

Universities Scotland welcomes the opportunity to respond to this consultation. Our members, Scotland's 19 higher education institutions, make a significant contribution to Scotland's economic, cultural and societal well-being. Our economic contribution of over £6bn per annum is built in part on our responsible autonomy. This is a recognition shared by the Scottish Government that the autonomy of Higher Education Institutions is critical to their ability to contribute fully to Scotland's social, economic and cultural wellbeing. In this context, governing bodies play a key role guiding the strategic development and performance of diverse institutions.

We share the Scottish Government's goal to harness and make best use of talent in our decision-making bodies, irrespective of age, gender, gender identity, sexual orientation, disability, religion or socio-economic background. The higher education sector is progressing work to enhance the diversity of its governing bodies, developing new institutional goals for this. Our response considers:

- the current gender balance of membership of university¹ governing bodies;
- the actions being taken that are aligned with the policy intentions reflected in this consultation;
- the particularities of university governance structures including the varied routes to governing body membership and electoral processes; and
- the status of universities and its implications for the scope of any potential legislation.

The gender balance of membership of university governing bodies

The detail and complexity of university governance structures are explored below. The governing bodies of Higher Education Institutions (often called "Courts") are noteworthy in that they provide for and encourage significant levels of inclusion from stakeholders at all levels. Governing bodies in the sector always include some staff and student representation, and in some cases include members nominated by other organisations, such as alumni bodies or the local community. These members are either elected by their peers or selected by means wholly outside of the Court's authority. Other members of the governing body are appointed directly by the Court through a transparent process. This is the segment of governing bodies for which institutions can be held accountable in regards to equality.

As of May 2014, 32% of the 200 members² appointed by university governing bodies were female, up 3% on the previous year. Three institutions already have ≥40% female appointed membership. Taking governing body membership as a whole, 29% of the 400 members across Scotland were female, including the three most recently appointed Chairs of University Court.

Action taking place

Each governing body, and the sector as a whole, is taking action to implement policies and goals with regard to the balance of its independent members in terms of equality and diversity.

At the national level

A new code of governance for the higher education sector, introduced in the summer of 2013, sets out governance principles that must be met by all institutions³. These include:

¹ We use the term 'university' throughout the document to mean an institution within the higher education sector. Scotland's higher education institutions are her 16 universities, the Glasgow School of Art, the Royal Conservatoire of Scotland and Scotland's Rural College, each with distinct governance arrangements.

² Based on data taken from individual Institution Governance webpages in May 2014.

³ <http://www.scottishuniversitygovernance.ac.uk/>

“There shall be a balance of skills and experience among members sufficient to enable the governing body to meet its primary responsibilities and to ensure stakeholder confidence. The governing body shall draw up and make public a full evaluation of the balance of skills, attributes and experience required for membership of the governing body, which shall inform the recruitment of independent members of the governing body. The membership of the governing body shall be regularly assessed against this evaluation. The governing body, having due regard to applicable law, shall establish appropriate goals and policies in regard to the balance of its independent members in terms of equality and diversity, and regularly review its performance against those established goals and policies.”

“When vacancies arise in the position of the chair, or in any of the members appointed by the governing body, they shall be widely publicised both within and outside the Institution. In doing so, specific reference should be made to the evaluation referred to [above] and also to the desirability of ensuring the diversity of the governing body’s membership.”

Universities will also be working over the coming months to support a new project on equality and diversity in Scottish HEI governing bodies, led by the Equality Challenge Unit, which is due to report in early 2015. This work will enhance and reinforce good practice guidance on board diversity across the sector based on lessons learnt both abroad and from the recent Code implementation.

In parallel to this, Universities currently work with several initiatives to support and encourage women to apply for board membership, e.g. the HE Leadership Foundation’s Aurora programme, workshops run by Equate Scotland, and more indirect support through Athena Swan awards (supporting board members of the future).

At the institutional level

Individual institutions are taking a range of actions, including:

- the creation of new Statements of Intent and Action Plans on diversity;
- reviews and equality impact assessments of governing body recruitment processes to identify how current practice can be enhanced through reviews of policy on the diversity of the governing body, drawing on advice from bodies such as the Equality Challenge Unit;
- revision of advert and post specification documents for lay members to be explicit in the desire to attract applicants from across the community;
- clarification and promotion of policy on member expenses that no person should suffer financially from taking on a governor’s role – so that all relevant expenses, including caring expenses, will be reimbursed;
- a focus on diversity in committee recruitment as a goal in itself and in recognition of this as an important route to governing body membership;
- focussed recruitment advertising, utilising routes such as Women on Boards.

University governance structures and the diverse routes to board membership

University governance is complex. Each individual institution’s governance arrangements rest on specific legal foundations. These foundations are very different, ranging from establishment by papal bull or royal charter, University status granted under the Further and Higher Education Act

(Scotland) 1992 or by the Privy Council, through to incorporation as companies limited by guarantee with a shareholding.⁴ All Higher Education Institutions in Scotland have charitable status.

Uniquely, governing boards of HEIs have proportions of their membership either elected directly or nominated by groups or organisations independent of the board itself. Elected and ex-officio members always include students and staff, elected by their peers, and governing bodies may additionally include nominations from external community bodies such as local authorities and the alumni community. Constituencies for such elections can include tens of thousands of individuals. To illustrate the complexity of these structures four examples of current HEI governing bodies (three Universities and the Royal Conservatoire) are provided as an annex to this response.

Elected constituencies and external nominating bodies will be aware of the governing body's own goals for diversity and may adopt their own measures to enhance diversity. However, the primary focus of a governing body's commitment to diversity is in relation to the members which it appoints.

The number of appointed members, and their proportion of the overall governing body, varies considerably from institution to institution. Turnover in membership is low, with members typically serving on the governing body for up to 8 years. Goals for diversity are therefore usually considered over time frames of five years and beyond.

The status of universities and its implications for the scope of any potential legislation.

We note that the consultation lists higher education institutions as 'public authorities' for the purposes of this policy. We assume that this term reflects the inclusion of HEIs under this definition under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. While sharing the broad ambition for greater gender equality set out in the consultation, the sector holds a concern with regard to unintended consequences flowing from its inclusion as a 'public authority' in proposed legislation.

Higher education institutions are autonomous charitable bodies, accountable to funders and holding a broader responsibility to their students and staff as well as the wider community. Classification as 'public authorities' for the purposes of this potential legislation will involve risk.

In particular, the inclusion of institutions in such a classification risks their current status in two key aspects:

- The Office for National Statistics classifies Universities as 'Non-Profit Institutions Serving Households' for the purposes of National Accounts, alongside e.g. other charities, trade unions learned societies etc. 'Although still currently classified as non-market producers, these bodies are not controlled by Government according to the criteria for control set out in the Manual for Government Debt and Deficit and so are classified to the NPISH sector.'⁵ This status has significant implications for Scottish HEIs' financial sustainability and international success, as it affects their ability to raise revenue and make direct capital investments. Classification as 'public authorities' for these purposes would constitute a risk to this ONS status. This would have major financial consequences, e.g. preventing institutions from retaining income from entrepreneurial activities, and putting higher education institutions' borrowing onto the Scottish Government's balance sheet.

⁴Report on the Review of Higher Education Governance, February 2012. URL: <http://www.scotland.gov.uk/Resource/0038/00386841.pdf>

⁵ 'Changes to National Accounts: Review of the Non-Profit Institutions Serving Household Sector', Office for National Statistics, May 2014.

- Unlike most public bodies, HEIs have charitable status. This is critical to their ability to raise funding from philanthropic sources, which is required for success in the highly competitive arena of global higher education. It is also crucial to institutions' financial sustainability because of the taxation implications. Government guidance says that 'A body established in order to implement the policies and directions of ministers or departments, for example, is unlikely to be a charity. If charitable status is sought for a Public Body it will be necessary to make substantial compromises in terms of the control which the department or minister can exercise over its activities.'⁶

Conclusion

We are grateful for the opportunity to respond to the consultation. The sector is committed to the overall ambition for greater diversity within governance structures. We have seen progress in the representation of women on our governing bodies over recent years with a 16 per cent increase in female Chairs (head of university's governing bodies) since 2013. A figure of 32 per cent women amongst appointed members means we are within sight of the 40 per cent of women suggested as a minimum by the consultation. The new Code of Good HE Governance, still within its first year of implementation, will deliver new measures with the aim of increasing this further as the cycle of vacancies and appointments allows.

As autonomous institutions we believe that higher education institutions should progress with their newly introduced governance reforms, working for "continuous improvement"; a principle to which all institutions subscribe. However, the sector does hold a concern with regard to unintended consequences flowing from its inclusion as a 'public authority' in proposed legislation, particularly as this will involve risk to the sector's charitable status and financial sustainability.

Annex: Examples of membership structures of HEI governing bodies

A. The University of Glasgow

Current Composition of Court

Via Electoral Process	Appointed/Ex-officio
The Rector (by the student body)	Chancellor's Assessor (by the Chancellor)
Five General Council Assessors (by the University's alumni)	Principal & Vice Chancellor (by Court)
Seven Senate Assessors (by academic staff)	Assessor of the City of Glasgow Council (by Glasgow City Council)
Two employee representatives (by University staff)	5 Co-opted members (by Court)
President of Students' Representative Council (by the student body)	
Assessor of Students' Representative Council (by the student body)	

⁶

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80080/PublicBodiesGuide2006_3_setting_upv2_0.pdf

Gender Balance 2014

Co-opted Members: 40% women

Overall: 32% women

New Initiatives to increase the representation of women:

- Advertisement of lay Court vacancies now include reference to a desire for diverse membership and state that nobody serving on Court will be financially disadvantaged. All expenses, including lost earnings and caring duties, will be covered.
- Advertisements for vacancies in 2013 were placed in professional media, such as Women in Property, Women on Boards, with the intention of encouraging more female applicants.
- The recruitment of lay members now involves the Nominations Committee agreeing a definition of each vacant role in terms of the specific skills/experience required by Court.
- Similarly a new protocol for the production of a job description and expected commitment for the Chair has been produced. New Chairs will be selected one year in advance of assuming office to enable effective transition and development.
- Terms of office have been reviewed by Court, and 4 years (plus a possible further 4 years) has been established as the standard term of office for all members, with the exception of the student members, the City Council representative and the Rector, whose terms are determined by Council elections (students and City Council) or legislation (Rector).

B. The Royal Conservatoire of Scotland

Current Composition of Board of Governors

Via Electoral Process	Appointed/Ex-officio
President of Students' Association (by the student body)	Principal (by the Conservatoire)
Three staff Governors (one by Academic Board, one by all full-time academic staff, and one by full-time support staff).	Deputy Principal (by the Conservatoire)
	Lay Governors - not less than 11 and not more than 19 (by the Board).

Gender Balance 2014

Co-opted Members: 33% women

Overall: 30% women

New Initiatives to increase the representation of women:

- The Board has articulated its aims in terms of equality and diversity. **Specifically in terms of gender, the Board will seek to achieve a minimum representation of 40% for either gender amongst Lay Governors by July 2019.**
- The Board has approved a statement of the balance of skills, attributes and experience required for membership of the Board of Governors. That statement, which is in the public domain, will inform the recruitment of Lay Governors and the Board's Nominations Committee will use it as the basis of its annual report to the Board.
- Membership of the Board's Nominations Committee has been extended to include all elected staff and student Governors.
- The Governance page on the Conservatoire's website includes an open invitation to interested individuals to express an interest in becoming a Lay Governor. A statement of the balance of skills, attributes and experience required for membership of the Board of Governors and a role specification for Governors accompanies that invitation, as does a statement in respect of the Board's commitment to equality and diversity. Recognising its national role, the Conservatoire has, in the past, advertised in the national and regional press for new Governors.
- A new role specification for the Chair has been produced and an inclusive and transparent search process for the appointment of a new Chair is being devised.
- The Conservatoire is seeking changes to its Statutory Instrument to, amongst other things, increase student representation from 1 elected Governors to 2. The Students' Association will be requested to ensure that it delivers gender equality in its Board representation.

C. The Robert Gordon University

Current Composition of Court

Via Electoral Process	Appointed/Ex-officio
Three staff Governors (one elected by the Academic Council, one by all Academic staff, and one by support staff).	Principal & Vice Chancellor (by the University)
Two student Governors (one undergraduate and one postgraduate, elected by the student body).	12 lay members (by the Board)

Gender Balance 2014

Co-opted Members: 25% (rising to 33% in 2015) women.

Overall: 22% women

New Initiatives to increase the representation of women:

- The Board has indicated that **the University should be working towards 40% of its membership being women, subject to the best candidates being appointed against the selection criteria for Board membership.** The current gender balance is 25% women as independent governors rising to 33% in 2015. RGU has had a gender balance of around 50% in the past. It has also been agreed that Board equality matters will be subject of monitoring as occurs for staff and students.

- The Nominations Committee has developed a skills matrix and this will be made public in future. Detailed governor profiles are currently on the web.
- Independent governor vacancies are widely published both within and out with the University.

D. Queen Margaret University

Current Composition of Court

Via Electoral Process	Appointed/Ex-officio
The Student President and one other Students' Union office-bearer (by the student body)	The Principal and Deputy Principal.
Three staff members, two of whom are elected by staff, one who is elected by Senate.	Between 12 and 16 lay members (by the Court)

Gender Balance 2014

Co-opted Members: 31% women.

Overall: 35% women

New Initiatives to increase the representation of women:

- In relation to equality & diversity, recent advertisement for lay Court vacancies confirmed the University's commitment to ensuring that its Court represents the staff, students and community which it serves. Expressions of interest have been particularly welcomed from women, disabled people, ethnic minorities and applicants who would further enhance the diversity of the Court.
- Advertisements for vacancies in 2014 have been placed in a range of media, including, Women on Boards, with the intention of encouraging more female applicants. With advice from the Equality Challenge Unit (ECU), the person specification has been revised so as to accommodate those without previous board level experience, but who are able to demonstrate a track record of success in professional areas of expertise.
- Further work is being undertaken (May 2014) to ensure that the QMU statutory instrument, as currently set out, provides for the recruitment of the Chair from out with the established lay membership. Lay vacancies are publicised within and without the University, and recruitment takes account fully of the balance of skills, attributes and experience of the current lay membership.