

## Audit & Assurance Committee

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| Date of Meeting     | Tuesday 5 October 2021         |
| Paper Title         | Review of Governance Framework |
| Agenda Item         | 11                             |
| Paper Number        | AAC1-F                         |
| Responsible Officer | Penny Davis, Board Secretary   |
| Recommended Status  | Disclosable                    |
| Action              | For Noting                     |

### 1. Executive Summary

**1.1** This report is produced annually (commencing 2020) to apprise the Committee of changes to the legislative and regulatory framework within which the Board operates over the past year.

**1.2** There are no compliance concerns highlighted in the report, which is for information.

### 2. Recommendations

**2.1.** The Committee is invited to **note** the report.

### **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 have greater relevance to its activities.

**GCRB Governance Framework – Review September 2021**

| Area of Influence             | Legislation/Regulation   | Outline Description  | Review of Status/Implications August 2020  |
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| <p><b>Education Acts</b></p>  | <p>Further &amp; Higher Education (Scotland) Act 1992</p>        | <p>Established incorporated colleges (Assigned Colleges); determined constitution, functions and powers</p>  | <p>2016 Code remains in place ref 2021 financial statements. Review of Code of Good Governance was completed in 2020, however, re-issue is on hold pending Scottish Government implementation of constitutional changes.</p>   |
|                               | <p>Further &amp; Higher Education (Scotland) Act 2005</p>        | <p>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> | <p>2014 Guidance applies to current board appointments. SG Review of Appointments Guidance completed in 2020, but reissue is on hold.</p> <p>Secondary legislation introducing Trade Union Members on all college sector boards, plus two additional non-executive members to GCRB board is now expected to progress during 2021-22.</p>   |
|                               | <p>Post-16 Education (Scotland) Act 2013</p>                     | <p>Amended previous Education Acts to create regional governance structures.</p>   | <p>Progress on introduction of remuneration of AC Chairs is also now anticipated in 2021-22.</p> <p>Other changes pending:</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> </ul> <p>Scottish Government advised response to SFC review around end September, which will provide basis for SG to progress matters above as appropriate.</p> |
| <p><b>Ethical Conduct</b></p> | <p>Ethical Standards in Public Life etc. (Scotland) Act 2000</p> | <p>Provided for Code of Conduct for public bodies</p>  | <p>2014 Code presently applies. Issue of revised Code anticipated December 2021. GCRB has plan in place to undertake development session on revised Code in early 2022/as appropriate.</p>   |

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|   | Register of Interest Regulations 2003   |   | Register of Interest reviewed/updated (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) | In concluding stages of review. Re-issue anticipated 2021-22. Has some implications for appointments guidance which is informed by PA process.  |
|   | 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<br>Associated regulations                                    | Established current legislative framework for Scottish charities and created OSCR.  | ACs are charities. GCRB is not a charity but may become one with Ministerial and OSCR consent. Consultation on changes to the Act to achieve greater transparency and enhanced powers for OSCR was completed in 2019. SG published analysis of responses, updated February 2021. No legislative change to date. |
| <b>Information Protection/ Disclosure</b> | Public Interest Disclosure Act 1998<br>(as amended by the Enterprise and Regulatory Reform Act 2013)              | Made provisions for whistleblowing  | Current GCRB policy remains compliant with British Standards Institute and Public Concern At Work code of practice. (No whistleblowing concerns raised with GCRB during 2020-21.)   |
|   | Freedom of Information (Scotland) Act 2002  | Defined right of access to information and exemptions.  | GCRB Publication Scheme reviewed and updated March 2021. (GCRB received three information requests that fell within the scope of FOI(S)A during 2020-21. Responses were sent to all and no further communications received.)  |
|   | Re-use of Public Sector Information Regulations 2015<br><br>Environmental Information (Scotland) Regulations 2004 | Provision under Section 61 of FOI(S)A to regulate on access to environmental information held by public authorities.        |   |

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|                           | Inspire (Scotland) Regulations 2009  |  |   |
|                           | 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.   | No recent changes reported. GCRB approved DP Policy in 2019-20. Action plan in place and monitored by DPO. UK Government has indicated potential future reform of DP regulations but no imminent changes.               |
| <b>Finance/<br/>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; 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.   | No recent changes reported to Audit Committee Handbook. 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.   |
| <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. GCRB still to explore/confirm options for Members. |

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| <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.   |
| <b>Quality</b>    | Scotland Act 1998<br>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.<br>GCRB general duty under 2005 Act refers.   | Scottish Government commenced process to reform SQA and Education Scotland in June 2021. Planning and reporting to Committee and Board will take account of reform process. |
| <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.<br><br>(No complaints received during 2020-21.)                                 |
| <b>Equalities</b> | Equality Acts (Scotland) 2006 and 2010<br>Equality Regulations 2012<br>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 Act mostly superseded by section 5 part 3)<br>2016 amendment required publication of certain data and diversity succession plan. | GCRB published equality mainstreaming report in 2020-21.<br><br>Board diversity succession plan reviewed/published annually in September/October.                           |
|                   | Gender Representation on Public Boards (Scotland) Act 2018   | Introduced requirement to appoint in the interests of 50% female membership of public sector boards  | Revised sector appointments guidance will refer. Specific guidance on implementation for all public sector boards awaited. GCRB practices monitored and compliant with Act. |

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|                            |   | where there equally qualified male and female candidates for a vacancy.                    |  |
| <b>Environment</b>         | Climate Change Act 2008<br>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)<br><br>Increase in GCRB activity with appointment of Climate Change lead 2021.                          |
| <b>Health &amp; Safety</b> | Health & Safety at Work Act 1974<br>Subsequent Acts and Regulations<br>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 & Compliance Implications**

**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. Financial & Resource Implications**

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

**6. Equalities Implications**

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

**7. Learner Implications**

**7.1.** There are no direct implications arising from this paper. Robust governance arrangements support GCRB in the delivery of its objectives, which are learner-focused.