

COLLEGE SECTOR BOARD APPOINTMENTS: 2014 MINISTERIAL GUIDANCE

1. INTRODUCTION

A board should ideally be drawn from varied backgrounds with a wide spectrum of characteristics, knowledge and experience. It is crucial to the success of public bodies that they attract the best people for the job and therefore it is essential that a board's appointments process should encourage as many suitable people to apply for positions and be free from unnecessary barriers.

Model Code of Conduct for Public Bodies, 2014

Guidance

1.1 Having consulted as required under the Post-16 Education (Scotland) Act 2013¹, this guidance is issued by the Scottish Ministers to:

- regional college boards in relation to the appointment of non-executive board members to those boards (section 3);
- Regional Boards in relation to the appointment of non-executive board members to those boards (section 4); and
- regional strategic bodies in relation to the appointment of the chair and non-executive board members of assigned incorporated college boards (section 5).

References in this guidance

Legislation

1.2 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.

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

¹ A draft of this guidance was issued for consultation in January 2014. The consultation paper is at <http://www.scotland.gov.uk/Publications/2014/01/3875>

Other references

1.4 Other references in this 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 non-executive 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 Act².
- 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.
- A “non-executive board member” is a member who is not the chair and who does not otherwise hold a specific position on the board³.

Ministers’ powers and this guidance

1.5 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.

1.6 Ministers have powers under paragraph 3C(1) of Schedule 2 to the 1992 Act to issue guidance to regional college boards and regional strategic bodies in relation to making appointments (including on the desirability of appointing members with particular skills and experience) and in extending appointments to regional college boards and assigned incorporated college boards. Regional college boards and regional strategic bodies must have regard to such guidance.

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

² 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>

³ 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. See also footnote 5 (page 6) in relation to New College Lanarkshire.

1.8 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.

1.9 Ministers have powers under paragraph 3(6) of schedule 2B to the 2005 Act to issue guidance to Regional Boards in relation to making appointments (including on the desirability of appointing members with particular skills and experience) and in extending appointments to Regional Boards. Regional Boards must have regard to such guidance.

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

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

Contact

1.12 If you have any queries contact Col Baird at colin.baird@scotland.gsi.gov.uk or on 0300 244 1312.

2. OVERVIEW

“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

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. College board members have led and managed the radical reform which the sector has recently undergone. Their time and expertise is recognised and respected. The sector is on a much better footing because of them.

2.2 Strong, accountable governance requires board members who reflect Scotland’s diverse population with the right skills, knowledge, experience and attributes 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 being put in place to achieve this – including those about appointments - were recommended by the **Review of FE Governance**, published in January 2012⁴, 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; and
- d) generate greater confidence in college governance arrangements.

⁴<http://www.scotland.gov.uk/Topics/Education/UniversitiesColleges/17135/CollegeGovernanceReview/FEGovernanceReport>

2.5 This guidance:

- a) identifies the **skills, knowledge, experience and attributes** 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 and transparent system in which learners, staff, business, wider society and Ministers will have confidence.

3. REGIONAL COLLEGE BOARDS – APPOINTMENT OF NON-EXECUTIVE 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 members⁵. 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; and
- non-executive board members appointed by the board.

3.4 A regional college board must therefore have between 9 and 12 non-executive board members.

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

Appointment of non-executive board members of a regional college board

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

⁵ A draft of the Lanarkshire Colleges Order was laid before the Scottish Parliament on 12 June 2014. If final approval is given, it will on 1 October 2014, amend the board arrangements for New College Lanarkshire (NCL), which will also be designated a regional college (and made a regional strategic body) on this date. NCL would have a board size of 19 to 22 members. Its membership would comprise: chair appointed by Scottish Ministers; principal of NCL; principal of South Lanarkshire College (SLC); chair of SLC; two elected staff members from NCL (one teaching and one non-teaching); the two SLC elected staff members (one teaching and one non-teaching); two student members (one nominated by NCL students’ association and one nominated by the SLC students’ association) and 9 to 12 non-executive board members.

Terms and conditions of appointment of non-executive board members

- A non-executive board member of a regional college board holds and vacates office on such terms and conditions as the board may determine⁶. [Paragraph 5(1)]

Length of appointment, extension and re-appointment of non-executive board members

- A non-executive board member is to hold office for a period of up to four years. [Paragraph 5(2)(c)]
- A regional college board may extend the period of appointment of a non-executive board member for a single further period of up to 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 A** outlines the routes for non-executive board members to continue on boards.

Equal opportunities

3.7 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 1998. “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.

⁶ The regional college board also determines the terms and conditions of appointment of staff and student members.

3.9 Regional college boards are also bound by the Equality Act 2010 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, which introduced specific equality duties to assist bodies to meet the general public sector equality duty. The general equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

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

3.10 Under its public sector equality duties, a regional college board is required to assess and review the equality impact of policies and practices on board appointments. This might involve identifying relevant evidence such as the population represented by the college or its potential catchment, the composition of the board, any gaps in representation and appropriate steps to address any gaps.

Not eligible for appointment

3.11 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 B** for ease of reference.

Protection of Vulnerable Groups (PVG) Scheme

3.12 It is an offence under section 35(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 for a regional college to offer regulated work with children to an individual barred from that work⁷. This includes appointing such a person to the college board of management since, by virtue of paragraph 18 of schedule 2 to that Act, regulated work with children includes being a member of the governing body of a regional college. Under section 35(7) of that Act, the regional college can offer an appointment subject to it being satisfied that the individual is suitable, e.g. by requesting a PVG scheme record (see also paragraph 3.35). It is an offence under section 34 of that Act for any person who is barred from regulated work with children to seek to be a board member.

⁷ Section 91(2) of, and schedule 2 to, of the Protection of Vulnerable Groups (Scotland) Act 2007 define “regulated work with children” and section 92(1) sets out when an individual is “barred from regulated work with children”.

Scottish Ministers' powers to require information

3.13 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 non-executive board member of a regional college board.

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 of appointments to the board of management. The chair of the regional college board should normally chair this committee. Staff and students should have an opportunity to contribute.

3.15 The principal of the college must not 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.

3.16 No-one who may be applying for a board member appointment must take part in any discussions or decisions that any committee or the board may have about that appointments process. Similarly, no board member who may be seeking to have their appointment extended must take part in any discussions or decisions relevant to that extension.

3.17 The **Guide for College Board Members 2012**⁸ is a helpful source of good practice. Please note that the Guide will be updated shortly.

Assessing the skills, knowledge, experience and attributes required

3.18 Given the number of stages in the process, an appointments process should begin early. Before beginning the process, the relevant committee is to identify current and future needs of the board to enable it to perform effectively, taking into account the anticipated challenges and opportunities facing the college. These could include, for example, human resources, finance, legal, estates, change management, experience or knowledge of the region (or part of it) or a particular sector etc.

⁸ www.collegesscotland.ac.uk/download-document/4922-guide-for-college-board-members-2012

3.19 The identified needs of the board should be compared against the skills, knowledge, experience and attributes of remaining board members to enable the committee to identify gaps to be filled through the appointments process.

Skills, knowledge, experience and attributes of board members

3.20 A regional college board should aim to have a membership:

- a) with diverse skills, knowledge and experience which taken together reflects the current and future needs of the board and which supports it to meet its responsibilities for effective governance as outlined in the **Code of College Governance**⁹; and
- b) which, as far as possible, reflects the diversity of the people in the region and comprises at least 40% men and 40% women.

3.21 In appointing a person as a non-executive member, the board should seek to appoint someone who:

- 1) can be expected to adhere to the Nine Principles of Public Life and act at all times in good faith and in the best interests of learners. The nine principles are: selflessness, integrity, objectivity, accountability, openness, honesty, leadership, public service and respect - see **Annex D**,

and

- 2) has significant experience or knowledge of:
 - a) further, higher or senior secondary education or the college student experience; or
 - b) industry, commerce, finance, the Third Sector, public service or trade unions; or
 - c) the region (or a part of it) and its relevant needs,

and

- 3) has such other skills, knowledge, experience or attributes as the board considers relevant to ensure effective corporate governance and the proper exercise of its functions (see paragraphs 3.18 and 3.19).

⁹ The Code will be published shortly. There will be a link to it on the Scottish Government web page at <http://www.scotland.gov.uk/Topics/Education/post16reform/hefegovernance>

3.22 A board can, where appropriate, take into account whether someone would in its view be able to acquire any sought after skills or knowledge following a period of induction and/or development.

3.23 As required by the 2005 Act, in appointing members, a board must do so in a manner which encourages equal opportunities and in particular the observance of the equal opportunities requirements. The **Diversity Delivers**¹⁰ programme sets out a number of ways in which diversity can be promoted in relation to board appointments. Many of the recommendations of **Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms**¹¹ will also be relevant.

Number of board members receiving remuneration

3.24 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 non-executive 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

3.25 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 must identify an independent person to, where possible, 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 it¹². They must otherwise have 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 regional college)¹³. They could, for example, be a principal,

¹⁰ <http://www.publicappointments.org/delivering-diversity/overview/>

¹¹ <http://www.equalityhumanrights.com/publication/research-report-85-gender-diversity-boards-appointment-process-and-role-executive-search-firms>

¹² The identification of an independent person would not involve Ministerial approval. Where it is not possible for the same independent person to be part of the process throughout, another independent person should fulfil the role they can't play.

¹³ The same person can be appointed for more than one 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.

chair, board member, board secretary or any other person from another college, or a member of a stakeholder organisation, such as a local authority. They must be:

- i. knowledgeable of the college sector;
 - ii. understand the skills, knowledge, experience and attributes required of the person(s) to be appointed; and
 - iii. have demonstrated sound judgment and decision-making.
- 2) A variety of approaches to encourage applications from as diverse a range of applicants as possible. This could include, among other things, the use of social media and approaching individuals or organisations to make them aware of the recruitment exercise.
 - 3) Positions advertised with clear information on the role description, person specification, and assessment criteria and methods. This includes, among other things, advertising on the Public Appointments website¹⁴.
 - 4) Timely information provided to both successful and unsuccessful candidates with an offer of feedback after application sift and interview stages¹⁵.
 - 5) An appointment made public once Ministerial approval has been given and the person has accepted the position in writing.

3.26 The **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**¹⁶ and accompanying guidance¹⁷ are helpful reference tools in making appointments, as are other publications¹⁸ of the Commissioner for Ethical Standards in Public Life in Scotland, such as in relation to **good practice on attraction and assessment**¹⁹. 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.

¹⁴ <http://www.appointed-for-scotland.org/>

¹⁵ Candidates should not be informed ahead of a Ministerial decision that they were put forward for Ministerial approval, as the early release of information could lead other candidates (who may find out) to believe they have been unsuccessful (see paragraphs 3.44 - 3.46).

¹⁶ <http://www.publicappointments.org/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

¹⁷ <http://www.publicappointments.org/publications/publication/223/guidance-on-the-2013-code-of-practice>

¹⁸ <http://www.publicappointments.org/publications/>

¹⁹ <http://www.publicappointments.org/publications/45/good-practice-in-attraction-and-assessment-examples>

Extending board member appointments

3.27 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. In reaching a view, the committee will carry out a needs analysis along the lines described in paragraphs 3.18 and 3.19.

3.28 The committee will also balance any benefits of continuity provided by an extension with the potential opportunity to increase the range of relevant skills, knowledge, experience and attributes 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.

3.29 Subject to the special arrangements after the completion of a non-executive 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 annual assessments of performance to evidence this; and
- b) that the board member's skills, knowledge, experience and attributes 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

3.30 When colleges were designated as regional colleges in March 2014, arrangements were made to continue members in office²⁰. These special arrangements only apply to people 'migrated' to regional college boards as non-executive board members. They do not apply to people appointed to regional college boards after a college was designated as regional.

3.31 A migrated member serves until the expiry of their current term of office or one year, whichever comes first. After this migrated period ends, a non-executive board member appointment is not normally to be extended. The post is instead to be filled through an open recruitment process as outlined in paragraphs 3.25 and 3.26. However, if there are exceptional circumstances where a regional board considers it necessary to extend such an appointment, Scottish Ministers must be informed at the earliest opportunity of the reasons, ahead of a name being submitted for approval.

²⁰ The migration arrangements for New College Lanarkshire have yet to be made. Whatever their precise details, the substance of the special arrangements made in this guidance will apply to New College Lanarkshire migrated non-executive board members.

3.32 It would be open to the person vacating a 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. These special arrangements apply only to migrated non-executive board members at the end of the 'migrated' period of office.

Term of board appointments or extensions

3.33 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 the same time.

Ministerial approval

3.34 Before a regional college board may appoint a non-executive board member or extend a non-executive board member's period of appointment, the board must obtain the approval of both its chair and Scottish Ministers.

3.35 A request for a scheme record under the Protection of Vulnerable Groups (PVG) Scheme does not have to be made before Ministerial approval is sought. This is something that could be done in the period between Ministerial approval and the board making the appointment, or even after the Ministerial approval is obtained. The appointment can also be made subject to the condition that the board is satisfied that the individual is a PVG scheme member and is suitable (see paragraph 3.12) once the scheme record is received.

3.36 A board should consider possible contingency action (such as, for example, further requests for short-term approval of appointments or short-term extensions of existing appointments) where, if Ministerial approval is not given in any particular case, this could lead to a board with fewer than 15 members. Such contingency action does not have to be detailed when submitting a name for approval.

3.37 Scottish Ministers will not normally consider the approval of a non-executive board member unless the chair has approved the board's appointment.

3.38 When considering whether to approve the appointment or extension of a non-executive board member, Scottish Ministers will take into account the extent to which the board has, in the view of Ministers, paid sufficient regard to this guidance.

3.39 When submitting the name of a person to Scottish Ministers for their approval, **the chair or board secretary** should

- a) confirm that the chair and the board are requesting Ministers to approve the appointment or extension;
- b) advise of any timing issues (e.g. does the appointment have to be made by a certain date?);
- c) advise whether the lack of approval would mean that the board would have fewer than 15 members (see paragraph 3.36);
- d) briefly outline the process;
- e) explain what was done to improve board diversity, including the gender balance on the board;
- f) outline what impact the prospective appointment/extension would have on the board's gender balance; and
- g) in particular for extensions, confirm that the existing board member has performed satisfactorily and there are annual assessments of performance to evidence this.

3.40 In relation to appointments, this should be accompanied by a statement from **the independent person** which

- a) outlines their involvement in the process; and
- b) confirms whether they are satisfied an open recruitment process was followed in accordance with this guidance and, if not, the reasons why not (see also next paragraph below).

3.41 If, in exceptional circumstances, a 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, Scottish Ministers must be informed at the earliest opportunity of the reasons, ahead of a name being submitted for approval.

3.42 If all the necessary information is available, Scottish Ministers aim to make a decision within a month.

3.43 In the event that Scottish Ministers do not approve an appointment or extension, they will write to chair of the board giving their reason.

3.44 In relation to appointments, in the event that Ministers did not approve an appointment, it would be open to the chair to put forward other persons from the appointment round who the board and the chair consider suitable to be appointed.

3.45 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.

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

4. REGIONAL BOARDS – APPOINTMENT OF NON-EXECUTIVE 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; and
- up to ten non-executive board members appointed by the Regional Board.

Appointment of non-executive members of a Regional Board

- Non-executive 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 non-executive board members

- A non-executive board member of a Regional Board holds and vacates office on such terms and conditions as the Regional Board may determine²¹. [Paragraph 7(1)(b)]

Length of appointment, extension and re-appointment of non-executive board members

- A non-executive board member is to hold office for a period of up to four years. [Paragraph 7(2)(e)]
- A Regional Board may extend the period of appointment of a non-executive board member for a single further period of up to four years; such an

²¹ The Regional Board also determines the terms and conditions of appointment of staff and student members.

extension requires to be approved by the chair of the Regional Board and Scottish Ministers. [Paragraph 7(4)]

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

4.4 **Annex A** outlines the routes for non-executive members to continue on boards.

Equal opportunities

4.5 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.

4.6 The terms “equal opportunities” and “equal opportunity requirements” are defined in section L2 of Part II of Schedule 5 to the Scotland Act 1998. “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.

4.7 Ministers intend Regional Boards to bound in due course by the Equality Act 2010 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, which introduced specific equality duties to assist bodies to meet the general public sector equality duty. The general equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

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

4.8 Under its public sector equality duties, a Regional Board would be required to assess and review the equality impact of policies and practices on board appointments. This might involve identifying relevant evidence such as the population represented by the college or its potential catchment, the composition of the board, any gaps in representation and appropriate steps to address any gaps.

Not eligible for appointment

4.9 Paragraph 6 of schedule 2B to the 2005 Act makes provision for persons not eligible for appointment as a board member of a Regional Board. Paragraph 6 is reproduced at **Annex C** for ease of reference.

Protection of Vulnerable Groups (PVG) Scheme

4.10 A board member of a Regional Board will not be doing regulated work with children simply by virtue of their position on the board. It would be for the Regional Board to consider whether their duties as a board member required them to do regulated work with children²² and whether a PVG scheme record should be requested to determine whether they are suitable in respect only of those duties involving regulated work with children.

Scottish Ministers' powers to require information

4.11 Scottish Ministers have powers under section 25A of the 2005 Act to require Regional Boards to give such information as Ministers require for the purposes of the exercise of their powers under the 2005 Act. This extends to information Scottish Ministers may require in order to consider whether to approve the appointment or extension of a non-executive board member of a Regional Board.

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 of appointments to the Regional Board. The chair of the Regional Board should normally chair this committee. Staff and students of the assigned colleges should have an opportunity to contribute.

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.

4.14 No-one who may be applying for a board member appointment must take part in any discussions or decisions that any committee or the board may have about that appointments process. Similarly, no board member who may be seeking to have their appointment extended must take part in any discussions or decisions relevant to that extension.

²² Section 91(2) of, and schedule 2 to, of the Protection of Vulnerable Groups (Scotland) Act 2007 define "regulated work with children".

Assessing the skills, knowledge, experience and attributes required

4.15 Given the number of stages in the process, an appointments process should begin early. Before beginning the process, the relevant committee is to identify current and future needs of the board to enable it to perform effectively, taking into account the anticipated challenges and opportunities facing the college. These could include, for example, human resources, finance, legal, estates, change management, experience or knowledge of the region (or part of it) or a particular sector etc.

4.16 The identified needs of the board should be compared against the skills, knowledge, experience and attributes of remaining board members to enable the committee to identify gaps to be filled through the appointments process.

Skills, knowledge, experience and attributes of board members

4.17 A Regional Board should aim to have a membership:

- a) with diverse skills, knowledge and experience which taken together reflects the current and future needs of the Regional Board and which supports it to meet its responsibilities for effective governance; and
- b) which, as far as possible, reflects the diversity of the people in the region and comprises at least 40% men and 40% women.

4.18 In appointing a person as a non-executive member, the Regional Board should seek to appoint someone who:

- 1) can be expected to adhere to the Nine Principles of Public Life and act at all times in good faith and in the best interests of learners. The nine principles are: selflessness, integrity, objectivity, accountability, openness, honesty, leadership, public service and respect - see **Annex D**,

and

2) has significant experience or knowledge of:

- d) further, higher or senior secondary education or the college student experience; or
- e) industry, commerce, finance, the Third Sector, public service or trade unions; or
- f) the region (or a part of it) and its relevant needs,

and

3) has such other skills, knowledge, experience or attributes as the board considers relevant to ensure effective corporate governance and the proper exercise of its functions (see paragraphs 4.15 and 4.16).

4.19 A Regional Board can, where appropriate, take into account whether someone would in its view be able to acquire any sought after skills or knowledge following a period of induction and/or development.

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. The **Diversity Delivers**²³ programme sets out a number of ways in which diversity can be promoted in relation to board appointments. Many of the recommendations of **Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms**²⁴ will also be relevant.

Chief officer

4.21 The chief officer of a Regional Board²⁵ may be appointed as a non-executive 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 non-executive 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 wants 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 or of an assigned college may seek to become a non-executive board members as private citizens like any other person, the board must ensure that less than half of its

²³ <http://www.publicappointments.org/delivering-diversity/overview/>

²⁴ <http://www.equalityhumanrights.com/publication/research-report-85-gender-diversity-boards-appointment-process-and-role-executive-search-firms>

²⁵ The chief officer of a Regional Board is its head of staff (an employee of the Regional Board).

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 Regional Board must conduct a fair, open and merit-based recruitment process, which includes:

- 1) For any particular appointment or appointments round, the relevant committee must identify an independent person to, where possible, 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 it²⁶. 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)²⁷. They could for example be someone from another regional strategic body, a principal, chair, board member, board secretary or any other person from a college in another region, or a member of a stakeholder organisation, such as a local authority. They must be:
 - i. knowledgeable of the college sector;
 - ii. understand the skills, knowledge, experience and attributes required of the person(s) to be appointed; and
 - iii. have demonstrated sound judgment and decision-making.
- 2) A variety of approaches to encourage applications from as diverse a range of applicants as possible. This could include, among other things, the use of social media and approaching individuals or organisations to make them aware of the recruitment exercise.
- 3) Positions advertised with clear information on the role description, person specification, and assessment criteria and methods. This includes, among other things, advertising on the Public Appointments website²⁸.

²⁶ The identification of an independent person would not involve Ministerial approval. Where it is not be possible for the same independent person to be part of the process throughout, another independent person should fulfil the role they can't play.

²⁷ The same person can be appointed for more than one 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.

²⁸ <http://www.appointed-for-scotland.org/>

- 4) Timely information provided to both successful and unsuccessful candidates with an offer of feedback after application sift and interview stages²⁹.
- 5) An appointment made public once Ministerial approval has been given and the person has accepted the position in writing.

4.26 The **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**³⁰ and accompanying guidance³¹ are helpful reference tools in making appointments, as are other publications³² of the Commissioner for Ethical Standards in Public Life in Scotland, such as in relation to **good practice on attraction and assessment**³³. 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. In reaching a view, the committee will carry out a needs analysis along the lines described in paragraphs 4.15 and 4.16.

4.28 The committee will also 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 annual assessments of performance to evidence this; and
- b) that the board member's skills, knowledge, attributes and experience remain relevant to the anticipated future needs of the board.

²⁹ Candidates should not be informed ahead of a Ministerial decision that they were put forward for Ministerial approval, as the early release of information could lead other candidates (who may find out) to believe they have been unsuccessful (see paragraphs 4.40 - 4.42).

³⁰ <http://www.publicappointments.org/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

³¹ <http://www.publicappointments.org/publications/publication/223/guidance-on-the-2013-code-of-practice>

³² <http://www.publicappointments.org/publications/>

³³ <http://www.publicappointments.org/publications/45/good-practice-in-attraction-and-assessment-examples>

Term of board appointments or extensions

4.30 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 the same time.

Ministerial approval

4.31 Before a Regional Board may appoint a non-executive board member or extend a non-executive board member's period of appointment, the board must obtain the approval of both its chair and Scottish Ministers.

4.32 A board should consider possible contingency action (such as, for example, further requests for short-term approval of appointments or short-term extensions of existing appointments) where, if Ministerial approval is not given in any particular case, this could lead to a board with fewer than 15 members. Such contingency action does not have to be detailed when submitting a name for approval.

4.33 Scottish Ministers will not normally consider the approval of a non-executive board member unless the chair has approved the board's appointment.

4.34 When considering whether to approve the appointment or extension of a non-executive board member, Scottish Ministers will take into account the extent to which the board has, in the view of Ministers, paid sufficient regard to this guidance.

4.35 When submitting the name of a person to Scottish Ministers for their approval, **the chair or board secretary** should:

- a) confirm that the chair and the board are requesting Ministers to approve the appointment or extension;
- b) advise of any timing issues (e.g. does the appointment have to be made by a certain date?);
- c) advise whether the lack of approval would mean that the board would have fewer than 15 members (see paragraph 4.32);
- d) briefly outline the process;
- e) explain what was done to improve board diversity, including the gender balance on the board;
- f) outline what impact the prospective appointment/extension would have on the board's gender balance; and
- g) in particular for extensions, confirm that the existing board member has performed satisfactorily and there are annual assessments of performance to evidence this.

4.36 In relation to appointments, this should be accompanied by a statement from **the independent person** which

- a) outlines their involvement in the process; and
- b) confirms whether they are satisfied an open recruitment process was followed in accordance with this guidance and, if not, the reasons why not (see also next paragraph below).

4.37 If, in exceptional circumstances, a 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, Scottish Ministers must be informed at the earliest opportunity of the reasons, ahead of a name being submitted for approval.

4.38 If all the necessary information is available, Scottish Ministers aim to make a decision within a month.

4.39 In the event that Scottish Ministers do not approve an appointment or extension, they will write to chair of the board giving their reason.

4.40 In relation to appointments, in the event that Ministers did not approve an appointment, it would be open to the chair to put forward other persons from the appointment round who the board and the chair consider suitable to be appointed.

4.41 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.

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

5. ASSIGNED INCORPORATED COLLEGE BOARDS – APPOINTMENT OF CHAIR AND NON-EXECUTIVE 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; and
- non-executive board members appointed by the regional strategic body.

5.5 An assigned incorporated college board must therefore have between 7 and 12 non-executive board members.

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

Terms and conditions of appointment of chair and non-executive board members

- The chair and non-executive board members of an assigned incorporated college board hold and vacate office on such terms and conditions as the regional strategic body may determine³⁴. [Paragraph 5(1)]

Length of appointment, extension and re-appointment of chair and non-executive board members

- The chair and non-executive board members are to hold office for a period of up to four years. [Paragraph 5(2)(c)]

³⁴ 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 a non-executive board member for a single further period of up to four years. [Paragraph 5(2C)]
- After an appointment has ended, a person is eligible for re-appointment. [Paragraph 5(1)]

5.7 **Annex A** outlines the routes for the chair and non-executive board 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.³⁵

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 1998. “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.

5.10 Regional strategic bodies are also bound (or will also be bound) by the Equality Act 2010 and the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012³⁶, which introduced specific equality duties to assist bodies to meet the general public sector equality duty. The general equality duty requires public authorities, in the exercise of their functions, to have due regard to the need to:

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

³⁵ This is because in making appointments to an assigned incorporated college board a regional strategic body is exercising one of its “other functions”.

³⁶ Regional strategic bodies that are colleges or universities are already within scope of the legislation. Ministers intend Regional Boards to be bound by these duties in due course.

5.11 Under its public sector equality duties, a regional strategic body is/will be required to assess and review the equality impact of policies and practices on board appointments. This might involve identifying relevant evidence such as the population represented by the college or its potential catchment, the composition of the board, any gaps in representation, and appropriate steps to address any gaps.

Not eligible for appointment

5.12 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 B** for ease of reference.

Protection of Vulnerable Groups (PVG) Scheme

5.13 It is an offence under section 35(1) of the Protection of Vulnerable Groups (Scotland) Act 2007 for a regional strategic body to appoint a person to an assigned incorporated college board if that individual is barred from regulated work³⁷. By virtue of paragraph 18 of schedule 2 to that Act, regulated work with children includes being a member of the governing body of an assigned college board. Under section 35(7) of that Act, a regional strategic body can offer a college board appointment subject to it being satisfied that the individual is suitable, e.g. by requesting a PVG scheme record (see also paragraph 5.41). It is an offence under section 34 of that Act for any person who is barred from regulated work with children to seek to be a board member.

Arrangements for appointments and extensions

5.14 Staff and students of an assigned college should have an opportunity to contribute to appointments and extensions of appointments to the college board.

5.15 The principal of an assigned incorporated college must not be a member of any committee which has responsibility for the appointment or extension of appointment of board members of their college. They could, however, be asked to provide information (if required), whether in person or in writing.

5.16 No-one who may be applying for a college board member appointment must take part in any discussions or decisions that any committee or body may have about that appointments process. Similarly, no college board member who may be seeking to have their appointment extended must take part in any discussions or decisions relevant to that extension.

³⁷ Section 91(2) of, and schedule 2 to, of the Protection of Vulnerable Groups (Scotland) Act 2007 define “regulated work with children” and section 92 sets out when an individual is “barred from regulated work”.

Assessing the skills, knowledge, experience and attributes required

5.17 Given the number of stages in the process, an appointments process for college board members should begin early. Before beginning the process, the regional strategic body is to make arrangements to identify current and future needs of the college board to enable it to perform effectively, taking into account the anticipated challenges and opportunities facing the college. These could include, for example, human resources, finance, legal, estates, change management, experience or knowledge of the locality of the college or a particular sector etc. This should include consultation with the college board, including its chair.

5.18 The identified needs of the college board should be compared against the skills, knowledge, experience and attributes of remaining board members to enable the regional strategic body to identify gaps to be filled through the appointments process.

Skills, knowledge, experience and attributes of chair and non-executive board members of an assigned incorporated college board

5.19 A regional strategic body should aim for an assigned incorporated college board to have a membership:

- a) with diverse skills, knowledge and experience which taken together reflects the current and future needs of the board and which supports it to meet its responsibilities for effective governance as outlined in the **Code of College Governance**³⁸; and
- b) which, as far as possible, reflects the diversity of the people in the region and comprises at least 40% men and 40% women.

5.20 A regional strategic body can, where appropriate, take into account whether someone would in its view be able to acquire any sought after skills or knowledge following a period of induction and/or development.

5.21 As required by the 2005 Act, in exercising its functions to appoint the chair and non-executive board 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. The **Diversity Delivers**³⁹ programme sets out a number of ways in which diversity can be promoted in relation to board appointments. Many of the

³⁸ The Code will be published shortly. There will be a link to it on the Scottish Government web page at <http://www.scotland.gov.uk/Topics/Education/post16reform/hefegovernance>

³⁹ <http://www.publicappointments.org/delivering-diversity/overview/>

recommendations of **Gender Diversity on Boards: The Appointment Process and the Role of Executive Search Firms**⁴⁰ will also be relevant.

Chair

5.22 In appointing a person as chair of an assigned incorporated college, the regional strategic body should seek to appoint someone who:

- 1) can be expected to adhere to the Nine Principles of Public Life and act at all times in good faith and in the best interests of learners. The nine principles are: selflessness, integrity, objectivity, accountability, openness, honesty, leadership, public service and respect - see **Annex D**,

and

- 2) has significant experience or knowledge of:
 - c) further, higher or senior secondary education or the college student experience; or
 - d) industry, commerce, finance, the Third Sector, public service or trade unions; or
 - e) the region (or a relevant part of it) and its relevant needs,

and

- 3) has proven
 - a) an ability to work strategically and collaboratively at a senior level with knowledge of excellent corporate governance;
 - b) an ability to lead change successfully and positively influence individuals and organisations; and
 - c) a clear understanding of the regional and operating context of the college, including education direction, economic priorities and improving public services.

and

- 4) has such other skills, knowledge, experience or attributes as the regional strategic body considers relevant to ensure effective corporate governance and the proper exercise of the college board's functions (see paragraphs 5.17 – 5.18).

⁴⁰ <http://www.equalityhumanrights.com/publication/research-report-85-gender-diversity-boards-appointment-process-and-role-executive-search-firms>

5.23 The regional strategic body cannot appoint as chair anyone who holds any other position on the assigned incorporated college board at the same time.

Non-executive members

5.24 In appointing a person as a non-executive member of an assigned incorporated college, the regional strategic body should seek to appoint someone who:

- 1) can be expected to adhere to the Nine Principles of Public Life and act at all times in good faith and in the best interests of learners. The nine principles are: selflessness, integrity, objectivity, accountability, openness, honesty, leadership, public service and respect - see **Annex D**,

and

- 2) has significant experience or knowledge of:
 - a) further, higher or senior secondary education or the college student experience; or
 - b) industry, commerce, finance, the Third Sector, public service or trade unions; or
 - c) the region (or a relevant part of it) and its relevant needs,

and

- 3) has such other skills, knowledge, experience or attributes as the regional strategic body considers relevant to ensure effective corporate governance and the proper exercise of the college board's functions (see paragraphs 5.17 – 5.18).

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 a non-executive 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 the appointment of non-executive board members to that college.
- 2) For any particular appointment or appointments round, an independent person must be identified to, where possible, 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 it⁴¹. They must have otherwise no connection with the regional strategic body or the college (e.g. they must not be a board member, a member of any committee⁴² or an employee of, the regional strategic body or the college)⁴³. They could for example be someone from another regional strategic body, a principal, chair, board member, board secretary or any other person from a college in another region, or a member of a stakeholder organisation, such as a local authority. They must be:
 - i. knowledgeable of the college sector;
 - ii. understand the skills, knowledge, experience and attributes required of the person(s) to be appointed; and
 - iii. have demonstrated sound judgment and decision-making.
- 3) A variety of approaches to encourage applications from as diverse a range of applicants as possible. This could include, among other things, the use of social media and approaching individuals or organisations to make them aware of the recruitment exercise.
- 4) Positions advertised with clear information on the role description, person specification, and assessment criteria and methods. This includes, among other things, advertising on the Public Appointments website⁴⁴.
- 5) Timely information provided to both successful and unsuccessful candidates with an offer of feedback after application sift and interview stages.

⁴¹ Where it is not possible for the same independent person to be part of the process throughout, another independent person should fulfil the role they can't play.

⁴² This does not preclude their membership of a committee set up for appointments.

⁴³ The same person can be appointed for more than one 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.

⁴⁴ <http://www.appointed-for-scotland.org/>

5.27 The **Code of Practice for Ministerial Appointments to Public Bodies in Scotland**⁴⁵ and accompanying guidance⁴⁶ are helpful reference tools in making appointments, as are other publications⁴⁷ of the Commissioner for Ethical Standards in Public Life in Scotland, such as in relation to **good practice on attraction and assessment**⁴⁸. 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 regional strategic body 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. In reaching a view, it will carry out a needs analysis along the lines described in paragraphs 5.17 - 5.18.

5.29 The regional strategic body will also balance any benefits of continuity provided by an extension with the potential opportunity to increase the range of relevant skills, knowledge, experience and attributes on the college 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.

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

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

⁴⁵ <http://www.publicappointments.org/publications/publication/222/2013-code-of-practice-for-ministerial-appointments-to-public-bodies-in-scotland>

⁴⁶ <http://www.publicappointments.org/publications/publication/223/guidance-on-the-2013-code-of-practice>

⁴⁷ <http://www.publicappointments.org/publications/>

⁴⁸ <http://www.publicappointments.org/publications/45/good-practice-in-attraction-and-assessment-examples>

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

5.31 When incorporated colleges were assigned to their regional strategic bodies on 1 August 2014, arrangements were made to continue members in office⁴⁹. These special arrangements only apply to people 'migrated' to assigned incorporated college boards as non-executive board members. They do not apply to people appointed to the college boards after the college was assigned.

5.32 A migrated member serves until the expiry of their current term of office or one year, whichever comes first. This is the 'migrated period'.

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

- a) will assume new responsibilities for incorporated college board appointments;
- b) will generally 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; and
- 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 non-executive board members at the end of their migrated period⁵⁰.

5.34 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 a non-executive board member, so that the total transitional period (the migrated period when added to any extended period) is no more than two years.

⁴⁹ The arrangements for South Lanarkshire College, which would on the coming into force of the Lanarkshire Colleges Order become an assigned college on 1 October 2014, have not yet been made. Whatever the precise details of the arrangements, the substance of the guidance in this section will apply.

⁵⁰ 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.

5.35 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.

5.36 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 and 5.27.

5.37 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

5.38 A regional strategic body will determine the length (of up to 4 years) of a board appointment or extension based on needs of the college 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 an assigned incorporated college

5.39 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 a non-executive board member. Any such delegation should be set out clearly in writing so that both the regional strategic body and college understand fully its scope and any underpinning operational processes. This would include, for example, setting out whether regional strategic body or the college is responsible for identifying the independent person.

5.40 It will be for the regional strategic body to determine whether it wants the college to present it with a choice of preferred candidates for appointment to the college board or whether it would be acceptable for the college to recommend a single name.

5.41 A Protecting Vulnerable Groups Scheme check does not have to be carried out before any preferred candidates are put forward to the regional strategic body. This is something that could be done in the period before the regional strategic body makes an appointment. An appointment can also be made subject to the regional strategic body being satisfied that the individual is suitable (see paragraph 5.13).

5.42 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. If a college is submitting preferred candidates to a regional strategic body, the college should establish a relevant committee as outlined in paragraphs 3.14 – 3.17 of this guidance.

5.43 It is important to note that the regional strategic body cannot transfer to the college its functions in relation to making or extending an appointment. Legislation requires the appointment and any extensions to be made by the regional strategic body.

5.44 Before making an appointment or extending one, 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.

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

ANNEX A

ROUTES FOR NON-EXECUTIVE BOARD MEMBERS TO CONTINUE ON BOARDS⁵¹

Route 1

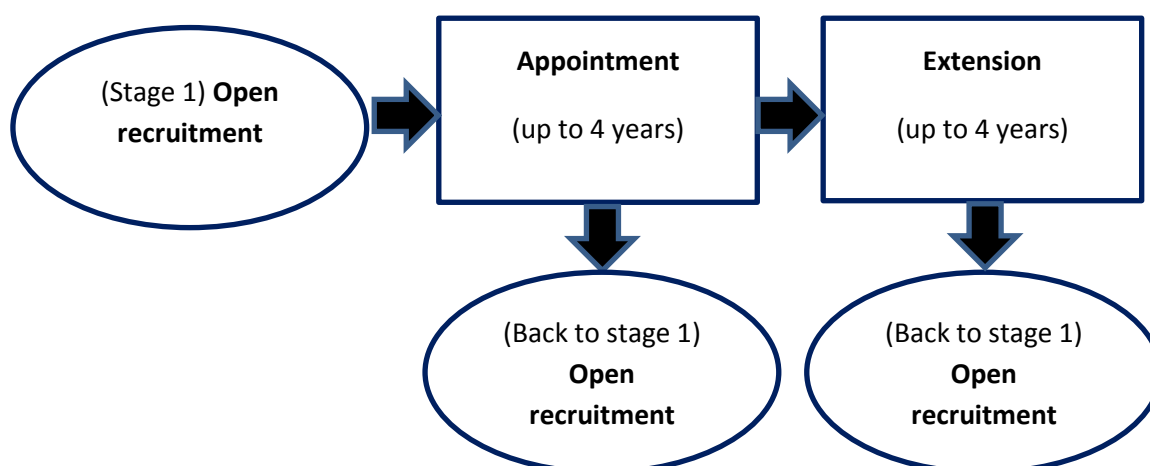
Appointment > Extension > Appointment route

- a) An appointment is made after open recruitment.
- b) The Board⁵² decides to extend the appointment. The chair and Ministers have to approve if the appointment is 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.



⁵¹ Applies also to the chair of an assigned incorporated college.

⁵² Or in the case of an assigned incorporated college, the regional strategic body.

ANNEX B

DISQUALIFICATION FROM MEMBERSHIP OF INCORPORATED COLLEGE BOARDS

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

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)⁵³.

⁵³ Note: paragraph 3(2)(b) is about the chair of an assigned college.

ANNEX D

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.