

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Do not publish response	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.

University of Stirling Students' Union Scottish Code of Good HE Governance

Response to Consultation – June 2017

Overview

1. We welcome the opportunity to feed into the redevelopment of the Scottish Code of Good HE Governance, in light of recent developments within the statutory and higher education environments. As outlined in our Phase One Response, we sought to see the code reformatted into clear groupings of composite principles, with a refreshed focus on stipulating the requirements for institutions.
2. We also desired to see the code go beyond simple statutory compliance, building on the outcomes of the HE Governance (Scotland) Act 2016, by putting forward a clear vision for effective governance arrangements within the Scottish Higher Education Sector.
3. We are therefore pleased to see the vast majority of these points reflected in the draft Code put forward for consultation. Having reviewed this and reflected on our initial points, we'd use this opportunity to highlight a number of areas which we feel could benefit from further review.

Form of the Code

4. We feel a key benefit of the 2013 iteration of the code was the sharing of good practice in governance. This open and collaborative approach, where institutions learn from one another, is a core component within the culture of Scottish Higher Education.
5. Whilst we would welcome the creation of a shared public repository of examples of good practice, we believe that ownership/responsibility for the creation and management of such a resource would need to be identified within the code. As otherwise, the extent to which this resource is actively utilised by institutions could be severely limited. There are several organisations within the sector who currently perform similar roles, within different aspects of sector activity. For example, Student Partnerships in Quality Scotland's (SPARQS) role in supporting the development of student engagement within quality assurance and enhancement activities in the sector.
6. We welcome the involvement of student representatives in contributing towards the development of this resource from their own perspective.
7. *As such, we'd push for the Code to retain some examples of best practice within the published code. This should be supplemented with a live repository to which both institutions and, specifically, student governing body members contribute. Responsibility for the development and management of this resource should be identified within the code, prior to publication.*

Definitions

8. We note that there is no requirement stated for the student member of a governing body to have been elected. Whilst we can assume that, if a sabbatical officer was to undertake the role – as is the case in all institutions – they would have been previously elected; the omission of this could lead to some confusion.
9. *With this in mind, we'd push for the inclusion of a requirement, reflective of the HE Governance (Scotland) Act 2016, for persons appointed by being elected by the students of the institution from among the students of the institution.*
10. The Code makes frequent reference to “the executive”, yet no definition is provided for this. Whilst we recognise that, due the variance amongst HEIs, the members constituting the Executive are likely to vary, the Code would benefit from the inclusion of a loose definition of the kind of officers and staff members who would fall within this category.
11. *As such, we'd propose including a vague definition of the role and composition of 'the executive' in generalised terms.*

The Governing Body: Primary Responsibilities

12. The Code states that “The Governing Body must ensure that the institution has in place appropriate arrangements for engaging with the public and the wider community which it serves”. We'd argue that there would be merit in widening this out to ensure the body has appropriate arrangements in place for engaging with all stakeholders, both internal and external to the institution. As part of this, there would be the expectation that institutions would take reasonable steps to engage with members of the public and wider community specifically. [Ref: P5]
13. *As such, we'd push for Paragraph 5 to be appropriate reworded to account for the full range of stakeholders, both internal and external to the institution, who should be engaged.*

The Governing Body: Membership

14. The code implies that the membership of governing bodies “should be no larger than is necessary to meet legal requirements”. We would question the rationale for such a requirement, given that it may be – given the individual context of an institution or a shared development across the sector – necessary to have a membership in excess of the statutory requirements.
15. That said, we recognise that a key factor of effectiveness is efficiency – and that overly inflated governing boards may inhibit the extent to which truly effective governance can be carried out. However, we do not feel it is the place of the code to explicitly limit the size of an institution's governing body.
16. *With this in mind, we would push to have the wording around this suitably 'loosened', retaining a requirement for an institution to ensure, on an ongoing basis, that the membership of their governing body meets statutory requirements and remains at a size conducive to effective governance.*

Equality and Diversity

17. The Code makes clear the expectation that the equality and diversity responsibilities of the governing body must be covered in the induction of new members of the governing body. We believe that, given the fundamental role equality and diversity plays within the HE Sector and across wider society, there should be an ongoing assessment of these responsibilities and members' understanding; with appropriate follow up training and development being arranged where necessary. [Ref: P35]
18. *As such, we would argue for the further development of Paragraph 35, to include the requirement for ongoing evaluation and training of governing body members, in line with developments to equality and diversity discourse within the sector and wider society.*

Effectiveness

19. Paragraph 49 of the Code allows for the institution to prevent certain items of business from being heard by the whole governing body. Whilst we recognise the requirement for Reserved Business, through which certain items would not be widely minuted; we do not believe that the provisions in Paragraph 49 embrace the principles of openness and honesty that are ingrained within public life. [Ref: P49]
20. *As such, we'd recommend the removal of the provision within Paragraph 49 – so as to ensure the arrangements for governance within Scottish HEIs remain aligned to the core principles of public life and effective governance.*
21. The Code states the need for institutions to ensure that agenda and papers are circulated to members of the governing body in advance. We'd argue that 'advance' is too vague a term to allow sufficient time for governing body members to effectively scrutinise proposals. [Ref: P50]
22. *As such, we'd recommend reframing Paragraph 50, to ensure institutions circulate agenda and supporting papers "sufficiently in advance" to governing body members to allow for effective scrutiny of proposals.*
23. We note that Paragraph 53 provides the Chair, in association with the principle, to decide on the involvement of senior executives within meetings of the governing body. With this in mind, we had considered the eventualities where it would be of benefit to the governing body to have persons attend who are not classified as Senior Executives. As such, we would propose a potential provision to allow members of the governing body, with the agreeance of the Chair, to invite along persons they see fit to attend, in an 'In Attendance' capacity, to part of the meeting. We feel that this would support the governing body in making difficult decisions, where multiple perspectives need to be considered. [Ref: P53]
24. *As such, we'd recommend the inclusion of a provision to allow members of the Governing Body to invite along, with the agreeance of the Chair, persons they see fit – to attend in an "In Attendance Capacity" for appropriate parts of the meeting.*
25. We welcome the inclusion of Paragraph 55, which allows for externally facilitated effectiveness reviews to take into account the experiences of recent and current student members on the governing body. [Ref: P55]

Committees and Academic Board

26. We agree with the requirement, put down in Paragraph 88, for the remuneration committee of the Governing Body to "seek the views of students and staff," in relation to senior remuneration packets. We believe this to be a key aspect of effective governance within the HE Sector and embracive of Openness and Objectivity principles associated with public life. [Ref: P88]
27. We note the requirements for the remuneration committee of the governing body to represent the public interest, as laid out in Paragraph 88 and 89 of the Code. We'd argue that there should be a requirement on the remuneration committee to consider the value any non-financial benefits associated with senior executive positions, which may not otherwise be available to other staff within the institution, when making decisions relating to the remuneration packets, individuals working at this level receive. [Ref: P88/89]
28. We also believe that a provision should be made within the code that encourages HEI's to ensure their Academic Boards are sufficiently empowered to make decisions pertaining to their remit, even if these could potentially be overruled by the Governing Body. Otherwise, these Boards – an important part of the structure of HEI's across Scotland – will lose their sense of purpose within the governance arrangements of each institution.

Further Development

29. We note that there is no guidance provided on how HEI's should conduct the elections, introduced through the HE Governance (Scotland) Act 2016 for both the Senior Lay Member and the two institutional staff member places on the governing board – as well as those for the academic council.
30. Whilst we recognise the Act also made provision, under Section 5(2) for these “elections to be conducted in accordance with the rules made by the governing body of the institution”, we believe it would be of benefit to the sector, if the Code identified some guidelines on good practice within this area.
31. *As such, we'd support the inclusion of an optional provision (using the modal verb 'should') within the Code that encourages HEI's to conduct the elections in accordance with defined principles as listed within an Annex.*
32. We also believe it would be beneficial if the Code provided more guidance on the role of the Academic Board. We recognise that there are a number of legal requirements for the governing body to maintain supreme authority on all matters, and that this was reflected in the 2016 Act.
33. *However, in light of this it would be beneficial to receive some clarification around the specific role Academic Boards have to play within wider institutional governance – and how their work interfaces and relates to the core work of the Governing Body.*
34. *In line with current moves across the sector, and wider society, we believe it would be of beneficial if the Code adopted gender neutral terminology throughout, refraining from using he/his and she/hers. Not only does this help ensure the inclusivity of the code, but it also contributes towards making it more accessible.*

Summary

35. Overall, we are very pleased with the work that has been undertaken to reshape and reinvigorate this code. Whilst there are some points we have sought to question, and some areas for further enhancement, we believe that – with these – the code will be an effective instrument in securing good governance within institutions across the Scottish higher education sector.

Further Clarification

36. Should you require further clarification or information in relation to any of the points made in the above response, please don't hesitate to contact Matt Adie (education.union@stir.ac.uk) for additional information.

Thank you for responding to the Review