

# COLLEGE SECTOR BOARD APPOINTMENTS: DRAFT MINISTERIAL GUIDANCE

## RESPONDENT INFORMATION FORM

**Please note** this form **must** be returned with your response to ensure that we handle your response appropriately.

We are inviting written responses by **Friday 30 May 2014**.

Please send your response with the completed form to [FEMailbox@scotland.gsi.gov.uk](mailto:FEMailbox@scotland.gsi.gov.uk)

or

College Sector Board Appointments Consultation  
Colleges and Adult Learning Division  
Scottish Government  
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150 Broomielaw  
Glasgow G2 8LU

If you have any queries contact Col Baird at the above email address or on 0300 244 1312.

### 1. Name/Organisation

#### Organisation Name

Colleges Scotland and College Development Network

**Title** Mr  Ms  Mrs  Miss  Dr  **Please tick as appropriate**

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### 3. Permissions - I am responding as...

**Individual** / **Group/Organisation**

Please tick as

- (a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate

Yes  No

- (b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c) The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate

Yes  No

- (d) 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?

Please tick as appropriate

Yes

No

## **College Sector Board Appointments: Draft Ministerial Guidance Consultation**

### **Response prepared by Colleges Scotland and College Development Network**

#### **Introduction**

Colleges Scotland and College Development Network (CDN) are jointly responding to the consultation on the 'College Sector Board Appointments: Draft Ministerial Guidance' on behalf of members.

The college sector supports improvements to governance arrangements and it is important to note that past reviews have found, in general, a good standard of governance. Many of the previous recommendations and legislative changes have already begun to be incorporated into new board processes.

Colleges have always proactively pursued good practice in relation to governance arrangements. A *Guide for College Board Members*<sup>1</sup> produced in conjunction with CDN and the Secretary to the Board Network already provides key reference materials and resources for the governing of the college system. The guide was developed in conjunction with chairs and principals and was last updated in 2012. Work has already begun to update the guide in line with the recent legislative changes.

Following the passing of the Post-16 Education (Scotland) Act 2013, the Scottish Funding Council (SFC) invited the regional chairs to lead on the development of a *Code of Good Governance for Scotland's Colleges*<sup>2</sup> which will include the provisions relating to the identification of principles of good governance practice for the college sector. A steering group has been established to develop a draft code which is chaired by Hugh Hall, Regional Chair, Forth Valley College, and has membership drawn from chairs, principals, secretaries to the board, union and government officials and key stakeholders. The group is currently undertaking a consultation on the draft code which will close on Monday 2 June 2014.

Both Colleges Scotland and CDN welcome the basic principles of the Draft Ministerial Guidance however there are several areas which require further clarification and consideration.

Each consultation question is answered in turn below.

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<sup>1</sup> <http://www.collegedevelopmentnetwork.ac.uk/colleges-scotland-policy/guidance-for-governors>

<sup>2</sup> <http://www.scottishcollegegovernance.ac.uk/>

## **Regional College Boards – Appointment of ‘Ordinary’ Board Members**

**Q1. We should welcome comments on the establishment of a relevant committee to nominate appointments and extensions, including identifying skills etc. of existing board members.**

- a) Colleges Scotland and CDN welcomes the establishment of a relevant committee to nominate appointments and extensions. The *Guide for College Board Members* already provides general principles for boards specifically relating to the appointments process and a model term of reference for the role of committees, including a nominations committee, which is considered best practice. This guide is seen as an essential resource for staff and college board members and it is important that any new guidance developed compliments these existing good practices.
- b) It is common practice for the secretary to the board to act as secretariat to the nominations committee.
- c) The nominations committee of the regional college board, when populating the board, should ensure its members represent the region it serves.
- d) It should be noted that a potential bottleneck could occur when board members apply for an extension to their four year term, with approximately 200+ appointments requiring Ministerial approval at the same time.

**Q2. We should welcome comments on the skills, knowledge and attributes and experience of board members (essential and desirable), including on representativeness.**

- a) Colleges Scotland and CDN have concerns that the skills, knowledge, attributes and experience that a board is asked to have regard to, when appointing an ordinary board member, could limit the opportunity for a board complement to consist of equality through diversity. It is important that when recruiting for board members, a college makes the best use of talents of people within the community regardless of age, race, gender or disability.
- b) The skills, knowledge, attributes and experience that a board is asked to have regard to, could be seen to be a barrier to some applicants e.g. a young entrepreneur/SME owner.
- c) It should be noted that submissions from the nominations committee can only be made from the candidates that apply.
- d) The regional college board members should ensure they represent the region they serve.

**Q3. We should welcome comments on the open recruitment process, including on arrangements for an independent person.**

- a) The Draft Ministerial Guidance states that following the completion of a board member’s migration period of office ends, an ordinary board member appointment is not to be extended and instead the post is to be filled through an open recruitment process. This decision, for some college boards, is unwelcome as recent college mergers and regionalisation formation as part of the Post-16 Education (Scotland) Act 2013 have led to the creation of new boards with the recruitment and subsequent Ministerial appointment of chairs and approval of ordinary members. This guidance indicates that although some ordinary members will have barely served a year on a board, they will need to vacate the post and apply for a new appointment. This will also be the same for staff board members. This will mean that Scottish Ministers, having already approved ordinary board members within the last year, will have to formally approve these members for a second time, assuming they put themselves forward for appointment. The board transition arrangements are

stated in a letter<sup>3</sup> dated 25 June 2013, from Michael Cross, Scottish Government to John Henderson, Colleges Scotland.

- b) The Draft Ministerial Guidance states that a college board must identify an independent person to be part of the recruitment process who must have no connection with the college or any other college committee. This could have a significant cost implication to a college as it is unlikely that an independent person would undertake this role without being remunerated. There has been recent experience whereby a chair/principal of another college undertook this role on behalf of the board with only minimal expenses being reimbursed.
- c) It is an important part of the process that the independent person is involved from start to finish. This could result in a lengthy and bureaucratic process to identify an independent person and ensure their suitability and availability.
- d) Although many colleges already advertise through the Public Appointments website, it can be a lengthy process to use this portal and its audience may be limited. The desire is for colleges to continue to use their own advertising channels/social media alongside the Public Appointments website going forward.
- e) The Draft Ministerial Guidance states that an ordinary board member appointment is made once Ministerial approval has been given and the person has accepted the position in writing. However, it does not provide an indication of the timescales following the submission of a name to the Scottish Ministers or when the nominations committee will receive a decision on whether the candidate was successful or not.
- f) In the event that Ministers do not approve an ordinary board member appointment, the Draft Ministerial Guidance states they will write to the chair of the regional college board giving their reasons, however it does not state the criteria that Scottish Ministers will use to base their decision upon. Nor does it specify what information will be presented if the candidate is rejected.
- g) It is also not clear from the Draft Ministerial Guidance whether additional evidence is welcome from the nominations committee when submitting a name to the Ministers. This could include that the correct recruitment protocols had been adhered to e.g. effective advertising campaign, targeting certain groups which will strengthen the case for the Scottish Ministers agreeing to the appointment of the candidate put forward.
- h) The *Guide for College Board Members* advises that a formal appointments process should include an appropriate checking of references and disclosures. A current practice for all college board appointments is verification through the Protecting Vulnerable Groups (PVG) scheme. It is not clear from the Draft Ministerial Guidance whether PVG checks or similar disclosure checks are to be in place prior to submitting a name to the Scottish Ministers or once approval has been received. This may lengthen the time that the process takes.

#### **Q4. We should welcome comments on extending board appointments, including on special arrangements after the migrated period.**

- a) The proposed extension period of the appointment of an ordinary board member for a further period not exceeding four years is in line with current good practice. The UK Corporate Governance Code 2012<sup>4</sup> recommends that “*any term beyond six years for a nonexecutive director should be*

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<sup>3</sup> <http://www.collegedevelopmentnetwork.ac.uk/governing-in-a-regional-structure/newsletters-governing-in-a-regional-structure>

<sup>4</sup> <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf>

*subject to particularly rigorous review, and should take into account the need for progressive refreshing of the board".* Colleges Scotland and CDN agree with the above statement on good practice however, it is asked if Ministerial approval for extending appointments as per the legislation is necessary; if there have been no significant changes.

- b) Colleges will be required to have processes and procedures in place to provide evidence of individual board member's performance to facilitate Ministerial approval of the extension.
- c) It should be noted that a potential bottleneck could occur when the current boards transition to the new boards, with approximately 200+ appointments requiring Ministerial approval at the same time.

**Q5. We should welcome comments on any other aspect of the guidance in relation to regional college boards.**

- a) The term 'ordinary board member' is not commonly used when referring to college governance or that of public sector governing practices. We propose that the term 'non-executive member' is used in its place.
- b) The steering group who are developing the draft *Code of Good Governance for Scotland's Colleges* are keen to ensure the terminology and language used in the draft code is concise, accessible and unambiguous to the reader. It would be helpful if the terminology and language in the Draft Ministerial Guidance mirrored that of the draft code.
- c) As colleges are now deemed to be part of the public sector under ONS reclassification, they are required to self insure. Clarification is required for individual board member's insurance cover (apart from the chair as we assume they are covered as publically appointed board members).
- d) Colleges Scotland and CDN recognise and acknowledge the current non-remunerated board members who have played a valuable role in leading and managing significant reforms within the sector.

## **Regional Boards – Appointment of ‘Ordinary’ Board Members**

**Q6. We should welcome comments on the establishment of a relevant committee to nominate appointments and extensions, including identifying skills etc. of existing board members.**

- a) Responses provided in Q1. a) and b) are relevant here.
- b) The nominations committee of the regional board, when populating the board, should ensure its members represent the region it serves.
- c) Regional boards are new entities and boards will need time to implement the new processes.
- d) In multi-college regions, it is questionable if establishing a single committee for carrying out the task of nominating appointments and extensions for assigned college boards would meet best practice. The regional strategic body should be encouraged to delegate this function to its assigned colleges who are best placed to understand their recruitment needs and ensure representativeness of the area they are located in. This is particularly true for the colleges in the Highlands and Islands region as they cover such wide and diverse areas and populations.

**Q7. We should welcome comments on the skills, knowledge and attributes and experience of board members (essential and desirable), including on representativeness.**

- e) Responses provided in Q2. a), b), c) and d) are relevant here.

**Q8. We should welcome comments on the open recruitment process, including on arrangements for an independent person.**

- a) Responses provided in Q3. a) to h) are relevant here.

**Q9. We should welcome comments on extending board appointments.**

- a) Responses provided in Q4. a), b) and c) are relevant here.

**Q10. We should welcome comments on any other aspect of the guidance in relation to Regional Boards.**

- a) Responses provided in Q5. a), b) and c) are relevant here.
- b) Clarification is required, as regional boards are not necessarily charities, if they have to meet the requirements as stated in 4.24 of the Draft Ministerial Guidance.
- c) The Highlands and Islands regional board appears different with only one staff member appointed to the board. The Post 16 Education (Scotland) Act 2013 and *Guide for College Board Members* indicate that two staff members should be appointed.
- d) Regional board members will have a wide remit with strategic overview as well as regional and local knowledge required whilst working alongside assigned college board members. Any ambiguity could be remedied by clarification of regional board member and assigned college board member remits.

## **Assigned Incorporated College Boards – Appointment of Chair and ‘Ordinary’ Board Members**

**Q11. We should welcome comments on the establishment of a relevant committee to nominate appointments and extensions, including identifying skills etc. of existing board members.**

- a) Responses provided in Q1. a) and b) are relevant here.
- b) The nominations committee of the assigned college board, when populating the board, should ensure its members represent the area it serves.
- c) It should be noted that a potential bottleneck could occur when board members apply for an extension to their four year term, with approximately 100+ appointments requiring Ministerial approval at the same time.
- d) Assigned college boards have different responsibilities to regional boards and regional college boards; therefore will need time to implement any new processes.
- e) As noted in point 5.38 of the Draft Ministerial Guidance, the regional board can allocate to the assigned college chair the responsibility to populate the assigned college board which does not require Ministerial approval. However, it does not provide an indication of the timescales following the submission of a name to the regional board or when the nominations committee will receive a decision on whether the candidate was successful or not. In the event that the regional board does not approve an appointment, the guidance is not clear on the processes thereafter.
- f) It is not clear from the Draft Ministerial Guidance whether board members from assigned colleges should sit on the nominations committee.

**Q12. We should welcome comments on the skills, knowledge and attributes and experience of the college chair (essential and desirable).**

- a) Responses provided in Q2. a), b), c) and d) are relevant here.
- b) The assigned college chair will be a member of the regional college board. He/she should have experience of the area which they serve and will have accountability to the regional board for the delivery of their part of the regional outcome agreement.

**Q13. We should welcome comments on the skills, knowledge and attributes and experience of ordinary board members (essential and desirable), including on representativeness.**

- c) Responses provided in Q2. a), b), c) and d) are relevant here.

**Q14. We should welcome comments on the open recruitment process, including on arrangements for an independent person.**

- a) Response provided in Q3. a) to h) are relevant here.
- b) It has to be recognised that some assigned colleges might experience difficulty in recruiting suitable board members. External perceptions might view these as being ‘subordinate’ bodies, with little ability or power to influence the education provision at a local level, with the power resting at the regional strategic body level.

**Q15. We should welcome comments on extending board appointments, including on special arrangements after the migrated period.**

a) Responses provided in Q4. a), b) and c) are relevant here.

**Q16. We should welcome comments on any other aspect of the guidance in relation to assigned incorporated college boards.**

a) Responses provided in Q5. a), b) and c) are relevant here.

b) Assigned college board members will have a remit covering the strategic overview of their college whilst working alongside regional board members who have a wider strategic remit for the region. Any ambiguity could be remedied by clarification of regional board member and assigned college board member remits.

c) Colleges Scotland and CDN recognise and acknowledge the current non-remunerated board members who have played a valuable role in leading and managing significant reforms within the sector.

### **Equality Impact**

**Q17. We should welcome comments on whether the matters covered in the guidance raise any equalities issues that require to be addressed with respect to age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex or sexual orientation.**

a) Responses provided in Q2. a), b) and c) are relevant here.

b) The Scottish Government intends to introduce gender quotas for public appointed boards; will other quotas be applied in future for other aspects of equality e.g. race, disability?

**Q18. What actions (beyond the issue of this guidance) should the Scottish Government take to support college sector boards achieve diversity?**

a) Good practice should be used and shared across the sector.

b) Colleges should be encouraged and supported to work within current equalities legislation to ensure diversity of their boards.

c) Commitment to diversity should not create barriers to the smooth and effective running of the college.

d) Guidance to ensure the terminology and language used in the board appointments process should be concise, accessible and unambiguous to the reader.