

College Sector Board Appointments: Draft Ministerial Guidance

COLLEGE SECTOR BOARD APPOINTMENTS: DRAFT MINISTERIAL GUIDANCE

1. INTRODUCTION

“Strong governance of the sector matters. We entrust those who govern with ensuring that colleges are well led and managed so that they meet their objectives, deliver positive outcomes and provide good value for taxpayers who fund the services. Just as they hold college managers to account for their actions, they too must be accountable for their stewardship of this important public service.”

Michael Russell MSP

Cabinet Secretary for Education and Lifelong Learning

Reinvigorating college governance: The Scottish Government response to the report of the review of further education governance in Scotland, June 2012

1.1 This consultation paper seeks comments on draft Ministerial guidance on appointments to college sector boards. It includes a series of questions. The questions are also set out in the formal respondent information document. We are inviting written responses by **Friday 30 May 2014**.

1.2 Please send the completed Respondent Information Form, which will include your response, to FEMailbox@scotland.gsi.gov.uk

or

College Sector Board Appointments Consultation
Colleges and Adult Learning Division
Scottish Government
6th Floor, Atlantic Quay
150 Broomielaw
Glasgow G2 8LU

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

1.4 Information about the wider role of Scottish Government consultation is at **Annex A**.

1.5 A list of consultees is at **Annex B**.

Draft guidance

1.6 Guidance that results from this consultation will be issued by the Scottish Ministers to:

- Regional college boards concerning the appointment of ‘ordinary’ board members to those boards;
- Regional Boards concerning the appointment of ‘ordinary’ board members to those boards; and
- Regional strategic bodies concerning the appointment of the chair and ‘ordinary’ board members of assigned incorporated college boards.

References in this draft guidance

Legislation

1.7 References to:

- the 1992 Act are to the Further and Higher Education (Scotland) Act 1992;
- the 2005 Act are to the Further and Higher Education (Scotland) Act 2005; and
- the 2013 Act are to the Post-16 Education (Scotland) Act 2013.

1.8 References to the 1992 Act and 2005 Act are to the Acts as amended by the 2013 Act.

Other references

1.9 Other references in this draft guidance:

- An “incorporated college” is a college with a board of management under part 1 of the 1992 Act.
- A “regional college board” is the board of management of an incorporated college designated by order under section 7A(1) of the 2005 Act as a regional college.
- A “regional strategic body” is a body listed in schedule 2A to the 2005 Act. The functions of a regional strategic body include appointing the chair and ordinary board members of assigned incorporated colleges.
- A “Regional Board” is a type of regional strategic body that is listed in Part 1 of schedule 2A to the 2005 Act. Unlike any other regional strategic body, the constitution of a Regional Board is set out in the 2005 Act¹.

¹ Further information about the differences between Regional Boards and the other type of regional strategic body is set out in the Scottish Government draft summary guide at <http://www.scotland.gov.uk/Topics/Education/post16reform/hefegovernance/CollegeReformsandPost-16Act>

- An “assigned incorporated college board” is the board of management of an incorporated college assigned to a regional strategic body by order under section 7C(1) of the 2005 Act.
- A “college sector board” is a board of either an incorporated college or a Regional Board. An “ordinary board member” is a member who is not the chair and who does otherwise hold a specific position on the board².

Ministers’ powers and this guidance

1.10 Ministers have powers under paragraph 3C(1) of Schedule 2 to the 1992 Act to issue guidance, following consultation, to regional college boards and regional strategic bodies in relation to appointments to regional college boards and assigned incorporated college boards.

1.11 Regional college boards and regional strategic bodies must have regard to such guidance when appointing board members.

1.12 Ministers also have powers under paragraph 3(6) of schedule 2B to the 2005 Act to issue guidance, following consultation, to Regional Boards in relation to appointment to those boards. Regional Boards must have regard to such guidance when appointing board members.

1.13 This guidance is issued under paragraph 3C(1) of Schedule 2 to the 1992 Act and paragraph 3(6) of schedule 2B to the 2005 Act.

² i.e. is not a student or staff member; and in the case of a college board, is not the principal; and in the case of a Regional Board, is not the chair of an assigned college.

2. OVERVIEW

2.1 All college sector board members play a vital role in ensuring that colleges and Regional Boards fulfil their roles, including meeting learner and business needs, ensuring value for money for taxpayers, and working in partnership with learners and staff.

2.2 Strong, accountable governance requires board members who reflect Scotland's diverse population with the right skills, knowledge, attributes and experience to make a valuable contribution to an effective board.

2.3 A key element of recent reforms to the college sector in Scotland has been to make significant improvements to the accountability of boards. Many of the measures – including those about appointments - being put in place to achieve this were recommended by the Review of FE Governance, published in January 2012³, and were built on in the legislative changes brought in by the 2013 Act.

2.4 The new transparent appointment system for college sector boards aims to:

- a) enhance public accountability
- b) have boards that are properly equipped to perform the role asked of them to achieve positive outcomes
- c) encourage participation from a wide and representative group of individuals
- d) generate greater confidence in college governance arrangements.

2.5 This guidance:

- a) identifies the **skills, knowledge, attributes and experience** of board members to enable college sector boards to perform effectively; and
- b) outlines, in general terms, the **process** by which appointments should be made or extended to support a robust, effective, transparent system in which learners, staff, business, wider society and Ministers will have confidence.

³<http://www.scotland.gov.uk/Topics/Education/UniversitiesColleges/17135/CollegeGovernanceReview/FEGovernanceReport>

3. REGIONAL COLLEGE BOARDS – APPOINTMENT OF ‘ORDINARY’ BOARD MEMBERS

What is a regional college board?

3.1 As previously outlined, a “regional college board” is the board of management of an incorporated college designated by order under section 7A(1) of the 2005 Act as a regional college.

Membership of a regional college board

3.2 Paragraph 3(1) of Schedule 2 to the 1992 Act outlines that a regional college board must comprise in total between 15 and 18 members. All paragraph references in this section are to that schedule.

3.3 Paragraph 3(2) details that the board must comprise:

- A chair appointed by Scottish Ministers
- The principal of the college
- Two elected staff members (one teaching and one non-teaching)
- Two nominated student members
- Ordinary board members appointed by the board.

3.4 A regional college board must therefore have between 9 and 12 ordinary board members.

3.5 Other key matters outlined in Schedule 2 to the 1992 Act include:

Appointment of ordinary members of a regional college board

- Ordinary board members are appointed by the regional college board, with the approval of its chair and Scottish Ministers. [Paragraph 3(3)]

Terms and conditions of appointment of ordinary board members

- An ordinary board member of a regional college board holds and vacates office on such terms and conditions as the board may determine⁴. [Paragraph 5(1)]

⁴ The regional college board also determines the terms and conditions of appointment of staff and student members.

Length of appointment, extension and re-appointment of ordinary board members

- An ordinary board member is to hold office for a period not exceeding four years. [Paragraph 5(2)(c)]
- A regional college board may extend the period of appointment of an ordinary board member for a single further period not exceeding four years; such an extension requires to be approved by the chair of the regional college board and Scottish Ministers. [Paragraph 5(2B)]
- After an appointment has ended, a person is eligible for re-appointment. [Paragraph 5(1)]

3.6 **Annex C** outlines the routes for ordinary members to continue on boards.

Equal opportunities

3.7 Regional college boards are bound by the Equality Act 2010. Section 26A of the 2005 Act provides that, among other things, when a regional college board makes appointments to its board, it must do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

3.8 The terms “equal opportunities” and “equal opportunity requirements” are defined in section L2 of part II of Schedule 5 to the Scotland Act 1988. “Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

Not eligible for appointment

3.9 Paragraph 5A of Schedule 2 to the 1992 Act makes provision for persons not eligible for appointment as a board member of an incorporated college. Paragraph 5A is reproduced at **Annex D** for ease of reference.

Scottish Ministers’ powers to require information

3.10 Scottish Ministers have powers under section 12(6) of the 1992 Act to require incorporated college boards to give such information as Ministers require for the purposes of the exercise of their powers under the Act. This extends to information

Scottish Ministers may require in order to consider whether to approve the appointment or extension of a board member of a regional college board.

Guidance

3.11 Paragraph 3C(1) details that in making appointments and in extending the period of appointment a regional college board must have regard to any guidance issued by Scottish Ministers in relation to the making of such appointments (including any guidance on the desirability of appointing members with particular skills and experience).

3.12 Before issuing guidance to regional college boards under paragraph 3C(1), paragraph 3C(2) requires Scottish Ministers to consult a list of bodies.

3.13 Paragraph 3C(3) enables Scottish Ministers to issue different guidance for different purposes. It is for this reason that the Ministers can, for example, issue different guidance to regional strategic bodies in respect of assigned colleges and to regional college boards.

Relevant committee with responsibility for board appointments and extensions

3.14 A regional college board is to establish a relevant committee to nominate board member appointments and extensions. The chair of the regional college board should normally chair this committee.

3.15 The principal of the college must not to be a member of this committee, as there is a conflict of interest. The principal could, however, be asked by this committee to provide information to it (if required), whether in person to the committee or in writing.

Assessing the skills and experience required

3.16 Before beginning an appointments process, the relevant committee of the board is to identify the skills, knowledge, attributes and experience of existing board members.

3.17 This should be compared against the future needs of the board to enable it to perform effectively, taking into account the anticipated challenges and opportunities facing the college. In doing so, boards should demonstrate that they have drawn on a variety of regional and national sources of intelligence and information to evidence the gaps that are to be filled through the appointments process.

Skills, knowledge, attributes and experience of board members

3.18 Board members will be expected to adhere to the Principles of Public Life in Scotland and act at all times in good faith and in the best interests of the learners (see **Annex F**).

3.19 In appointing a person as an ordinary member of a regional college board, the board must have regard to the desirability of appointing someone who has proven:

- a) an ability to work successfully at a senior level, maintaining and developing excellent corporate governance
- b) an ability to contribute to the development of a vision and strategic direction for the college, and to help guide the delivery of planned outcomes in challenging circumstances
- c) an ability to engage and communicate effectively with a wide range of individuals and organisations
- d) senior level experience in building networks that help achieve shared objectives
- e) an understanding of the context in which the college operates, namely in terms of education and improving public services
- f) such other skills, knowledge, attributes or experience as the regional college board considers relevant.

3.20 The following is also considered desirable:

- a) proven experience of, or capacity in, further and/or higher education
- b) proven experience of, or capacity in, industry, commerce, finance, the Third Sector, local authority or trade union(s).

Representativeness

3.21 Moreover, boards should aim to have:

- a) a membership which, as far as possible, reflects the make-up of the population which they serve
- b) a majority of ordinary board members who have proven experience, or knowledge, of the region.

3.22 As required by the 2005 Act, in appointing members, a regional college board must do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

Number of board members receiving remuneration

3.23 A regional college board cannot remunerate individuals for their role as a member of the board (other than its chair). However, as it is possible that members of staff of a college may seek to become 'ordinary' board members as private citizens like any other person, the board must ensure that less than half of its members receive remuneration from the board. Members receiving remuneration include the chair (as a remunerated board appointment); any salaried members of staff on the board, including the principal; and any sabbatical student members (whether remunerated directly by the college or by the college's students' association).

Open recruitment process

3.24 The board must conduct a fair, open and merit-based recruitment process, which includes:

- 1) for any particular appointment or appointments round, the relevant committee should identify an independent person to be part of the process throughout (including development of person specification, assessment criteria and methods as well as involved at the sift and interview) to ensure openness in the appointment round and to instil confidence in it. They must have otherwise no connection with the college (e.g. they must not be a board member, a member of any other college committee or an employee of the college)⁵. However, they must be:
 - i. knowledgeable about the regional college
 - ii. understand the skills, knowledge, experience and attributes required of the person(s) to be appointed
 - iii. have demonstrated sound judgment and decision-making.
- 2) Positions advertised with clear information on the role description, person specification, and assessment criteria and methods. This includes advertising on the Public Appointments website⁶.
- 3) Timely information provided to both successful and unsuccessful candidates with an offer of feedback after application sift and interview stages.
- 4) Names of candidates that have the support of the chair submitted to the relevant committee.

⁵ The same person can be appointed for more than appointment round. However, care should be taken to avoid excessive reliance on the same person or persons, so as to call into doubt their credibility as an independent person.

⁶ <http://www.appointed-for-scotland.org/>

- 5) An appointment made public once Ministerial approval has been given and the person has accepted the position in writing.

3.25 The **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**⁷ and accompanying guidance⁸ are helpful reference tools in making appointments. While they are intended for regulated Ministerial public appointments, the principles of and approach set out by the code are relevant to and should underpin college sector board recruitment and appointment.

Extending board member appointments

3.26 Where an appointment has not already been extended, the relevant committee is to consider whether the needs of the board will be most effectively met by extending an appointment or by making a new appointment.

3.27 In reaching a view, the committee will balance any benefits of continuity provided by an extension with the potential opportunity to increase the range of relevant skills, knowledge, attributes and knowledge on the board by making a new appointment through open competition. Reaching a decision to make a new appointment through open competition would not prevent the person vacating the post from applying for the new appointment.

3.28 Subject to the special arrangements after the completion of a board member's 'migrated' period of office ends (see below), an appointment can be extended (for one single period) only if:

- a) the board member has performed satisfactorily, with evidence of regular assessments of performance to evidence this;
- b) that the board member's skills, knowledge, attributes and experience remain relevant to the anticipated future needs of the board.

Special arrangements after the completion of a board member's 'migrated' period of office ends

3.29 When a college is first designated as regional in 2014, existing ordinary board members will be 'migrated' to the regional college board. They will serve until the expiry of their current term of office or one year, whichever comes first. After this 'migrated' period ends, an ordinary board member appointment is not to be

⁷ <http://www.publicappointments.org/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

⁸ <http://www.publicappointments.org/publications/publication/223/guidance-on-the-2013-code-of-practice>

extended. The post is instead to be filled through an open recruitment process as outlined in paragraphs 3.24-3.25.

3.30 It would be open to the person vacating the post to apply for the new appointment. To be clear: if they are subsequently re-appointed, it would be open to the board to extend that appointment at the end of the period of the new appointment. The special arrangements only apply to the end of the 'migrated' period of office.

Ministerial approval

3.31 Before a regional college board may appoint an ordinary board member or extend an ordinary board member's period of appointment, the board must obtain the approval of both its chair and Scottish Ministers.

3.32 Scottish Ministers will not normally consider the approval of an ordinary board member unless both the board and the regional college chair have already approved the appointment, and requested Ministerial approval.

3.33 When Scottish Ministers consider whether to approve the appointment or extension of ordinary board members they will take into account the extent to which the regional college board has, in the view of Ministers, paid sufficient regard to this guidance.

3.34 When submitting the name of a person to Scottish Ministers for their approval, the chair of the regional college board should confirm that:

- a) the chair and the board are requesting Ministers to approve the appointment or extension;
- b) the appointment (or extension of appointment) was made having regard to this guidance (and if not, the reasons why not, see paragraph 3.35 below);
- c) in particular for appointments, that an open recruitment process was followed;
- d) in particular for extensions, that the existing board member has performed satisfactorily and there are regular assessments of performance to evidence this.

3.35 If, in exceptional circumstances, a regional college board intends to make an appointment without following an open recruitment process or to extend an appointment without evidence of the satisfactory performance of the board member, the board must inform Scottish Ministers at the earliest opportunity, ahead of submitting a name for approval.

3.36 In the event that Ministers do not approve an appointment, they will write to chair of the regional college board giving their reason.

3.37 It would be open to the regional college chair to put forward other persons from the appointment round who the board and the chair consider suitable to be appointed in the event that Ministers did not approve their preferred choice.

3.38 Given that this is a potential outcome, the board should avoid advising such people that they have not been successful until Ministerial approval has been given.

3.39 In the event that there was no other suitable candidate, the board would begin a new open recruitment process.

Term of board appointments or extensions

3.40 A regional college board will determine the length (of up to 4 years) of a board appointment or extension based on needs of the board, having regard to the desirability of avoiding a substantial number of board appointments potentially ending around about the same time.

Consultation questions

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

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

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

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

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

4. REGIONAL BOARDS – APPOINTMENT OF ‘ORDINARY’ BOARD MEMBERS

What is a Regional Board?

4.1 As previously outlined, a “Regional Board” is a type of regional strategic body that is listed in Part 1 of schedule 2A to the 2005 Act. Its constitution is set out in schedule 2B to the 2005 Act.

Membership of a Regional Board

4.2 Paragraph 3(1) of schedule 2B to the 2005 Act provides that a Regional Board must consist of no fewer than 15 members. All paragraph references in this section are to that schedule.

4.3 Paragraph 3(2) provides that it must comprise:

- A chair appointed by Scottish Ministers
- The chair of each college assigned to the Regional Board
- Two elected staff members (one teaching and one non-teaching)
- Two nominated or elected student members
- Up to ten ordinary board members appointed by the board.

Appointment of ordinary members of a Regional Board

- Ordinary board members are appointed by the Regional Board, with the approval of its chair and Scottish Ministers. [Paragraph 3(5)]

Terms and conditions of appointment of ordinary board members

- An ordinary board member of a Regional Board holds and vacates office on such terms and conditions as the board may determine⁹. [Paragraph 7(1)(b)]

Length of appointment, extension and re-appointment of ordinary board members

- An ordinary board member is to hold office for a period not exceeding four years. [Paragraph 7(2)(e)]
- A Regional Board may extend the period of appointment of an ordinary board member for a single further period not exceeding four years; such an extension requires to be approved by the chair of the Regional Board and Scottish Ministers. [Paragraph 7(4)]

⁹ The Regional Board also determines the terms and conditions of appointment of staff and student members.

- After an appointment has ended, a person is eligible for re-appointment.
[Paragraph 7(8)]

4.4 **Annex C** outlines the routes for ordinary members to continue on boards.

Appointment of ordinary members of a Regional Board

4.5 Paragraph 3(5) provides that ordinary board members are appointed by the Regional Board, with the approval of the chair of the regional college board and Scottish Ministers.

Equal opportunities

4.6 Section 26A of the 2005 Act provides, among other things, that when making appointments to its board, a Regional Board must do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

4.7 The terms “equal opportunities” and “equal opportunity requirements” are defined in section L2 of part II of Schedule 5 to the Scotland Act 1988. “Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

Not eligible for appointment

4.8 Paragraph 6 makes provision for persons not eligible for appointment as a board member of a Regional Board. Paragraph 6 is reproduced at **Annex E** for ease of reference.

Guidance

4.9 Paragraph 3(6) provides that in making appointments and in extending the period of appointment a Regional Board must have regard to any guidance issued by Scottish Ministers in relation to the making of such appointments (including any guidance on the desirability of appointing members with particular skills and experience).

4.10 Before issuing guidance to Regional Boards under paragraph 3(6), paragraph 3(7) requires Scottish Ministers to consult a list of bodies.

4.11 Paragraph 3(8) provides that Scottish Ministers may issue different guidance for different purposes. It is for this reason that the Ministers could, for example, issue different guidance to different Regional Boards.

Relevant committee with responsibility for board appointments and extensions

4.12 A Regional Board is to establish a relevant committee to nominate Regional Board member appointments and extensions. The chair of the Regional Board should normally chair this committee.

4.13 The chief officer of the Regional Board must not be a member of this committee, as there is a conflict of interest. The chief officer could, however, be asked by this committee to provide information to it (if required), whether in person to the committee or in writing.

Assessing the skills and experience required

4.14 Before beginning an appointments process, the relevant committee of the board is to identify the skills, knowledge, attributes and experience of existing board members.

4.15 This should be compared against the future needs of the board to enable it to perform effectively, taking into account the anticipated challenges and opportunities facing the board. In doing so, boards should demonstrate that they have drawn on a variety of regional and national sources of intelligence and information to evidence the gaps that are to be filled through the appointments process.

Skills, knowledge, attributes and experience of board members

4.16 Board members will be expected to adhere to the **Principles of Public Life in Scotland** and act at all times in good faith and in the best interests of the learners (see **Annex F**).

4.17 In appointing a person as an ordinary member of a Regional Board, the board must have regard to the desirability of appointing someone who has proven:

- a) an ability to work successfully at a senior level, maintaining and developing excellent corporate governance
- b) an ability to contribute to the development of a vision and strategic direction for the Regional Board, and to help guide the delivery of planned outcomes in challenging circumstances
- c) an ability to engage and communicate effectively with a wide range of individuals and organisations
- d) senior level experience in building networks that help achieve shared objectives
- e) an understanding of the context in which the Regional Board operates, namely in terms of education and improving public services

- f) such other skills, knowledge, attributes or experience as the Regional Board considers relevant.

4.18 The following is also considered desirable:

- a) proven experience of, or capacity in, further and/or higher education
- b) proven experience of, or capacity in, industry, commerce, finance, the Third Sector, local authority or trade union(s).

Representativeness

4.19 Moreover, boards should aim to have:

- a) a membership which, as far as possible, reflects the make-up of the population which they serve
- b) a majority of ordinary board members who have proven experience, or knowledge, of the region.

4.20 As required by the 2005 Act, in appointing members, a Regional Board must do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

Chief officer

4.21 The chief officer of a Regional Board¹⁰ may be appointed as an 'ordinary' board member of the Regional Board by the Regional Board, with the approval of its chair and Scottish Ministers, without the Board following an open recruitment process. The appointment would, like any other 'ordinary' board member, be for a period up to 4 years.

4.22 If the board were to appoint the chief officer to the Regional Board, the board must ensure the terms and conditions of the board appointment require the chief officer to vacate office as a board member if they cease to be chief officer of the Regional Board before their period of appointment to the board ends.

4.23 At the end of a period of appointment, the Regional Board should review whether the chief officer ought to be appointed again to the Regional Board. If the Regional Board want to re-appoint the chief officer, this would require the approval of its chair and Scottish Ministers.

Number of board members receiving remuneration

4.24 A Regional Board cannot remunerate individuals for their role as a member of the board (other than its chair). However, as it is possible that members of its staff

¹⁰ The chief officer of a Regional Board is its head of staff (an employee of the Regional Board).

or of an assigned college may seek to become 'ordinary' board members as private citizens like any other person, the board must ensure that less than half of its members receive remuneration from the board (either directly or from its assigned colleges). Members receiving remuneration include the chair (as a remunerated board appointment); any salaried members of college staff on the board, and any sabbatical student members (whether remunerated directly by an assigned college or by the college's students' association); and the chief officer (if appointed to the board).

Open recruitment process

4.25 The board must conduct a fair, open and merit-based recruitment process, which includes:

- 1) for any particular appointment or appointments round, the relevant committee should identify an independent person to be part of the process throughout (including development of person specification, assessment criteria and methods as well as involved at the sift and interview) to ensure openness in the appointment round and to instil confidence in it. They must have otherwise no connection with the Regional Board or any of its assigned colleges (e.g. they must not be a board member, a member of any other committee, or an employee, of the Regional Board or any of its assigned colleges)¹¹. However, they must be:
 - i. knowledgeable about the Regional Board
 - ii. understand the skills, knowledge, experience and attributes required of the person(s) to be appointed
 - iii. have demonstrated sound judgment and decision-making.
- 2) Positions advertised with clear information on the role description, person specification, and assessment criteria and methods. This includes advertising on the Public Appointments website¹².
- 3) Timely information provided to both successful and unsuccessful candidates with an offer of feedback after application sift and interview stages.
- 4) Names of candidates that have the support of the chair submitted to the relevant committee.
- 5) An appointment made public once Ministerial approval has been given and

¹¹ The same person can be appointed for more than appointment round. However, care should be taken to avoid excessive reliance on the same person or persons, so as to call into doubt their credibility as an independent person.

¹² <http://www.appointed-for-scotland.org/>

the person has accepted the position in writing.

4.26 The **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**¹³ and accompanying guidance¹⁴ are helpful reference tools in making appointments. While they are intended for regulated Ministerial public appointments, the principles of and approach set out by the code are relevant to and should underpin college sector board recruitment and appointment.

Extending board member appointments

4.27 Where an appointment has not already been extended, the relevant committee is to consider whether the needs of the board will be most effectively met by extending an appointment or by making a new appointment.

4.28 In reaching a view, the committee will balance any benefits of continuity provided by an extension with the potential opportunity to increase the range of relevant skills, knowledge, attributes and knowledge on the board by making a new appointment through open competition. Reaching a decision to make a new appointment through open competition would not prevent the person vacating the post from applying for the new appointment.

4.29 An appointment can be extended (for one single period) only if:

- a) the board member has performed satisfactorily, with evidence of regular assessments of performance to evidence this;
- b) that the board member's skills, knowledge, attributes and experience remain relevant to the anticipated future needs of the board.

Ministerial approval

4.30 Before a Regional Board may appoint an ordinary board member or extend an ordinary board member's period of appointment, the board must obtain the approval of both its chair and Scottish Ministers.

4.31 Scottish Ministers will not normally consider the approval of an ordinary board member unless both the board and the Regional Board chair have already approved the appointment, and requested Ministerial approval.

¹³ <http://www.publicappointments.org/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

¹⁴ <http://www.publicappointments.org/publications/publication/223/guidance-on-the-2013-code-of-practice>

4.32 When Scottish Ministers consider whether to approve the appointment or extension of ordinary board members they will take into account the extent to which the Regional Board has, in the view of Ministers, paid sufficient regard to this guidance.

4.33 When submitting the name of a person to Scottish Ministers for their approval, the chair of the Regional Board should confirm that:

- a) the chair and the board are requesting Ministers to approve the appointment or extension;
- b) the appointment (or extension of appointment) was made having regard to this guidance (and if not, the reasons why not, see paragraph 4.34 below);
- c) in particular for appointments, that an open recruitment process was followed;
- d) in particular for extensions, that the existing board member has performed satisfactorily and there are regular assessments of performance to evidence this.

4.34 If, in exceptional circumstances, a Regional Board intends to make an appointment without following an open recruitment process or to extend an appointment without evidence of the satisfactory performance of the board member, the board must inform Scottish Ministers at the earliest opportunity, ahead of submitting a name for approval.

4.35 In the event that Ministers do not approve an appointment, they will write to chair of the Regional Board giving their reason.

4.36 It would be open to the Regional Board chair to put forward other persons from the appointment round who the board and the chair consider suitable to be appointed in the event that Ministers did not approve their preferred choice.

4.37 Given that this is a potential outcome, the board should avoid advising such people that that they have not been successful until Ministerial approval has been given.

4.38 In the event that there was no other suitable candidate, the board would begin a new open recruitment process.

Term of board appointments or extensions

4.39 A Regional Board will determine the length (of up to 4 years) of a board appointment or extension based on needs of the board, having regard to the desirability of avoiding a substantial number of board appointments potentially ending around about the same time.

Consultation questions

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

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

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

Q9. We should welcome comments on extending board appointments.

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

5. ASSIGNED INCORPORATED COLLEGE BOARDS – APPOINTMENT OF CHAIR AND ‘ORDINARY’ BOARD MEMBERS

What is an assigned incorporated college board?

5.1 As previously outlined, an “assigned incorporated college board” is the board of management of an incorporated college assigned to a regional strategic body by order under section 7C(1) of the 2005 Act.

What is a regional strategic body?

5.2 As previously outlined, a “regional strategic body” is a body listed in schedule 2A to the 2005 Act.

Membership of an assigned incorporated college board

5.3 Paragraph 3A(1) of schedule 2 to the 1992 Act provides that an assigned incorporated college board must comprise between 13 and 18 members. All paragraph references in this section are to that schedule.

5.4 Paragraph 3A(2) provides that it must comprise:

- A chair appointed by the regional strategic body
- The principal of the college
- Two elected staff members (one teaching and one non-teaching)
- Two nominated student members
- Ordinary board members appointed by the regional strategic body.

5.5 An assigned incorporated college board must therefore have between 7 and 12 ordinary members.

5.6 Other key matters outlined in Schedule 2 to the 1992 Act include:

Terms and conditions of appointment of ordinary board members

- The chair and ordinary board member of an assigned incorporated college board holds and vacates office on such terms and conditions as the regional strategic body may determine¹⁵. [Paragraph 5(1)]

Length of appointment, extension and re-appointment of ordinary board members

- An ordinary board member is to hold office for a period not exceeding four years. [Paragraph 5(2)(c)]

¹⁵ The regional strategic body also determines the terms and conditions of appointment of staff and student members.

- A regional strategic body may extend the period of appointment of the chair or an ordinary board member for a single further period not exceeding four years [Paragraph 5(2C)]
- After an appointment has ended, a person is eligible for re-appointment. [Paragraph 5(1)]

5.7 **Annex C** outlines the routes for the chair and ordinary members to continue on boards.

Equal opportunities

5.8 Section 26A of the 2005 Act provides that, among other things, when a regional strategic body makes appointments to an incorporated college board, it must do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.¹⁶

5.9 The terms “equal opportunities” and “equal opportunity requirements” are defined in section L2 of part II of Schedule 5 to the Scotland Act 1988. “Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions. “Equal opportunity requirements” means the requirements of the law for the time being relating to equal opportunities.

Not eligible for appointment

5.10 Paragraph 5A makes provision for persons not eligible for appointment as a board member of an incorporated college. Paragraph 5A is reproduced at **Annex D** for ease of reference.

Guidance

5.11 Paragraph 3C(1) provides that in making appointments and in extending the period of appointment a regional strategic body must have regard to any guidance issued by Scottish Ministers in relation to the making of such appointments (including any guidance on the desirability of appointing members with particular skills and experience).

5.12 Before issuing guidance to regional strategic bodies under paragraph 3C(1), paragraph 3C(2) requires Scottish Ministers to consult a list of bodies.

5.13 Paragraph 3C(3) provides that Scottish Ministers may issue different guidance for different purposes.

¹⁶ This is because in making appointments to an assigned incorporated college board a regional strategic body is exercising one of its “other functions”.

Relevant committee with responsibility for board appointments and extensions

5.14 A regional strategic body is to establish a relevant committee to nominate college board member appointments and extensions. The chair of the regional strategic body¹⁷ should normally chair this committee.

5.15 The chief officer (or equivalent) of the regional strategic body must not to be a member of this committee, as there is a conflict of interest. They could, however, be asked by this committee to provide information to it (if required), whether in person to the committee or in writing.

Assessing the skills and experience required

5.16 Before beginning an appointments process, the relevant committee is to identify the skills, knowledge, attributes and experience of existing college board members.

5.17 This should be compared against the future needs of the college board to enable it to perform effectively, taking into account the anticipated challenges and opportunities facing the college. In doing so, regional strategic bodies should demonstrate that they have drawn on a variety of regional and national sources of intelligence and information to evidence the gaps that are to be filled through the appointments process. This should include consultation with the chair of the assigned incorporated college to help identify the needs of the college board.

Skills, knowledge, attributes and experience of chair

5.18 The college chair should be expected to adhere to the **Principles of Public Life in Scotland** and act at all times in good faith and in the best interests of the learners (see **Annex F**) and should have proven:

- a) an ability to work successfully at a senior level, maintaining and developing excellent corporate governance
- b) a successful track record of leading and driving change
- c) an ability to guide the delivery of planned outcomes in challenging circumstances
- d) an ability to engage effectively and successfully influence a wide range of stakeholders
- e) senior level experience in building strategic partnerships that can be applied in developing shared objectives and building networks across the region and college sector.

¹⁷ In the case of a regional strategic body that is not a Regional Board this would be the chair of any relevant committee that may have relevant regional strategic functions delegated to it.

- f) an ability to work collaboratively and creatively to support a collective effort to deliver the regional outcome agreement.
- g) an understanding of the context in which the college operates, namely in terms of education and improving public services
- h) such other skills, knowledge, attributes or experience as the regional strategic body considers relevant in relation to the exercise of the college board's functions.

5.19 The following is also considered desirable:

- a) proven experience of, or capacity in, further and/or higher education
- b) proven experience of, or capacity in, industry, commerce, finance, the Third Sector, local authority or trade union(s)
- c) proven experience, or knowledge, of the locality of the college.

Skills, knowledge, attributes and experience of board members

5.20 College board members should be expected to adhere to the **Principles of Public Life in Scotland** and act at all times in good faith and in the best interests of the learners (see **Annex F**) and should have proven:

- a) an ability to work successfully at a senior level, maintaining and developing excellent corporate governance
- b) an ability to contribute to the development of a vision and strategic direction for the college, and to help guide the delivery of planned outcomes in challenging circumstances
- c) an ability to engage and communicate effectively with a wide range of individuals and organisations
- d) senior level experience in building networks that help achieve shared objectives
- e) an understanding of the context in which the college operates, namely in terms of education and improving public services
- f) such other skills, knowledge, attributes or experience as the regional strategic body considers relevant in relation to the exercise of the college board's functions.

5.21 The following is also considered desirable, proven:

- a) experience of, or capacity in, further and/or higher education
- b) experience of, or capacity in, industry, commerce, finance, the Third Sector, local authority or trade union(s).

Representativeness

5.22 Moreover, a regional strategic body should aim for a college board to have:

- a) a membership which, as far as possible, reflects the make-up of the population which they serve.
- b) a majority of ordinary board members who have proven experience, or knowledge, of the locality of the college.

5.23 As required by the 2005 Act, in exercising its functions to appoint the chair and ordinary members of an assigned incorporated college board, the regional strategic body must do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements.

Principal of assigned incorporated college board

5.24 A regional strategic body is not to appoint the principal of an assigned incorporated college as the chair of the college board.

Number of board members receiving remuneration

5.25 Neither an assigned incorporated board nor a regional strategic body can remunerate individuals for their role as member of an assigned incorporated college board. However, as it is possible that members of an assigned college may seek to become 'ordinary' board members as private citizens like any other person, the regional strategic body must ensure that less than half of members of a college board receive remuneration from the board. Members receiving remuneration include any salaried members of staff on the board, including the principal; and any sabbatical student members (whether remunerated directly by the college or by the college's students' association).

Open recruitment process

5.26 The regional strategic body must conduct a fair, open and merit-based recruitment process, which includes:

- 1) the chair of the relevant assigned college should usually play a full part in the process for appointment of ordinary board members to that college.
- 2) for any particular appointment or appointments round, the relevant committee should identify an independent person to be part of the process throughout (including development of person specification, assessment criteria and methods as well as involved at the sift and interview) to ensure openness in the appointment round and to instil confidence in it. . They must have

otherwise no connection with the regional strategic body or college (e.g. they must not be a board member, a member of any other committee or an employee, of the regional strategic body or college)¹⁸. However, they must be:

- i. knowledgeable about the college
 - ii. understand the skills, knowledge, experience and attributes required of the person(s) to be appointed
 - iii. have demonstrated sound judgment and decision-making.
- 3) Positions advertised with clear information on the role description, person specification, and assessment criteria and methods. This includes advertising on the Public Appointments website¹⁹.
- 4) Timely information provided to both successful and unsuccessful candidates with an offer of feedback after application sift and interview stages.
- 5) Names of candidates submitted to the relevant committee.

5.27 The **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**²⁰ and accompanying guidance²¹ are helpful reference tools in making appointments. While they are intended for regulated Ministerial public appointments, the principles of and approach set out by the code are relevant to and should underpin college sector board recruitment and appointment.

Extending board member appointments

5.28 Where an appointment has not already been extended, the relevant committee is to consider whether the needs of the college board will be most effectively met by extending an appointment or by making a new appointment.

5.29 In reaching a view, the committee will balance any benefits of continuity provided by an extension with the potential opportunity to increase the range of relevant skills, knowledge, attributes and knowledge on the college board by making a new appointment through open competition. This should, in the case of extension of ordinary board members, include consultation with the chair of the assigned

¹⁸ The same person can be appointed for more than appointment round. However, care should be taken to avoid excessive reliance on the same person or persons, so as to call into doubt their credibility as an independent person.

¹⁹ <http://www.appointed-for-scotland.org/>

²⁰ <http://www.publicappointments.org/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

²¹ <http://www.publicappointments.org/publications/publication/223/guidance-on-the-2013-code-of-practice>

incorporated college to help identify the needs of the college board. Reaching a decision to make a new appointment through open competition would not prevent the person vacating the post from applying for the new appointment.

5.30 Subject to the special arrangements after the completion of a board member's 'migrated' period of office ends (see below), an appointment can be extended (for one single period) only if:

- a) the board member has performed satisfactorily, with evidence of regular assessments of performance to evidence this;
- b) that the board member's skills, knowledge, attributes and experience remain relevant to the anticipated future needs of the board.

Special arrangements after the completion of a board member's 'migrated' period of office ends

5.31 When an incorporated college is first assigned to a regional strategic body in 2014, existing board members will be 'migrated' to the college board. They will serve until the expiry of their current term of office or one year, whichever comes first. This is the "migrated period".

5.32 However, in the interests of board stability, given that regional strategic bodies:

- a) will assume new responsibilities for incorporated college board appointments
- b) be making appointments to a number of colleges;
- c) may in the interests of economy, efficiency and effectiveness, want to advertise for members to college boards at the same time;
- d) may want to appoint a chair of a college ahead of other college board appointments;

the following special arrangements apply for extending the appointment of the chair and ordinary board members at the end of their migrated period²².

5.33 At the end of their migrated period, a regional strategic body may, following the process described in paragraphs 5.28-5.30, extend the appointment of the chair or an ordinary board member, so that the total transitional period (the migrated period when added to any extended period) is no more than two years.

²² Legislation does not enable staff and student member appointments to be extended. So at the end of their appointment, normal processes apply: student members are nominated by the students' association and staff members are elected.

5.34 To illustrate by example:

- an appointment has six months remaining at the point when the college is assigned -
 - the appointment ends after those six months
 - the appointment may then be extended for a period of up to 18 months, so that it ends no more than two years from the date the college was assigned.

- an appointment has 18 months remaining at the point when the college is assigned
 - the appointment ends after 12 months;
 - the appointment may then be extended for a period of up to 12 months, so that it ends no more than two years from the date the college was assigned.

- an appointment has 3 years remaining at the point when the college is assigned
 - the appointment ends after 12 months;
 - the appointment may then be extended for a period of up to 12 months, so that it ends no more than two years from the date the college was assigned.

5.35 When an appointment ends, whether with an extension as set out above or not, the post is to be filled following the open recruitment process described in paragraphs 5.26-5.27.

5.36 It would be open to the person vacating the post to apply for the new appointment. To be clear: if they are subsequently re-appointed, it would be open to the regional strategic body to extend that appointment at the end of the period of the new appointment as described elsewhere in this guidance. These special arrangements to extend only apply to appointments at the end of their migrated period.

Term of board appointments or extensions

5.37 A regional strategic body will determine the length (of up to 4 years) of a board appointment or extension based on needs of the board, having regard to the desirability of avoiding a substantial number of board appointments potentially ending around about the same time.

Administration of appointments process by assigned incorporated college

5.38 In the interests of economy, efficiency and effectiveness, the regional strategic body may wish to delegate to an assigned incorporated college board (with its agreement) the management of all or part of the process for the appointment or extension of a chair or ordinary member.

5.39 In administering any part of the process, the college is to have regard to this guidance as if it were a regional strategic body and to any supplementary guidance which the regional strategic body may wish to give the college.

5.40 It is important to note that the regional strategic body cannot transfer to the college its function of making the appointment. Legislation requires the appointment to be made by the regional strategic body.

5.41 Before making an appointment a regional strategic body is to satisfy itself that the college has had sufficient regard to this guidance and any supplementary guidance it has given the college.

5.42 It will be for the regional strategic body to determine whether it wants the college to present it with a choice of preferred candidates or whether it would be acceptable for the college to recommend an individual person.

5.43 The regional strategic body is not required to accept the recommendation of a college.

Consultation questions

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

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

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

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

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

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

6. EQUALITY IMPACT

Consultation questions

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

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

ANNEX A

THE SCOTTISH GOVERNMENT CONSULTATION PROCESS

1. Consultation is an essential and important aspect of the Scottish Government's working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

2. The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same. Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses.

3. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh EH11 3XD, telephone 0131 244 4565).

4. All Scottish Government consultation papers and related publications (e.g., analysis of response reports) can be accessed at: Scottish Government consultations <http://www.scotland.gov.uk/consultations>. The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review;
- inform the development of a particular policy;
- help decisions to be made between alternative policy proposals; and
- be used to finalise legislation before it is implemented.

5. Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

6. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

ANNEX B

CONSULTEES

All FE colleges eligible for Scottish Funding Council funding– principals and chairs
Argyll College – principal and chair
All local authorities – chief executives
University of the Highlands and Islands
All University of the Highlands and Islands academic partners
All college regional leads
All students' associations of FE colleges eligible for SFC funding and Argyll College students' association

Association of Scottish Chambers of Commerce
Capability Scotland
Community Learning and Development Standards Council for Scotland
Close the Gap
Colleges Scotland
Commissioner for Ethical Standards in Public Life in Scotland
Confederation of British Industry Scotland
Convention of Scottish Local Authorities
Education and Culture Committee
Educational Institute of Scotland
Engender
Equality and Human Rights Commission
Equality Challenge Unit
Equality Network
Federation of Small Businesses
GMB
Independent Living
Highlands and Islands Enterprise
Inclusion Scotland
Institute of Directors
Linking Education and Disability Scotland
National Union of Students Scotland
Office of the Scottish Charity Regulator
Scottish Council for Development and Industry
Scottish Council for Voluntary Organisations
Scottish Disability Equality Forum
Scottish Enterprise
Scottish Funding Council
Scottish Trades Union Congress
Scottish Qualifications Authority
Scottish Women's Convention

Scottish Youth Parliament
Sector Skills Alliance Scotland
Skills Development Scotland
Society of Local Authority Chief Executives and Senior Managers
UNISON
Unite the Union
Universities Scotland
Volunteer Development Scotland
Young Enterprise Scotland

ANNEX C

ROUTES FOR ORDINARY MEMBERS TO CONTINUE ON BOARDS²³

Route 1

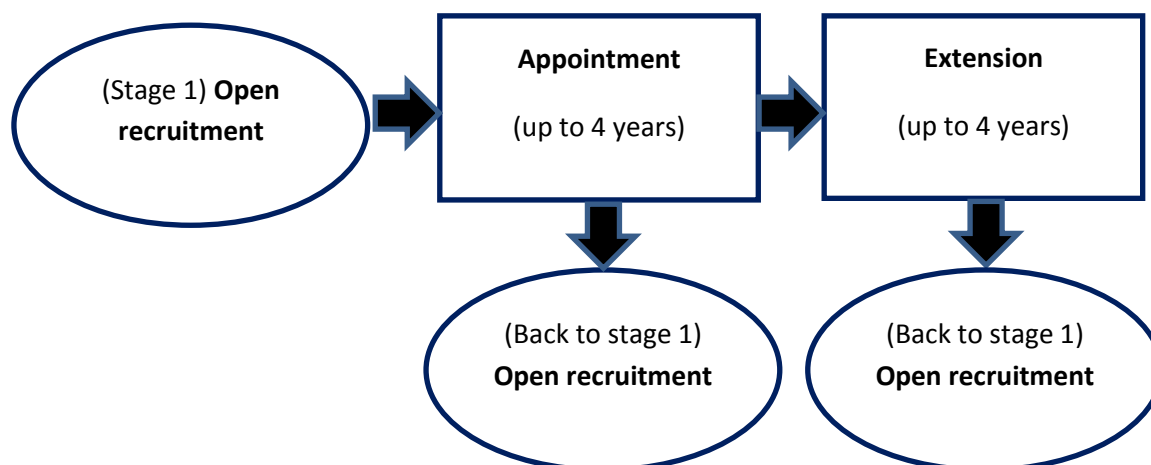
Appointment > Extension > Appointment route

- a) An appointment is made after open recruitment.
- b) Board²⁴ decides to extend appointment. The chair and Ministers have to approve if to a regional college or Regional Board. This would not involve open recruitment.
- c) The extended appointment comes to an end (at a determined point of no more than four years). This creates a board vacancy – further extension is not allowed.
- d) The process therefore begins again at a) - an appointment is made after open recruitment. The same individual could apply for this position.

Route 2

Appointment > Appointment route

- a) An appointment is made after open recruitment.
- b) That appointment is not extended.
- c) If the board member wants to be appointed again, the process would be 'reset'.
- d) In other words the process begins again at a) - an appointment is made after open recruitment. The same individual could apply for this position.



²³ Applies also to the chair of an assigned incorporated college.

²⁴ Or regional strategic body in the case of an assigned incorporated college.

ANNEX D

DISQUALIFICATION FROM MEMBERSHIP OF INCORPORATED COLLEGE BOARDS

PARAGRAPH 5A OF SCHEDULE 2 TO THE 1992 ACT (AS INSERTED BY PARAGRAPH 2(7)(C) OF SCHEDULE TO THE 2013 ACT)

5A(1) A person is not eligible for appointment as a member of the board if the person— .

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine; .

(b) is an undischarged bankrupt; or .

(c) has been removed from office under section 24 of this Act (in relation to any college) or section 23Q of the Further and Higher Education (Scotland) Act 2005 (in relation to any regional board). .

(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person— .

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force); .

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it); .

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986; .

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts; .

(e) who has been adjudged bankrupt (and has not been discharged); or .

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world.

ANNEX E

DISQUALIFICATION FROM MEMBERSHIP OF REGIONAL BOARDS

PARAGRAPH 6 OF SCHEDULE 2B TO THE 2005 ACT (AS INSERTED BY SECTION 11(2) OF THE 2013 ACT)

6(1) A person is not eligible for appointment as a member of the board if the person—

(a) has within 5 years of the date on which the appointment would take effect, been sentenced (following conviction for an offence in the United Kingdom, the Channel Islands, the Isle of Man or the Irish Republic) to imprisonment for a period of not less than 3 months, whether suspended or not, without the option of a fine; .

(b) is an undischarged bankrupt; or .

(c) has been removed from office under section 24 of the 1992 Act (in relation to any college) or section 23Q of this Act (in relation to any regional board). .

(2) For the purposes of sub-paragraph (1)(b), “undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force); .

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors (and has not been discharged in respect of it); .

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986; .

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts; .

(e) who has been adjudged bankrupt (and has not been discharged); or .

(f) who is subject to any other kind of order, arrangement or undertaking analogous to those described in paragraphs (a) to (d), anywhere in the world. .

(3) This paragraph does not apply in relation to persons appointed in pursuance of paragraph 3(2)(b)²⁵.

²⁵ Note: paragraph 3(2)(b) is about the chair of an assigned college.

ANNEX F

PRINCIPLES OF PUBLIC LIFE IN SCOTLAND

Public Service

To have a duty to act in the interests of the public body of which you are a member and in accordance with the core tasks of that body.

Selflessness

To have a duty to take decisions solely in terms of public interest. You must not act in order to gain financial or other material benefit for yourself, family or friends.

Integrity

To not place yourself under any financial, or other, obligation to any individual or organisation that might reasonably be thought to influence you in the performance of your duties.

Objectivity

To must make decisions solely on merit when carrying out public business.

Accountability and Stewardship

To be accountable for your decisions and actions to the public. You have a duty to consider issues on their merits, taking account of the views of others and must ensure that the public body uses its resources prudently and in accordance with the law.

Openness

To be as open as possible about your decisions and actions, giving reasons for your decisions and restricting information only when the wider public interest clearly demands.

Honesty

You have a duty to act honestly. You must declare any private interests relating to your public duties and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

To promote and support these principles by leadership and example, to maintain and strengthen the public's trust and confidence in the integrity of the public body and its members in conducting public business.

Respect

To respect fellow members of your public body and employees of the body and the role they play, treating them with courtesy at all times.



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