

## Audit & Assurance Committee

Date of Meeting	Tuesday 6 October 2020
Paper Title	Review of Governance Framework
Agenda Item	13
Paper Number	AAC1-H
Responsible Officer	Penny Davis, Board Secretary
Recommended Status	Disclosable
Action	For Decision

### 1. Report Purpose

- 1.1** To apprise the Committee of changes to the legislative and regulatory framework within which the Board operates over the past year.

### 2. Recommendations

- 2.1.** The Committee is invited to **note** the changes outlined in the report, and **decide** whether it would be beneficial to receive this report annually, at this point in the year.

### 3. Background

- 3.1.** Over the course of a year there are amendments to regulation and, occasionally, legislation, which have implications for GCRB's governance practice and reporting.
- 3.2.** While such changes are reported individually at Committee or Board, as appropriate, by the Executive or Board Secretary, the following report brings together relevant changes into a single, summary chart, in the interests of:
- a. ensuring that the Committee has an overview of the range and scale of changes in the past year, and
  - b. supporting the Committee in considering whether appropriate controls in place to comply with legal and regulatory requirements.
- 3.3** The report does not include an exhaustive list of all legislation and regulation that applies to GCRB, but covers areas that are more relevant, of which the Committee may wish to be apprised periodically.

GCRB Governance Framework – Review August 2020

Area of Influence	Legislation/Regulation	Outline Description	Review of Status/Implications August 2020
Education Acts	Further & Higher Education (Scotland) Act 1992	Established incorporated colleges (Assigned Colleges); determined constitution, functions and powers	Review of Code of Good Governance completed in 2020. Issue of revised Code awaited. 2016 Code applies to 2019-20 financial statements.
	Further & Higher Education (Scotland) Act 2005	Established Funding Council and regional governing bodies; determined constitution, functions and powers of Regional Strategic Bodies/Regional Boards; statutory basis for Regional Outcome Agreements, Financial Memorandum, Code of Good Governance, Appointments Guidance.	<p>SG Review of Appointments Guidance completed in 2020. Issue of revised guidance awaited. 2014 Guidance applies to current board appointments. Scottish Government introduced interim arrangements to extend existing appointments where necessary during COVID lockdown. SG to review position September 2020.</p> <p>Secondary legislation awaited introducing Trade Union Members on all college sector boards further to 2017 consultation. Consultation on model nomination procedure ongoing. Expectation TU members will join in 2020-21.</p> <p>Introduction of remuneration of AC Chairs anticipated 2021.</p>
	Post-16 Education (Scotland) Act 2013	Amended previous Education Acts to create regional governance structures.	<p>Other changes pending/announced by SG in 2019:</p> <ul style="list-style-type: none"> <li>- guidance for SFC/colleges on SFC reviews</li> <li>- SFC rights to address AC meetings</li> <li>- provision for appointing bodies to suspend members</li> <li>- teamwork to become part of formal governance induction programme</li> </ul> <p>Current review of tertiary education and support will have implications for governance/funding model/ROA during 2020-21. Additional board meeting/strategy session planned.</p>

<b>Ethical Conduct</b>	Ethical Standards in Public Life etc. (Scotland) Act 2000  Register of Interest Regulations 2003	Provided for Code of Conduct for public bodies	Standards Commission review of Code of Conduct undertaken in 2020. Issue of Scottish Government consultation on revisions awaited. 2014 Code presently applies. GCRB development session to follow issue of revised Code.  Register of Interest reviewed (as required and) annually in September.
	Code of Practice for Ministerial Appointments to Public Bodies 2013	Public Appointments process (applies directly to Regional Chairs and indirectly to Non-Executive Board Member appointments)	Commissioner launched consultation on 6 August 2020 on prospective changes to Code. Good Governance Steering Group submitting sector response by 9 November deadline. GCRB engaged in review.
	Bribery Act 2010	Redefined bribery offences and penalties	Code of Conduct refers to board member duties. Anti-bribery policy reviewed/approved 2019.
<b>Charitable Status</b>	Charities Trustee and Investment (Scotland) Act 2005 Associated regulations	Established current legislative framework for Scottish charities and created OSCR.	ACs are charities. GCRB is not a charity but may become one under the 2005 Education Act as a Regional Board. Consultation on changes to the Act to achieve greater transparency and enhanced powers for OSCR was completed in 2019. Legislative change pending.
<b>Information Protection/ Disclosure</b>	Public Interest Disclosure Act 1998 (as amended by the Enterprise and Regulatory Reform Act 2013)	Made provisions for whistleblowing	Current GCRB policy is compliant with British Standards Institute and Public Concern At Work code of practice. Due for review in 2020-21. (No whistleblowing concerns raised with GCRB in 2019-20.)
	Freedom of Information (Scotland) Act 2002  Re-use of Public Sector Information Regulations 2015	Defined right of access to information and exemptions.  Provision under Section 61 of FOI(S)A to regulate on access to	GCRB Publication Scheme reviewed 2018. Due for review during 2020-21.  SIC briefly extended FOI request response deadline (in qualifying circumstances) during lockdown. (GCRB received one FOI request during 2019-20.)

	Environmental Information (Scotland) Regulations 2004  Inspire (Scotland) Regulations 2009	environmental information held by public authorities.	
	Public Services Reform (Scotland) Act 2010	Placed duties on public authorities to publish information on expenditure >£25k on hospitality/entertainment, overseas travel, PR or consultancy and any staff paid >£150k	Financial Memorandum/SPFM refer. No recent changes.
	Data Protection Act 2018	2018 Act replaced 1998 Act and supplemented GDPR. Provides statutory basis for processing/storing/disclosing personal information.	GCRB approved DP Policy in 2019-20. Further work required in 2020-21 to complete schedule of actions recommended by DPO including review of records management and production of retention/destruction schedules. Further work also required to determine requirement for data sharing agreements with assigned colleges and funding council.

<b>Finance/ Audit</b>	(Further & Higher Education (Scotland) Act 2005) Financial Memorandum	Defines relationship to SFC and delegation of authority/reporting requirements; revised 2014 to accommodate ONS changes and Post-16 Act. GCRB replicates at AC level.	Currently under review by SG/SFC; revised version anticipated 2020; will require GCRB to review AC level memorandum subsequently.
	(Public Finance & Accountability (Scotland) Act 2000) Scottish Public Finance Manual	Comprehensive regulations for public bodies with legal status via the 2000 Act, on which FM draws, which applies post ONS.	Audit & Assurance Committee terms of reference updated in 2019 to reflect changes to Audit Committee Handbook. Several minor changes over course of year; significant changes will be reported to Committees/Board as appropriate.
	Procurement Reform (Scotland) Act 2014	Defined terms and duties in relation to regulated procurements and contracts.	SPFM refers. GCRB policy compliant with current law/regulation. Note some procurement legislation was set aside during COVID period.

<b>Safeguarding</b>	Protection of Vulnerable Groups (Scotland) Act 2007	Introduced PVG scheme in place of previous disclosure scheme. Ministerial Appointments guidance refers.	GCRB Board Members not formally required to undergo disclosure but it may be appropriate for them to do so/ additional terms may be imposed for future appointments. Some dialogue has taken place with Clyde College HR department. Further work needed in 2020-21 to establish how GCRB could efficiently complete the process for its Members.
<b>Community</b>	Community Empowerment Act 2015	Introduced new rights for communities to engage in public authority decision-making, purchase land held by public authorities, etc	GCRB participates in Community Planning Partnerships across college region. Review/briefing on potential future implications for college estates (eg, Asset Transfer Requests) would be beneficial during 2020-21.
<b>Quality</b>	Scotland Act 1998 2005 Education Act	Established authority for inspectorate with Government Executive Agency status; merger in 2011 of HMIE with LTS created joint authority for curriculum development and inspection. GCRB general duty under 2005 Act refers.	Assigned college enhancement plans published February 2019. GCRB receives annual update reports. Education Scotland reviews have been suspended during 2020 due to lockdown.
<b>Complaints</b>	Scottish Public Services Ombudsman Act 2002 (amended by 2005 Education Act)	Established SPSO to oversee and investigate complaints by members of the public against public bodies. Provided for model complaint handling procedure.	SPSO issued revised MCHP at start of 2020. GCRB approved/adopted revised policy March 2020.  (No complaints received during 2019-20.)
<b>Equalities</b>	Equality Acts (Scotland) 2006 and 2010 Equality Regulations 2012 2016 Amendment to Specific Duties	2006 Act was precursor which established Equality & Human Rights Commission (NDPB); 2010 Act Introduced Public Sector Equality Duty; incorporated/replaced all previous anti-discrimination legislation including equal pay (1970	GCRB mainstreaming report due April 2020. EHRC notified public bodies of flexibility over reporting deadlines where appropriate during COVID-19 restrictions. <i>Report to be completed for September approval/publication?</i>  Board diversity succession plan reviewed/published annually in September/October.

		Act mostly superseded by section 5 part 3) 2016 amendment required publication of certain data and diversity succession plan.	
	Gender Representation on Public Boards (Scotland) Act 2018	Introduced requirement to appoint in the interests of 50% female membership of public sector boards where there equally qualified male and female candidates for a vacancy.	Revised sector appointments guidance will refer. Specific guidance on implementation for all public sector boards expected 2020-21.
<b>Environment</b>	Climate Change Act 2008 Climate Change (Scotland) Act 2009	Scottish Government has action plan 2018-32; sector activity/compliance monitored by SFC.	GCRB as listed authority required to report (reporting is in proportion to scale of organisation but also takes account of influence/policy-making role)  (Note: Board approved Climate Change post in 2020 to take forward regional initiatives.)
<b>Health &amp; Safety</b>	Health & Safety at Work Act 1974 Subsequent Acts and Regulations Working Time Regulations also regulated by HSE	Main piece of health and safety legislation defined duties to employees and to the public.	Duties are qualified by principle of “so far as is reasonably practicable”; primary requirement is risk assessment and to act on findings. Detail of H&S reporting not included here as primarily responsibility of ACs. Proportionate GCRB H&S policy in place,

**4. Risk Analysis**

**4.1** Robust monitoring arrangements will help to mitigate Risk 013: There is a breach of legislation/ guidance/code of practice and this results in a failure of governance.

**5. Legal Implications**

**5.1.** There are no specific legal implications arising from this paper.

**6. Resource Implications**

**6.1.** There are no resource implications arising from this paper.

**7. Equalities Implications**

**7.1.** There are no new equalities considerations arising from this paper. The report refers to Equalities requirements.

**8. Strategic Implications**

**8.1.** There are no strategic implications arising fro this paper.