

## Nominations and Remuneration Committee Meeting

Date of Meeting	Monday 5 October 2015
Paper Title	Board member extensions to appointment
Agenda Item	14
Paper Number	NRC2-I
Responsible Officer	Martin Fairbairn, Interim Chief Officer
Status	Disclosable
Action	For Approval

### 1. Report Purpose

- 1.1. Consideration of the process for managing the possible extension of existing Board members for a second term.

### 2. Recommendations

- 2.1. The Committee is invited to **agree** the process described in this paper for the consideration of extension for a second term for the Board members whose first terms end on 30 April 2016.

### 3. Background

#### *Committee terms of reference*

- 3.1. The Committee's terms of reference state that the Committee "The committee shall make recommendations to the Board for its approval in relation to ... the nomination of board members for extension of the period of appointment at the conclusion of their term of office"

#### *Board members*

- 3.2. The terms of five Board members end on 30 April 2016. Under the legislation their terms of office may be extended for a second period not exceeding four years by the Board itself (which also has to be approved by the Chair and the Scottish Ministers). There is, though, no obligation to extend.
- 3.3. The Scottish Government has issued guidance on board member appoints and extensions. A copy of the section that applies to GCRB is attached at Annex A. The key points are:
- Account to be taken of equal opportunities.
  - A full skills analysis should be undertaken.
  - A term can only be extended if the board member has performed satisfactorily, with

evidence of annual assessments of performance to evidence this. The body's overall performance will also be taken into account.

- Nobody who is eligible for extension should take part in any of the decision-making about extension.

**3.4.** The last point is important, since both the current members of the Nominations & Remuneration Committee are eligible to have their terms extended.

**3.5.** If someone is not extended, they can apply to re-join the Board afresh through a standard appointment process.

#### **4. Proposed process**

**4.1.** Following the identification of the proposed new members, the Interim Chair will seek three members from within the Board members whose terms do not end on 30 April 2016 to form a temporary Committee called 'Extensions Committee'. The knowledge, experience or skills required will be:

- Public sector governance
- Human Resources
- Understanding of the further and higher education system.

**4.2.** Both the establishment of the Extensions Committee and its membership will be proposed to the end-October meeting of the Board.

**4.3.** In the period up to the end of the calendar year the Extensions Committee will oversee all aspects of the process with a view to making recommendations to the Board at its January 2016 meeting on both the appointments themselves and on the periods of appointment. Extended periods of appointment will probably be staggered to create a more even pattern of member retiral and appointment.

**4.4.** Following the January 2016 meeting we will seek Scottish Government approval for extensions proposed by the Board.

#### **5. Risk Analysis**

**5.1.** This paper addresses the risk that GCRB's membership does not meet its requirements in terms of number and knowledge / skills / experience.

#### **6. Legal Implications**

**6.1.** The legal and regulatory aspects of this matters are addressed within the body of the paper.

#### **7. Financial Implications**

**7.1.** There are no new financial implications arising from this paper.

**8. Regional Outcome Agreement Implications**

- 8.1.** There are no specific implications for the Regional Outcome Agreement associated with this paper.

#### **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 determine<sup>21</sup>. [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

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<sup>21</sup> 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 children<sup>22</sup> 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.

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<sup>22</sup> 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**<sup>23</sup> 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**<sup>24</sup> will also be relevant.

### **Chief officer**

4.21 The chief officer of a Regional Board<sup>25</sup> 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

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

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

<sup>25</sup> 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 it<sup>26</sup>. 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)<sup>27</sup>. 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 website<sup>28</sup>.

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<sup>26</sup> 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.

<sup>27</sup> 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.

<sup>28</sup> <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 stages<sup>29</sup>.
- 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**<sup>30</sup> and accompanying guidance<sup>31</sup> are helpful reference tools in making appointments, as are other publications<sup>32</sup> of the Commissioner for Ethical Standards in Public Life in Scotland, such as in relation to **good practice on attraction and assessment**<sup>33</sup>. 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.

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<sup>29</sup> 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).

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

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

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

<sup>33</sup> <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.