
Nominations and Remuneration Committee Meeting

Date of Meeting	Thursday 6 October 2022
Paper Title	Update on Legal and Regulatory Developments
Agenda Item	13
Paper Number	NRC1-I
Responsible Officer	Marianne Philp, Interim Board Secretary
Status	Disclosable
Action	For Information

1. Report Purpose

- 1.1 This report provides the Committee with an update on indicative timescales for legal and regulatory developments.
- 1.2 Due to the Covid-19 pandemic restrictions, several planned developments have been delayed. In July 2022, the Chair of the Good Governance Steering Group issued to the sector the attached update on planned timescales.

2. Recommendations

- 2.1 The Committee is asked to **note** the report.

3. Risk and Compliance Analysis

- 3.1 There are no risks directly associated with the report other than to ensure that relevant action is taken as and when any changes come into force.
- 3.2 There are no new legal implications arising from the report.

4. Finance and Resource Implications

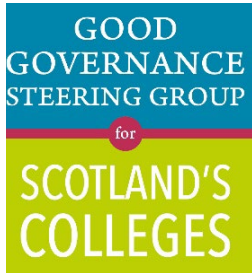
- 4.1 There are no current resource implications associated with the report.

5. Equalities Implications

- 5.1 No equalities implications have been identified in direct relation to this report.

6. Learner Implications

- 6.1 There are no direct learner implications of the report, which is for information.



Dr Waiyin Hatton
Chair of the Good Governance Steering Group
Regional Chair, West College Scotland

Introduction

I was privileged to take over as chair of the Good Governance Steering Group (GGSG) in March this year, when Ken Milroy who had been chair of the group since 2016, stepped down from his position as Regional Chair of North East Scotland College.

I have spent the last few months getting on top of my brief and thought it would be an opportune time to provide an update to the college sector's leaders and governance professionals on the work of the GGSG.

Work of the GGSG

As expected over the past few years, Covid-19 has been the main priority for the Scottish Government and previously planned activity, including any key consultation and legislation changes, centred around the college governance reforms have had to be put on hold. However, I am pleased to report that the GGSG has recently been revisiting the timescales around these reforms and I am able to provide an update on some of these.

As you will be aware, in early 2019, the Minister announced further governance reforms for Scotland's colleges. A summary of these, along with revised timescales for implementation, are noted below:

- **Remuneration of Assigned College Chairs** – this would be in line with what already happens with the 13 Regional Chairs. **[revised timescales for implementation: 2024]**
- **Trade Union Nominees on Boards** – two trade union nominees (one nominated by support staff unions and the other nominated by the teaching staff union) will be included on boards of incorporated colleges and regional strategic bodies. This is in addition to the two existing staff representatives. There are currently no plans to increase student representation. **[revised timescales for implementation: August 2023]**
- **Review College Sector Board Appointments: Ministerial Guidance 2014** – will be refreshed and updated. **[revised timescales for implementation: November 2022]**
- **Co-operation with Funding Bodies** – this would allow the Scottish Funding Council (SFC) to undertake reviews of any college as they see fit. **[revised timescales for implementation: 2024+]**
- **Attendance at Board Meetings by Funding Bodies** – this would allow SFC to attend the board meetings of assigned colleges. **[revised timescales for implementation: 2024+]**
- **3E Examinations and the Non-Incorporated Colleges** – further investigate allowing the Auditor General for Scotland to have the ability to conduct economy, efficiency and effectiveness reviews with the non-incorporated colleges that are not part of a local authority. **[revised timescales for implementation: 2024+]**
- **Suspension of Board Members by Appointing Bodies** – bringing colleges into line with other Scottish public bodies where appointing bodies may suspend board members. **[revised timescales for implementation: 2024+]**

Some of these governance reforms will require full consultation as well as both primary and secondary legalisation.

Further details and timescales for each of these areas can be found in the **College Governance Implementation Plan** which is outlined in **Annex 1**. While timescales are currently indicative, the Scottish Government has agreed with the GGSG to revisit the 2024+ timescales for the Remuneration of Assigned College Chairs with the aim of finalising this earlier.

Further details of the current activity in relation to several areas is noted below:

Trade Union Nominees on Boards (Incorporated Colleges and Regional Strategic Bodies)

The Scottish Government will be soon publishing its 12-week consultation on the Draft Order – starting mid-July until mid-October 2022. It is anticipated that the sector will fully implement changes by August 2023.

Interim Guidance for Observer Status for Trade Union Members on Boards

In light of the Ministerial decision for two trade union nominated members (one nominated by support staff unions and the other nominated by the teaching staff union) to be added, in addition to the elected staff representatives, to the board composition for incorporated colleges and regional strategic bodies, and in keeping with the agreed Staff Governance Standard, the GGSG would encourage all boards, as an interim arrangement, to adopt observer status for these appointments.

This interim arrangement will also assist with any transition when the legislation is passed by the Scottish Parliament.

While the GGSG supports this arrangement, it also has an expectation that all individuals with observer status will act accordingly when attending board meetings in this capacity and will adhere to the key principles, along with board members, from the *Code of Good Governance for Scotland's Colleges* and *Model Code of Conduct for Members of Devolved Public Bodies* which includes observing the highest standards of ethical conduct, respecting confidentiality at all times, and complying with all regulations.

While observers attending board meetings will receive information provided to other members of the board (including papers and minutes), they may not be permitted to formally vote on matters submitted for a vote however, they may be granted the right to speak at meetings, following permission by the chair. The chair would also determine if there were any reserved matters that it was not appropriate for an observer to receive papers or be included in discussion.

Procedure for the Election and Appointment of the Trade Union Nominees

The GGSG has been developing the guidance around a nomination's procedure for the election and appointment of the TU nominees. This is currently being finalised with the GGSG and will be shared with the sector shortly.

Other guides relating to the election of staff and student board members have also been reviewed recently and College Development Network (CDN) will publish any updated guidance and share it with the sector.

College Sector Board Appointments: Ministerial Guidance 2014

The Scottish Government policy team is currently working with the GGSG to review and revise the *College Sector Board Appointments: Ministerial Guidance 2014*. The sector will be consulted on the changes during August 2022, ahead of an updated guidance being published in November 2022.

Externally Facilitated Effectiveness Reviews

The 2016 Code of Good Governance for Scotland's Colleges states that "The board must keep its effectiveness under annual review and have in place a robust self-evaluation process. There should also be an externally facilitated evaluation of its effectiveness at least every three years".

The GGSG considered CDN's *Overview of the External Governance Effectiveness Reviews for Scotland's Colleges 2020/21* report and agreed to change board externally facilitated evaluation reviews to 'every three to five years', in line with the university sector. This change has been endorsed by both the Scottish Government and SFC.

CDN will publish an updated Guidance Note on Conducting Externally Facilitated Effectiveness Reviews and share it with the sector.

2016 Code of Good Governance for Scotland's Colleges

The GGSG has been reviewing and revising the current *Code of Good Governance for Scotland's Colleges* periodically over the last two years, in line with legislative changes and good practices. It was envisaged that an updated Code would be published before now however, the GGSG decided to wait until the revised timescales by the Scottish Government on the governance reforms were known before deciding when to publish an updated Code. This was discussed again at a recent GGSG meeting, and it was agreed to publish an updated Code ahead of the new academic year and then make further revisions where appropriate. The GGSG will publish an updated Code and share it with the sector.

The GGSG also agreed that following the implementation of the governance reforms and when further revisions are made to the Code, ahead of publishing it, the GGSG will conduct an **Islands Community Impact Assessment** to ensure any changes to the Code do not adversely affect colleges boards within the Scottish islands.

Further Information

As key work on governance reforms is taken forward, we will aim to keep college sector's leaders and governance professionals briefed on progress. In the meantime, and for information, a note of the current composition of the GGSG and contact details for any enquiries, are noted below:

GGSG Membership and Contact Information	
Membership <ul style="list-style-type: none">• Four regional/assigned college chairs• Four college principals (or senior college staff)• Two college governance professionals• Representation from STUC (EIS/UNISON)• A representative from NUS Scotland• A representative from Scottish Government• A representative from SFC• A representative from Colleges Scotland• A representative from CDN• A representative from OSCR	Contact <p>Frances Harrower Secretariat for the Good Governance Steering Group frances.harrower@collegesscotland.ac.uk M: 07725 557342</p>

Good Governance Steering Group
July 2022

College Governance Implementation Plan

Governance Decision	Impacts on	Deliverables	Lead	Supported By	Timescales
1. Chairs of the assigned colleges chairs (incorporated) are to be remunerated at a rate determined by the Scottish Ministers.	<ul style="list-style-type: none"> Regional and Assigned College Chairs Regional strategic bodies Regional Colleges Assigned incorporated college boards Scottish Funding Council 	<ul style="list-style-type: none"> Review the current pay arrangements for regional college chairs against the Scottish Government's Pay Policy Technical Guide for 2019. 	SG	SFC	Complete
		<ul style="list-style-type: none"> Report back to GGSG. 	SG	GGSG	Complete
		<ul style="list-style-type: none"> Consider whether assigned college (incorporated) chairs should be Ministerial appointed. 	SG	SFC	Complete - decision made not to.
		<ul style="list-style-type: none"> Develop a business case (determining affordability by consulting with RSBs and regional colleges) prior to primary legislation. 	SG	SFC	2023 +
		<ul style="list-style-type: none"> Report back to GGSG. 	SG	GGSG	2023 +
		<ul style="list-style-type: none"> Propose amendments the Further and Higher Education (Scotland) Act 1992. 	SG	SFC	2023 +
		<ul style="list-style-type: none"> Consult on amendments to the Act. 	SG	SFC	2023+
		<ul style="list-style-type: none"> Develop new Pay Guidance on passing of the amendments to Act. 	SG	SFC	2024+
		<ul style="list-style-type: none"> Consult on new Pay Guidance 	SG	SFC	2024+
		<ul style="list-style-type: none"> Issue new Pay Guidance. 	SG	SFC	2024+
2. Trade Union nominees will be added to the boards of the incorporated colleges, the GCRB and the Lanarkshire Board, in addition to the elected staff representatives.	<ul style="list-style-type: none"> Trade Unions Regional strategic bodies Regional colleges Incorporated assigned colleges Scottish Funding Council 	<ul style="list-style-type: none"> Establish a working group to prepare boards and ensure an effective implementation and report back to GGSG. 	GGSG	CS	Complete
		<ul style="list-style-type: none"> Review various legals around the proposed implementation to ensure the various Acts are considered and aligned. 	SG	OSCR	Complete
		<ul style="list-style-type: none"> Discuss the impacts of the changes on board compositions directly with GCRB and Lanarkshire board. 	SG	SFC	Complete
		<ul style="list-style-type: none"> Discuss with the impacts of the changes directly with UHI. 	SG	SFC	Complete

Governance Decision	Impacts on	Deliverables	Lead	Supported By	Timescales
		<ul style="list-style-type: none"> Review current board/RSB compositions considering the increase in staff members and the changes to the remuneration of assigned college chairs. Provide guidance around compositions - minimum and maximum numbers. 	SG	SFC	Complete
		<ul style="list-style-type: none"> Review/amend existing guidance or the code and/or develop new guidance (quorum on board committees, conflict of interests, time off for public duties, accountability and conduct, committee remits). 	CDN	Board Secretaries Network	Complete
		<ul style="list-style-type: none"> EIS/UNISON to develop principles around a nominations process. 	EIS/UNISON	SG	Complete
		<ul style="list-style-type: none"> Develop guidance around a nominations process and consult with trade unions and boards. 	CDN	Board Secretaries	Ongoing
		<ul style="list-style-type: none"> Consider strengthening as part of the Induction Training Programme how to manage conflict of interests (OSCR's involvement from a charities trustee perspective - Duties and Accountabilities) 	CDN	OSCR	Complete
		<ul style="list-style-type: none"> Amend both the 1992 Act and the 2005 Act by Subordinate legislation (including consultation process). 	SG	SFC	June 2022 - July 2023
		<ul style="list-style-type: none"> Sector to fully implement the changes. 	ALL		August 2023

Governance Decision	Impacts on	Deliverables	Lead	Supported By	Timescales
3. <i>College Sector Board Appointments: Ministerial Guidance 2014</i> will be refreshed and updated.	<ul style="list-style-type: none"> Scottish Funding Council Regional strategic bodies Regional college boards Assigned college boards Scottish Funding Council 	<ul style="list-style-type: none"> Review current Ministerial Guidance. 	SG	SFC	Complete
		<ul style="list-style-type: none"> Establish working group of GGSG to review and recommend amendments to the current Guidance. 	GGSG		N/A
		<ul style="list-style-type: none"> Report back to the GGSG. 	SG	GGSG	Complete
		<ul style="list-style-type: none"> Update Ministerial Guidance to include: <ul style="list-style-type: none"> improving succession planning co-opting members board vacancies advertised on the CDN website Gender Representation of Public Board Act 2018. 	SG/ Public Appointments Team		Complete
		<ul style="list-style-type: none"> Consult on the updated Ministerial Guidance. 	SG		August 2022
		<ul style="list-style-type: none"> Issue new Ministerial Guidance, alongside revised Code. The revised code could be issued without the guidance. 	SG		November 2022
		<ul style="list-style-type: none"> Sector to fully implement. 	ALL		November 2022
4. Colleges Development Network to embed teamwork within the induction training of board members.	<ul style="list-style-type: none"> College sector board members Scottish Funding Council 	<ul style="list-style-type: none"> CDN to review training needs prior to AY 2019/20. 	CDN		Complete
		<ul style="list-style-type: none"> Report back to the GGSG on outcome of review. 	CDN	GGSG	Complete
		<ul style="list-style-type: none"> Roll out training. 	CDN		Complete - rolling out as of October 2019

Governance Decision	Impacts on	Deliverables	Lead	Supported By	Timescales
5. Develop guidance for the SFC and colleges to follow in relation to any specific reviews undertaken by SFC of colleges under section 7C(7) of the Act (which relate to reviewing statutory criteria for a body to remain eligible for funding).	<ul style="list-style-type: none"> Regional strategic bodies Regional college boards Assigned college boards Scottish Funding Council 	<ul style="list-style-type: none"> Scope out potential guidance, taking into account the role of the RSB. 	SG	SFC	2023+
		<ul style="list-style-type: none"> Report back to GGSG 	SG/SFC	GGSG	2023+
		<ul style="list-style-type: none"> Draft Ministerial Guidance 	SG	SFC	2024+
		<ul style="list-style-type: none"> Report back to GGSG 	SG	SFC	2024+
		<ul style="list-style-type: none"> Consult on the Ministerial Guidance 	SG	SFC	2024+
		<ul style="list-style-type: none"> Issue Ministerial Guidance 	SG	SFC	2024+
6. Introducing the ability of SFC to attend the board meetings of assigned colleges.	<ul style="list-style-type: none"> Regional strategic bodies Regional college boards Assigned college boards Scottish Funding Council 	<ul style="list-style-type: none"> Scope out potential guidance around what this legislation change aims to achieve, taking into account the role of the RSB and the removal of assigned colleges as fundable bodies. 	SG	SFC	2023+
		<ul style="list-style-type: none"> Report back to the GGSG 	SG	GGSG	2023+
		<ul style="list-style-type: none"> Seek approval from the Scottish Funding Council for permission to remove assigned colleges from Schedule 2 of the 2005 Act (fundable body status). 	SG	SFC	2024+
		<ul style="list-style-type: none"> SFC to issue their decision. 	SFC		2024+
		<ul style="list-style-type: none"> Issue a removal of assigned colleges from Schedule 2 by Order (subordinate legislation) and Introduce a Power in Schedule 2 by Order (primary legislation) to allow the Scottish Funding Council to attend the board meetings of assigned colleges. 	SG	SFC	2024+
		<ul style="list-style-type: none"> Sector to fully implement. 	ALL		2024+

Governance Decision	Impacts on	Deliverables	Lead	Supported By	Timescales
7. Further investigate allowing the Auditor-General for Scotland the ability to conduct economy, efficiency and effectiveness reviews with the non-incorporated colleges that are not part of a local authority.	<ul style="list-style-type: none"> UHI Argyll College Sabhal Mor Ostaig West Highland College Newbattle Abbey College Scottish Funding Council Audit Scotland 	<ul style="list-style-type: none"> Consultation with the affected colleges and UHI, examine the potential impact on the independent status of non-incorporated colleges and ONS reclassification as well as consider the dependency on alignment with potential other changes to the Public Finance and Accountability Act. 	SG - Policy/ Finance Teams	Audit Scotland	2023+
		<ul style="list-style-type: none"> Ministerial decision. 	SG		2024+
		<ul style="list-style-type: none"> Report back to the GGSG. 	SG	GGSG	2024+
		<ul style="list-style-type: none"> Amend the Public Finance and Accountability Act 2000 by Order to allow for the AGS to conduct 3E examinations - <i>this action is still to be determined and is within the remit of Finance, not College Policy.</i> 	SG Finance		2024+
		<ul style="list-style-type: none"> Ability now available to Audit Scotland. 	Audit Scotland		2024+
8. Allow for appointing bodies to suspend members they appoint in line with other Scottish public bodies.	<ul style="list-style-type: none"> Scottish Government Regional Strategic Bodies 	<ul style="list-style-type: none"> Examine how this would work in principle and how different this would be from dismissal. Also, how this would tie into the review of the Charities and Trustees Investment (Scotland) Act 2005. 	SG		2023+
		<ul style="list-style-type: none"> Report back to the GGSG. 	SG	GGSG	2023+
		<ul style="list-style-type: none"> Amend the 1992 Act by Primary legislation. 	SG		2024+
		<ul style="list-style-type: none"> Develop new Board Member Suspension Guidance on passing of the amendments to Act. 	SG		2024+
		<ul style="list-style-type: none"> Consult on the Board Member Suspension Guidance. 	SG		2024+
		<ul style="list-style-type: none"> Issue Board Member Suspension Guidance. 	SG		2024+
		<ul style="list-style-type: none"> Sector to fully implement the changes. 	ALL		2024+