



**Scottish
Code of
Good
Higher
Education
Governance
(2017 edition)**

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Note on the second edition of the Code

This is the 2017 edition of the Code. It is the output of a review of the original Code, which was published in 2013. The present edition, once fully adopted, entirely replaces the 2013 Code.

Foreword

Higher education institutions (HEIs) form a critical part of Scotland's national fabric, with significant impact locally, nationally and internationally. They prepare the next generation of highly educated and skilled individuals, opening doors and transforming lives in the process. They address the major social and scientific issues facing the country and the wider world and play vital roles in communities and the nation's cultural life. Collectively, HEIs form one of Scotland's leading economic sectors and are key to producing sustainable, inclusive economic growth.

While HEIs have in common the core activities of teaching, research and knowledge exchange, as autonomous institutions their missions, strategic priorities, institutional histories and constitutions may differ.

HEIs receive substantial amounts of funding from both public and private sources, to deliver diverse outcomes to many beneficiaries. This means that they, and those involved in their governance, have responsibilities towards a particularly wide range of stakeholders. These include the institutions' students and staff, its alumni, employers of graduates, partners in research and development, the Scottish and UK governments (through the Scottish Funding Council and the UK Research Councils in particular) and other funders, including international partners.

The unique position and status of HEIs places special responsibilities on their governing bodies. HEIs serve the common good. As autonomous organisations, they have to generate income, innovate and invest to develop and sustain excellence in all their activities and remain competitive on a global stage. Those involved in the governance of higher education institutions therefore must balance the need for coherent strategy and sound financial management with the responsibility to bring benefit to higher education's many stakeholders and society in general. In addition, all of Scotland's HEIs have charitable status, placing on their governing bodies the legal responsibilities of trustees.

Reflecting these responsibilities and expectations, this Code underpins the sector's commitment to high standards of governance. Governing bodies have a responsibility to lead by example, guiding the development of the institution's ethics and values and demonstrating these in the governing body's own actions. This means that they must show leadership and integrity not only in the decisions they make but also in the way they conduct their business. In particular, the governing body has to both lead and exemplify the institution's approach to equality and diversity and to social responsibility.

The Code applies in a complex context of other regulatory and legislative requirements with which HEIs must comply. These include not only Scottish and UK laws relating specifically to higher education, but also (among others):

- charities law and regulations overseen by the Office of the Scottish Charity Regulator (OSCR);
- the requirements of the Scottish Funding Council, including those laid down in its Financial Memorandum and Accounts Direction;
- the Statement of Recommended Practice for Further and Higher Education (SORP2015);
- relevant company law;
- equality law and associated duties;
- legislation on health and safety and on the protection of children and vulnerable adults;
- Freedom of Information and Data Protection legislation;
- procurement law;
- complaints handling requirements overseen by the Scottish Public Sector Ombudsman;
- the requirements of professional bodies and other regulators relevant to the wide range of HEIs' activity, including QAA Scotland.

As part of the wider legal framework, the Scottish Funding Council requires institutions to comply with principles of good governance as a condition of a grant of public funding. This Code sets out an appropriate set of principles for this purpose.

Balancing the diversity and autonomy of Scotland's higher education institutions with the need for a common understanding of the highest standards of governance, the Code contains both high-level principles and more detailed provisions. In such a diverse sector it is possible that certain of the principles can be met in ways that are different from those envisaged in the specifics of the Code. The Code should be applied with attention to the principles of proportionality and of relevance to the nature of the individual institution, this being particularly important in the case of the Small Specialist Institutions.

Accordingly, the Code is issued on a 'comply or explain' basis. This approach is widely accepted as the most effective way of achieving good governance. Institutions must report in the corporate governance statement of their annual audited financial statements (Annual Reports) the extent of their compliance with the Code. If an institution's practices are not consistent with particular provisions of the Code, an explanation must be published in that statement. Such exceptions must be explained in terms of the institution's particular circumstances and/or operating model.

The form of this Code

This Code is concerned with governance of the institution and is organised into sections thematically. Each section starts with the high-level principles of good governance in the relevant area. More detailed provisions follow in the subsequent paragraphs.

The more detailed provisions of the Code specify how the high-level principles should be put into practice. The left-hand margin is used to show how different paragraphs relate to different elements of the high-level principles. The whole Code is subject to the 'comply or explain' approach, but naturally some provisions are to a greater extent obligatory, being more fundamental to good governance. The strength of the requirement for compliance is indicated systematically as follows:

- Where *must* is used, this indicates something that is obligatory either because it is a legislative or regulatory requirement or because it is fundamental to good higher education governance. Compliance is therefore required in all of these cases. The number of instances has been kept to a minimum.
- Where *expected* is used, this indicates a strong presumption that compliance will be achieved in normal circumstances, but there may be cases in which an alternative approach to good governance can be justified.
- Statements that use the verb *should* also bring an expectation of compliance in most circumstances, but with a recognition that there may be situations in which a departure can be justified or it would be reasonable and acceptable to meet the principles of good governance in alternative ways.

Where institutions invoke 'comply or explain', whether in relation to an *expect* statement or a *should* statement, they must demonstrate how the relevant high-level principle of good governance is met in some alternative way.

This Code does not list examples of good practice, which can be expected to vary widely across such a diverse set of institutions and over time. HEIs should work together, and with stakeholder representatives, to create and maintain a public repository of examples of best practice as a live resource and so to promote continuous improvement in governance practices across the sector. Student representatives should also, in conjunction with their institutions, develop their own best practice to help support student governing body members to meet the particular challenges of their short terms of office on governing bodies.

Matters not explicitly covered within this Code, or which emerge over time, should be considered in the spirit of this Code and its underlying principles of openness and transparency in pursuit of good governance.

Definitions

Governance arrangements in HEIs reflect the uniqueness and complexity of higher education. Many of their numerous stakeholders are directly involved, enhancing governance by contributing a wide range of skills, perspectives and experience. Given the variety of participants and roles, it is helpful to define some terms in advance, to allow for a more concise Code.

Throughout this Code, the following definitions of key terms are assumed, except where an alternative definition is given explicitly:

Staff member (of the governing body)	Anyone serving on the governing body who is employed by the Institution, except for those whose membership is on an <i>ex officio</i> basis; e.g. Principal or Vice Principal. (This includes Elected or Union staff members, as follows.)
Elected or Union staff member	Anyone serving on the governing body in one of the capacities specified in subsections 10(1)(b-d) of the Higher Education Governance (Scotland) Act 2016. These are: 1. Elected staff members: at least two members of the governing body must be appointed "by being elected by the staff of the institution from among their own number". 2. Trade union nominees, of which at least one must be nominated by a union representing academic staff and one by a union representing non-academic staff.
Student member	A member of the governing body who is a registered student of the Institution and/or an officer of the student association, nominated to the governing body by that association or on an <i>ex officio</i> basis.
Chair	The responsibilities of the position of 'Senior Lay Member' in relation to the role of Chair are set out in the Higher Education Governance (Scotland) Act 2016. The Rector may also carry out some of the roles of Chair at the Ancient universities, as prescribed in older legislation.
Principal	The <i>de facto</i> Head of Institution and the Institution's chief executive officer in the terms of the SFC's Financial Memorandum. This includes the position of Director of the Glasgow School of Art and the position of Principal and Vice Chancellor at other Institutions.
Lay member	A member of the governing body who is neither an employee nor a student of the Institution. Where appropriate, a further distinction is drawn in the text of the Code between lay governing body members who are appointed by the governing body and other lay members (the latter group including the Senior Lay Member, any members appointed or elected by alumni groups, any representative of the local or regional authority appointed in accordance with the statutes of a particular HEI and, in some HEIs, Rector's or Chancellor's Assessors).
External lay committee member	A lay member of one of the governing body's committees who is not a member of the governing body itself. It is common practice to appoint such external members to committees in order to bring in specific expertise. Committee membership can also provide individuals with experience of HE governance without taking on the full responsibilities of governing body membership.
Executive officer	A member of the Institution's management team who is not a member of the governing body (i.e. here this term is not used to denote the Principal or any other members of the governing body).

1

The Governing Body: Primary responsibilities

The governing body must take responsibility for ensuring the effective management of the Institution, planning the Institution's strategic direction and future development and advancing its mission. The governing body has ultimate responsibility for all the affairs of the Institution and must ensure that there are appropriate arrangements for financial management. It must satisfy itself that the Institution is compliant with all relevant legal and regulatory obligations and operates with high levels of social responsibility. The governing body must adopt and publish a Statement of Primary Responsibilities.

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1. The governing body must enable the Institution to achieve and develop its mission and primary objectives of learning and teaching and research.
2. The members of a governing body, collectively and individually, must act in accordance with the Nine Principles of Public Life in Scotland,¹ which should be the foundation for the governing body's behaviour and its decision-making processes. They are:
 - Duty
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability and Stewardship
 - Openness
 - Honesty
 - Leadership
 - Respect
3. The governing body must be involved in the development of, take responsibility for, and monitor performance against the Institution's strategic plan, which sets the aims and objectives of the Institution and identifies the financial, physical and staffing strategies necessary to achieve these objectives. It is also expected to approve an annual plan that identifies those aspects of the strategic plan being implemented in the year in question.
4. The governing body must be attentive to risks which could threaten the sustainability of the Institution, including the risk of inaction in the face of threat or opportunity, and ensure that the Institution has appropriate procedures to identify and actively manage risk. The governing body is responsible for determining the nature and extent of the principal risks it is willing to take in pursuing its strategic plan. Institutions should maintain a risk register and are expected to provide an annual disclosure about risk management in audited financial statements.

¹ While higher education institutions are not public bodies, the Nine Principles of Public Life in Scotland, which incorporate the seven 'Nolan Principles', provide an appropriate and recognised definition of ethical and responsible behaviour for those involved in higher education governance.

The governing body must ensure that the Institution has appropriate arrangements for financial management.

The governing body must satisfy itself that the Institution is compliant with all relevant legal and regulatory obligations.

The governing body must satisfy itself that the Institution operates with high levels of social responsibility.

5. The governing body should satisfy itself that the Institution has adequate systems and practices for informing and consulting with stakeholders' representative bodies, including recognised trade unions and student associations, in relation to the on-going development of the Institution and any significant proposals regarding relevant institutional policies. The governing body should also satisfy itself that the Institution has in place appropriate arrangements for engaging with the public and the wider communities which it serves.
6. The governing body should satisfy itself that the Institution's students' association is properly resourced and supported to function as an effective and autonomous organisation. The Institution has a legal obligation to take reasonable steps to ensure that the students' association operates in a fair and democratic manner and that the students' association is accountable for its finances.
7. The Institution's financial regulations must specify the financial responsibilities and authority of the governing body, its committees, and staff. Financial procedures should specify processes to be followed in day-to-day financial transactions. There should be clear policies on a range of systems, including (but not limited to) treasury management, investment management, risk management, debt management, and grants and contracts. These should be monitored to enable continuous improvement.
8. Legal and regulatory obligations include compliance with all relevant laws, the governing instruments of the Institution, relevant financial standards including the Scottish Funding Council's Financial Memorandum, and any legal obligations arising in connection with the Institution's charitable and/or company status, in addition to the observance (on a comply or explain basis) of this Code.
9. The governing body is expected to review regularly its policies relating to compliance with statutory duties.
10. The governing body must satisfy itself that the Institution's policies and actions are ethical and sustainable, taking into consideration their impact on the environment, on the wellbeing of its students and workforce, including health and safety issues and fair working practices, and on other communities, whether local or more distant.

The governing body must adopt and publish a Statement of Primary Responsibilities.

11. The Statement of Primary Responsibilities is expected to include, as a minimum, provisions that relate to:
 - protecting the reputation and values of the Institution;
 - ensuring, in conjunction with the academic board, the quality of the Institution’s educational provision and adequate provision for the general welfare of students;
 - approving the mission and strategic vision of the Institution, its strategic plan, key performance indicators (KPIs) and annual budgets, ensuring that they have due regard to the interests of students, staff and other stakeholders, and monitoring institutional performance in terms of these;
 - appointing the Head of the Institution (the Principal) as chief executive officer of the Institution and putting in place suitable arrangements for monitoring their performance;
 - appointing the Secretary to the governing body;
 - ensuring the establishment and monitoring of systems of control and accountability, including financial and operational controls, risk management, means of evaluating the governing body’s own performance and clear procedures for handling internal grievances and “whistleblowing” complaints and for managing conflicts of interest.
12. This Statement must be included in the Institution’s Annual Report, along with a broad summary of the authority that the governing body delegates to management, its committees and the academic board. The Annual Report must be published on the Institution’s website.
13. The governing body may delegate authority or allocate some of its work to committees, grant delegated authority to the Chair or a committee to act on its behalf, and delegate authority to the Principal and other officers of the Institution. Such delegations must be clearly defined in a schedule of delegation that is formally approved by the governing body. Having delegated authority to other bodies or individuals to act on its behalf, the governing body is nevertheless still ultimately accountable and assumes collective responsibility for the actions taken.
14. In deciding which tasks should be delegated to committees, the governing body must retain a formal schedule of matters reserved to it for its collective decision.² Such matters are likely to include final decisions on issues of institutional strategy; the review and approval of the Institution’s annual budget and Annual Report; and the appointment and dismissal of the Principal and of the Secretary to the governing body.

² The governing instruments of some Institutions list key powers that the governing body may not delegate.

2

The Governing Body: Membership

The governing body must have a balance of skills and experience among its members sufficient to enable it to meet its primary responsibilities and foster stakeholder confidence. It must have a majority of lay members and should be no larger than is necessary to meet legal requirements on membership and to ensure appropriate coverage of skills and stakeholder involvement. The recruitment of members appointed by the governing body must proceed through an open and inclusive process that is based on a skills evaluation.

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15. The governing body is expected to draw up and make public a register of the balance of skills, attributes and experience required in the membership of the governing body, to inform the recruitment of appointed lay members of the governing body as well as regular assessment of the balance of skills across the membership of the governing body.
16. By law, governing bodies must include at least two members “appointed by being elected by the staff of the Institution from among their own number”. In devising a process or processes for appointing these members, Institutions should have regard to the importance of maintaining adequate representation from both the academic and non-academic staff bodies, building on current practice where appropriate.
17. All Institutions are expected to make clear in their annual reports how the size, and composition of the governing body (and any change in the size or composition) contributes to maintaining a coherent and effectively functioning governing body, as well as meeting statutory requirements on membership and the need for an appropriate range of skills and experience.
18. Institutions are expected to advertise vacancies for appointed lay members within and outside the Institution, using a job specification and a clear indication of the skills, knowledge and experience required.
19. Lay members who are appointed by the governing body must be appointed for a given term, which may be renewable, subject to satisfactory performance. The renewal of any appointment must not be automatic, but should be recommended by the nominations committee or equivalent (see Section 7). Service beyond three terms of three years, or two terms of four years, should be avoided (exceptions, such as retention of a particular skill or expertise, may be permitted, but must be explained). After this point members should normally retire and be replaced by new members. Such limits on periods of office should also be observed by those constituencies which appoint or elect members to the governing body.
20. Where an existing member of the governing body is elected to serve as Chair, that member should automatically begin a new term of membership linked to the office. However, consideration should be given to limiting the new Chair to a single term of office where that person has already served for a substantial period on the governing body. The governing body or relevant committee should consider this point when formulating the rules for eligibility to stand for election to the Senior Lay Member position.

3

Responsibilities of Governing Body Members

Governing body members must take collective responsibility for the governing body's decisions. All members must exercise their responsibilities in accordance with accepted standards of behaviour in public life and in the interests of the Institution as a whole, rather than as representatives of any constituency. All governing body members assume the same responsibilities as part of the collective decision-making body (apart from the additional responsibilities that attend particular offices, including the roles of Chair, Principal and, where there is one, Rector). Conflicts of interest must be considered and may affect a member's ability to participate in some governing body business.

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21. All governing body members are collectively responsible and accountable for all the governing body's decisions. Members should take an active part in all governing body business and should not confine their contributions to matters that appear relevant to their background or the particular constituency that appointed or elected them.
22. Members appointed or elected by a particular constituency, or otherwise drawn from a particular sector or community, must not act as if delegated by that particular constituency. No member may be bound, when speaking or voting, by mandates given to them by others, or drawn from an electoral platform. This requirement is not only in line with principles of good governance but also essential to members' responsibilities as charity trustees.³
23. Members of the governing body must also take care not to become involved in the day-to-day executive management of the Institution, excepting those who are employed by or are students of the Institution, and in these cases only to the extent that they have executive responsibilities in the course of their employment or their activities as students or trade union representatives.
24. The governing body, acting as a whole, has the power to remove any member of the governing body from office,⁴ and should do so if the member materially breaches the conditions of their appointment, including the requirements of this Code.

³ On this point and other aspects of the charity trustee role, see <http://www.oscr.org.uk/charities/guidance/guidance-and-good-practice-for-charity-trustees>.

⁴ The Higher Education Governance (Scotland) Act 2016 sets out conditions on the rules that Institutions may adopt in respect of removal of any governing body member, including the Chair.

All governing body members assume the same responsibilities as part of the collective decision-making body (apart from the additional responsibilities that attend particular offices, including the roles of Chair, Principal and, where there is one, Rector). Conflicts of interest must be considered and may affect a member's ability to participate in some governing body business.

The Institution must maintain and publicly disclose a current register of interests of members of the governing body.

25. All governing body members must be considered full members of the governing body and treated as such. Once appointed, all members assume the same responsibilities, obligations and rights and should be expected and supported to participate fully in all governing body business, unless a clear conflict of interest is identified. The roles of the Chair, Rector (where there is one) and Principal have additional aspects, which are prescribed in legislation, in institutional protocols and in this Code. Otherwise, there are different categories of member only in that there exist distinct routes to appointment to the governing body.
26. Institutions are expected to set rules on committee memberships that are consistent with this principle. Institutions' rules must not preclude membership of any of the governing body's standing committees, with the exception of the Audit Committee, purely on the basis of the category of governing body member (in the sense of who appointed or elected that member). A conflict of interest may prevent a governing body member from taking up membership of a particular committee. Other than this, the primary determinant of committee membership is that its members have the ability (the required skills and the time) to contribute effectively to the committee.
27. A member of a governing body who has a financial, family or other interest in any matter under discussion, at any meeting of the governing body or one of its committees at which they are present, must, as soon as practicable, disclose the fact of this interest to the meeting. The same requirement applies to the Secretary and any executive officers who are present.
28. Where it is identified that a member of the governing body has a conflict of interest with respect to a given matter, the Chair may, on the advice of the Secretary, request that the member in question withdraw from participation in relevant business. Depending on the nature of the business, this may allow for participation in discussions without taking part in decision-making or may require complete non-participation and/or withdrawal from that part of the meeting.
29. A member of the governing body is not considered to have a financial interest in matters under discussion merely because they are a member of staff or a student of the Institution. Nor does the restriction of involvement in matters of direct personal or financial interest prevent members of the governing body from remaining at a meeting which is considering, and voting, on proposals to insure the governing body against liabilities which it might incur.
30. The Institution is expected to publish the register of interests on its website, suitably redacted to take account of data protection duties, and keep it up to date. The Secretary and any other senior officer closely associated with the work of the governing body, for example the Finance Director, must also submit details of any interests to be included in the register.
31. The Institution is also expected to maintain robust and comprehensive policies on registering gifts and hospitality offered to governing body members in relation to their role on the governing body, and to the Secretary and Finance Director. These policies should have regard to the overarching need for transparency in public life.

4

Equality and Diversity

The governing body must provide leadership in equality and diversity across all protected characteristics, assuming responsibility for the Institution's strategy and policy on equality and diversity. This should not only ensure compliance with all relevant legislative and regulatory requirements but also actively promote and facilitate equality and diversity goals across the whole Institution.

In addition, the governing body must monitor its own composition, establishing appropriate goals and policies regarding the balance and diversity of the members it appoints and regularly reviewing its performance against these goals and policies.

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32. The governing body is responsible for compliance with all relevant legislative and regulatory requirements relating to equality and diversity. The governing body is expected to approve the Institution's equality and diversity policy and to satisfy itself that relevant policies have been implemented throughout the Institution. The governing body is expected to receive an equality monitoring report at least annually.⁵ This report should include clear goals in relation to specified characteristics and actions taken towards achieving these goals.
33. Institutions must work to eliminate unlawful discrimination, promote and facilitate equality and foster good relations across all protected characteristics. The governing body is expected to show leadership in pursuing these actions.
34. The governing body's equality and diversity responsibilities should be included in the induction of new members. The need for additional training in matters of equality and diversity should be assessed as part of regular reviews of the development needs of governing body members (see Section 5).

⁵ Where externally required reports fulfil this requirement, no additional reporting is required for the sake of this Code.

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35. Having due regard to applicable law, best practice and the need for appropriate skills and experience, the governing body is expected to establish and regularly review appropriate goals and policies on equality and diversity with respect to the members it appoints.⁶ The governing body, through its nominations committee or equivalent, should take steps to open opportunity of membership to the widest possible range of well qualified potential members and to remove any unnecessary barriers to membership.
36. The governing body should monitor equality and diversity (including, but not restricted to, gender balance) across the entire governing body. External organisations or electorates that appoint or elect governing body members should be made aware of any significant imbalances and should consider how they can contribute to increasing the diversity of the governing body where appropriate.

⁶ At the time of this Code's publication (October 2017), relevant guidance includes the public commitment by the Chairs of all Scottish HEIs to maintaining or working towards gender-balance, defined as at least 40% women and at least 40% men, among the members directly appointed by governing bodies. More generally, the Equality Challenge Unit offers a range of useful resources including key guidance for governance at: <http://www.ecu.ac.uk/publications/governing-bodies-equality-and-diversity>.

5

Effectiveness

On joining the governing body, new members must receive an induction aimed at equipping them to be effective governing body members when they commence the role. Opportunities for further development for all members should be provided regularly, in accordance with their individual needs and responsibilities. The proceedings of the governing body must be conducted in a timely and appropriately transparent manner. Key officers of the executive should attend meetings to support effective decision-making, but must not unduly influence the business of the governing body. The governing body must review its effectiveness regularly and is expected to report publicly on the results of effectiveness reviews and associated actions. In addition, the governing body must satisfy itself that it has discharged its responsibilities through its annual review of the Institution's overall performance which forms the core of the Annual Report.

New members must receive a full induction on joining the governing body. Opportunities for further development for all members should be provided regularly, in accordance with their individual needs and responsibilities.

37. Governing bodies are expected to provide all those responsible for making appointments or overseeing elections to the governing body with a clear description of the responsibilities of and expectations placed upon governing body members. This should also be published in a form that is accessible to potential electors of governing body members.
38. On taking up office, all new members are expected to receive the Institution's standard letter of appointment, be briefed on the terms of their appointment and be made aware of the responsibilities placed on them for the proper governance of the Institution. Each new member should have a programme of induction covering both general aspects of the role and matters specific to the particular Institution, including its current strategy and performance and its various stakeholder groups.
39. Special attention should be paid to induction for members who lack experience of comparable roles. Governing bodies should work with student organisations to mitigate any challenges caused by the usually short tenure of student governing body members. As part of this, particular care should be given to ensuring that their induction is comprehensive and, as far as possible, completed before they take on any governance responsibilities.
40. Induction should cover conflicts of interest, questioning skills, relevant financial knowledge and skills, and the nature of higher education institutions, except where the governing body member has sufficient relevant experience to render some part of this unnecessary.
41. Members' individual contributions are expected to be reviewed regularly, at a minimum every two years, through a standardised process with the active involvement of the member concerned. Opportunities for relevant personal development should be identified. The timing of this review process should be carefully considered for student members

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in particular, in order to maximise its usefulness during their limited terms of office. These reviews need not all be carried out by the Chair, though the Chair retains ultimate responsibility for the effectiveness of the governing body (see Section 6).

42. Governing bodies are expected to meet at least four times a year. Members should attend all meetings where possible. Details of the number of meetings of the governing body and its main committees, and rates of attendance of members, should be reported publicly.
43. In addition to normal meetings of the governing body, the Institution is expected to hold an annual stakeholder meeting in public, at which representatives of the governing body, including the Principal, are expected to give an account of the Institution's performance and should be available to answer questions. This event may or may not also include regular governing body business.
44. To function efficiently, the governing body must have rules for the conduct of its meetings. Institutions are expected to publish these rules, which should include, but are not restricted to:
 - procedures for voting, rescinding decisions, calling extraordinary meetings, and declaring business reserved;
 - requirements for a quorum; and
 - frequency of meetings.
45. The agenda of governing body meetings and supporting papers are expected to be circulated sufficiently in advance to allow for effective scrutiny of proposals, and decisions minuted. The agenda and minutes are expected to be published in a timely manner on the Institution's website. The governing body's rules must specify the kinds of matter that may not be published for reasons of confidentiality. The papers considered at meetings should be made available to staff and students, unless this would breach confidentiality or would not be in the interests of the Institution.
46. Institutions are expected to make available on their website a list of all members of the governing body, along with a brief biography of each member, and an email address for contacting the Secretary, which may also be used to contact members of the governing body. Details of the membership and terms of reference of key committees, including the audit, remuneration and nominations committees (or equivalents) should also be listed.

Key officers of the executive should attend meetings to support effective decision-making, but must not unduly influence the business of the governing body or its committees.

The governing body must review its effectiveness regularly and is expected to report publicly on the results of effectiveness reviews and associated actions.

In addition, the governing body must satisfy itself that it has discharged its responsibilities through its annual review of the Institution's overall performance which forms the core of the Annual Report.

47. Decisions of the governing body must be made only by its members, acting collectively. Executive officers should provide information and advice when called upon (allowing that Secretaries may need to take a more active role in order to fulfil their responsibilities; see Section 6). At governing body meetings, the number of executive officers present should not normally exceed the number of lay members present. Any member of the governing body must be able to raise issues relating to institutional management, notwithstanding the presence of executive officers. To help ensure this, the Chair should be aware of any professional or personal connections between, or other relevant issues concerning, governing body members and executive officers.
48. The Chair must ensure that the distinct roles for executive officers and members of the governing body are maintained and respected. The Chair and the Principal should discuss and reach a clear understanding of the extent and nature of executive officers' involvement in meetings, including which parts of the meeting each individual should attend. Ultimately the Chair is responsible for the conduct and effectiveness of governing body business.
49. The governing body is expected to review its own effectiveness each year and to undertake an externally facilitated evaluation of its own effectiveness and that of its committees, including size and composition of membership, at least every five years. As part of these processes or separately, the effectiveness of the academic board (also known as Senate, Senatus Academicus or academic council) is expected to be reviewed similarly. These reviews should be reported upon appropriately within the Institution and outside. Externally facilitated reviews should be held following any period of exceptional change or upheaval (allowing suitable time to see the effects of changes made), the usual timetable for externally facilitated review being brought forward if necessary in these circumstances.
50. Given the short terms of office served by student members, externally facilitated effectiveness reviews should, where possible, take evidence from recent student members as well as those currently serving on the governing body.
51. The governing body is expected to reflect annually on the performance of the Institution as a whole in relation to its strategic plan, with reference to agreed KPIs. Where possible, the governing body should benchmark institutional performance against equivalent metrics of other comparable institutions. The Institution's annual performance against KPIs and its progress towards meeting its strategic objectives should be published in its Annual Report.

6

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Key roles

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The four Ancient universities must have a protocol to define the division of responsibilities between the Rector and the Chair.

The Principal must be accountable to the governing body. The governing body must make clear, and regularly review, the authority delegated to the Principal as chief executive, having regard also to that conferred directly by the instruments of governance of the Institution.

The Secretary to the governing body must ensure compliance with all procedures and ensure that the governing body is appropriately supported such that it is able to discharge its duties. All members must have access to the advice and services of the Secretary to the governing body, and the appointment and removal of the Secretary must be a decision of the governing body as a whole.

52. The Higher Education (Scotland) Act (2016) specifies the responsibilities of what it terms the 'Senior Lay Member' in relation to the role of Chair. By virtue of older legislation, the Rector at the Ancient universities may carry out certain elements of the Chair role. References to the Chair in this Code therefore refer to the Senior Lay Member insofar as the relevant responsibilities fall within the legal definition of the Senior Lay Member role.
53. Having responsibility for leadership of the governing body and as chair of its meetings, the Chair must promote its effective operation, ensuring that its members work together effectively and have confidence in the procedures laid down for the conduct of business. Like all other members, the Chair must contribute to collective decision-making and act only in the interests of the Institution, not on behalf of any electoral constituency or interest group.
54. The Chair may delegate duties to other members of the governing body, but must do so with the consent of the governing body and with due regard to the Chair's statutory responsibilities and the rules of the governing body. Any such delegation should be clearly recorded.
55. As part of responsibility for the governing body's overall effectiveness, the Chair should ensure that student members are given the necessary support to participate effectively, bearing in mind their short terms of office.

The four Ancient universities must have a protocol to define the division of responsibilities between the Rector and the Chair.

56. Through leadership of the governing body, the Chair plays a key role in the business of the Institution, but not in day-to-day executive management. The Chair must strive to maintain a constructive and challenging working relationship with the Principal and, by extension, between the governing body and the Principal. These relationships should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles that each has within an Institution's constitution.
57. The governing body may grant delegated authority to the Chair to act on its behalf between meetings. Alternatively, other arrangements may be made for action between meetings, such as the use of an Exceptions Committee or equivalent and/or protocols around decision-making by correspondence. Policy on this matter should be clearly defined in the rules governing the governing body's business. The Chair is answerable to the governing body for and must make a report to the governing body on any action taken on its behalf.
58. The governing body is expected to appoint one of its lay members to serve as an intermediary for other members who might wish to raise concerns about the conduct of the governing body or the Chair. Led by this lay member, the members of the governing body are expected to appraise the Chair's performance at least annually, without the Chair present. Prior to this, all governing body members should be offered the opportunity to provide relevant feedback individually and in private. Like other members, the Chair should be assisted to identify professional development needs in relation to governance responsibilities and seek opportunities to address them.
59. In formulating rules and procedures for the election of a Senior Lay Member, as required by the Higher Education Governance (Scotland) Act 2016, the Institution is expected to consult with relevant stakeholders. The Institution is expected to publish these rules and procedures on its website, along with the membership of the committee managing this process.
60. A distinction needs to be drawn in the four Ancient universities (the Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews) between the role of the Chair and the specific role of the Rector in 'presiding' at governing body (Court) meetings. The exact interpretation of the Rector's role with respect to the governing body is a matter for agreement by the governing body of the individual Institution concerned. Each governing body must set that agreement out clearly in a protocol, the content of which should be published and made clear to candidates for the posts of Rector and Senior Lay Member and reflected in the job descriptions for these posts.⁷

⁷ Note that this section does not apply to the Rector at the University of Dundee or the University of the Highlands and Islands (UHI). At the University of Dundee, the Rector is elected by the student body and may choose to act as an *ex officio* member of the governing body or appoint an assessor following consultation with the students' association; neither the Rector nor their assessor automatically presides at meetings of the governing body. UHI's Rector also has *ex officio* ordinary membership of the governing body. This is a quite distinct position from that of Rector at the Ancient universities: UHI's Rector is elected by and chairs the UHI Foundation.

The Principal must be accountable to the governing body. The governing body must make clear, and regularly review, the authority delegated to the Principal as chief executive, having regard also to that conferred directly by the instruments of governance of the Institution.

The Secretary to the governing body must ensure compliance with all procedures and ensure that the governing body is appropriately supported such that it is able to discharge its duties. All members must have access to the advice and services of the Secretary to the governing body, and the appointment and removal of the Secretary must be a decision of the governing body as a whole.

61. The Principal is responsible for management of the Institution and for providing the governing body with advice on its strategic direction.
62. The Principal is the designated officer in respect of the use of Scottish Funding Council funds and compliance with that Funding Council's Financial Memorandum. The Principal must alert the governing body if any actions or policy under consideration would be incompatible with the terms of the Financial Memorandum. If the governing body nevertheless decides to proceed, then the Principal has a duty to inform either the Chief Executive of the Scottish Funding Council, or other appropriate officer.
63. The Principal has responsibility for the appropriate implementation of the decisions of the governing body.
64. The governing body is expected to ensure that the appointment process for the Principal enables student, staff and trade union input to be taken into account, taking into consideration the academic and non-academic aspects of the Principal's role. The membership of the selection committee for the appointment of the Principal must be approved by the governing body and is expected to consist of lay members, at least one Elected or Union staff member, at least one student member of the governing body and adequate representation from the academic community.
65. Assessment of the performance of the Principal, normally led by the Chair, is expected to take place on an annual basis, with views sought and considered from each member of the governing body.
66. The Secretary to the governing body must be appointed to that post by the governing body and, in carrying out the role of Secretary to the governing body, must be solely responsible to the governing body. When dealing with governing body business, the Secretary must act on the instructions of the governing body itself. Only the governing body, as a whole, is empowered to remove the Secretary from these duties.
67. The Secretary must have a direct reporting link to the Chair of the governing body for the conduct of governing body business (i.e. agendas, papers, minutes, etc.) and must be available and accessible to all members of the governing body. All members of the governing body should be proactive in seeking advice from the Secretary when it is required.
68. The Secretary must draw to the attention of the governing body any conflict of interest, actual or potential, between the Secretary's administrative or managerial responsibilities within the Institution and responsibilities as a Secretary to the governing body. If the governing body believes that it has identified such a conflict of interest itself, the Chair should seek advice from the Principal, but must offer the Secretary an opportunity to respond.
69. The Secretary is expected to ensure that papers are supplied to members in a timely manner and contain such information, in such form and of such quality, as is appropriate to enable the governing body to discharge its duties efficiently and effectively.

7

Committees and Academic Board

At a minimum, the governing body's committees must include a nominations committee, an audit committee, and a remuneration committee, or equivalents. All committees must be provided with a clear remit and written terms of reference.

The governing body must establish a nominations committee with a suitably inclusive membership to oversee the appointment of new members to the governing body.

A suitably qualified audit committee must be appointed.

The governing body must establish a remuneration committee to determine and review the salaries, benefits and terms and conditions (and, where appropriate, severance payments) of the Principal and such other members of staff as the governing body deems appropriate. The policies and processes used by the remuneration committee must be determined by the governing body, and the committee's reports to the governing body should provide sufficient detail to enable the governing body to satisfy itself that the decisions made have been compliant with its policies.

The governing body has responsibility for the effectiveness of the Institution's academic board.

At a minimum, the governing body's committees must include an audit committee, a remuneration committee and nominations committee, or equivalents. All committees must be provided with a clear remit and written terms of reference.

The governing body must establish a nominations committee with a suitably inclusive membership to oversee the appointment of new members to the governing body.

70. The Secretary should be solely responsible for commissioning legal advice for the governing body, and advising it on all matters of procedure. The Chair and members of the governing body should look to the Secretary for guidance about their responsibilities under the charter, statutes, articles, ordinances and regulations to which they are subject, including legislation, this Code and the requirements of the Scottish Funding Council, and on how these responsibilities should be discharged. It is the responsibility of the Secretary to alert the governing body if the Secretary believes that any proposed action would exceed the governing body's powers or be contrary to legislation, this Code or to the Scottish Funding Council's Financial Memorandum (notwithstanding the Principal's responsibility as accountable officer in the latter case).
71. The Secretary is expected to advise the Chair in respect of any matters where conflict, potential or real, may occur between the governing body and the Principal. The Secretary should also keep the Principal fully informed on any matter relating to governing body business (other than in relation to the Principal's own performance and reward).
72. The governing body must safeguard the Secretary's ability to carry out these responsibilities.

73. Committee remits and terms of reference must state the extent and limits of the committee's responsibilities and authority and are expected to be published on the Institution's website. Committees must not exceed their terms of reference and should be so advised by the Secretary to the governing body. Committees must distinguish between issues on which they are empowered to take decisions, and issues that they must refer to the governing body for decision. Where a committee is acting under delegated powers it should submit regular written reports to the governing body on decisions that it has taken on the governing body's behalf.
74. The membership of the nominations committee should have a lay member majority. The membership should include the Chair, the Principal, at least one Elected or Union staff member and a student member of the governing body. Where the Chair is chair of the nominations committee, this role should be delegated to another member when the committee is managing the appointment of the Chair's successor.
75. The nominations committee is expected to consider the field of candidates against a skills register which to and also to consider whether candidates share the values of the Institution and will add to the overall success and health of the Institution. The nominations committee must also give due consideration to issues of equality and diversity, in line with Section 3 of this Code, and to the appropriate inclusion in the governing body of relevant stakeholder groups.

A suitably qualified audit committee must be appointed.

The governing body must establish a remuneration committee to determine and review the salaries, benefits and terms and conditions (and, where appropriate, severance payments) of the Principal and such other members of staff as the governing body deems appropriate. The policies and processes used by the remuneration committee must be determined by the governing body, and the committee's reports to the governing body should provide sufficient detail to enable the governing body to satisfy itself that the decisions made have been compliant with its policies.

76. The governing body must appoint an audit committee and set up internal and external audit arrangements in accordance with the appropriate Audit Code and the Scottish Funding Council's requirements. The audit committee should be a small, authoritative body which has the necessary financial expertise and the time to examine the Institution's financial and risk management control and governance under delegation from the governing body. The committee is expected to produce an annual report for the governing body, including its opinion on the adequacy and effectiveness of governance arrangements (not confined to financial arrangements), financial control and arrangements for promoting economy, efficiency and effectiveness.
77. The governing body should also receive reports on the Institution's risk management arrangements. These may be the responsibility of the Audit Committee or of a separate Risk Committee (or equivalent).
78. Membership of the remuneration committee should have a majority of lay members. A majority of these lay members should be members of the governing body (others may be external lay committee members). The membership should include the Chair of the governing body. The committee chair should be a lay member of the governing body and should not be the Chair of the governing body. The Principal should be consulted on remuneration relating to other senior post-holders and should attend meetings of the committee, except when the committee discusses matters relating to the Principal's own remuneration.
79. The policies and processes used by the remuneration committee in reaching decisions on individuals must be discussed by the whole governing body and approved by that body. The remuneration committee's reports to the governing body should provide sufficient detail of the broad criteria and policies against which decisions, including in relation to any unusual severance payments, have been made.
80. In addition, the remuneration committee is expected to seek the views of representatives of students and staff of the Institution, including representatives of recognised trade unions, in relation to the remuneration package of the Principal and the senior executive team. This requirement may be implemented in part through relevant members of the governing body serving as members of the remuneration committee or attending its meetings, or may be achieved through separate consultation with representatives of the student and staff communities. The relevant process should form part of the policies and processes approved by the whole governing body, as outlined above.
81. The remuneration committee is expected to represent the public interest and avoid any inappropriate use of public funds. The remuneration committee is expected to seek and make use of sufficient relevant information to reach well informed evidence-based decisions. This should include appropriate comparative information on salaries and other benefits and conditions of service in equivalent positions in the Higher Education sector and elsewhere, including other organisations that similarly receive public funding; national pay awards and rates

The governing body has responsibility for the effectiveness of the Institution's academic board.

of pay used throughout the Institution; and assessments of relevant individuals' performance. The remuneration committee should oversee contracts of employment for senior staff and should ensure that these do not specify periods of notice of more than 12 months and do not require the payment of pension enhancements (except where these follow from pension scheme rules). The remuneration committee is expected similarly to act proportionately and with regard to the appropriate use of funds when considering severance arrangements for senior staff.

82. The governing body must ensure that the academic board (also known as Senate, Senatus Academicus or academic council) is appropriately constituted according to relevant legislation and the Institution's statutory instruments. The governing body is expected to receive and consider reviews of the academic board's effectiveness (see Section 5).
83. The Institution is expected to have appropriate measures in place to clarify the different responsibilities of the governing body and the academic board and to encourage a high level of mutual understanding between them.

