



SFC Guidance

Good Practice in University Sector Governance

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Summary: Requirements for higher education institutions to comply with The Scottish Code of Good HE Governance

FAO: Chairs, Principals and Directors of Scotland's universities

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Purpose

1. This guidance sets out the Scottish Funding Council's (SFC) determination of the principles of good governance which will apply to higher education institutions in Scotland, in accordance with SFC's statutory duty under the Further and Higher Education (Scotland) Act 2005 (as amended) ("the 2005 Act").

Background

2. Section 9A of the 2005 Act states that "The Scottish Ministers may, under section 9(2), impose a condition that SFC must, when making a payment to a higher education institution under section 12(1), require the institution to comply with any principles of governance which appear to SFC to constitute good practice in relation to higher education institutions".
3. Scottish Ministers have exercised their powers under the legislation and included in their grant letter to SFC (dated 4 April 2014) a condition under which SFC must require every higher education institution to comply with any principles of governance which appear to constitute good practice.
4. We expect institutions to work to achieve full compliance with the new Scottish Code of Good Higher Education Governance (the new Code) during 2017-18 which we will class as a transitional period. Full adoption of the new Code will take effect from 1 August 2018. If for any reason institutions are still working towards full compliance at this time, comply or explain can be used (see paragraph 8).

Principles of Good Governance

5. In considering which principles of governance constitute good practice, we have undertaken a review of the new Code, issued in October 2017.
6. Having reviewed the new Code, we are generally satisfied that it currently meets the principles of governance which constitute good practice. Furthermore, good governance practice is not static and we would expect the guidance in the Code to be enhanced in the event of any major and widely recognised developments in the principles of governance which constitute good practice in relation to higher education institutions.
7. Institutions will be expected to comply with the high-level principles of the Code and follow closely the detailed provisions. Compliance with the Code should be reported in the Corporate Governance statement included in the annual financial statements of the institution.

Comply or explain

8. SFC considers that any departures from the high-level principles of the Code are likely to be rare and, in line with the Code, would need to be explained and justified by the institution. In the event that an institution feels unable to comply with one of the high-level principles of the Code, we would expect it to contact SFC to discuss this at an early stage, rather than wait until the annual financial statements are issued.

Monitoring compliance with the Code

9. In order to monitor compliance with the Code, SFC will rely on the information provided by institutions in their corporate governance statement in the annual financial statements. However, as stated in paragraph 8 above, we expect institutions to contact SFC at an early stage if they have any departures from the high-level principles of the Code.
10. The accounts direction for the 2016-17 accounts ([SFC/GD/09/2017](#)) states that higher education institutions should include a specific statement in the corporate governance statement to confirm compliance with the Scottish Code. In line with the comply or explain approach, an explanation should be provided in the event that the institution's practices are not consistent with particular aspect of the Code.
11. In terms of reporting on compliance in 2017-18, the transitional year, we will expect institutions to state their progress in complying with the new Code in the corporate governance statement in the annual financial statements, alongside a statement of compliance with the 2013 Code.
12. From 2018-19 onwards, if there is non-compliance reported by an institution that causes SFC concern, we will write to the institution to set out our concerns. It is a failure to comply with the terms and conditions of grant under the Financial Memorandum if there is non-compliance with the Scottish Code of Good Higher Education Governance in relation to either:
 - Unexplained departures from any aspect of the Code.
 - Areas of departure which are explained, but the explanation fails to demonstrate compliance with the relevant high-level principle.
13. Where apparent non-compliance is identified, the approach taken by SFC will follow the arrangements and principles set out in:
 - The Financial Memorandum (including paragraphs 4 and 5 of the Introduction, paragraphs 7 to 9 of Part 1 and paragraphs 10 to 12 of Part 2).

- The relevant version of SFC's Outcome Agreement Guidance (for example, paragraphs 23 to 31 of 'Guidance for the development of University Outcome Agreements: 2018-19 to 2020-21', [SFC/GD/20/2017](#)).

14. We recognise that institutions have a grace period until 2020 to fully comply with parts of the Higher Education Governance (Scotland) Act 2016 and therefore may not achieve full compliance with the Code in certain areas until this time. Any non-compliance due to this must be clearly stated in the corporate governance statement in each year's financial statements.

Review of the Code

15. We agree with the recommendation made by the review steering group that the Code should be reviewed again within four years of its implementation date and that the depth and scope of the review will depend on the circumstances at the time. There should also be a mechanism for earlier amendment of the Code in the event of any major and widely recognised developments in the principles of governance which constitute good practice in relation to higher education institutions.

Further information

16. For further information, please contact Claire Taylor, Senior Financial Analyst (Tel: 0131 313 6604; email: ctaylor@sfc.ac.uk) or Martin Fairbairn, Chief Operating Officer, (Tel: 0131 313 6524; email: mfairbairn@sfc.ac.uk)



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