations, making the references cumbersome and unnecessary and the Code likely to become quickly outdated as the regulatory framework changes over time.
- Point 28 states that ‘no committee should be restricted to lay members only’, which is directly contradictory to established standards of good governance for Audit Committees, as seen in the UK Corporate Governance Code and the Committee of University Chairs Handbook for Members of Audit Committees in Higher Education.

We would propose that the Code is either significantly edited back to focus on core principles alone; or held as a draft for reference only until the end of the implementation period of the new Governance Act to enable us to concentrate effort on the important and complex work of determining how best to implement the new Governance Act in a way that will ensure continued good governance of an institution of our size and complexity.

Thank you for responding to the Review