



Respondent Information Form

Please note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

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The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
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Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No

Consultation on Good College Governance

Introduction

College governance has been high on the agenda since the enactment of the Post-16 Education (Scotland) Act 2013. The college sector has not only undergone significant legal changes to how its boards operate but also experienced cultural change. The establishment of the Good Governance Steering Group (GGSG) in October 2013 sought to achieve a sector-wide ownership of what constitutes the '*principles of good governance*' and this was accomplished through the publishing of the *Code of Good Governance for Scotland's Colleges* in December 2014 which was later updated in August 2016.

Following the implementation of the Code, the GGSG has spent the last three years continuing its work by developing various good practice guidance, frameworks, models and considering other recommendations and areas of best practice. It has also focused its efforts on ensuring existing college board members and board secretaries are appropriately trained in good college governance.

As the GGSG takes ownership of the recommendations outlined in the *Good College Governance: The Report of the Education Secretary's Task Group (March 2016)* and incorporates them into its own workplan, there remains a few areas of recommendations outstanding due to the Scottish Government's commitment to consult wider before electing to proceed with them.

Essentially, it is Colleges Scotland's interpretation of the changes being consulted on that are about increasing the Scottish Government's and the Scottish Funding Council's (SFC) powers of intervention in the college sector by giving the Scottish Government and SFC greater flexibility in the options open to them to intervene where they perceive college boards are failing. It is also Colleges Scotland's understanding that from a legal perspective, the changes the Scottish Government is consulting on would be relatively straightforward to achieve, if it chooses to proceed with them. The changes are amendments/expansions to the existing suite of Scottish Government/SFC powers provided for in the *Further and Higher Education (Scotland) Act 1992* and *Further and Higher Education (Scotland) Act 2005* and the statutory guidance which accompanies them. However, the changes to the statutory guidance (Questions 4, 5 and 6) would not require legislation, but could be dealt with by way of issuing replacement guidance.

Response

Each consultation question is answered in turn below.

QUESTION 1: Should the Scottish Ministers have powers to determine a rate of remuneration for the chairs of assigned, incorporated colleges?

Noncommittal

- This direction would correct an inconsistency resulting from the *Post-16 Education (Scotland) Act 2013* which allows chairs of regional colleges to be remunerated, but not chairs of assigned colleges. This is particularly anomalous within the Glasgow regional structure, given the scale of the assigned Glasgow colleges.

- There would potentially remain an inconsistency where chairs (or their equivalent) in non-incorporated colleges which sit within a regional strategic body structure (in particular non-incorporated colleges which are academic partners of UHI) may not be entitled to be remunerated, depending upon their particular structure and constitution.
- Affordability would also need to be addressed prior to implementing this change. It is important that funding should not be taken away from the learners to pay for the remunerated positions on college boards.
- Colleges Scotland would seek further clarity on this recommendation before being able to commit to a position.

QUESTION 2: Should legislation require two trade union nominees from recognised main unions for (1) teaching and (2) non-teaching staff to be members of a board of an incorporated college and Regional Board?

No

- All board members are required to act in the best interest of the college or regional strategic body, rather than representing any nominating body or third party interests. As charity trustees, board members are also subject to a duty to avoid conflicts of interest. Although this is the case for all board members, this issue could potentially be more acute or more difficult to manage in relation to trade union nominees. These changes could also detract from the notion of a board having 'collective responsibility'.
- Trade union nominees would result in an increase in board numbers and therefore result in boards possibly becoming too large to be effective. It would also increase the number of paid operational staff on a board.
- There would be a disparity if this approach was not also taken for student board members.
- The practicalities of identifying trade union nominees if more than one recognised trade union in each area might need to be considered. This is potentially exacerbated in a regional board where there may be several colleges within the region.
- It is already a board's duty to maintain positive employee relations and dialogue with trade unions. Since the implementation of National Bargaining in 2015 and the signing of the National Recognition and Procedures Agreement, college boards have shown a commitment to consult with unions on national policy matters.

QUESTION 3: If so, should the nominees (1) be in addition to elected staff members (without any change to student member numbers); (2) be in addition to elected staff members (with an increase in student member numbers); or (3) replace elected staff members.

No

- No further comment. Please see response to Question 2.

QUESTION 4: Should provision be made for highly regarded candidates for which there is no immediate position to be appointed without further open recruitment, along the lines proposed?

Yes

- This approach would provide welcome flexibility and potential easing of the board recruitment process however, a 12 month 'shelf life' might not be sufficient a period.

QUESTION 5: Should provision be made in relation to a proven ability to work well as a team?

Noncommittal

- It may be reasonable to recognise that effective board working depends on relationships and personalities, however in practice this may be difficult to objectively demonstrate.
- This recommendation appears to have a 'micro-management' aspect to it on the part of the Scottish Government. Colleges Scotland would be in favour of a less prescriptive approach to board recruitment for college boards.

QUESTION 6: Should appointing bodies advertise all board vacancies on CDN website?

Noncommittal

- This recommendation appears to represent a 'micro-management' aspect to it on the part of the Scottish Government.
- The College Development Network has already been developing various good practice guidance, frameworks and models under the direction of the GGSG and effective board recruitment is an area currently being developed further.

QUESTION 7: Should Ministers have powers to suspend any or all board members (except the principal) in circumstances where they consider this appropriate while they carry out further consideration as to whether a removal order is warranted?

Noncommittal

- Any opportunity to carry out further investigation of circumstances prior to Ministers exercising any powers to formally remove by order would appear to be beneficial, as this would allow for a full and proper assessment to be undertaken before a step as dramatic as removing a board is taken. However, the current power to remove is only exercisable in the most serious instances of board failure. The Scottish Government having a further power to suspend any or all board members prior to undertaking an investigation could be perceived that they are looking to intervene more readily on governance matters within the college sector.
- Currently, there is a duty on the Scottish Government to consult SFC prior to exercising the power to remove any or all board members, but no further requirements in terms of investigation or evidence-gathering. If a power to suspend was legislated for, it is anticipated that this would be relatively tightly time-limited (i.e. the period of any suspension could not to exceed a prescribed period of time) and to be accompanied by powers of investigation. It is also unclear on how a board would operate during any period of suspension.
- Colleges Scotland would seek further clarity on this recommendation before being able to commit to a position.

QUESTION 8: Should Ministers have power, when making a removal order, to include someone who has since left the board but was a member during the period for which Ministers consider there was board failure with the effect that the person is disqualified from any other boards?

Yes

- A board member should not be able to abdicate their duties by resignation.

QUESTION 9: Should Ministers have powers to direct (a) incorporated colleges and (b) Regional Boards?

No

- Given the extent of existing Scottish Government powers, SFC powers and the Office of the Scottish Charity Regulator (OSCR) powers to direct colleges or to limit their activities without consent, it is not necessary to put further controls in place.
- If further powers of direction were to be introduced, colleges could be subject to direction/oversight by the Scottish Government, SFC, OSCR, Education Scotland and (in the case of assigned colleges) a regional strategic body. It is neither appropriate or practical to expect college boards to answer to this number of external/regulatory bodies.
- The consultation references that further powers may have discouraged the approach to the severance payments taken as part of the college regionalisation and mergers. The policy and guidance around severance payments has already been addressed in the SFC's Financial Memorandum and if the Scottish Government has specific concerns that are not covered in the existing provisions in the Financial Memorandum then it would be Colleges Scotland's recommendation that this is amended rather than introduce further legislation for a far wider power of direction.
- Allowing Ministers to have 'general powers' could have the potential to result in the Scottish Government becoming involved in operational/strategic issues which would be the role of the board and the college executive teams. This may be seen as cutting across boards' accountability and responsibility for their college.

QUESTION 10: If Ministers were to have such powers (1) should they be limited to circumstances where they consider a board is not governing appropriately? (2) should Ministers' powers be (a) in addition or (b) instead of the current power of direction that vests with regional strategic bodies?

No

- Please see response to Question 9.

QUESTION 11: Should assigned colleges be required by legislation to cooperate with a SFC review under section 7C(7) of the 2005 Act?

Noncommittal

- Colleges Scotland would seek further clarity on this recommendation from the perspective of both assigned colleges and regional strategic bodies, lines of accountability and the respective remits/roles of the SFC and the regional strategic bodies.

QUESTION 12: Should SFC have powers to attend and address meetings if it has concerns about an assigned college's ability to meet the criteria set out in section 7(2) of the 2005 Act?

Noncommittal

- As in Question 11, Colleges Scotland would seek further clarity around the lines of accountability and respective remits/roles of SFC and the regional strategic bodies.

QUESTION 13: Should the existing powers of the SFC and regional strategic bodies to attend and address meetings of a governing body be extended to include relevant committee meetings?

No

- A board retains overall responsibility for the governance and success of the institution, irrespective of delegation of any particular aspect or matter to a committee. If the overall focus is on ensuring high quality governance, with rights of intervention only being utilised in response to serious failures, it may be questionable whether the SFC's intervention rights should extend to committees which themselves have reporting responsibility to college boards. Any serious failures which justified intervention would likely be a matter for the board to address in the first instance.
- There is a risk that the powers of the SFC to intervene strays into matters which are at an operational rather than strategic/board-level.

QUESTION 14: Should the powers of the Auditor General for Scotland to conduct economy, efficiency and effectiveness examinations be extended to include all relevant non-incorporated colleges?

Yes

- Any public bodies which spend public money should be independently scrutinised to assure public money is spent properly, efficiently and effectively.
- It is important to note however, that although all incorporated colleges share the same legal structure, it is not the case that all institutions within the sector are subject to the same governance arrangements. There are already inconsistencies and ambiguities across the sector in a number of governance aspects resulting in complex reporting requirements.

QUESTION 15: Should legislation be clear that the power of a person or body to appoint college board members includes a power to suspend any board member that they have appointed?

Noncommittal

- The consultation makes clear that this point is intended to address a technical legal point, however the practical effect of the change (making clear that regional colleges or regional strategic bodies board members could be suspended by the Scottish Government) has already been raised and a response provided by Colleges Scotland in Question 7.

Additional Comments

Certain recommendations outlined in the consultation could have detrimental consequences. Some legalisation changes could have an impact on how college boards are governed in the future, particularly around them becoming too large to be effective and further general powers of direction by the Scottish Government and SFC resulting in them becoming involved in operational/strategic issues, which may be seen as cutting across boards' accountability and responsibility for their college.

The role of the GGSG has been to shape and influence government policy on college governance and make any necessary recommendations for improvements. During 2016/17 there has been a significant focus on governance training specifically around board member inductions and specialist training for audit chairs. A Governance Hub has also been created which hosts key reference material and online training, and almost all board members have registered for this.

The sector continues to show a real willingness to ensure history does not repeat itself in terms of poor governance. All college boards have now been through the new externally validated effectiveness reviews which will provide assurance to college funding bodies that the level of governance in each organisation is appropriate.

Being a board member of a public board can be extremely daunting. Not only are board members responsible and accountable for millions of pounds of taxpayers' money, they are also an employer of hundreds of staff. These positions are generally also non-remunerated. The legislative arrangement in which college boards operate and are answerable to, can become a barrier which prevents protected characteristics groups from applying for board positions. Colleges Scotland would welcome 'softer' outcomes i.e. training, support or guidance interventions at seeking to address the recommendations from the Task Group, instead of legislating for more Ministerial powers and further sanctions.

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Colleges Scotland