

# 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	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Do not publish response	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.**

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### **Commitment to Good Governance**

At the University of Strathclyde, we are committed to ensuring good governance, underpinned by clear principles, and we continually seek to develop our approaches in line with recognised best practice. We are currently undergoing an externally-facilitated Review of Governing Body Effectiveness and will carefully consider the outcomes with a view to taking forward Court's agreed recommendations.

Our commitment to good governance is made clear through Court's publicly-available Statement of Primary Responsibilities and the University's associated governing instruments. In our view, good governance is most transparently and effectively delivered through the appointment of an appropriately experienced and diverse Court membership and by ensuring that these individuals are provided with the best tools and support to help them guide and challenge the University's decision-making processes. Also of fundamental importance in achieving and sustaining a culture of good governance is a commitment to collective decision-making and the ethos and personal integrity of individual Court members.

Against this background, we appreciate appropriately pitched guidance to help us fulfil our commitment to good governance and we welcome the opportunity to comment on the draft revised Code, having engaged positively with the process of evidence-gathering and Phase one consultation in 2016.

In terms of evidencing good governance, Scottish universities have been required, as a condition of SFC grant, to demonstrate compliance with good governance principles for a significant number of years and good practice in HE governance has been codified in the UK since, at least, the introduction of the original CUC Code of Governance in 2004 (updated in 2009 and 2014). In addition, and prior to the introduction of the Scottish Code of Good HE Governance in 2013, Scottish universities were required by the SFC to also comply with the relevant sections of the UK Corporate Governance Code. At all stages we have responded positively to these requirements.

Against this background, our view is that the quality and effectiveness of governance within Scottish universities has been and remains demonstrably robust and the University of Strathclyde, along with other Scottish institutions, has engaged constructively with recent developments in Scottish higher education governance.

Indeed, the University of Strathclyde welcomed the introduction, in 2013, of a Scottish-specific code to support an enhanced focus on reviewing and implementing best practice. Whilst the 2013 Code arguably increased consistency and transparency of governance arrangements, through the identification and codification of many existing elements of good practice, it also recognised and reflected the autonomy and diversity that is key to the global success of Scotland's universities. The autonomy of individual institutions and the resulting diversity in

their governance arrangements allows the sector to make a significant and collective positive contribution to Scotland's economy and society, both nationally and locally. In order to protect and enhance this contribution, it is essential that further refinements to governance arrangements do not constrain the ability of institutions to innovate and respond flexibly to opportunities.

### **Timeline**

We note the very short period between the deadline for responses (21 June) and the final meeting of the Steering Group where we understand it is currently intended the draft Code should be amended as required and ultimately agreed (27 June), subject to minor final revisions following receipt of responses delayed due to timing of Governing Body meetings. This effectively allows only three working days for the collation and analysis of the majority of comments and for their prior review by Steering Group members. We strongly encourage the Steering Group to give appropriate consideration to the most significant comments put forward in light of the potential impact on institutions and on the governance of the Scottish higher education sector. With this in mind, we also suggest that it would be appropriate for the Steering Group to extend the timeline for finalising the Code. We do not believe there would be any impacts from doing so, and indeed would suggest there could be considerable negative impacts from finalising an updated Code without giving due consideration to the feedback put forward by the sector.

### **General comments on the draft Code:**

The following comments relate specifically to the draft Code presented for consultation and are provided with a view to ensuring the Steering Group has the opportunity to consider our specific thoughts on the draft, in the context of our more substantive comments on the ethos and culture of good governance, and the timeline for finalising the Code, set out above.

Whilst the revised draft Code presented for consultation asserts, at several points, the position of Scotland's universities as autonomous institutions with diverse missions and strategic priorities, the general tone, specific language used, and some specific content could be perceived as contrary to these assertions. As a result, it is indicative, perhaps unintentionally, of a more prescriptive and less flexible approach. As a broad proxy for this, we note the prevalence within the draft Code of elements with which universities 'must' comply, in comparison to those where they 'should'. The document includes 230 uses of the term 'must' and 83 instances of the word 'should'. This compares to the current (2013) Code's 26 instances of 'must' and 148 instances of 'should'. Further comparison with the equivalent CUC Code (2014) shows a total of 52 instances of 'must' and 24 instances of 'should'. The CUC Code also uses a third term 'could' to highlight elements of good practice which institutions may choose to adopt to support the delivery of those elements which 'must' be complied with.

Whilst the frequency of use of these terms may be considered to be uncontentious their application here appears to be significantly weighted towards a 'one-size-fits-all' approach, in contrast to the 2013 Code's recognition of the autonomy of individual institutions and diversity of missions across the sector.

Although the model of 'comply or explain' (a key concept of UK and international corporate governance since the early 1990s) is reported as having been adopted, in reality there appear to be a number of elements of the draft Code which do not reflect this principle. Indeed, the draft Code states that "most of the requirements are expected of all institutions". Diversification of practice and process within the sector often leads to improvements in governance through the identification and sharing of best practice. By limiting the potential for diversification in governance arrangements, the draft Code could potentially hinder the

sector's ability to continue to evolve and develop new and innovative good governance practice.

Whilst the high-level principles expressed at the beginning of each section seem appropriate, the level of detail which follows, mainly relating to processes for how these 'must' or 'should' be achieved, appears to be unnecessarily detailed and prescriptive. We believe that this level of detail and prescription is neither necessary nor appropriate.

On this basis, we would also comment on the length, complexity, and accessibility of the Code. At around 10,000 words, it exceeds the length of the equivalent CUC Code which is approximately 7,200 words. The Code rightly highlights the importance of appropriate induction processes for new members of governing bodies. However, as it stands, the revised Code would not clarify new members' understanding of the nature and requirements of their role. Instead, the Code, in practice, provides a set of rules to be followed in the day to day governance operations of universities and its main use is likely to be as a compliance checklist for university administrative staff tasked with providing the secretariat function to governing bodies.

Furthermore, there is limited reference to the core purposes of universities and no obvious indication that examples of best practice governance have been widely considered as part of the Code's development e.g. internationally or within industry or the public sector.

We would also question the appropriateness of including references to government policy initiatives or specific legislation within a high-level Code of Governance which potentially limits the longevity of the Code. Other than ensuring that nothing within the Code creates a conflict with existing requirements, it would be sufficient to say that governing bodies have a responsibility to ensure that institutions are compliant with all relevant legal/regulatory obligations and required standards of accountability.

### **Detailed comments:**

**Page 1, Foreword:** The draft states that universities are 'accountable' to a range of stakeholders. The use of the word 'accountable' indicates a specific and contractual responsibility. Whilst universities work closely and collaboratively with 'employers of graduates', in many different ways, the idea that they are somehow 'accountable' to them in a general or regulatory sense has the potential to mislead.

**Page 2, The form of this Code:** It is indicated that institutions should work together to create and maintain a 'public repository' of examples of governance best practice. In the absence of any individual body being identified as responsible for doing so (and resourcing it appropriately) this is unlikely to come to fruition.

**Page 6, paragraph 9:** Whilst all Scottish universities make an important and widely-acknowledged contribution to economic development, through the provision of graduates, research and development, industry engagement, etc. it is not appropriate to mandate that the governing body "must" aim to contribute to economic development, thereby attributing a core purpose to universities that is more suitably the direct responsibility of the Scottish Government and its enterprise agencies. It is recognised that, from time to time, the Scottish Government may direct the Scottish Funding Council to use appropriate funding levers in a way that further enhances the contribution that universities make to economic development. However, it is not apparent that this requires to be codified and it is not the same as mandating a core purpose in this area for universities, which attract funding from a wide range of sources.

**Page 6, paragraph 10:** The inclusion here of reference to the Fair Work Framework and the requirement that governing bodies ‘must aim to support the principles of fair work’ imposes a regulatory requirement where one does not currently exist. The adoption of the Fair Work Framework is currently voluntary.

**Page 7, paragraph 17:** Whilst the Higher Education Governance (Scotland) Act 2016 specifies the membership requirements of university governing bodies, the Act states that *The election process is to be conducted in accordance with rules made by the governing body of the institution*. All indications to date have been that, where the Act remains silent, processes and procedures for implementing its requirements are entirely within the gift of individual institutions. The need to provide further guidance within a governance code is questionable and the appropriate balance of academic and non-academic staff representation should be a decision for governing bodies.

**Page 8, paragraph 18:** It is unclear why ‘any increase in the size of the governing body must be fully explained’ in annual reports. This is a new requirement. There is currently no statutory limit on size and this is determined by individual governing bodies according to their needs, although general good practice indicates a preferred upper limit of 25. The need to report annually on how the size and composition of a governing body contributes to its coherence and effectiveness seems sufficient and the final sentence of this paragraph should be removed.

**Page 8, paragraphs 20-21:** In line with current practice, the ability for an existing member’s term of office to be extended to take account of their election as Chair should also apply to other governing body office-holders such as a Vice-Chair, Deputy Chair or Treasurer. This would reflect the importance of retaining such individuals in key positions due to their specific experience and skills.

**Page 9, paragraph 28:** The current draft states that ‘no committee should be restricted to lay members only’. However, available guidance from both the Committee of University Chairs and the Financial Reporting Council specifies that all members of the Audit Committee should be independent, objective and non-executive. The Scottish Government’s own [guidance](#) on Audit Committees also states that: *The board (or Accountable Officer) should establish an audit committee of at least three members, all of whom should be either non-executive directors or independent external members*.

**Page 10, paragraph 31:** the requirement to maintain a public register of gifts and hospitality should make clear that this relates to gifts or hospitality arising from their membership of the institution’s governing body. Otherwise, it could be perceived as relating to other aspects of a member’s life or work, outside of the institution.

**Page 10, paragraph 32:** Including reference to specific legislative requirements is unnecessary and potentially impacts the longevity of the Code. It is sufficient to say that governing bodies are responsible for compliance with all relevant legislative and regulatory requirements.

**Page 11, paragraph 34:** It is the responsibility of the governing body, collectively, to determine the appropriate Key Performance Indicators (KPIs) by which institutional performance is measured, based on the specific vision, mission and strategic aims of the institution. It is inappropriately prescriptive for a code of governance to mandate the inclusion of particular Key Performance Indicators.

**Page 11, paragraph 37:** inclusion of a voluntary commitment on governing body gender balance is inappropriate, particularly when the Scottish Government has recently consulted on draft legislation which, if enacted, would supersede such a commitment.

**Page 12, paragraph 44:** Specifying the content of induction programmes seems unnecessarily prescriptive. Universities are well experienced in the requirements for the full and detailed induction of new members of governing bodies.

**Page 13, paragraph 52-53:** The terms 'executive officers', 'senior officers' and 'senior executives' seem to be used interchangeably here and should be clarified or rationalised, possibly by including a definition on page 3.

**Page 17, paragraph 70:** The University Secretary provides a key link between the governing body and the rest of the institution and therefore, it may be more appropriate to state that 'The Principal, working with the University Secretary (or equivalent senior officer), must ensure that the decisions of the governing body are implemented appropriately'.

**Page 17, paragraph 73:** Current practice at Strathclyde is that, when undertaking annual assessment of the Principal's performance, the Chair seeks views from **all** members of the governing body. This should be the norm and therefore it seems unnecessary here to differentiate between different categories of governing body membership.

**Page 18, Section 7:** This refers to the Academic Board's responsibility to uphold academic freedom. This is a legal responsibility of the governing body, not the Academic Board (or equivalent).

**Page 19, paragraph 86:** This paragraph appears to exclude the Principal from formal membership of the Remuneration Committee and indicates only that the Principal should 'attend' meetings, except when his/her remuneration is discussed. If this is the intention, it should be clearly stated. For example, at Strathclyde, the Principal is a member of the committee apart from when his or her own remuneration and/or conditions of service are discussed or determined. Nor are they present for such discussions.

**Additional comments:**

Page 3: Under the 'Definitions' section, replace 'give' with 'given'

Page 7: there is a redundant paragraph number (16)

***This response was approved by the University of Strathclyde Court on 20 June 2017***

**Thank you for responding to the Review**