

Audit Committee

Date of Meeting	Tuesday 3 October 2017
Paper Title	Actions from Review of Powers, Duties and Accountability
Agenda Item	19
Paper Number	AC1-0
Responsible Officer	Penny Davis, Board Secretary
Status	Disclosable
Action	For noting and feedback

1. Report Purpose

1.1 The purpose of the report is to advise the Committee on matters arising from the recent review of GCRB’s legal and regulatory powers, duties and accountability, and actions being taken to check and/or establish arrangements to ensure compliance.

2. Recommendations

2.1 Members are asked to note the report and feedback views on the defined areas for development and proposed actions.

3. Background

3.1 The Audit Committee received its annual report on GCRB’s compliance with the Code of Good Governance in May 2017. However, given the complex legal and regulatory environment in which GCRB operates, the level of change in that environment, and the level of change in GCRB itself, it was considered appropriate at this time to undertake a wider review of GCRB’s powers, duties and accountability to ensure that the organisation is fully aware of, and compliant with, its governance framework.

4. Detail

4.1 A report summarising powers, duties and accountability is appended to this paper. (Item references in tables are to the appended report.)

4.2 The following two tables show:

- specific actions identified;
- areas where a need for further research and activity in the coming year has been identified.

4.3 Actions

	Item	Action	Timeframe
1	5.19	Scheme of Delegation/Committee Terms of Reference to reflect Paragraph 16A of 1992 Further & Higher Education (Scotland) Act as amended re approval of Assigned College Principals' appointment and terms and conditions.	Complete 4.9.17
2	39.0	Scheme of Delegation/Committee Terms of Reference to reflect SFC guidance on severance issued in February 2016.	Complete 4.9.17
3	9.6/11/ 17.10	Review arrangements for student elections to GCRB to address summer gap in membership while ensuring compliance with legislation on term of student appointments on college boards.	Underway; report to N&R 5.10.17
4	17.5/ 17.11/ 36.0	Compile/maintain data on Assigned College membership and tenure to support succession planning and responsibilities under appointments guidance.	Report to N&R 30.11.17
5	25.0	Update Register of Interests and ensure Board Members are aware of their responsibility to inform GCRB of changes.	Complete 4.9.17
6	29.0	Review whistleblowing policy/procedure against Public Concern at Work code of practice.	Report to Audit 3.10.17
7	31.0	Ensure GCRB Complaints procedure is consistent with SPSO model.	Report to Audit 5.12.17
8	33.12	Remuneration Committee Members (including new student member) to have completed mandatory online training modules.	For completion by N&R 5.10.17
9	33.18	Review GCRB induction procedures against best practice guidance issued by Good Governance Steering Group.	Report to N&R 30.11.17
10	33.19	GCRB to undergo externally validated self assessment in 2017-18. Ensure planning/timetable in place to submit report/development plan to SFC by 31 March 2018.	Report to N&R 5.10.17
11	34.2	GCRB to determine position on PVG checks.	Report to N&R 5.10.17
12	33.7	Review Scheme of Delegation taking account of sector model, GCRB specific requirements and items emerging from this review as appropriate.	Report to Audit 5.12.17

4.4 Areas for Development

	Item	Development Area	Timeframe
1	26.0	The Equalities Act 2010 applies to GCRB as a public authority listed in Schedule 19, Part 3. The Scottish Specific Duties have reporting implications for GCRB in 2018, although these are proportionate to the size of the organisation. Further guidance has been sought to establish what is required, and a reporting workplan will be put in place.	Report to P&R Committee 4.12.17 / Board 18.12.17 Equalities reporting deadline April 2018
2	27.0	GCRB must review its arrangements to ensure compliance with the incoming General Data Protection Regulation. Detailed guidance is now available and an implementation plan will be put in place. (SFC advice has been sought on data sharing between GCRB and the Glasgow Colleges.)	Report to Audit 5.12.17 GDPR effective May 2018
3	28.0	GCRB is required to adhere to the Scottish Information Commissioner's model publication scheme; GCRB has adopted the scheme but will need to review compliance and consider implications for records management, which is provided for under FOI(S)A Section 61.	Report to Audit 5.12.17
4	32.0	GCRB has not thus far been required to report on Climate Change measures but is captured by the Climate Change (Scotland) Act 2009 as a public body listed in Schedule 1 to FOI(S)A. We are advised GCRB will be required to report in 2018. SFC monitors compliance/reporting and will issue further guidance.	Report to Committee/ Board March 2018. Reporting deadline November 2018

5. Risk Analysis

5.1 The proposed actions seek to mitigate Risk 0012: There is a breach of legislation/guidance/ code of practice and this results in a failure of governance.

6. Legal Implications

6.1 There are no legal implications besides those considered in the paper.

7. Resource Implications

7.1 There are potential resource implications arising from changes in GCRB's status and new data protection legislation. These will be considered further in the report to the Audit Committee on 5 December 2017.

8. Strategic Implications

8.1 Periodical reviews of governance and compliance and a clear understanding of GCRB's responsibilities in relation to the Assigned Colleges support the collective delivery of strategic objectives.

Annex A - Overview of Powers, Duties and Accountability

1.0 Introduction

This overview of the governance framework within which GCRB operates - ie, the legislative and regulatory sources of its authority and obligations – draws information from law and regulation in place at the time of writing. As such, its accuracy over time will depend on it being updated with each amendment to existing, or introduction of new, law or regulation¹.

Legal and regulatory requirements form the core of the governance framework, but there are elements of the framework that are determined by the Board itself, in particular its scheme of delegation and standing orders. This guide refers to the relevant Education Acts, certain other legislation including equalities and information acts, the Code of Good Governance, the Scottish Government's Appointments Guidance, the Financial Memorandum and the SFC's associated Severance Guidance. Content that refers to the powers and duties, etc, of assigned colleges is included where this reinforces or adds meaning to GCRB's powers and duties. It is intended that this guide should be considered alongside the Board's own governance materials and other information and best practice guidance that is available within the sector.

2.0 Policy context for the establishment of GCRB

Regional strategic bodies were created in 2013, further to the Government's white paper Putting Learners at the Centre (2011) and the review of further education conducted by Professor Russel Griggs (2012). The Scottish Government's purpose was to create bodies that would plan and distribute funding on a regional basis in the new multi college regions. The establishment of regional strategic bodies enabled the basic principles of regionalization to be applied in areas where colleges had not merged to form a single institution, so that decisions about funding and provision could be made on a regional basis and that colleges, as publicly funded bodies, could plan and deliver FE provision in a coherent way within their region, reducing unnecessary duplication and competition between institutions and working effectively with other service providers in their region.

THE EDUCATION ACTS

3.0 Introduction

The Post-16 Education (Scotland) Act (the 2013 Act) provided for the establishment of regional bodies and amended the Further and Higher Education (Scotland) Act 1992 (the 1992 Act) and the Further and Higher Education (Scotland) Act 2005 (the 2005 Act).

The 2013 Act made provision for two types of Regional Strategic Body: Regional Boards and Other Regional Strategic Bodies. GCRB is a Regional Strategic Body that is a Regional Board.

¹ *The Scottish Government is currently consulting on proposed changes to legislation that will affect certain powers referred to in this guide.*

4.0 Overview of Key Roles of a Regional Strategic Body

- 4.1 To plan college provision across the region.
- 4.2 To fund assigned colleges.
- 4.3 To hold assigned colleges to account, including monitoring their performance.
- 4.4 To appoint the chair and ordinary members of assigned incorporated college boards.
- 4.5 To approve the appointment of the principal of assigned incorporated colleges.

A Regional Strategic Body may also deliver shared services.

5.0 Statutory Functions of a Regional Strategic Body

(All of the following section numbers refer to the 2005 Act as amended except where stated otherwise.)

Functions similar to functions of the SFC (in respect of bodies the SFC funds)

- 5.1 Administer funds (Section 12A)
- 5.2 Fund assigned colleges (12B)
- 5.4 Performance monitoring (23G)
- 5.5 Promotion of credit and qualification framework (23H)
- 5.5 Efficiency studies: Assigned Colleges (23I)
- 5.6 Right to address college meetings (23J)
- 5.7 Require information from assigned colleges (23N(1)).

Functions similar to functions of regional college boards

- 5.8 Exercise functions with a view to securing coherent provision, having regard to other provision in the locality of its colleges (23E)
- 5.9 Plan, having regard to economy, efficiency and effectiveness (23F)
- 5.10 Consult and collaborate (23M)
- 5.11 Exercise functions with view to improving economic and social well-being in the locality of its colleges, having regard to social and economic regeneration needs and social cohesion and social inclusion issues (23K)
- 5.12 Have regard to particular matters: local needs; national needs; sustainable development; UK and international context; educational and related needs (including support needs); improving participation (23L)
- 5.13 Provide Ministers with such information as they may reasonably require for the purposes of or in connection with the exercise of any of their functions under the 2005 Act (25A)
- 5.14 When making appointments to its governing body or exercising any of its other functions, do so in a manner that encourages equal opportunities and in particular the observance of equal opportunities requirements (26A)

Other Functions

- 5.15 May give a direction to an assigned incorporated college (section 23N). Before giving a direction (of a general or specific character) the regional strategic body must consult a list of bodies that includes the colleges concerned.

- 5.16 May require the transfer of staff, property, rights or obligations by any of its assigned colleges for certain specified purposes (23O).
- 5.17 Provide Ministers with such information as they may reasonably require for the purposes of or in connection with the exercise of any of their functions under the 2005 Act (25A)
- 5.18 Appoint (and extend the appointment of) the chair and ordinary members of the board of any of its assigned incorporated colleges, having regard to Ministerial guidance (1992 Act, Schedule 2, paragraph 3A).
- 5.19 Approve the appointment of the principal of any of its assigned incorporated colleges and their terms and conditions of appointment (1992 Act, Schedule 2, paragraph 16A).

Quality

- 5.20 The SFC and regional strategic bodies have complementary functions with respect to quality.
- 5.21 Section 13 of the 2005 Act provides that the SFC must secure that provision is made for assessing and enhancing the quality of fundable further education and fundable higher education provide by post-16 education bodies (a term that encompasses both fundable post -16 education bodies and assigned colleges).
- 5.22 Regional strategic bodies have a duty to monitor the performance of their assigned colleges (23G). This may include monitoring or assessing fundable education provided by them. The Act specifically requires regional strategic bodies to seek to avoid unnecessary duplication when monitoring the performance of their colleges.

6.0 New function of SFC regarding Regional Strategic Bodies

- 6.1 SFC must secure that provision is made for assessing and enhancing the performance of regional strategic bodies.

7.0 Provision for Code of Good Governance

- 7.1 The 2005 Act gives Ministers the power to impose a condition of grant to the SFC that it must, when making a grant to any regional strategic body, require the regional strategic body to comply with any principles of governance which appear to the SFC to be appropriate in relation to such a body.
- 7.2 Complying with the Code of Good Governance is therefore a condition of grant.

8.0 Funding and accountability in relation to Regional Strategic Bodies

- 8.1 The SFC enters into an outcome agreement with a regional strategic body. That outcome agreement and any associated conditions of grant form the basis of the regional strategic body's accountability to the SFC.
- 8.2 The SFC's Accountable Officer in terms of section 15 of the Public Finance and Accountability (Scotland) Act 2000 is its chief executive. As Accountable Officer the chief executive is answerable to the Scottish Parliament in relation to the exercise of their functions as such.
- 8.3 The chief officer of a regional strategic body has through the SFC's Financial Memorandum with that body responsibilities for their regional strategic body similar to many of those of Accountable Officers designated under the Public Finance and Accountability (Scotland) Act 2000.

- 8.4 Through this mechanism they are directly accountable to the chief executive of the SFC for the proper use of funds received from the SFC.

9.0 Constitution of Regional Boards

- 9.1 Part 1 of Schedule 2A to the 2005 Act provides for a Regional Board for Glasgow Colleges.
- 9.2 Ministers are empowered, by order, to modify Part 1 of Schedule 2A so as to establish (or abolish or re-name) a Regional Board.
- 9.3 Regional Boards must have a minimum of 15 members, that must include:
- Chair
 - Chair of the board of each of the assigned colleges
 - 2 staff members: one teaching, one non-teaching
 - 2 student members.
 - up to 10 ordinary members
- 9.4 The Chair is appointed by Scottish Ministers and remunerated by the Regional Board at a level determined by Ministers. The appointment is regulated by the Public Appointments Commissioner. A chair's term of office is up to 4 years, as determined by Ministers, and their appointment may be extended for a single further term.
- 9.5 Assigned College Chairs are members ex officio. They are appointed as chairs of Assigned College boards by the Regional Board in accordance with the Ministerial guidance on appointments.
- 9.6 Staff members are elected respectively by teaching and non-teaching staff of assigned colleges in the region for a term of 4 years.
- 9.7 Student members are nominated or elected by the students (see process below).
- 9.8 Ordinary members are appointed by the Regional Board subject to the approval of the Chair of the Board and Scottish Ministers, and in accordance with the Ministerial guidance on appointments.
- 9.9 When the term of office of a chair or ordinary member ends, they may be re-appointed subject to the relevant guidance. There is no limit on the number of times a person may be reappointed.
- 9.10 While a person remains a member of staff, or student, of one of the Regional Board's assigned colleges, when the period of appointment of a staff or student member ends that person is eligible to be reappointed, following the appropriate procedure. There is no limit to the number of times a person may be appointed.
- 9.11 The principal of an assigned college who is not a member of the Regional Board to which their college is assigned has a right to participate in any deliberations (but not in making decisions) at meetings of the Regional Board, unless the chair of the Regional Board determines otherwise.

10.0 Chair

- 10.1 Under the Act, a MSP, MP, MEP, member of the House of Lords are barred from being the chair of a Regional Board. The chief officer of any particular Regional Board is barred from being the chair of that Regional Board.

11.0 Student Members

- 11.1 Where there are two assigned colleges, each student association nominates a student member.
- 11.2 Where there are more than two, the student association of each assigned college is entitled to nominate students.
- 11.3 If only two students are nominated, they are appointed.
- 11.4 If more than two students are nominated, the student members are elected by the students of the assigned colleges. The election is between those nominated.

12.0 Provision for Appointments Guidance for Regional Boards

- 12.1 Regional Boards are responsible for appointing the ordinary board members of Regional Boards. The appointments must be approved by the chair and Ministers.
- 12.2 Ministers may issue guidance to Regional Boards on making and in extending appointments to Regional Boards.
- 12.3 Before issuing such guidance, Ministers must consult a list of bodies, including Regional Boards and colleges that are assigned to, or likely to be assigned to, a Regional Board to which the guidance relates.

13.0 Removal of Members of Regional Boards

- 13.1 Ministers may, by order, remove any or all board members of a Regional Board, including the chair of an assigned college who is a member of a Regional Board by right of their position.
- 13.2 Where removal is of a chair of an assigned college which is an incorporated college that person must also be removed from the assigned college board.
- 13.3 The grounds for removal are where it appears to Ministers that a Regional Board:
 - has committed or is committing a serious one-off breach of any term or condition of grant made to by the SFC.
 - has committed or is committing repeated breaches of such terms or conditions;
 - has failed or is failing to discharge its responsibility properly for administering funds;
 - has failed, or is failing to discharge any of its duties properly; or
 - has mismanaged or is mismanaging its financial or other affairs.
- 13.4 Before making an order to remove board members in any of the above circumstances, Ministers must consult the SFC.

14.0 New function of SFC relating to Regional Boards

- 14.1 Regional Boards must comply with any directions given by the SFC regarding the appointment of Regional Board employees; their terms and conditions; and payment of pensions, allowances or gratuities (schedule 2B to the 2005 Act)

15.0 Regional Boards as charities

- 15.1 The Act allows for Regional Boards to become charities.

- 15.2 It would be for Regional Boards in the first instance to consider whether they wished to become charities. It would be for the Office of the Scottish Charity Regulator to consider any such application.
- 15.3 Ministers would also have a role in considering whether Regional Boards ought to be excluded from the Ministerial control aspect of the charity test in such circumstances.
- 15.4 Without such an exclusion it is likely that Regional Boards would be excluded from meeting the charity test. (Ref sections 7(4) and (5) of the Charities and Trustee Investment (Scotland) Act 2005)

16.0 Abolition of Regional Boards

- 16.1 Ministers may abolish a Regional Board by order, following consultation with a list of bodies. A Regional Board may be abolished, for example, if all the colleges in a region were to merge to form a regional college. In such circumstances, Ministers have powers that could be used to transfer all the staff, property, rights and obligations of the Regional Board to the regional college.

17.0 Assigned Colleges

- 17.1 Assigned colleges are colleges that have been assigned by Ministers by order to a regional strategic body. An assigned college can be an incorporated or a non-incorporated college.
- 17.2 The only bodies a regional strategic body can fund to provide fundable further education and fundable higher education and to undertake research are those colleges assigned to it.
- 17.3 All assigned colleges are required to have regard to plans of a regional strategic body and to provide it with such information as it may reasonably require.
- 17.4 Assigned incorporated college boards may have 13-18 members that must include:
 - Chair
 - Principal of the college
 - 2 staff members: one teaching, one non-teaching
 - 2 student members.
 - 7 to 12 ordinary members
- 17.5 The Chair is appointed by the Regional Strategic Body having regard to Ministerial guidance on appointments for a term of up to 4 years. The term may be extended for a further term of up to four years.
- 17.6 The Principal is a member ex officio.
- 17.7 An assigned college board is responsible, with the approval of the regional strategic body, for appointing and determining the terms and conditions of the principal.
- 17.8 Principals of assigned incorporated college boards that are assigned to a regional board have a right to participate in the deliberations but not decision-making of the regional board unless the Chair of the regional board determines otherwise.
- 17.9 Teaching and non-teaching staff members are elected by their respective staff bodies for a term of four years.
- 17.10 Student members are nominated by the students' association of the college. Their term of office runs from 1 September to 30 August the following year.
- 17.11 Ordinary members are appointed by the regional strategic body, having regard to Ministerial guidance, for a period of up to 4 years. Their appointment may be extended by the regional strategic body for a further term of up to four years.

18.0 Removal of Members of an Assigned Incorporated College Board

- 18.1 Where one of the grounds for removal exists in relation to any particular incorporated college board, Ministers may, by order, remove any or all board members of that college (except the principal).
- 18.2 The grounds for removal are where it appears to Ministers that a board:
- has committed or is committing a serious one-off breach of any term or condition of grant made to by its regional strategic body;
 - has committed or is committing repeated breaches of such terms or conditions;
 - has failed or is failing to provide or secure the provision of education of such standard as the Ministers consider to be appropriate;
 - has failed or is failing to discharge any of their duties properly;
 - has mismanaged or is mismanaging its financial or other affairs.
- 18.3 Before making an order to remove board members in any of the above circumstances, Ministers must consult the SFC.
- 18.4 Ministers may also make an order to remove board members if they receive advice from the SFC that an incorporated college board is failing to meet the fundable criteria (ie, that the college is not, or is no longer, a body for which there is in place suitable provisions, procedures and arrangements of the type described by or under section 7(2) of the 2005 Act).

19.0 Code of Good Governance in relation to Assigned Colleges

- 19.1 The Act gives Ministers the power to impose a condition of grant to the SFC that it must, when making a grant to a regional strategic body, require that regional strategic body to require colleges assigned to it to comply with any principles of governance which appear to the SFC to constitute good practice in relation to colleges of further education.
- 19.2 Compliance with the Code of Good Governance is therefore a condition of regional strategic body grant.

20.0 Funding and accountability of Assigned Colleges

- 20.1 The SFC enters into an outcome agreement with a regional strategic body. Both that outcome agreement and the associated conditions of grant form the basis of the regional strategic body's accountability to the SFC.
- 20.2 The regional strategic body, in turn, enters into an outcome agreement with each of its assigned colleges, as a condition of grant to them. The assigned college is then accountable to the regional strategic body for the delivery of its outcome agreement.
- 20.3 Principals of assigned colleges, through the Financial Memorandum between the college and the regional strategic body, have responsibilities similar to Accountable Officers as defined in the Public Finance and Accountability (Scotland) Act 2000. They are directly accountable to the chief officer of their regional strategic body for the proper use of funds received from the regional strategic body.
- 20.4 Assigned college must, where appropriate, have regard to the plans of their regional strategic body (section 23F of the 2005 Act).

(All subsequent section references in this section are to the 2005 Act unless indicated otherwise)

- 20.5 Assigned colleges must provide their regional strategic body with such information as it may reasonably require for the purposes of or in connection with the exercise of any of its functions (23N).
- 20.6 Assigned colleges must comply with a direction of their regional strategic body (23N). Before giving a direction the regional strategic body must consult a list of bodies, including the colleges concerned.
- 20.7 Assigned colleges must comply with a requirement that may be made by their regional strategic body to transfer staff, property, rights or obligations for certain specified purposes (23O).
- 20.8 Assigned colleges must provide Ministers with such information as they may reasonably require for the purpose of or in connection with the exercise of any of their functions under the 2005 Act (25A).
- 20.9 When making appointments to its board or exercising any of its other functions, an assigned college board must do so in a manner that encourages equal opportunities and in particular the observance of equal opportunities requirements (26A).
- 20.10 An assigned college board must have suitable arrangements to seek to ensure that the interests of the college's students are represented by a students' association (7(2)(a)).
- 20.11 College boards must comply with provisions of the 1994 Education Act, Section 22, with regard to the constitution and procedures of students' associations.

21.0 New functions of SFC in relation to assigned colleges

- 21.1 The SFC may, whenever it considers appropriate, review whether an assigned incorporated or non-incorporated college is meeting the fundable body criteria (ie, that the college is a body for which there are in place suitable provisions, procedures and arrangements of the type described by or under section 7(2) of the 2005 Act.
- 21.2 The SFC must provide a report of such a review to Ministers. An unfavourable review could lead Ministers to seek to make an order revoking the assignment of a non-incorporated college to its regional strategic body (preventing the regional strategic body from funding it) or to remove board members from an incorporated college.

22.0 Assigned colleges as charities

- 22.1 Assigned incorporated college board members must discharge their duties as charity trustees (sections 7(4) and (5) of the Charities and Trustee Investment (Scotland) Act 2005 and the Charity Test (Specified Bodies) (Scotland) Order 2008).

23.0 Transfer of Staff, Property, Rights or Obligations

- 23.1 Section 23O of the 2005 Act makes provision for the transfer of staff, property, rights or obligations, enabling regional strategic bodies to require assigned colleges to undertake such transfers in certain circumstances.
- 23.2 Regional strategic bodies that are regional boards may, in certain circumstances, require such a transfer without the consent of assigned colleges.
- 23.3 A regional strategic body can require any of its assigned colleges to transfer staff, property, rights or obligations for the following purposes.
- To transfer programmes of learning or courses of education (transfer from one assigned college in the region to another)

- To transfer services (transfer from an assigned college to either (a) another assigned college in the region or (b) to the regional strategic body)
 - Any other purpose relating to the functions of a regional strategic body or any of its colleges (transfer from an assigned college to (a) another assigned college in the region or (b) to the regional strategic body)
- 23.4 Before making a transfer requirement, a regional strategic body must consult a list of bodies, including the colleges concerned.
- 23.5 Consultation with any college to which the proposed transfer relates must be with a view to seeking the agreement of the college. As well as requiring a regional strategic body to consider representations, this would require a regional strategic body to show that it had entered into meaningful dialogue with those giving the representations with a view to reaching a common position on the requirement. Having done this, it would be possible for a Regional Board to make the requirement without the agreement of the assigned college(s) concerned.
- 23.6 A transfer requirement imposed by a Regional Board is binding on any incorporated college to which it relates (ie, the assigned incorporated college which is required to make the transfer and, where relevant, the assigned incorporated college to which the transfer is to be made) regardless of whether the incorporated college(s) in question consent to the transfer.
- 23.7 Ministers have powers by order to vary some of the circumstances where the consent of an incorporated college is or is not needed. Before making such an order Ministers must consult a list of bodies.
- 23.8 Section 230 of the 2005 Act provides that any transfer required under section 230(1) is a relevant transfer for this purposes of the Transfer of Undertakings (Protection of Employment) Regulations 2006. The 2006 regulations therefore apply to such transfers whether or not they otherwise fall within their scope.
- 23.9 Section 230 also provides that where a regional strategic body's staff are transferred to any of its colleges by virtue of any other arrangements made between the regional strategic body and that college, such a transfer is a relevant transfer for the purposes of the 2006 regulations. The 2006 regulations therefore apply to these transfers whether or not they otherwise fall within their scope.
- 23.10 Section 230 further requires that any property transferred as a result of a required transfer is to be applied for the purpose of the advancement of education (which is a charitable purpose). This is to ensure that colleges will not be excluded from meeting the charity test set out in section 7 of the Charities and Trustee Investment (Scotland) Act 2005.

24.0 Powers of direction

- 24.1 Regional strategic bodies cannot use their powers of direction (section 23N of the 2005 Act) to direct a college to transfer any staff, property etc.

OTHER SIGNIFICANT LEGISLATION

- 25.0 The Ethical Standards in Public Life etc. (Scotland) Act 2000** provides for a code of conduct on which relevant college sector boards, being listed as devolved public bodies in Schedule 3 to the Act, must base their own codes of conduct.

The Code of Conduct holds board members to the Nine Principles of Public Life in Scotland. These are: Public Service, Selflessness, Integrity, Objectivity, Accountability and Stewardship, Openness, Honesty, Leadership, and Respect.

The Code has particular relevance to the operation of the Board in relation to the declaration, recording and publication of interests (Sections 4 and 5) and confidentiality requirements (Section 3.11).

The **Register of Interest Regulations 2003** require the Board to maintain and make publicly available a register of its members' interests.

The Commissioner for Ethical Standards in Public Life in Scotland may investigate relevant complaints and the Standards Commission for Scotland may hold hearings into alleged breaches of the Code.

The Code (section 3.10) also directs members of boards to familiarize themselves with the requirements of the **Bribery Act 2010**. Individuals may be personally liable for consenting to or conniving in an offence, but there is also a "corporate offence" defined in the Act that necessitates adequate measures to have been taken by an organization to prevent bribery from occurring, hence the need for GCRB to have in place an appropriate policy.

26.0 The Equalities Act 2010 incorporated or replaced all previous anti-discrimination legislation, and introduced the Public Sector Equality Duty (the "general duty"). Scottish Ministers made regulations in 2012 placing specific duties on Scottish public authorities (the "Scottish specific duties").

The Act applies to GCRB as a public authority listed in Schedule 19 to the Act, Part 3.

It defines protected characteristics as being age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sex.

There is a legal obligation to undertake Equality Impact Assessments (EIAs) to assess the impact of the actions of the organization on people of different racial groups, disabled people, and men and women, including transsexual men and women.

The General Duty, which applies to all public bodies, is to:

- eliminate unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and people who do not share it; and
- foster good relations between people who share a protected characteristic and people who do not share it.

The Scottish Specific Duties, which entail a comprehensive reporting cycle, apply fully to the three Assigned Colleges. They apply in part, not fully, to bodies with fewer than twenty staff, and due to its distinct status, unique reporting requirements apply to GCRB. These are that in 2018 and every two years thereafter, GCRB must:

- report on mainstreaming the equality duty;
- publish equality outcomes or report progress;
- publish employee information (it should be noted that Data Protection legislation will affect and may prevent publication due to low staff numbers).

Duties are on the bodies listed in Schedule 19, therefore, they are individually on the Assigned Colleges and GCRB.

The Equality and Human Rights Commission is a regulatory, policy, advisory and research body (established under the 2006 Equality Act) which has some legal powers to enforce equalities legislation. The Equality Challenge Unit provides advice, training and other leadership support specifically to universities and colleges.

27.0 GCRB meets the definition of a data controller under the **Data Protection Act 1998**. The Act concerns the collection, storage, use and disclosure of personal information. The definition of data includes electronic and paper records and the principles set out in the Act require that personal information held by an organization is:

- used fairly and lawfully
- used for limited, specifically stated purposes
- used in a way that is adequate, relevant and not excessive
- accurate
- kept for no longer than is absolutely necessary
- handled according to people's data protection rights
- kept safe and secure
- not transferred outside the European Economic Area without adequate protection

The Act affords stronger legal protection for more sensitive personal data, for example, health records or political opinions.

GCRB must therefore be aware of the information it holds and have appropriate record-keeping arrangements in place.

Individuals are entitled to access personal data an organization may hold about them and may do so through a Data Subject Access Request. The organization is entitled to charge up to £10.00 to process such a request but must provide relevant information to the requester within forty calendar days of receiving the request or, if levied, the necessary fee.

Data Protection matters are regulated by the UK Information Commissioner, who has powers to enforce the law including the power to impose fines.

From 25 May 2018, the **General Data Protection Regulation (GDPR)** will apply in the UK. Data protection measures should remain proportionate to the size and purpose of the organization, however, the GDPR will strengthen existing requirements in several respects including:

- extending the definition of personal data, for example, to include online identifiers;

- enhancing consent requirements to ensure that consent is freely given, specific, informed and unambiguous, and in the case of sensitive data, explicitly given in relation to that data;
- requiring public authorities to appoint a Data Protection Officer (DPO) with relevant expertise to advise the organization, monitor compliance and serve as a point of contact;
- requiring organizations to undertake Data Protection Impact Assessments in certain circumstances;
- requiring that significant, relevant data breaches are reported to the ICO within 72 hours;
- increasing the potential fine (for some infringements, up to 4% of turnover or EUR20 million (whichever is higher)).

GRCB should therefore review its arrangements in relation to data protection and ensure any necessary changes are implemented before 25 May 2018.

28.0 The **Freedom of Information (Scotland) Act 2002** (FOISA) provides for access to information on grounds of public interest. As a body fundable by the SFC, the Act applies to GCRB (Schedule 1, Part 5).

Freedom of Information is regulated by the Scottish Information Commissioner who has powers to enforce the Act including investigatory powers and the issuing of information notices.

As a public authority, GCRB must produce and maintain a publication scheme, based on the model scheme published by the Office of the Scottish Information Commissioner. Publication requirements cover nine classes of information and include information about the organization and its purposes and Board agendas, minutes and reports.

Under Section 61 of the Act, the Scottish Government has produced a code of practice on records management which sets a standard for retention, management and destruction of records.

Any information that the organization holds that is not already published via the scheme may be requested. Notwithstanding several exemptions that may apply, the organization must provide requested information within twenty working days of receiving a request. A fee may be charged for the provision of information in certain circumstances and some requests may be refused.

Under the **Environmental Information (Scotland) Regulations 2004** (EISRs) every Scottish public authority has a duty to make environmental information available on request. Certain of the requirements that apply to EISRs differ from those that apply to FOI requests.

29.0 The **Public Interest Disclosure Act 1998** (as amended by the Enterprise and Regulatory Reform Act 2013) applies to all UK employers and provides for “workers” (as defined in the Employer Relations Act 1996, Section 230) to make protected disclosures to the employer or others, which is the basis on which the Board must have a whistleblowing procedure in place. There are provisions protecting workers from suffering detriment as a result of a disclosure, both in relation to the employer and other employees. (The charity Public Concern at Work has produced a succinct code of practice to assist organisations in complying with the Act and achieving best practice.)

30.0 The majority of the provisions of the **Community Empowerment (Scotland) Act 2015** do not apply to regional strategic bodies. As a member of Community Planning Partnerships, however, GCRB is included in the duties (Part 2 of the Act) around planning and delivery of local outcomes and the

requirement to involve community bodies at all stages of community planning. Part 10 of the Act refers to community participation in public decision-making, which may impact on GCRB, however, this part of the Act is not currently in force and will be subject to further legislation (and associated consultation) before any further action is required.

- 31.0** The **Scottish Public Services Ombudsman Act 2002** (amended by 2005 Education Act) established the SPSO as the body to whom members of the public may complain about public bodies. **The Public Services Reform (Scotland) Act 2010** gave the SPSO powers to lead a standardized approach to complaints handling across the public sector. College sector boards were required to adopt the SPSO's model procedure in 2013.
- 32.0** As a public body included in Schedule 1 to FOI(S)A, GCRB is subject to the provisions of the **Climate Change (Scotland) Act 2009**. Under Part 4 of the Act, public bodies have a duty to conduct their business sustainably and seek to contribute to the delivery of climate change targets. The rule of proportionality applies: an organization with a small estate and few staff should seek to comply in a way that reflects its scale. However, it must also reflect the nature of its work and an organization with key leadership, development, consultation and partnership working roles should have regard to its duties in those contexts.

The SFC monitors college sector compliance with the Act.

CODE OF GOOD GOVERNANCE FOR SCOTLAND'S COLLEGES

- 33.0** Compliance with the Code (ref paragraph 7, above) is a condition of SFC grant. The Code is implemented on a "comply or explain basis". The Chair on behalf of the Board must include a statement of compliance in the annual report and accounts, and must explain any points of non-compliance. The board must also notify the SFC at the earliest opportunity of any points of non-compliance.

For the greater part the Code is a restatement and reinforcement of existing legislative and regulatory requirements in the form of a series of principles that underpin good governance. The Code also elaborates, however, on certain points of law or regulation, and in some instances introduces new requirements that are not already mentioned elsewhere. There are also points where the Code applies in general to all sector boards but has more direct relevance to college boards and, therefore, requires further interpretation from the perspective of a regional strategic body. In summary, the key points of which GCRB should be aware are:

- 33.1 The Code emphasizes the collective nature of the responsibility and accountability of board members as a single entity, and the inclusion of staff and student members, in that context, as full members and not representatives (paragraphs D.3 and D.4).
- 33.2 The Board is responsible for determining strategy but also for ensuring a comprehensive performance management system is in place that identifies key performance indicators (A.4-A.7).
- 33.3 The Board must appoint a non-executive member to be the senior independent member to provide a sounding board for the chair, serve as an intermediary for others and be available where contact through the normal channels has failed or is inappropriate (A.14). The senior independent member or vice chair should normally lead the annual evaluation of the chair (D.24).

- 33.4 In Section B, concerning the student experience, the Code refers both to college boards' duties in relation to students' associations, but also general duties on boards to ensure that the student experience is central to all their decisions, that students are consulted where significant change is being proposed, and that proper account is taken of the findings from student surveys and other relevant sources (B.1-B.3).
- 33.5 Numerous principles elaborate on the purposes of effective external engagement: A.4 – A.8 with regard to strategic planning; B.8, from the perspective of ensuring relevant learning; B.9 in relation to quality; C.5 in relation to the Board's accountability to its stakeholders; and E.1 – E.4, which re-emphasise the legal duties on the Board to collaborate, plan and consult across the region and, where relevant, nationally.
- 33.6 C.7 requires the board to ensure that its decision-making processes are transparent, properly informed, rigorous and timely, and specifically requires:
- the prompt production, dissemination and online publication of board/committee agendas, minutes and papers;
 - every board and committee meeting to have a well-structured agenda circulated timeously in advance;
 - the retention of all key documentation that justifies decisions made by the board and its committees.
- 33.7 C.8 requires as a minimum the Board to have an Audit, Remuneration, Finance and Nominations/Appointments committee, and a scheme of delegation setting out authority delegated to those committees and any individuals as appropriate.
- 33.8 A specified member of the management team must be assigned to provide advice and support to each committee (C.9).
- 33.9 Committee discussions and decisions must be reported to the Board at its next meeting if not before (C.10).
- 33.10 C.11 and C.12 require the board to have in place effective risk management and reporting systems and specifically to determine the body's risk appetite.
- 33.11 C.13 – C.18 concern the audit committee's role and responsibilities and touch on the detailed guidance provided in the Audit Committee Handbook contained within the Scottish Public Finance Manual.
- At C.15, the Code requires audit committees to pursue audit recommendations promptly and monitor implementation.
 - C.16 excludes the Chair (and Principal) from membership of the committee.
 - C.18 requires the committee to have at least one member with recent, relevant finance or audit experience.
- 33.12 C.19 – C.21 refer to the remuneration committee.
- C.19 requires members to complete the online training provided by the College Development Network;
 - C.20 requires a designated committee of non-executive members to set the remuneration of the principal and suggests that staff and students should have a role in gathering and submitting evidence for that purpose;
 - C.21 prevents the Board Chair from chairing the remuneration committee but permits them to be a member.
- 33.13 C.27 and C.28 require the Board to comply with the sector's Staff Governance Standard and the outcomes of national bargaining.
- 33.14 D.1 – D.2 assign certain responsibilities to the Board Chair, including the promotion of a culture of openness and debate through:

- encouraging the effective contribution of all board members
 - fostering constructive challenge and support to the principal, executive team and fellow board members
 - effective team-working
 - positive relations between board members.
- 33.15 D.13 – D.16 introduce detailed requirements for the role of board secretary.
- D.13 requires the board secretary to be appointed (and removed) by the Board as a whole and to report directly to the Chair in their board secretary capacity.
 - D.14 sets out the advisory functions of the role, the right to speak at board and committee meetings if they have concerns regarding governance, and the duty to report unresolved concerns to the relevant funding body.
 - D.15 sets out the need for appropriate expertise, induction, and adequate resources for the role.
 - D.16 requires the board to ensure conflicts of interest (for example, where the board secretary has other duties) are managed properly.
- 33.16 D.17 requires the Board to have regard to Ministerial guidance on appointments.
- 33.17 D.18 requires the Board to satisfy itself that appropriate arrangements are in place for student and staff elections/nominations to the Board.
- 33.18 D.19 – D.21 refer to the requirement for appropriate induction (both to the board and committees), and development. (Good practice guidance in the form of a Development Framework has been developed by the Good Governance Steering Group and College Development Network.)
- 33.19 D.22 – D.27 concern evaluation. (Guidance has been developed by the Good Governance Steering Group and College Development Network.)
- D.22 refers to the requirement to extend board (non-executive) appointments or re-appoint on the basis of evidence of satisfactory individual performance and D.25 requires all members, including staff and students, to undergo annual appraisal, normally conducted by the chair;
 - D.23 requires the board to evaluate its effectiveness annually and undertake an externally facilitated evaluation at least every three years, sending its evaluation report and development plan to its funding body and publishing them online²;
 - D.24 requires the board to have arrangements in place to evaluate both the Board chair and committee chairs;
 - D.27 requires assigned college chairs' performance to be evaluated by the regional strategic body.

COLLEGE SECTOR BOARD APPOINTMENTS: 2014 MINISTERIAL GUIDANCE

The guidance restates legislative provisions that apply to board member appointments and sets out in detail requirements for non-executive appointments (ie, those who are not otherwise identified as serving on the board through their appointed or elected office). The guidance refers both to the expertise and other qualities board members must have and the process by which appointments are made.

² GCRB was given an exemption from the requirement that applied to other sector boards to undertake an externally validated evaluation during 2017-18. It is, however, required to do so in 2018-19.

34.0 Guidance that applies to both Regional Boards and Assigned Colleges

- 34.1 Equal Opportunities: the guidance expands on the basic provision in the 2005 Act (see paras 5.14 and 20.9 above). It refers to the definition of equal opportunities in the Scotland Act 1998, to the provisions of the Equality Act 2010 and the Specific Duties (Scotland) Regulations 2012 and to the Diversity Delivers programme. Under the Public Sector Equality Duty, boards must assess and review the equality impact of policies and practices on board appointments. This would include reviewing the composition of the board and identifying gaps in representation/appropriate steps to address gaps.
- 34.2 A board must consider whether board members are required to do regulated work with children and whether a PVG scheme record should be requested to determine their suitability in respect of any such work (with reference to the Protection of Vulnerable Groups (Scotland) Act 2007, Section 91(2), and Schedule 2).
- 34.3 A board must establish a relevant committee to nominate board member appointments and extensions. The board chair should normally chair this committee. Staff and students should have an opportunity to contribute.
- 34.4 The chief officer of the organization may not be a member of a nominations committee, but they may be invited to contribute information if required.
- 34.5 No-one who may be a candidate for appointment/extension may participate in any discussions or decisions about that appointment/extension process.
- 34.6 The nominations committee must assess current and future needs of the board. The needs assessment should be considered against the skills, knowledge, experience and other attributes of current members to identify gaps.
- 34.7 A board should aim to have a membership:
- with diverse skills, knowledge and experience which taken together reflect the current and future needs of the board and support effective governance;
 - which as far as possible reflects the diversity of the people in the region and comprises at least 40% men and 40% women.
- 34.8 The board should seek to appoint members
- whom it can expect to adhere to the Nine Principles of Public Life in Scotland;
 - who have significant experience or knowledge of:
 - further, higher or secondary education or the college student experience; or
 - industry, commerce, finance, the Third Sector, public service or trade unions; or
 - the region (or a part of it) and its relevant needs; and
 - who have such other skills, knowledge, experience or attributes as the board considers relevant.
- 34.9 The board may take into account whether someone would in its view be able to acquire any sought after skills or knowledge following a period of induction and/or development.
- 34.10 The board must conduct a fair, open and merit-based recruitment process that includes an independent person who will, where possible, be part of the process throughout³. The independent person may not have any other connection with the board (or the associated regional board/assigned college boards) but must:
- be knowledgeable about the college sector;
 - understand the skills, knowledge, experience and attributes required of the person(s) to be appointed;

³ Where it is not possible for the same independent person to be part of the process throughout another independent person should fulfil any part of the role they cannot play.

- have demonstrated sound judgement and decision-making.
- 34.11 Vacancies must be advertised on the Public Appointments website.
- 34.12 Candidates should not be informed ahead of a Ministerial decision that their name has been put forward.

35.0 Guidance specific to Regional Board Appointments

- 35.1 The chief officer of a Regional Board may be appointed as a non-executive member of the Regional Board with the approval of the Chair and Scottish ministers without an open recruitment process. The appointment would be for a period of up to four years.
- If the Board appoints the chief officer to the Board, it must ensure that the chief officer will be required to vacate office as a board member if they cease to be chief officer before their appointment period ends.
 - If the board wishes to re-appoint the chief officer to the board at the end of the period of appointment it requires the approval of the Chair and Scottish Ministers to do so.
- 35.2 Paragraph 4.24 of the guidance refers to remuneration of Board Members and introduces a requirement equivalent to that which applies to charities, limiting a regional board to remunerating less than half of its members. This could become an issue, for example, in the event of the chief officer being appointed as a non-executive member and a member of staff of an assigned college being appointed as a non-executive member.
- 35.3 Before appointing a non-executive member or extending an appointment, a Regional Board must obtain the approval of both its Chair and Scottish Ministers.
- 35.4 Where there is a risk of the board having fewer than fifteen members, the Regional Board should consider contingency action in the event that Ministerial approval is not given, for example, a short-term extension of an existing appointment.
- 35.5 Paragraph 4.35 sets out what information the Chair or Board Secretary should provide to Scottish Ministers. This includes:
- Explaining what has been done to improve board diversity including gender balance;
 - Outlining the impact the prospective appointment or extension would have on the board's gender balance;
 - For extensions, confirming that there are annual assessments of performance to evidence the member's satisfactory performance.
 - For appointments, a statement by the independent person outlining their involvement and that they are satisfied that the process was open in accordance with the guidance (or, if not, the reasons why not).
- 35.6 If, in exceptional circumstances, a board intends to make an appointment without an open recruitment process, or extend without evidence of satisfactory performance, Scottish Ministers must be informed at the earliest opportunity, ahead of a name being submitted for approval.
- 35.7 Scottish Ministers will aim to make a decision within a month.
- 35.8 If an appointment does not receive ministerial approval, it is open to the Chair to put forward any other suitable person from the appointment round.

36.0 Guidance specific to Assigned College Board Appointments

- 36.1 The guidance makes clear that the Regional Strategic Body, being the appointing body for non-executive members of assigned college boards, must ensure that relevant requirements,

including equalities and PVG requirements are met in relation to assigned college appointments (see 34.1 and 34.2 above).

- An Assigned College board member is identified as undertaking regulated work with children under the PVG (Scotland) Act 2007, Schedule 2; a PVG check is therefore necessary to provide assurance that a candidate is suitable.⁴
- 36.2 The guidance re-applies the limitation on remunerated members which applies, in any case, to an Assigned College that is a charity.⁵
- 36.3 The guidance applies equivalent criteria for Chairs as those that apply to non-executive members, under paragraph 5.22.
- 36.4 The Regional Strategic Body cannot appoint as Chair anyone who holds any other position on the assigned incorporated college board at the same time.
- 36.5 The Chair of an Assigned College Board should normally play a full part in the process to appoint non-executive members to the board of that college.
- 36.6 A Regional Strategic Body may delegate the management of all or part of the process to appoint a chair or non-executive members of an Assigned College Board to that board. Any such delegation should be set out clearly in writing and include details of procedure; this would include, for example, whether the Regional Strategic Body or the Assigned College should identify the independent person.
- 36.7 It is for the Regional Strategic Body to determine whether the Assigned College should present a choice of preferred candidates or recommend a single name for a vacancy.
- 36.8 In administering any part of the appointments process, an Assigned College is required to have regard to the guidance as if it were the Regional Strategic Body and to any supplementary guidance that the Regional Strategic Body may wish to give.
- 36.9 If an Assigned College is submitting the name of a preferred candidate, it should establish a relevant committee (as referred to in 34.3 above, and paragraphs 3.14 to 3.17 of the Ministerial guidance).
- 36.10 The Regional Strategic Body may not delegate the authority to make or extend an appointment.
- 36.11 Before making or extending an appointment, the Regional Strategic Body must satisfy itself that an Assigned College has had sufficient regard to the Ministerial guidance and any other guidance it may have given⁶.
- 36.12 The Regional Strategic Body is not required to accept the recommendation of a college.

FINANCIAL MEMORANDUM

The Financial Memorandum (FM) is based on requirements set out in the Scottish Public Finance Manual (SPFM) that apply to all government bodies, notwithstanding several derogations that are

⁴ Note: a Regional Strategic Body may judge for itself whether its members undertake regulated work with children; however, given the potential for an individual in their capacity as a Board Member to have unsupervised contact with young people aged 17 or under, PVG checks may be considered a sensible precaution.

⁵ It is possible that a member of staff of one Assigned College could apply to become a non-executive member of another Assigned College board. They would be entitled to do so as a private citizen. No provision is made in the guidance for this specific situation, where a member of staff would be remunerated directly by a college as their employer, but indirectly by the Regional Strategic Body as the funding body. Clarification would need to be sought and the Board would need to decide how to proceed if such circumstances arose.

⁶ Paragraph 35.5 above (and 4.35 of the Ministerial guidance) would suggest a reasonable approach to this.

specified in the FM. The FM between the Funding Council and Colleges was taken as the model for the FM between GCRB and its Assigned Colleges.

Further to ONS reclassification, incorporated colleges are classed as central government bodies (as opposed to non-profit institutions serving households, which they were formerly considered to be). As an intermediary body within the Scottish Government's funding and regulatory framework for further education, regional strategic bodies are captured by the requirements of the SPFM. These are, in any case, applied through the FM between the SFC and the regional strategic body, as this applies to all fundable bodies in the college sector as defined in the 2005 Act as amended, and is a condition of grant. (Under the 2005 Act the SFC may attach terms and conditions to the payment of grants.)

The FM requires the governing body to comply with the Code of Good Governance for Scotland's Colleges.

The following does not summarise all requirements set out in the FM, compliance with which was the subject of a recent audit review, but extracts points that are of particular note or that apply in particular to a regional strategic body in relation to the SFC, or to an assigned college in relation to a regional strategic body where this departs from the general rule.

As a general note, the FM states that where the institution's interpretation of the FM differs from that of the SFC [or Regional Strategic Body in the case of Assigned Colleges], the SFC will seek, wherever possible, to reach agreement in a spirit of partnership with the institution. However, the SFC's/RSB's interpretation of the FM shall be final.

37.0 Financial Memorandum between Funding Council and Regional Strategic Body/ Regional Board

Part 1 of the FM defines the relationship between the SFC and the institution and respective responsibilities, including the following points.

- 37.1 Where the SFC has concerns, it will, in the first instance, seek to resolve matters with the chief officer of the institution (the term "institution" includes GCRB). Where this has not proved possible or if there are significant concerns, the SFC Accountable Officer will inform the chair of the board and the chief officer in writing and will specify what action is required to address the concerns.
- 37.2 Where circumstances warrant it, the SFC Accountable Officer may suspend the payment of any or all grants to the institution. SFC may also use its powers to attend and address a meeting of the board.
- 37.3 The SFC will maintain a complaints procedure and a separate appeals process for funding decisions.
- 37.4 The institution will be consulted in advance and given reasonable notice of any significant change to policy or procedure affecting the allocation or payment of grant and of significant changes in overall funding levels.
- 37.5 Section 17 of the FM sets out requirements in relation to achieving sound financial governance of public funds including internal audit, anti-fraud and bribery, and risk management.
- 37.6 As well as being accountable directly to the governing body for the proper conduct of the institution's affairs, the chief executive officer is also accountable directly to SFC's

Accountable Officer for the institution's proper use of funds deriving from the Scottish Ministers and its compliance with the requirements of the FM.

- 37.7 The chief executive officer of the institution must inform SFC's accountable officer without delay of any circumstance that is having, or is likely to have, a significant adverse effect on its ability to fulfil its functions or of any significant financial weakness or material non-compliance with the FM.

Part 2 sets out general requirements including:

- 37.8 The institution must deliver its Outcome Agreement with SFC.
- 37.9 The institution must comply with any additional requirements attached to a strategic, capital or other grant from SFC.
- 37.10 The SFC may make in-year adjustments to grant payments if Scottish Ministers revise their grant payment to SFC. In such circumstances, the SFC and institution may renegotiate the outcome agreement.
- 37.11 The SFC may require immediate repayment of grant or loan funding on the grounds of non-compliance with the FM or additional terms and conditions, and may charge interest if there is a period where funds remain unreturned.
- 37.12 The institution must have regard to public sector pay policy.
- 37.13 The Audit Committee must produce an annual report to the governing body of the institution.
- 37.14 The institution must follow the SFC's current accounts direction in preparing its annual financial statements.
- 37.15 Internal audit services must comply with standards set out in the SPFM.
- 37.16 The institution must inform SFC when an internal auditor is appointed and if one is removed or departs before the end of their term of office.
- 37.17 Internal audit must assess risk management, internal control, governance and value-for-money, and all activities in which the institution has a financial interest.
- 37.18 The internal auditor's annual report to the Audit Committee must also be sent to the SFC.
- 37.19 The institution must have a strategy for reviewing systematically management's arrangements for securing value for money.
- 37.20 The external auditor is entitled to receive all notices and other communications relating to any meeting of the governing body that any member is entitled to receive and to attend and be heard at any meeting on any part of the business that concerns them, for example, when the institution's annual report and accounts are being discussed.
- 37.21 As a minimum, the external auditor is expected to attend audit committee meetings where audit coverage, the audit report on the financial statements and the management letter are being considered.

Part 3 covers additional requirements for regional bodies. The following requirements apply specifically to Regional Strategic Bodies.

- 37.22 The institution must put in place a financial memorandum with each of its assigned colleges. Financial memoranda should be agreed in advance with the SFC's accountable officer.
- 37.23 The institution must ensure that assigned colleges follow the requirements of the SPFM, notwithstanding derogations.

Requirements that apply to Regional Colleges and Regional Boards include:

- 37.24 Where the SPFM requires notification or prior approval of Scottish Ministers, the institution must first contact the SFC.
- 37.25 Regional Boards may not borrow money.
- 37.26 Cash reserves should be kept to a minimum. Grant in aid not drawn down at the year end shall lapse. The institution may, however, transfer funds to an arms-length foundation.
- 37.27 *Note for the current year: any extension of former banking arrangements beyond 2016-17 requires the agreement of Scottish Ministers.*
- 37.28 The institution may operate an overdraft facility to manage the timing of income and expenditure through its bank account.
- 37.29 The institution requires SFC written consent to lend or give a guarantee, indemnity or letter of comfort, and should give assurance that any contingent liability could be met from its own resources, or that appropriate insurance is in place. Such consent is not needed for standard arrangements that are part of the normal course of business.
- 37.30 Prior SFC approval must always be obtained before occurring expenditure for any purpose that may be considered novel, contentious or repercussive or which could have significant future cost implications. (Examples are provided under para 19 of part 3 of the FM.)
- 37.31 Fraud must be reported to the SFC as and when it is detected.
- 37.32 The institution must establish appropriate documented internal delegated authority arrangements consistent with the delegated authority sections of the SPFM and FM.
- 37.33 Any donations to ALFs must take place by the end of the financial year on 31 March and are subject to sufficient cash and resource cover being available.
- 37.34 As soon as practicable after the end of the financial year, the institution must publish a statement of annual expenditure on public relations; overseas travel; hospitality and entertainment; and external consultancy. The amount, date, payee and subject matter must be published for any payment exceeding £25,000.

Early departures of staff

- 37.35 The institution must comply with the SPFM and have regard to Audit Scotland's 2013 report *Managing early departures from the Scottish public sector*.
- 37.36 Severance schemes must be approved by the SFC. Provided a payment is within the parameters of an approved scheme, further SFC approval is not required.⁷
- 37.37 Special severance payments in excess of £1,000 require SFC approval except where provision for such payments has been included in a severance scheme approved by SFC.
- 37.38 External consultancy contracts with a value greater than £100,000 require advance SFC approval.
- 37.39 SFC must be informed at the earliest opportunity of any impairment to an asset, including an investment.
- 37.40 The institution may retain commercial income, gifts, bequest or donations, in addition to SFC grant.
- 37.41 Institutions may extend current commercial insurance arrangements (for three years) to 31 July 2018.
- 37.42 The institution may not make speculative investments without prior written SFC approval.
- 37.43 Procurement process must reflect APUC guidance and relevant policy and advice issued by the Scottish Procurement Directorate. Procurement must be undertaken by appropriately trained and authorized staff.

⁷ Requirements in the FM are qualified by the severance guidance subsequently issued by the SFC (Section 39 of this guidance).

37.44 Any proposal to award a contract with a value in excess of £25,000 without competition must be approved in advance by SFC.

37.45 Delegated financial limits

External business and management consultancies	£100,000
Special severance payments	£1,000
Operating leases – non property	£250,000
Procurement non-competitive action	£25,000

37.46 Annual reporting requirements

Extra contractual payments	£5,000
Compensation payments	£5,000
Ex-gratia payments	£1,000
Claims waived or abandoned	£3,000
Write-off of bad debt	£3,000
Losses	£3,000
Overseas student irrecoverable loss	£6,000
Fraud loss	£5,000

38.0 Financial Memorandum between GCRB and Assigned Colleges

The Financial Memorandum between GCRB and the Assigned Colleges replicates the provisions of the SFC's Financial Memorandum with fundable bodies in the college sector, substituting the Regional Strategic Body for the SFC in some instances, and introducing the RSB as an intermediary between the college and the SFC in instances where SFC approval is needed.

39.0 SFC Guidance on Seeking Approval of Severance Schemes and Settlement Agreements

The SFC published, in February 2016, detailed guidance on meeting SPFM requirements when making severance arrangements. Compliance with the guidance is a condition of funding.

The guidance includes a procedural flowchart and templates for approval of business schemes for both severance schemes and individual settlement agreements. These must be used when GCRB is submitting an application for approval to SFC and when an Assigned College is submitting an application to GCRB for approval (and onward submission to SFC).

An Employee Information Schedule must also be completed for individual arrangements.

A model termination letter is also provided that institutions may adopt.

Regional strategic bodies must require colleges assigned to them to follow the guidance as a condition of grant.

The guidance replaces that issued by the SFC in 2000 and 2004.

Principles

39.1 When considering any severance, the institution should ensure that the following principles are observed:

- Public funds must not be used wastefully or to underwrite inequitable or over-generous conditions of service, including severance;
- Decisions on severance arrangements and, in particular, limits on payments will be based on the conditions set in the SPFM and the guidance and not on the source(s) of funding;
- Notice of termination of appointments must not be delayed in order to generate compensation payments in lieu of notice;
- Where appropriate, ex-gratia severance or redundancy packages must be based on the arrangements set out within relevant extant terms and conditions of employment. In particular, prior consideration should be given to the availability of pension and compensation benefits within these conditions;
- Special payments must be transparent and negotiated in a way that avoids conflict of interest;
- Offers of subsequent employment or consultancy work must be exceptional and only made where they represent value for money; and
- Any undertakings about confidentiality must leave transactions open to proper public scrutiny.

Requirements

39.2 Colleges and regional boards require SFC approval for:

- Any new severance scheme;
- Any change to a previously approved scheme;
- Any payment, forming part of any scheme, considered to be sensitive or high profile;
- Any use of settlement agreements; and
- Any payment to an individual in excess of contractual entitlement outwith an approved voluntary severance scheme

39.3 For assigned colleges, the regional strategic body is responsible for obtaining SFC approval.

39.4 Relevant board members and personnel (remuneration committee members and staff dealing with severance decisions) should be provided with a copy of the guidance. The duty is on colleges to ensure that this is the case for their boards and relevant personnel.

39.5 Policies and procedures should be established with a view to:

- Ensuring a business case, including justification and full expected cost, is prepared;
- Decisions are made and approved in accordance with delegation procedures;
- Decisions are fully documented and a clear audit trail of evidence supporting the decisions is retained; and
- There is clear evidence of governance oversight.

39.6 The Remuneration Committee or equivalent:

- must scrutinise proposed schemes and agreements before recommending approval to the Board;
- must ensure there is no conflict of interest between those approving arrangements and proposed individual beneficiaries;

- must have a role in setting remuneration policy and ensuring contractual terms are not overly generous.
- 39.8 The SFC must be consulted in all cases where the possibility of compulsory redundancy is being considered and notified of any such consideration at the earliest opportunity. For Assigned Colleges, the guidance states that consultation should be with the SFC or the Regional Strategic Body as appropriate.
- 39.9 The number of staff leaving through voluntary severance schemes and associated costs will be reported in institutions' annual accounts.

Severance Schemes

- 39.10 For severance schemes, the Guidance states that “assigned, incorporated colleges must submit the business case to their regional strategic bodies which are required to consider and approve the business case prior to submission to SFC for approval”.
- 39.11 The business case for a new or changed scheme should set out:
- The rationale for introducing/changing the scheme;
 - Mitigating action already taken or planned to avoid the need for headcount reductions, eg, recruitment freeze, redeployment, reductions in working hours;
 - The terms available under the relevant compensation/pension scheme and the rationale for offering terms other than the contractual minimum;
 - The estimated annual costs and savings of the new/revised scheme over the payback period;
 - Details of how, by whom and over what timescale the costs of the scheme will be funded;
 - The impact that the restructuring/headcount reduction will have on the pay-bill;
 - Any potentially sensitive or high profile cases forming part of the scheme; and
 - Confirmation that relevant management and governance procedures have been followed.
- 39.12 Schemes must be time limited and linked to a programme of managing early departures.
- 39.13 Appropriate legal and independent professional advice must be sought in establishing and implementing the scheme. Such advice must be provided for scrutiny by the Remuneration Committee and/or Board prior to approval of the scheme or arrangement.
- 39.14 Minutes of Board meetings approving the scheme should be sent to the SFC with the business case.

Settlement Agreements or Proposals to Secure a Voluntary Resignation

- 39.15 Approval is required for any case where a settlement agreement or non-contractual financial consideration is proposed to secure a voluntary resignation outwith the terms of an existing and approved scheme.
- 39.16 Settlement agreements should not be a standard feature of a scheme, and individual approval is required of any settlement agreement that is part of a scheme.
- 39.17 There should be a presumption against confidentiality clauses and colleges must indicate whether a confidentiality clause is proposed and, if so, on what grounds. Detailed guidance is provided in the form of a model confidentiality statement and a standard termination letter/agreement that colleges may use.

39.18 The institution must submit a business case for any proposed individual arrangement, which must include:

- Justification of the need for a settlement agreement;
- An explanation of the circumstances of the case, including the legal assessment of the risk of litigation and likely outcome;
- Confirmation that relevant management and governance procedures have been followed;
- An assessment of the value for money offered by the proposal, including a breakdown of each of the constituent parts of the proposals and any contractual elements that may be relevant;
- Any non-financial considerations; and
- Confirmation as to whether the use of a confidentiality clause is proposed in the case.

39.19 An Employment Information Schedule (also provided as an annex to the guidance) should be included.

Procedure

39.20 Business cases submitted to the SFC for Assigned Colleges must be signed by the College Principal and the Chief Officer of the Regional Strategic Body.

39.21 Business cases submitted to the SFC by the Regional Strategic Body must be signed by the Chief Officer⁸.

39.22 Business cases will be acknowledged and processed within five working days (twenty days if the SFC decides ministerial views should be sought). The SFC should be given notice as early as possible of pending business cases.

⁸ *The guidance does not provide for a situation where the Principal or Chief Officer themselves is the subject of the submission, therefore, GCRB should ensure that any such situation is handled appropriately, having sought the views of the SFC, for example, by substituting the Chair of the Nominations and Remuneration Committee (or equivalent college committee where relevant) as signatory.*