



**An Roinn Oideachais
agus Scileanna**
Department of
Education and Skills

LEGISLATIVE REFORM

HIGHER EDUCATION AUTHORITY ACT, 1971

Consultation Report and Response of the
Department of Education and Skills

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I am pleased to introduce this Consultation Report on the legislative reform of the Higher Education Authority Act. This reform is needed to provide the necessary legislative basis for the excellent work which the Higher Education Authority (HEA) is undertaking in supporting, funding and regulating the higher education sector.

The HEA was established under the Higher Education Authority Act 1971 and has in the last nearly fifty years overseen the growth of our higher education system from a system catering for approximately 20,000 students in 1971 to over 200,000 students in the present day. Over the years the sector has become more diverse with an increased emphasis on equality of access and opportunity, flexible modes of learning, life-long learning and meeting the education and skills needs of the economy and the Country. The HEA has met the challenges of the sector over the years and has made a massive contribution to the excellent, internationally recognised higher education and research sector which we now have. I believe that our higher education sector can compete with the best in the world.

However, the legislation for the higher education sector and for the HEA has not kept pace with the developments in the sector. We are now putting in place the necessary legislation to underpin the excellent work of the HEA and to provide the necessary backing for continued innovation and development in the future.

The first phase in the development of the legislation was this consultation process. I issued a request for written submissions in July 2018 and I attended a consultation forum with the key stakeholders in November 2018. This report summarises the key points and opinions expressed by stakeholders during this consultation process. It also includes the response by my Department to the consultation process and includes a proposed performance and regulatory model for higher education in accordance with best international practice and an overview of the proposed legislation which incorporates many of the views expressed by stakeholders in the consultation process.

The new legislation will reflect the mission and values of my Department's Statement of Strategy 2019 – 2021, Empowering through learning - *"To facilitate individuals, through learning, to achieve their full potential and contribute to Ireland's social, economic and cultural development."*

We are aiming for a top-class higher education system which is a seamless part of our overall education system and which is innovative and adaptive to the needs of the learner and the education needs of the Country. I am confident that this new legislation will give the HEA the necessary backing to continue its excellent work and to continue to support, motivate, fund and regulate the higher education sector. I look forward to the continued success of the higher education sector in providing learning and development opportunities for all citizens of the State.

Mary Mitchell O'Connor T.D.

Minister of State for Higher Education

1. INTRODUCTION

The Higher Education Authority Act, 1971 established the Higher Education Authority (HEA), set out the functions of the HEA and provided for the governance of the HEA. The Act also provided that the HEA is the statutory funding authority for the universities, institutes of technology and a number of other designated institutions. The Act established the HEA as the advisory body to the Minister for Education and Skills.

The Act has been amended by other legislation on a number of occasions. However there have been important changes since 1971, particularly over recent years, to the responsibilities that the HEA is expected to fulfil in relation to the higher education sector. The higher education sector itself has changed radically since 1971 with the number of students increasing from approximately 20,000 in 1971 compared to approximately 235,000 students in 2017/2018. The population of the higher education institutions (HEIs) has also become more diverse and inclusive with an increased emphasis on equality of access and opportunity in higher education, flexible modes of learning and meeting the education and skills needs of the State. The Technological Universities Act 2018 has added Technological Universities to the higher education landscape with the first Technological University established on 1 January 2019. A number of private colleges also receive Exchequer funding towards higher education provision.

The current HEA legislation does not reflect the current environment of the higher education sector or the changed role and responsibilities of the HEA. New legislation is required to ensure that the HEA has the legislative basis for revised functions, as envisaged in particular in the National Strategy for Higher Education to 2030, and the necessary authority to meet government objectives in relation to higher education. It is therefore proposed to revoke the Higher Education Authority Act, 1971 and put in place a new Act. This legislation will provide a detailed and modernised framework to provide for the achievement of government objectives in relation to higher education and for the regulation and oversight of the performance of HEIs aligned with best international practice.

2. CONSULTATION PROCESS

An extensive consultation process has been undertaken to inform the development of the updating of the Higher Education Authority Act, 1971. This consisted of:

1. A request for written submissions on the updating of the Higher Education Act, 1971 (July to September 2018); and
2. A consultation forum with key stakeholders on 23 November 2018.

3. REQUEST FOR WRITTEN SUBMISSIONS

The Minister of State for Higher Education, Mary Mitchell O'Connor launched a public consultation on 19 July 2018 seeking views on updating the Higher Education Authority Act 1971. The closing date was initially 31 August 2018 but was extended to 28 September 2018 at the request of a number of stakeholders.

A consultation document was provided with a set of eight key questions which stakeholders were invited to respond to. The consultation document is at Appendix 1.

There were 14 responses to the request for written submissions. The list of those responding is at Appendix 2. The submissions have been published on the Department of Education and Skills website and can be found at [Update of the Higher Education Authority Act 1971 - Public Consultation - Department of Education and Skills](#)

The views of stakeholders presented in the written submissions are summarised below. **These represent the views of stakeholders who contributed to the consultation process, and not the views of the Department of Education and Skills. A summary of the Department's response to the consultation is included in this consultation report.**

3.1 WHAT SHOULD BE THE KEY FUNCTIONS OF THE HIGHER EDUCATION AUTHORITY?

The key role of the HEA as an intermediary, independent body between the Government through the Minister, the Department of Education and Skills and the HEIs was recognised. Respondents agreed that the HEA should continue to oversee the development of the higher education sector by retaining responsibility for the strategic development of the sector, funding of the sector, providing policy advice to Government and providing oversight of the governance and performance of HEIs.

Most of the submissions agreed that the existing general functions as set out in Section 3 and 4 of the 1971 Act remain valid but that there should be a new and comprehensive statement of the HEA functions and these should include:

- The role of the HEA in relation to teaching and learning;
- The role of the HEA in promoting the key role of higher education and research in meeting economic and social policy objectives including advising the Minister and Government on priority areas for research investment across the higher education sector and the impact of such investment;
- The role of the HEA in relation to the promotion of equity of access to higher education and the attainment of equality within the HEIs;
- The role of the HEA in promoting the internationalisation of Irish higher education;
- The role of the HEA in relation to system performance and development (including monitoring progress on the attainment of national policy objectives for Exchequer funded HEIs);
- The provision of policy advice to the Minister;
- Advancing matters of concern to the institutions with regard to Irish higher education; and
- Setting conditions attaching to the provision of funding.

The HEA recognised that it may require additional powers to exercise its role in overseeing HEIs. The HEA was of the view that such powers should be proportionate and incremental in nature providing a robust and effective legal basis to the roles and responsibilities currently carried out by the HEA and that it is important to recognise the autonomy of the HEIs and, accordingly additional powers should be exercised only if there are evidenced breaches of good governance practice or inadequate performance in meeting national objectives as set out by the Minister.

The HEA suggested that the legislation should give specific powers to the HEA to:

- develop and publish guidelines and codes relating to the governance and financial management of HEIs;
- provide a requirement on governing bodies to abide by such codes; and
- report to the HEA on their implementation at such frequency as the HEA decides.

Respondents recommended that greater autonomy for the HEA should be allowed so that the sector can fully deliver on national plans for higher education and enterprise.

There was a focus in some of the submissions on the promotion of educational equity and inclusion in higher education recommending that this should be adopted as a key function of the HEA. These submissions stated that equality of opportunity, progression and outcome must be the central goals of the higher education system. They also suggested that there should be an emphasis in the new legislation on increasing access pathways to higher education from Irish further education and training and community education. The extension of free fees to part-time students attending higher education was submitted by some stakeholders to ensure increased access to higher education by disadvantaged groups and individuals. A respondent also stated that the legislation should extend beyond the nine grounds set out under equality legislation and include socio-economic status.

The proposal was also made that the retention of the current model of “higher education” or a move towards a “tertiary education” model (incorporating further education) should be considered. This would strengthen integration and alignment of higher education and further education and training and would contribute to a more open perception of the value of skills and apprenticeship.

Autonomy and accountability were a major theme of the consultation process. There was an acceptance of the need for the highest standards of governance in higher education. However, stakeholders who commented on this issue held the view that regulation of HEIs should be proportionate and justified by the requirement to safeguard the use of public funds, the reputation of higher education and the interests of students. One respondent stated that there is strong international evidence that the most successful universities are those with the greatest levels of independence coupled with strong governance and accountability and that the new legislation should provide the statutory basis for governance and accountability of the sector with due provision for institutional autonomy and academic freedom. Another submission stated that the autonomy of HEIs should be linked to the percentage of funds received from the State. A respondent noted that a number of regulatory processes have been agreed between the HEA and the universities in recent years (Code of Governance, Statement of Internal Control, Borrowing Framework, Remuneration Framework, Performance Compact). This respondent requested that the new legislation should recognise and underpin the autonomy of universities and provide a regulatory framework that enables them to perform strongly and deliver on the long-term goals set by Government managed via the System Performance Framework or similar instrument and set out in the universities’ strategic plans as provided for in the Universities Act, 1997.

One submission drew a distinction between those HEIs in receipt of “core” Exchequer funding and private HEIs who receive Exchequer funding only in competitive research calls and/or for the delivery of specified education provision and services. A number of submissions recommended that all public funding for HEIs should be distributed through the HEA to facilitate the appropriate funding levels under the recurrent grant allocation model and the monitoring of expenditure by HEIs related to this funding.

A respondent suggested that the HEA should assess on a multi-annual basis the funding requirements of the HEIs based on appropriate international comparisons and following consultation with the HEIs each year as part of the annual budget/estimates process.

A further submission included the recommendation that the HEA in its advisory role in relation to the demand/need for higher education student places should be enabled to take into consideration not only those institutions coming within its remit but also other private providers of higher education. A related recommendation was that all HEIs should be required to provide the HEA with information on enrolments, completion and progression rates.

One respondent was of the view that consideration should be given to appoint inspectors to investigate and report with recommendations on aspects of the governance and management of HEIs in receipt of “core funding” where issues of public concern have been reported to the HEA and/or the Minister. This should be accompanied by appropriate, targeted and proportionate sanctions in the event of evidenced failure of governance or management.

Another submission recommended that the HEA should continue to develop the performance management system and the statistical data evaluation for the sector.

Some stakeholders suggested that the HEA should be the key centre for the promotion of research, international benchmarking and innovation in higher education in Ireland.

Quality and Qualifications Ireland (QQI) stated that a clear demarcation of lines of accountability between HEIs, QQI, the HEA and the Department of Education and Skills would provide for greater certainty and clarity of expectations and that it is important that the legislation enables collaboration and synergy between the agencies. The new legislation should take cognisance of the responsibilities of QQI under its legislative framework to avoid the risk of overlap. The HEA’s submission also emphasised the importance of there being a clear distinction in the respective roles of the Department of Education and Skills and the HEA.

The Irish Research Council (IRC) stressed the importance of research in higher education by recommending that the role of the HEA with regard to research should be more explicitly provided for in statute including the extension of its functions to encompass research. It supported a role for the HEA, in the legislation, in setting national guidelines and parameters pertaining to postgraduate research students and the power to issue directives to designated institutions on matters relating to postgraduate researchers. Science Foundation Ireland (SFI) stated that the revised legislation could include improving research integrity as a responsibility of the HEA and that the HEA should work with the Department of Education and Skills to clarify the career structure and progression for postdoctoral and other fixed-term researchers.

3.2 WHAT ROLE SHOULD THE MINISTER HAVE IN RELATION TO REGULATION OF THE HIGHER EDUCATION SECTOR?

The HEA believes that the powers and limitation on the powers of the HEA and those of the Minister should be clearly set out in legislation. The HEA referenced the recommendation in the Cromien report¹, which was reiterated by the OECD in its 2004 Review of Higher Education in Ireland, and recommended that the Department should remove itself from operational roles and responsibilities in relation to higher education and focus strongly on strategy and policy development.

There were differences of opinion in the submissions regarding the role of the Minister in relation to the regulation of the higher education sector. Some submissions suggested that the Minister/Department should assume a more active responsibility for the governance and oversight of the higher education sector whilst others suggested that the regulatory oversight of the higher education sector should be a matter for the HEA.

Some respondents suggested that the primary responsibilities of the Minister should be to propose and seek government approval for higher education and research policy and to set national strategy, to provide the legislative framework for the higher education system and to provide the necessary Exchequer resources to deliver on the strategy and on government objectives. This should be complemented by a significant role for the HEA in providing advice to the Minister, in implementing national strategies and policies and in monitoring the impact of same.

Respondents also recommended that the Minister should:

- Align broader government initiatives aimed at social inclusion and equity to policy initiatives within the higher education sector;
- Ensure HEIs are achieving established benchmarks, particularly in the promotion of equity and inclusion within the university sector; and
- Invest in cooperative initiatives between the HEA, Irish FET providers, SOLAS and the Community Education sector.

Some respondents were of the view that the Minister should continue to have a role in the formal designation or registration of HEIs.

3.3 ARE THERE ANY RELATED UPDATES REQUIRED TO OTHER ACTS?

The HEA made the following recommendations:

- Consideration should be given to reducing the size of HEI governing bodies;
- Appointments to HEI Governing Bodies, other than ex-officio members, Student Union, President/other student representatives and staff members should be through the PAS process and all eligible members should receive payment for their services; and
- Paragraph 4.9 of the Code of Practice for the Governance of State Bodies states a Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant. Consideration should be given to

¹ *Department of Education and Science report – Review of Department’s Operations, System and Staffing Needs by Seán Cromien, October 2000*

making provision for HEIs' Governing Bodies to meet at least twice per annum without the President being present.

One respondent recommended broader forms of active learner voice engagements and in particular the creation of a National Higher Education Learner Forum alongside the development of a student engagement strategy (incorporating formal and informal student engagement strategies).

One respondent reflected that the Universities Act 1997 and the Institutes of Technology Acts 1992 and 2006 may need to be reviewed to align institutional governance structures with best international practice and to achieve a clear accountability framework whilst preserving autonomy. One respondent noted that corporate governance for the technological sector was strengthened by the Technological Universities Act 2018.

Another submission proposed a refinement of the existing System Performance Framework with fewer but more meaningful metrics and targets and a sharper focus on strategic deliverables. This submission also proposed the retention of the Annual Governance Statement as a key instrument of accountability and performance and suggested processes by which the internal governance of the universities could be strengthened including through:

- self-evaluation of governing authorities and committees;
- independent audit committee and internal audit functions;
- robust risk-management processes;
- quality review procedures in conjunction with QQI;
- external audits and reviews by C&AG; and
- internal independent review systems.

One respondent noted that the Industrial Development (Science Foundation Ireland) Act 2003 needs to be considered in the updating of the HEA legislation.

3.4 IS A REGISTRATION MODEL FOR HIGHER EDUCATION INSTITUTIONS APPROPRIATE?

There was a mixed response to the proposed registration model with some respondents expressing satisfaction with the current designation model and on that basis not supportive of the introduction of a registration system with others supportive of the introduction of a registration model.

One respondent suggested that the QQI Register of Providers could provide the basis for the new registration system as an alternative to, or a complement to, the existing designation system.

There was a concern in some of the submissions that a registration system could run the risk of creating a rigid framework for the higher education sector and could have the unintended effect of impeding the development of existing institutions and the establishment of new types of HEIs. This could reduce the flexibility of Ireland to respond to educational opportunities.

One respondent outlined a number of potential benefits to the registration system:

- More co-ordinated higher education sector;
- Increased opportunities for institutional collaboration;

- Transparency and consistency in the allocation of state funding amongst HEIs;
- Improved accountability for the state’s investment in the sector; and
- More comprehensive and consistent statistical data for the higher education sector.

However, this respondent did recognise the challenge of ensuring a more equitable institutional funding model given the existing fiscal constraints and the possible diminution of autonomy for private, but state dependent HEIs which could deter innovation on the part of these institutions potentially reducing their effectiveness.

One submission suggested that any new model should be inclusive of all providers, regardless of their funding profile. A registration model similar to that in the UK was suggested for consideration in this submission. If agreed this registration system with clear criteria for each registration type and robust monitoring of HEI performance would be beneficial to the whole sector. However, the submission noted that thought must be given to the conditions of ongoing registration, de-registration or a change in registration “type”. The submission also noted that there would be a need for a co-operative approach with the QQI Register of Providers.

One respondent reflected that the recent passing of the legislation for technological universities might seem to run counter to the registration model concept. Another respondent stated that a registration model should only be considered if it can be shown to have a clear and definitive positive impact on the overall quality of delivery of the higher education sector. This respondent raised a concern over who would adjudicate on the quality assurance function of registration, the QQI or the HEA. Another respondent stated that a differential approach should be considered but only where it protects the inclusive perception of the system and where it can be guaranteed to uphold the standards and reputation of the system as a whole.

QQI recommended that legislation providing for the registration of HEIs should not impact adversely on QQI’s remit to assess the corporate fitness of providers for the purpose of accessing QQI awards. QQI noted that any change to the HEA legislation should take cognisance of the Qualifications and Quality Assurance Act 2012 and the QQI Amendment Bill 2018.

3.5 ARE THERE INTERNATIONAL MODELS OF REGULATION WHICH SHOULD BE EXAMINED AS PART OF THE PROCESS OF UPDATING THE ACT?

A number of countries were mentioned in the submissions as having models of regulation which may be relevant.

The following countries were referenced in this context:

- **England:** In 2017 the passing of the Higher Education and Research Act led to the creation of two new bodies to regulate and fund higher education providers: the Office for Students and UK Research and Innovation reflecting England’s self-funded strategy. English universities can decide, without the intervention of the State, on all aspects of organisational autonomy, including selection, term of office and dismissal of the executive head, governance structures and inclusion of external members, as well as internal academic structures.
- **Scotland:** The Scottish Funding Council encompasses both further and higher education and its mandate centres on the funding of high-quality education at further and higher levels. The mandate also covers the undertaking of research among the bodies. Scotland

- provides a robust strategy on how to increase university access to education among students from underrepresented groups.
- **Finland:** The Universities Act (2009) grants administrative and financial autonomy to universities. Universities and the Ministry of Education and Culture have performance agreements defining operational and qualitative targets for each university. These provide a basis for decisions on the university's student intake, selection, curricula and instruction. Universities receive funding from the State and also undertake external fundraising. There are clear pathways for all learners to access free educational opportunities that will lead to higher-level education.
 - **The Netherlands:** The Dutch model of regulation includes government funded institutions, government designated institutions and institutions without government funding or approval.
 - **Denmark:** The Ministry of Higher Education and Science is responsible for higher education. Universities have a high degree of autonomy and self-governance. The University Act (2003) introduced boards composed of a majority of external members as the university's highest authority. HEIs are partly financed by the Ministry of Higher Education and Science and by other income-generating activities. There are five categories of institution each with a clear rationale and offering specified award levels based on the Danish National Qualifications Framework.
 - **Sweden:** Since 1 January 2013, the Swedish Higher Education Authority and the Swedish Council for Higher Education are the central government agencies responsible for matters relating to higher education. However, universities and university colleges remain separate State entities and make their own decisions about the content of courses, admissions, grades and other related issues. A new model of quality assurance of higher education was implemented in 2016. University chancellors and the National Authority for Higher Education remain responsible for evaluation of HEIs, but also ensure that universities develop their own system of quality control.
 - **Canada:** Attention was drawn to higher education initiatives that incorporate community engagement as a component of increasing learner access.
 - **Australia:** In 2011 two new national regulators were established at the tertiary level: the Australian Skills Quality Authority (ASQA) for Vocational Education and Training and the Tertiary Education Quality and Standards Agency (TEQSA) for higher education. TEQSA applies a systematic, structured and consistent approach to assessing compliance risk across all providers, using a standard set of risk indicators corresponding to primary areas of institutional practice and performance. Australian universities have the authority to accredit their courses and are also responsible for their academic and quality assurance standards.
 - **New Zealand:** The Tertiary Education Commission (TEC) in New Zealand is responsible for tertiary education in New Zealand, a system of comparable size and maturity to Ireland. The functions of the TEC are set out in the New Zealand Education Act 1989 and these include the delivery of the higher education strategy, provision of advice to the minister including advice on policy formulation, the implementation of funding mechanisms, management of a careers database and related information service, the strengthening of connections between education levels and the world of work, and the monitoring of performance.

One respondent referred to a report by Fielden (2008) for the World Bank which discussed the advantages of higher education agencies which removed the detailed operational issues from the

Ministry of Education, which can then focus on policy issues and not get involved in detailed management of institutions. The research highlights that successful operation of an agency depends on a close relationship with the Ministry of Education, while also setting clear roles and responsibilities for the intermediate body responsible for the oversight of higher education.

3.6 THE FOLLOWING ARE SOME OF THE AREAS THAT COULD BE CONSIDERED FOR UPDATING AND/OR INCLUSION IN THE ACT. ARE THERE OTHER AREAS WHICH SHOULD BE CONSIDERED?

Designation/registration of Institutions, general functions of the HEA, Strategic Plans, governance of HEIs, penalties for governance or other breaches, appointment of Investigator, funding, withholding of funding, review and provision of relevant courses, gathering of information, improved data sharing to support more effective policy making while taking into account GDPR requirements and whether there are additional data sources that could be collated, reviews, research, links with other bodies, the Board.

One respondent stated that the Board of the HEA should have primary responsibility for approving the HEA's strategic plan and that the Board should be cognisant of national priorities as set down in the National Strategy for Higher Education and as provided for in its service level agreement with the Department of Education and Skills.

The HEA suggested that the size of the HEA Board should be between 12-15 members and that Board membership should include provision for:

- Members employed by institutions funded by the HEA;
- International members;
- A representative nominated by a recognised national students' union; and
- A representative from the Department of Education and Skills.

One respondent suggested that the new HEA Act should take account of governance provisions in the respective Acts for the different sectors and ensure that the provisions in the HEA Act are aligned with the sectoral legislation, especially in relation to institutional autonomy. This respondent highlighted that the respective governing authorities of each institution have responsibility underpinned by statute for the governance of their organisations and stated that it is imperative that this independent structure is maintained.

It was noted in one submission that the mechanisms for accountability (Code of Governance, Annual Governance Statements, System Performance Framework etc.) are already in place and the revised Act should ensure that these are appropriately underpinned by the new legislative framework. The submission pointed out that governance breaches are provided for via the penalty system in the new System Performance Framework.

Reference was made in one submission to the principle of a "Visitor" to an institution arising from serious/persistent cases of governance breaches which already exists in the Universities Act. The submission argued that the proposed response to the issue of breaches of governance requirements

should take into account instruments of governance within the current governance framework, including the proposed penalty provisions.

One respondent stated that the review and provision of relevant courses as a form of workforce planning was in the past a feature of the management and oversight of Institutes of Technology. For the HEA to determine whether a university's programmes are relevant with consequent impacts on provision would be a significant move away from institutional autonomy and towards a state dependant higher education system.

A number of submissions referred to the issue of data collection by the HEA to ensure compliance with GDPR regulations. The HEA stated that a key objective of a statutory provision in relation to data collection and sharing will be to put beyond doubt that the HEA can have access to the data it needs to monitor compliance and performance, plan and co-ordinate the higher education and research system and to share its data in a way that supports these objectives and overall national policy. On this basis the HEA recommended that the following provisions should be included in the Act in relation to data collection:

- The HEA should have specific powers to collect student data electronically or otherwise from institutions funded by the HEA;
- The HEA should have specific powers to collect student data electronically or otherwise from private HEIs;
- The HEA should have specific powers to collect staff data electronically or otherwise from HEA funded institutions and private institutions;
- The HEA should have specific powers to collect financial and other information from institutions funded by the Higher Education Authority; and
- The HEA should have the power to collect data from other state bodies necessary to carry out its statutory functions.

Another submission stated that the HEA data gathering role needs to be enhanced by agreement with the universities subject to the requirements of data protection law. This submission proposed that appropriate levels of funding are applied to ensure that the capacity of the HEA is developed to perform a data analytics function in co-operation with the sector in accordance with best international practice.

QQI stated that the legislation should enable the HEA and QQI to share relevant data, in line with GDPR whilst another respondent suggested that there is merit in considering the inclusion of private institutions in annual data collection regarding performance by the HEA.

SFI supported open access to research information and stated that the HEA should continue to support the National Principles for Open Access to scientific information as reflected in the National Principles for Open Access Statement and that it should support and encourage efforts by the HEIs to standardise their data and publication repositories for maximum interoperability.

One respondent sought a commitment in the legislation to the promotion of Lifelong Learning including a commitment to projected growth by all HEIs. The respondent stated that Irish HEIs should develop a plan for lifelong learning within their own strategic plans and work directly with the HEA to ensure targets are being achieved.

Another respondent referred to section 13 of the 1971 Act which provides that the HEA may institute and conduct studies on such problems of higher education and research as it considers appropriate and may publish reports of such studies. This respondent suggested that this function should have stronger statutory underpinning and a more explicit link with the general functions of the Authority, including the policy advisory role. The respondent also considered that a public information and communications role for the HEA should be considered for inclusion in the Act.

The IRC requested that a statutory basis for the Irish Research Council should be included in the legislation. It suggested two options – a standalone council in its own right separate from the HEA or a continuation of substantially the same relationship between the Council and the HEA. The IRC's view is that the Act should provide for the establishment of the Council on a statutory basis within the HEA, preserving the existing relationship with the HEA. The IRC submission provided details of how this can be achieved in legislative terms. The HEA supported the establishment of the IRC operating as a statutory body under the aegis of the HEA.

3.7 HOW SHOULD THE HEA MONITOR COMPLIANCE WITHIN THE HIGHER EDUCATION SECTOR?

One respondent believes that the Department of Education and Skills and the HEA should be guided by a responsive regulatory approach in the higher education sector i.e. an approach which emphasises dialogue and incentivises and rewards good behaviour, as well as being clear about the process of escalation required in the event of compliance shortfalls.

A respondent stated that any new legislation should ensure that the existing instruments of governance are appropriately provided for (the Code of Governance, aligned with the State Code; Annual Governance statements submitted by the Universities; the System Performance Framework with the additional breaches provisions). This respondent also stated that any new legislation should recognise the value of university autonomy as provided for in the Universities Act 1997, and support robust and effective governance in HEIs.

Another respondent suggested that the System Performance Framework provides the policy scaffolding to ensure accountability and quality assurance and nurtures the necessary conditions to encourage behaviours beneficial to promoting excellence. This respondent also noted that any increase in regulatory requirements should take into account the administrative burden that this will place on institutions as well as on the HEA. The respondent also stated that if Ireland wants transparency and good system stewardship, Ireland needs institutions to provide accurate, comparable and timely data to the HEA – in many cases much more data that they currently provide. However, as a general principle, international experience points at ensuring regulatory requests are proportionate and balanced.

One submission reflected that institutions are now faced with resourcing offices that are focused on satisfying increasing reporting and monitoring demands. The submission suggested that institutions should be equipped with appropriate governance structures and an agreed policy framework and that review processes should be combined or linked which would help make the monitoring process more consistent, transparent and rigorous.

The HEA proposed a graduated, time specific, proportionate system to address scenarios where there is non-compliance with governance standards or significant organisational underperformance.

These would include the appointment by the HEA Board of: Advisors, Specialist assistance, or issuing Guidance Instructions and Mandatory (Enforced) Instructions, all made in sequence over a specified timeline in legislation.

The HEA also proposed that the Minister should have the power to appoint an Inspector to all institutions funded by the HEA and that the HEA should have powers to investigate governing bodies and executive bodies in the HEIs.

The HEA suggested that subject to safeguards, the HEA should have the power to impose financial penalties or withhold funding from HEIs for stated misconducted or poor performance.

SFI recommended that compliance monitoring is best based on high quality data and that the HEA should implement a national research information system which tracks research activity being carried out in Ireland's HEIs. SFI also suggested that the governance structures in the HEIs should evolve to increase the authority of the governance of SFI centres.

3.8 ARE THERE ANY OTHER RELEVANT ISSUES WHICH YOU WISH TO COMMENT ON?

A respondent stressed the importance of equality proofing the new legislation and stated that the HEA should have a strategic framework for equality which moves beyond the nine grounds of equality legislation and incorporates a specific requirement in relation to socio-economic status.

One organisation raised the issue of the difficulty of access to higher education for students with intellectual disabilities. It requested that intellectual disability is included in the list of criteria for the Fund for Students with Disabilities in Higher Education. It also requested core funding from the Exchequer for the ten specialised programmes that are accessible for students with intellectual disabilities in different HEIs across Ireland. It suggested personalised budgets for people with intellectual disabilities which would empower them to take control of their own funding and have more choice and control over the services and supports they receive.

One respondent requested that the cap on number of students eligible for Free Fees funding in some private institutions be removed to reflect increased demand from all eligible students. This respondent also requested that funding is provided on a comparable basis to other State funded HEI's (through the RGAM funding model) and that private institutions are facilitated to respond to the demand through the CAO for programmes.

QQI noted that the different purposes of quality assurance and performance can be misunderstood or misinterpreted. As an external quality assurance agency, QQI provides assurance that HEIs have internal quality assurance systems in place and that they are effective. This encompasses the seven universities, the fourteen institutes of technology, any new Technological Universities, the Royal College of Surgeons in Ireland, linked providers and approximately thirty other private and independent providers that offer higher education.

The IRC stated that in mid-2012 a Standing Committee for Research and Graduate Education (RGEC) was established by the HEA and the IRC as an advisory body to provide policy and operational coherence between the two bodies. The committee membership comprises Authority and Council members. It was proposed that this Committee be placed on a statutory footing.

4. CONSULTATION FORUM

The consultation forum took place on 23 November 2018. All of those who participated in the written consultation process and representatives from the HEA board and executive, Universities, Institutes of Technology, some education bodies and key higher education representative bodies were invited to attend the consultation forum. A full list of the bodies represented at the forum is attached at Appendix 3.

The Minister of State for Higher Education, Mary Mitchell O'Connor, T.D. opened the forum and thanked all of the participants for attending the consultation forum to give their views on the updating of the HEA legislation. A presentation was given providing a summary of the views provided by participants in the written consultation process. Dr. Thomas Weko, Senior Analyst in the Policy Advice and Implementation Division of the OECD Education and Skills Directorate gave a presentation on the trends in higher education and the implications for system governance and regulation. Dr. Weko also answered a number of questions relating to his presentation.

The Forum then broke into discussions at each of the seven tables. A preliminary draft outline of the provisions proposed for inclusion in the HEA Bill was distributed in advance of the forum together with six discussion points. Each table was asked to consider the six discussion points. A Department of Education and Skills official took notes at each table. A representative from each table then reported back the main points raised to the plenary. The consultation forum concluded with an open forum where participants had the opportunity to raise additional issues.

The key opinions expressed at the consultation forum are summarised below. **These represent the views of stakeholders who contributed to the consultation process, and not the views of the Department of Education and Skills. A summary of the Department's response to the consultation is included in this consultation report.**

4.1 DISCUSSION POINT 1: FUNCTIONS OF THE HEA

Does the preliminary draft outline identify the main functions that the HEA should be expected to fulfil or are there others that we need to consider?

The general view was that the list of functions was too long. The functions should be prioritised and categorised into primary and secondary functions and there needs to be a clear distinction between the HEA's role as a funder and as a regulator. Participants stated that the quality of teaching, learning and the student experience should be included in the functions and that the research and development function of the HEA should be expanded further.

Participants agreed that the student should be at the top of the list of functions and should be central to the legislative approach overall. Participants stated that the current draft does not include a prominent role for the HEA for serving the needs of the student.

A reference was made to the inclusion in the preliminary draft outline of the power of the Minister to confer additional functions on the HEA by Order. Participants suggested that there needs to be appropriate tests for the Minister to give any extra functions to the HEA and that any new

functions/powers for the HEA should be proposed through a consultation process and given under primary legislation.

Participants stated that HEA functions should be cross-referenced to existing Acts (including the Universities Act 1997 and the Technological Universities Act 2018) and that functions should be in compliance with existing frameworks.

Participants noted that the list of functions appears to overlap with those of other bodies. These functions need to be mapped and tested against other bodies and their requirements.

Participants were of the view that the function of the HEA needs to be clear around the roles of the Board and the executive especially when HEIs could be represented on the Board and funding decisions are being discussed and agreed.

Participants suggested that the legislation should provide for the HEA to develop policy and guidelines around an admissions process for every HEI to ensure equality of access.

There was a discussion about the HEA's role in advising the Minister and Department and if it has the knowledge and information available to it to do so effectively.

4.2 DISCUSSION POINT 2: POWERS OF THE HEA

Does the preliminary draft outline give the HEA the powers and tools it needs in order to deliver on its functions in relation to, for example, Regulation, Governance, Performance, Funding etc.?

Participants were broadly satisfied with the powers included in the preliminary draft outline which were given to the HEA in order to deliver on its functions in relation to regulation, governance, performance, funding and other relevant functions.

Participants were of the view that there should be a distinction between functions and powers but that the powers should be linked back to the functions. Participants recommended that the legislation should be clear on the powers and functions.

4.3 DISCUSSION POINT 3: PROPOSED REGISTRATION MODEL

What would the main components of a "registration model" be? What criteria would HEIs be expected to meet in order to be registered with the HEA?

There was a lot of commentary on the proposed registration model with the question being posed "what current gap in the system is the registration model supposed to solve?" The purpose of the registration system was questioned by participants.

Participants felt that more clarity was needed around this proposed model and how it would work in practice. Participants stated that there was a need to ensure that the registration model automatically provides for the registration of the existing HEA designated institutions. Participants noted that an annual application is built into the proposal at the moment but it was felt that this

would create a significant administrative burden which would be disproportionate to the potential benefits of the approach. Participants suggested that the model should be that once a provider is registered they do not have to re-register every year.

The question was asked whether it was mandatory for HEIs to be registered with the HEA and what would be the implications if an institution did not register. The issue of de-registration was also raised and how this would be addressed. Participants stated that the registration system could be damaged by under-performing providers and that the register could act as a marketing tool.

Participants stated that there may be benefits from a registration system for new providers and providers which are currently not designated HEIs under the HEA Act, but that any new registration system needs to be as straightforward as possible.

Participants suggested that the Universities Act may need to be amended to facilitate a registration system.

The capacity of the HEA to provide the registration system was questioned. Participants reflected that more resources would be needed to support this system. There was concern over the capacity of the HEA to issue guidelines and orders that the HEIs have to comply with.

The importance of quality as a key element in any system that is put in place was raised by participants. The question was asked - Will all institutions have to pass this quality mark to be on the register? Participants noted that there is a QQI process for the external quality assurance of higher education institutions and the HEA Strategic Dialogue process with higher education institutions. They suggested that the existing systems could be used rather than introducing a new process. Participants stressed the importance of avoiding confusion and duplication with the QQI process if the registration system proceeds.

Participants stated that the registration system would need to have different levels of regulation for different categories of HEI. The issue of how to accommodate HEIs that are not currently part of a legislative framework was raised.

A participant made the point that reputation and quality are key for all students. It was noted that the reforms in England was driven by a desire for competition and to allow new providers to come in. This was a market driven approach. This participant suggested that if we use the registration model, it needs to be a different model than in England and would be more suited to students and the Irish HE sector.

Participants agreed that the State needs assurance about quality of qualifications and about use of State funding. Participants suggested that the modernisation of the designation system may be better than introducing a new registration system.

4.4 DISCUSSION POINT 4: DISTINCTION OF ROLES AND RESPONSIBILITIES

Does the preliminary draft outline provide sufficient clarity on the respective roles and responsibilities of the HEA vis a vis the Minister / Department / HEIs?

Participants pointed out that the statutory/legislative role of the HEA in the 1971 Act is not aligned with its current roles and responsibilities and this should be clarified in the new legislation.

Participants also stated that the relationship between the Department and the HEA is not clearly defined and that there needs to be clarity in the Bill on the interaction between the HEA and the Department.

Participants suggested that once the Minister decides upon policy the HEA needs to be given the freedom to operate within this policy framework.

A concern was expressed by some participants over the proposal that the Minister sets the priorities for the HEA and that these are aligned with the National Strategy for Higher Education. Some participants questioned whether this undermines the existing strategic dialogue process and stated that this may discourage diversity in the sector if HEIs are forced to comply with the National Strategy.

4.5 DISCUSSION POINT 5: BALANCE BETWEEN AUTONOMY AND ACCOUNTABILITY

Does the preliminary draft outline provide the correct balance between the autonomy of the HEIs and accountability / regulation of the HEIs by the HEA ?

Participants highlighted the benefit of allowing for institutional diversity through the implementation of the System Performance Framework. This allows for diversity whilst also promoting the implementation of national higher education policy. Participants stressed the importance of the continuation of this system.

Participants stated that there can be confusion between the concept of accountability and that of control and that there can be clear accountability without centralised control. Participants also noted that the level of control has to be put in the context of a reduced level of public funding since 2008. Concern was expressed regarding the risk of creating a “command and control” model of higher education. Participants were concerned that this would potentially undermine the autonomy of the institutions. Participants stressed that a one size fits all approach would not promote and encourage the innovation and reform that will help support the achievement of national objectives in relation to higher education.

Participants made the point that HEIs are “thought leaders” in society and that HEIs need to be enabled to perform to the best of their abilities and that governance from the State should not inhibit their development. They noted that creativity and innovation require autonomy to flourish and remarked that the HEIs may not be able to carry out their core business if compliance requirements are such that they spend too much time meeting administrative requirements.

Participants suggested that a set of principles for the implementation of the regulatory model should be included in the Act. These principles could outline the way in which the regulation will be implemented in practice.

Participants remarked that funding is the key to the accountability of HEIs and that there needs to be stability of funding for HEIs. Participants stated that the preliminary draft outline enforces penalties when something goes wrong but does not provide a reward if something goes well. They recommended on that basis that there should be greater recourse to performance related funding. They suggested that entrepreneurial activity by institutions should be rewarded and that HEIs need to be risk takers, subject to appropriate risk management strategies.

Participants stated that there must be a balance between inspection powers and autonomy as too much inspection can inhibit autonomy. Participants were of the opinion that the increasing level of regulation of public providers is becoming an issue. Participants suggested that the HEA regulatory role should be carried out in a supportive way so that if there is an issue in a HEI the HEA has the ability to assist in resolving it.

Some participants were of the view that the code of governance should be agreed with the universities. They recommended that there should be an appeal process for HEIs if penalties are to be applied under the Act. They also mentioned that there is an employment control framework which applies to HEIs that operates outside the current legislative framework.

The role of the governing body of HEIs was raised by participants and the need for the governing body to be stronger relative to governance and oversight. Participants suggested that the skills on the governing bodies need to be strengthened, and size reduced.

Participants stated that there are potentially regulatory overlaps between the HEA and QQI and that these need to be clarified and streamlined especially where the requirements and timelines differ but the goal is similar.

4.6 DISCUSSION POINT 6: AREAS TO BE STRENGTHENED

Are there any particular areas where the preliminary draft outline needs to be strengthened or expanded e.g. Research, Data Protection, Promoting Access, cooperation with other agencies?

Participants agreed that the student/learner should be at the centre of the new legislation.

Participants reflected that it is important to recognise the role of HEIs in driving future economic growth and to articulate this in the legislation. Participants also noted that it is important to recognise in the legislation the wide breadth of work undertaken in HEIs including spin-outs, spin-ins, entrepreneurial role, community and regional role etc.

Participants stated that the strategic relationship with the wider education and training system needs to be reflected in the legislation. They suggested that there is a need to improve co-ordination between the HE and FET sectors, otherwise there is the likelihood of growing competition between both sectors which is damaging to both.

Participants recommended that the legislation needs to address different skill needs, types of learners and modes of learning. They suggested that there needs to be future proofing of skills needs and that the legislation should be equality proofed.

Participants noted that the functions of the HEA are very extensive but there needs to be clarity and a clear separation of roles and responsibilities between various bodies – e.g the HEA, QQI, SFI etc. Participants stated that overlaps can lead to the risk of a lack of clarity and potential conflicts arising. This arises for example in relation to reporting requirements.

Participants stated that operational independence of funding decisions is very important. Participants noted that there is a strong alignment between the HEA and the Irish Research Council (IRC) and suggested two options for the establishment of the IRC on a statutory basis:

- to establish the IRC within the HEA; or
- to establish the IRC separate to the HEA.

A participant questioned whether the inclusion of post-graduate career paths is appropriate for inclusion in this Bill.

Participants recommended that the provisions in the preliminary draft outline should be assessed against other acts (including the Universities Act) and these provisions should be balanced.

Participants also recommended that there need to be coherence between higher education strategies and the proposed Bill. Participants questioned whether the proposed legislation reflects processes that have already been undertaken – e.g. the refresh of research prioritisation, skills strategy etc.

4.7 GENERAL

Participants stated that this new legislation needs to uphold quality, maintaining international reputation and appropriate accountability for expenditure in the higher education sector. They also recommended that the HEA legislation needs to be capable of recognising all sectors – university, institute of technology, technological universities and private HEIs.

Some participants were of the view that the suggestion in the preliminary draft outline that university strategy statements should be aligned with Departmental and national objectives may be in conflict with the Universities Act.

Participants reflected that it might emerge from discussion that there is a need to look at how research is divided up in terms of policy and funding responsibility and the relationship between the HEA, IRC and SFI. Participants noted that significant research funding comes from outside the HEA.

Participants remarked that there is not enough participation from disadvantaged areas in higher education and that the Department should shift towards an incentivising approach for HEIs to promote greater participation.

5. RESPONSE BY THE DEPARTMENT OF EDUCATION AND SKILLS – A PERFORMANCE AND REGULATORY MODEL FOR HIGHER EDUCATION

The Department of Education and Skills values the contributions made by stakeholders in the consultation process which are helpful in informing the development of the new legislation. This section and section 6 of this report set out the response of the Department to the themes identified in the consultation process.

The Department recognises the importance of the HEA and the necessity of it being a strong, trusted and credible leader within higher education. This legislation will support the differentiated but strongly complementary roles of the HEA, the Minister and the Department in relation to the higher education sector. In overall terms it is important to state that the role of the Department in developing the legislation, is to reflect on behalf of the Minister broader policy objectives and priorities over and above those held by stakeholders in higher education, which legitimately reflect specific sectoral or organisational interests.

The core objective of the legislation is to ensure that the HEA is equipped with a solid and robust legal basis to undertake its key responsibilities in relation to the performance and regulation of the higher education sector, consistent with best international practice.

It is not intended to put in place a new performance and regulatory framework but rather to modify the existing system, extending it in a proportionate and balanced way in response to identified and considered weaknesses in the current performance and regulatory model.

This section of the report summarises the international perspective of higher education regulation. It is followed by an overview of the regulatory framework currently in place and a statement of the proposed approach to regulation and performance for the future.

5.1 THE INTERNATIONAL PERSPECTIVE OF HIGHER EDUCATION REGULATION

Internationally the case for regulation in the higher education sector has shifted in emphasis from the allocation of resources and the oversight and protection of public funding to the oversight and regulation of the quality of the learning experience. The aim is to provide a high quality, student focused system with appropriate oversight and accountability to underpin public confidence by all stakeholders, students and the public. Regulation is necessary not only to protect the public funding but also to protect the students, uphold standards, maintain international reputation and to protect the sustainability of the HEIs and the higher education system.

In an international context, the regulation of higher education has many different facets and may combine self-regulation, co-regulation and regulation by independent bodies. There is a recognition that different types of providers may need to be subject to differing regulatory requirements whilst being subject to the same performance and regulatory framework. There has been a move towards a risk based regulatory approach where the frequency and intensity of regulatory review depends on the risks arising in the particular institutions. This approach includes encouraging institutions to manage their risk effectively and will mean that regulatory resources are directed to those areas of greatest risk in order to protect the student and the institution. This system is equitable in that institutions are subject to the same rules but there may be increased regulation of some institutions

due to their particular level of risk. There has also been increased emphasis on the measurement of an institution's performance against national higher education strategies and/or the strategic plans of the institution.

5.2 CURRENT IRISH REGULATORY MODEL

The current Irish regulatory model encompasses the HEA legislation, the Qualifications and Quality Assurance legislation, legislation related to state funded higher education sectors, statutes, frameworks, codes and guidelines. This model provides a performance and regulatory framework which is operated by the HEA in co-operation with the HEIs and a quality assurance framework which is operated by the QQI.

The existing HEA legislation includes regulatory provisions relating to funding, financial reporting, provision of information to the HEA and studies by the HEA. There is specific legislation in place for each of the publicly funded sectors of higher education namely the Universities Act 1997, Technological Universities Act 2018, Institutes of Technology Acts 1992 to 2006, the Dublin Institute of Technology Acts 1992 to 2006² and the National College of Art and Design Act 1971. These separate pieces of legislation contain provisions related to the regulatory framework including the functions of the institutions, requirement for a governing body, strategic development plan, equality statement, budgets, the keeping and auditing of accounts, annual report, provision of information to the Minister/HEA, borrowing guidelines, the purchase and disposal of shares in companies, staff, superannuation, academic council and the appointment of an investigator (or a visitor for universities).

The Qualifications and Quality Assurance legislation covers the quality assurance of further and higher education and training, the National Framework of Qualifications and the recognition of qualifications. It is not proposed to duplicate processes developed under this legislation or in any amendments to it, under the revised HEA legislation. Under this Act, all public providers of further and higher education and training and designated awarding bodies (i.e. universities, RCSI and technological universities) must have quality assurance procedures in place and these are subject to review by QQI. The Qualifications and Quality Assurance Act, 2012 requires providers, including private higher education providers, to have quality assurance procedures in place before they can apply to QQI for programme validation (which gives access to QQI awards). It is a key principle in the Qualifications and Quality Assurance Act, 2012 that HEIs (and other providers) are primarily responsible for the quality of the education that they provide.

The Qualifications and Quality Assurance (Education and Training) Amendment Bill 2019 will provide QQI with additional statutory powers to assess private provider's corporate fitness and financial robustness against criteria to be specified in regulations. These regulations will set out criteria addressing key issues such as the legal personality, ownership and corporate governance arrangements of providers in addition to examining that adequate financial resources are in place to ensure the viability of these businesses. Ongoing compliance with the specified criteria will be necessary for providers to retain quality assurance approval, which will be necessary for authorisation to use the International Education Mark (IEM). Failure to comply with these conditions will potentially lead to a withdrawal of quality assurance approval (and the IEM).

² The Dublin Institute of Technology Acts 1992 to 2006 are no longer relevant as Dublin Institute of Technology has been dissolved and incorporated into Technological University Dublin since 1 January 2019.

The HEIs in receipt of public funds are also governed by public sector guidelines and circulars, several frameworks, codes and guidelines such as the Code of Practice for the Governance of State Bodies (or the university or institute of technology adapted version), Performance Delivery Agreements/Service Level Agreements/Memorandum of Understanding between the HEI and the HEA, Financial Memorandum between the HEI and the HEA, System Performance Framework, D/PER Circular 13/2014, public pay policy, Borrowing Framework, Departures Framework, public sector capital expenditure requirements, public sector procurement requirements and annual statements of governance and control.

The existing sectoral legislation, the QQI legislation, the HEA legislation and the frameworks, codes and guidelines provide a comprehensive regulatory model for the university, institute of technology and technological university sector.

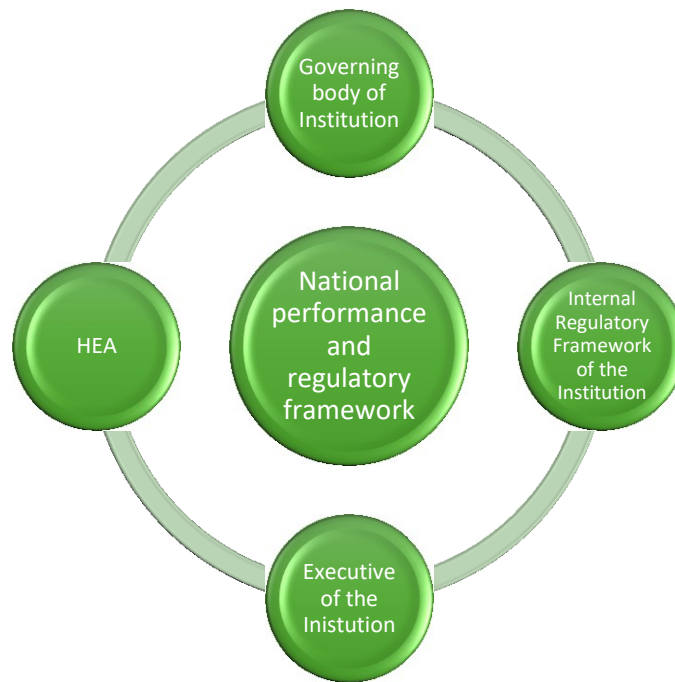
5.3 HIGHER EDUCATION REGULATION AND PERFORMANCE MODEL: KEY PRINCIPLES

The Irish performance and regulatory model for higher education should reflect best practice principles for performance and regulatory models both domestically and internationally. The purpose of the performance and regulatory model is to ensure that the core objectives of the higher education system are secured. The model will put an emphasis on the regulation and oversight of the quality of the learning experience and directing regulatory resources to those areas of greatest risk. This is crucial to the achievement of the objectives of the higher education system. The guiding principles which will be taken into account in developing this performance and regulatory framework are:

- A framework which will support the core objectives of the higher education system;
- Clarity regarding the role of the Minister, HEA, governing bodies and the executive of HEIs and other relevant bodies;
- Clarity, sustainability and simplicity in relation to funding and regulation;
- Achieving the correct balance of autonomy and accountability for the HEIs in receipt of funding ;
- Ensuring the model does not impose an excessive administrative burden on HEIs or the HEA;
- Protecting Exchequer investment in the higher education sector; and
- Safeguarding the needs of the student including quality and future of courses.

5.4 A CO-REGULATION MODEL

Consistent with international experience of higher education regulation a balanced and effective co-regulation model will be reflected in the new legislation. Under this model the objective is to strike an appropriate balance between the internal governance of the higher education Institution and the role of the HEA under the new legislation. The compliance is to be overseen in the first instance by the governance framework in the institution themselves. This internal performance and governance framework will be in accordance with a national performance and regulatory framework which includes a clear reporting requirement to the HEA. In circumstances in which HEIs meet regulatory requirements through effective and robust governance at institutional level, the regulatory role of the HEA is limited to oversight delivered through accountability mechanisms.



The features of the co-regulation model will be:

- Strong Governing Bodies with Board members with the necessary skills who exercise their fiduciary duty to the institution;
- An executive which works effectively with the governing body;
- An internal performance and governance framework, including codes of practice and relevant policies and compliance with this framework;
- A comprehensive reporting system from the executive to the Board;
- An effective internal risk management and internal control system;
- Oversight and performance delivery agreements with the HEA;
- Compliance with a Code of Practice for governance which will be agreed between the HEA and the relevant sector;
- Reporting framework to the HEA including annual governance statements, financial reporting and annual report;
- The operation of the Systems Performance Framework;
- Compliance with legislative and national regulatory requirements including audit; and
- Powers of intervention by the HEA in instances where a serious risk has been identified or there has been non-compliance with regulatory standards.

This model corresponds in overall terms to the principles of the existing model. In this model, the primary responsibility for compliance with the performance and regulatory framework will rest with the governing body of the relevant institution supported by the executive of that institution. Governing bodies should be of a sufficient size to allow for effective governance and the members should have the appropriate skills and knowledge to enable them to discharge their respective duties and responsibilities effectively.

It is also important to note that Board members have a fiduciary duty to the HEI in the first instance (i.e. the duty to act in good faith and in the best interests of the HEI) even if they have been nominated for membership of the governing body by a particular group/sector. It is noted that the

Technological Universities Act 2018 provided for a reduction in size and membership of the governing bodies of the Institutes of Technology but the relevant sections are not commenced yet. It is proposed to amend the university legislation to reduce the size of the governing body and make changes to the membership process in accordance with the Irish Universities Association 2012 [Report to the Minister on University Governance](#).

The governing bodies of HEIs need to ensure that an effective internal performance and governance framework is in place and that this is implemented and complied with by the higher education Institution. This internal framework should be in compliance with legislative requirements and the national performance and regulatory framework developed by the HEA and agreed with the HEIs. The governing body will be accountable to the HEA for compliance with legislative requirements and the national framework. It is proposed that a risk based regulatory approach will be adopted where the frequency and level of regulatory review will depend on the risk arising in the institution. It is anticipated that this model will provide the correct balance between autonomy and accountability with less regulation of those HEIs with a lower level of risk and increased regulation of some HEIs due to a higher level of risk. This model will support and promote institutional autonomy, innovation, reform, good behaviour and a culture of excellence in HEIs.

There may be a difference in the level of regulatory review depending on the level and type of funding provided and the sector to which the HEI belongs (including private institutions). It should be noted that even in the absence of any public funding there is a case for an effective system of regulation to safeguard students and uphold the reputation of the sector.

5.5 LEGISLATIVE PROVISIONS FOR REGULATION

Provisions need to be included in the new legislation for the regulation of the higher education sector. However, as outlined in the previous section the level of regulatory review will depend on the level and type of funding provided, the sector to which the HEI belongs and the level of risk arising in the relevant institution. Consideration needs to be given to the provisions which will apply in the legislation to each of the different categories of HEI including the Exchequer funded sector, private institutions in receipt of core funding or free fees funding, private institutions in receipt of other funding (e.g. Springboard) and private institutions which receive no Exchequer funding. The international shift in emphasis in higher education regulation from the allocation of resources and the oversight and protection of public funding to the oversight and regulation of the quality of the learning experience should be taken into consideration in this regard. Some regulation of all HEIs, even those not in receipt of Exchequer funding is necessary to protect the students, uphold standards, maintain international reputation and to protect the sustainability of the HEIs and the higher education system. Some of the areas for consideration for regulation under the Act are:

- HEA power to collect information (including student enrolments, completion and progression rates);
- Code of governance (separate codes for different sectors);
- Conditions of funding (for those institutions in receipt of funding);
- System Performance Framework;
- Strategic Development Plan;
- Equality Statement;
- Review power by the HEA and penalties for non-compliance;

- Human Resource requirements; and
- Student number requirements.

Further consultation and discussion will take place with stakeholders on the appropriate regulatory requirements to include in the legislation for each sector, but it is anticipated that at least some of these requirements (eg. the HEA power to collect information) will apply to all HEIs, including private institutions not in receipt of Exchequer funding.

5.6 CHANGE OF NAME OF HIGHER EDUCATION AUTHORITY

The name of the Higher Education Authority will be changed to the Higher Education Commission (HEC) reflecting the performance and regulatory role which will be undertaken by the HEA. The purpose of the name change is to reflect the change in functions in the HEA.

6. RESPONSE BY THE DEPARTMENT OF EDUCATION AND SKILLS - OVERVIEW OF THE PROPOSED LEGISLATION

This section of the report outlines the main areas which will be addressed in the legislation to provide the necessary support to the Higher Education Commission (HEC) to achieve its objectives and to support the provision of an excellent higher education sector.

6.1 PURPOSE OF THE LEGISLATION

Consistent with the principles discussed in section 5, the purpose of the legislation is to establish a clear statutory basis for the HEC and to provide the HEC with the legislative basis for:

- making investment decisions and providing funding in accordance with these decisions;
- establishing and operating a performance and regulatory framework for the higher education sector;
- assisting the Minister in the development and implementation of higher education policy,
- safeguarding students;
- supporting HEIs in implementing national higher education policy; and
- maintaining the integrity and reputation of the higher education system.

The reform of the HEA legislation is critical to the reform and modernisation of the higher education sector. The structure and design of the legislation will reflect best practice principles in terms of the funding and regulation of higher education sectors internationally. It will also build on the foundations of the existing system and be capable of recognising all sectors of higher education including universities, institutes of technology, technological universities and private institutions. There will also be appropriate links to the further education and training sector to strengthen the integration of the Tertiary Sector overall.

The core objectives of the HEC legislation will be to:

- Promote and safeguard the interests of the students;
- Maintain and enhance the reputation of the higher education sector, including international reputation;
- Promote and support HEIs in achieving excellence in teaching, learning and research in higher education;
- Promote equality of access and opportunity in higher education; and
- Provide a comprehensive governance framework to safeguard Exchequer investment in the sector and ensure accountability by HEIs for that funding.

6.2 KEY FUNCTIONS OF THE HIGHER EDUCATION COMMISSION

The HEC functions set out in the legislation will provide a comprehensive framework for the HEC to oversee the effective funding, regulation, governance and strategic support and development of the higher education system.

The key functions of the HEC provided for in the legislation will be to:

- Develop higher education and higher education research policy, in co-operation with the Department of Education and Skills, the Department of Business, Enterprise and Innovation and other Government Departments in relation to research in higher education, institutions of higher education and other relevant bodies;
- Implement higher education and higher education research policy as decided by the Minister and the Government, in co-operation with the Department of Education and Skills, , the Department of Business, Enterprise and Innovation and other Government Departments in relation to research in higher education, institutions of higher education and other relevant bodies;
- Further the development of high quality higher education and higher education research;
- Promote the attainment and maintenance of excellence in learning, teaching and research in higher education, including the Open Science and research integrity agendas;
- Implement the necessary and appropriate governance structures to underpin public confidence in the higher education sector and to support institutions of higher education in adhering to these responsibilities;
- Provide advice to the Minister including advice on state investment in higher education and higher education research and prepare proposals for such investment;
- Provide funding to HEIs and monitor expenditure by bodies to which funding is allocated;
- Promote and provide funding for apprenticeship provision in HEIs;
- Measure, assess and strengthen the performance of the higher education system through a System Performance Framework or other means to ensure accountability while respecting institutional autonomy;
- Promote equality of access and opportunity in higher education and promote the attainment of equality within HEIs;
- Promote internationalisation of Irish higher education; and
- Conduct research on higher education and issues related to higher education as appropriate.

These functions will be undertaken having due regard to the whole of Government approach to research policy in Ireland and having due regard to the role of the Department of Education and Skills, the lead role of the Department of Business, Enterprise and Innovation and the roles of other Government Departments and their agencies with respect to research that is carried out in Higher Education Institutions.

Additional functions may be added as the legislation is developed. The HEC functions will be carefully aligned to correspond with existing Acts (including the Universities Act 1997, the Institutes of Technology Acts 1992 to 2006, the Technological Universities Act 2018 and the Qualifications and Quality Assurance (Education and Training) legislation) to ensure that the new HEC legislation complements the existing legislation.

6.3 CENTRAL ROLE OF THE STUDENT

An overarching objective of the new legislation is to promote and safeguard the interests of the student. The student will be central to the new legislation and one of the primary objectives of the HEC which will be included in the legislation, is the protection and promotion of the needs of the student. The quality of teaching, learning and the student experience will be a key theme at the centre of the legislation.

6.4 ROLE OF THE MINISTER AND THE DEPARTMENT

The Minister for Education and Skills is responsible for the national strategy for higher education and higher education research, the legislative framework for the higher education system and for the provision of Exchequer resources to deliver on the strategy and on the State's objectives. The HEC plays a central role in developing and advising on policy and strategy for higher education. It is anticipated that there will be a requirement for Ministerial approval for certain roles of the HEC which is in accordance with good practice in public sector funding and regulatory bodies.

The Department will support the Minister in his/her role with the main focus of the Department being on the development of higher education strategy and policy. The Department's primary responsibilities will seek to remove itself from the operational roles as far as possible with these being the responsibility of the HEC. The role of the Minister will be clearly set out in legislation.

Under the System Performance Framework, the Minister sets priorities for the higher education system advised by the knowledge and expertise of the HEC, which are delivered by HEIs through their strategy statements and by their mission-based performance compacts agreed with the HEC.

6.5 ROLE OF THE HEC

The legislation will provide for the continuation of the body formerly known as the Higher Education Authority (An tÚdarás Um Ard-Oideachas) and the change of name of this body to the Higher Education Commission (An Coimisiún Um Ard-Oideachas).

The HEC is an intermediary body between the Government through the Minister, the Department of Education and Skills and the HEIs. The new legislation will define a clear role and responsibility for the HEC with the main objective of the HEC being contributing to the development of higher education policy and strategy and assisting in the implementation of higher education policy and strategy as decided by the Minister while also protecting and maximising the output from the State's investment in the higher education sector and promoting positive outcomes from the allocation of the resources. The HEC will be a significant contributor to the development and adoption by the Minister and the Department of key policies and strategies. The HEC will also undertake the operational role of funding, supporting, regulating and overseeing the higher education sector.

The legislation will ensure that the HEC has the necessary powers, functions and authority to carry out its role.

6.6 DESIGNATION OF INSTITUTIONS OF HIGHER EDUCATION

REGISTRATION MODEL

The original proposal contained in the preliminary draft outline of the provisions proposed for inclusion in the legislation presented at the Consultation Forum was for a registration system under which all HEIs would be subject to regulatory oversight by the HEA. This was proposed to ensure that all institutions providing higher education qualifications were subject to regulation and oversight by the HEC to secure the achievement of a high quality higher education system where the needs of the student were paramount and Exchequer investment was protected.

The original proposal for a registration model involved:

- An application process to the HEA for inclusion on the register;
- A framework developed by the HEA for assessing applications for membership including quality and governance requirements;
- Ongoing conditions of membership of the register including quality, governance, compliance with HEA guidelines/orders, provision of information, legal requirements;
- Demonstration by each HEI on an annual basis that they meet the ongoing conditions of membership of the register; and
- A framework to deal with breaches of the ongoing membership conditions.

In responding to the proposed registration model stakeholders expressed a number of concerns regarding this proposed system including the administrative burden for HEIs and the HEA, the cost of an annual registration system and the legal uncertainty created by the requirement to apply for re-registration on an annual basis. Stakeholders also highlighted the benefits of building on the current designation system rather than introducing a new registration system. The Department has considered the views expressed by stakeholders on the proposed registration system and also considered the complexity of the introduction of a new registration model for recognising the status of HEIs when there is already an established legislative framework in place for universities, technological universities and institutes of technology. Consequently, the Department is proposing a modernisation of the current designation system for institutions of higher education rather than introducing a new registration system.

The requirement in the registration model for an application process, ongoing conditions of membership, annual compliance requirements and the framework for breaches of ongoing membership conditions will not apply in the proposed revised designation model. However the revised designation model will still ensure that all institutions providing higher education qualifications are subject to regulation and oversight by the HEC to secure the achievement of a high quality higher education system where the needs of the student are paramount and Exchequer investment is protected.

CURRENT LEGISLATION

The Higher Education Authority Act 1971 designates universities, colleges of a university, technological universities, institutes of technology, the Dublin Institute of Technology, the Royal College of Surgeons in Ireland, the National College of Art and Design and the Royal Irish Academy as

HEIs for the purposes of the Act. It also includes a provision and a process for the designation of additional educational institutions as HEIs for the purposes of the Act.

Under the QQI legislation and the proposed amendment to this legislation, Universities, Technological Universities, the Institutes of Technology, RCSI and QQI can approve awards to be included within the National Framework of Qualifications (NFQ). QQI has approved awards at level 6 (higher education) to level 10 for approximately 30 private and independent providers that offer higher education. The Universities and NUI have approved awards for a number of other linked providers. The proposed modernised designation system should include, as required, these institutions while ensuring that the work of the QQI is not duplicated.

PURPOSE OF DESIGNATION

The purpose of the designation of the higher education providers is to ensure that there is some minimal regulation of all higher education providers, even those not in receipt of Exchequer funding in order to protect the students, uphold standards, maintain international reputation and to protect the sustainability of the HEIs and the higher education system.

PROPOSED DESIGNATION MODEL AS AN INSTITUTION OF HIGHER EDUCATION

It is proposed that the new legislation will provide for the automatic designation of the HEIs which are currently designated as institutions of higher education under the 1971 Act. The universities, technological universities, institutes of technology, NCAD and RCSI will be “grandparented” and automatically designated as institutions of higher education under the new legislation.

It is envisaged that the legislation will provide for the mandatory designation of all other higher education providers, whose principal purpose is higher education, as institutions of higher education for the purposes of the Act. This will be achieved by the inclusion of a definition in the legislation. The current proposed definition is:

“institution of higher education” is a higher education provider which provides programmes leading to at least one higher education award that is included within the National Framework of Qualifications and which was established and is operated for the principal purposes of higher education.

This definition may also need to exclude certain bodies which are subject to regulation by the Department of Education and Skills, other Departments or other State bodies such as the Education and Training Boards, Colleges of Further Education, HSE Centres and the Garda College.

It is proposed that the HEC will make a determination regarding which higher education providers are designated as institutions of higher education for the purposes of the legislation and that it will inform the relevant higher education providers of this determination prior to publishing a schedule of institutions of higher education on an annual basis or as required. There will be provision for an appeals procedure for bodies who wish to appeal the determination by the HEC that they should be included or excluded from the schedule of institutions of higher education.

Inclusion on the schedule as an institution of higher education will mean that the provisions of the HEC legislation will apply to the relevant institution. However, it is envisaged that not all provisions in the Act will apply to all institutions of higher education. Some provisions in the legislation may

only apply to the Universities, technological universities, institutes of technology and certain other state funded HEIs. A distinction between different categories of institutions of higher education may be provided for in the legislation in order to apply different sections of the Act to the different sectors and categories of institution of higher education.

The legislation will need to provide for close co-operation and interaction between QQI and the HEC in order to implement this designation model as this model relies on information from QQI regarding institutions which have awards included within the NFQ.

REMOVAL OF DESIGNATION AS AN INSTITUTION OF HIGHER EDUCATION

A provision for the removal of designation will be included in the legislation and this will need to rely on or take account of QQI determinations in relation to compliance with the relevant quality assurance requirements, removal from the framework of qualifications or the corporate fitness of the provider.

PROTECTION OF THE TITLE DESIGNATED INSTITUTION OF HIGHER EDUCATION

It is proposed that the title Designated Institution of Higher Education or some other similar title would be protected under the legislation. Only those institutions which are designated as institutions of higher education under the Act would be permitted to use the title and it would be an offence for another institution to use this title in Ireland.

It should be noted that designation as an institution of higher education for the purposes of the Act will not create any entitlement to public funding.

The designation model does not give rise to the increased administrative requirements envisaged under the regulation model, whilst achieving the same purpose of regulating all HEIs in order to protect students and maintain and uphold the reputation of the higher education sector in Ireland.

6.7 STRATEGY FOR HIGHER EDUCATION AND HIGHER EDUCATION RESEARCH

The legislation will provide that the HEC will develop in co-operation with the Department of Education and Skills a Strategy statement for higher education and higher education research at least every 10 years. The Strategy statement will have regard to any policy directions given by the Minister, national policy and the strategy statement for the Department of Education and Skills and will set out the long-term strategic direction for higher education and higher education research and will address economic goals, social goals (including equality of access) and environmental goals. It will also have due regard to the whole of Government approach to the setting of Ireland's research strategy and the lead role of the Department of Business, Enterprise and Innovation and the roles of other Government Departments for delivering the national research strategy.

6.8 SYSTEM PERFORMANCE FRAMEWORK

It is proposed to include a provision for the development and implementation of a performance framework for HEIs based on national objectives. This will provide legislative backing for the existing System Performance Framework. It is proposed that the legislation will include provision for the

agreement of performance objectives between the HEIs and the HEC through a strategic dialogue process and will provide for the monitoring and review of the implementation of previous frameworks.

6.9 FUNDING

The legislation will provide the HEC with the power to provide funding to designated institutions of higher education and other bodies including support services or representative bodies.

It is proposed that these grants will be provided in accordance with a funding framework developed by the HEC. The funding framework may provide for different funds to achieve the principles and functions of the HEC. The framework for the allocation of funding will have a particular focus on outputs and outcomes in accordance with the strategy for higher education and higher education research and may also include recognition/incentive for good performance.

The framework will establish the conditions of funding which will apply to grants and different conditions of funding may apply to different categories of funding.

6.10 CODES OF PRACTICE

Codes of Practice for the governance of universities and institutes of technology which are agreed between the relevant sector and the HEA have been in operation for over a decade. It is proposed to include in the legislation provision for the HEC to develop and put in place codes of practice for the governance of designated institutions of higher education in consultation with the relevant sector. It is anticipated that in accordance with the current practice, different codes of practice may apply to different sectors of higher education. Designated institutions of higher education will be required to comply with the relevant code of practice and provide a statement to the HEC each year regarding their compliance.

6.11 COMPLIANCE WITH PUBLIC SECTOR NUMBERS AND REMUNERATION

It is proposed that the legislation will provide that in line with the current position the universities, the institutes of technology and the technological universities will be required to comply with public sector staff number requirements and public sector remuneration level requirements as advised by the HEC to these bodies. This may require some amendment to existing legislation.

6.12 REVIEW AND INTERVENTION POWERS

It is proposed to include powers of review and intervention by the HEC where there is a concern regarding the performance and regulation of the HEI. It is proposed that the HEC will have the power to appoint a person to carry out a review of any matter relating to the functions of the HEC or any matter concerning the performance of its functions by a designated institution of higher education where there is a concern regarding the performance by the HEI of its functions. The review power will also provide for the HEC to carry out a review of the funding provided to any other body which is

not a designated institution of higher education where there is a concern regarding the use of Exchequer funding.

There will be a range of powers of intervention available to the HEC with the first level being dialogue with the HEI and the provision of assistance, including the appointment of specialist advisors to assist the HEI in addressing the issue. The aim is to intervene at an early stage to rectify any issues arising. HEIs with persistent or serious breaches of the performance and regulatory framework may incur a range of penalties ranging from non-financial penalties up to the withholding or refund of a grant. In cases of very serious continued non-compliance with the performance and regulatory framework it is proposed that the Minister can require the dissolution of the governing body of Exchequer funded HEIs.

The powers of intervention by the HEC which it is proposed will be included in the legislation include:

- Review power for the HEC;
- Provision of assistance to HEIs and their governing body including the appointment of advisors;
- Appointment of an observer to the governing body;
- Non-financial penalties;
- Withholding or refund of grant;
- Advise QQI of any issue related to a provision under the QQI legislation; and
- Recommendation to the Minister to replace the governing body.

It is important to note that these powers will be implemented on an incremental basis and only as necessary in a balanced and proportionate manner. Appropriate appeals provision will be included in the legislation.

6.13 EQUALITY AND INCLUSION

Equity of access to higher education is a national priority for the Government and the Department. The Department is committed to advancing the progress of learners at risk of educational disadvantage and learners with special educational needs in order to support them to achieve their potential. Equality of opportunity, progression and outcome are central goals of the higher education system and promoting equity of access to higher education is a fundamental role of the HEC. The legislation will promote and provide legislative backing for this role and will reflect as necessary the National Access Plan for Equity of Access to Higher Education.

6.14 REGIONAL COLLABORATION

It is proposed that the legislation will provide for the collaboration of institutions of higher education in regional areas to:

- improve responsiveness to local economic and social needs;
- avoid duplication of provision of courses and provide a wider range of courses in the region as a whole;
- encourage progression pathways for students; and

- facilitate academic interchange and exchange of ideas.

This collaboration may include joint provision of programmes of education and training and joint research projects. It may also include collaboration with local business, enterprise, the professions, the community, local interests and related stakeholders in the regional area.

6.15 RESEARCH

Further consideration will be given to ensuring that there is an appropriate statutory basis for the performance of the research responsibility currently carried out by the Irish Research Council (IRC). The importance of research will be reflected in the legislation with explicit provision for the role of the HEC with regard to higher education research. The legislation will reflect the whole of Government approach to research policy in Ireland and will have due regard to the role of the Department of Education and Skills, the lead role of the Department of Business, Enterprise and Innovation and the roles of other Government Departments and their agencies with respect to research that is carried out in Higher Education Institutions.

6.16 DATA COLLECTION AND SHARING

The legislation will include provisions in relation to data collection and sharing to ensure compliance with GDPR regulations. The key objective of this provision will be to ensure that the HEC has the capacity to collect the data necessary to carry out its functions, including access to the data it requires to monitor compliance and performance, plan and co-ordinate the higher education and higher education research system and to share its data in a way that supports these objectives and overall national policy. HEIs also need the capacity to collect and share data and this issue will be examined in the drafting of this legislation to provide the necessary powers while ensuring compliance with GDPR regulations. Consideration will also be given to including provision for enabling Statutory Instruments which would specify the HEC data requirements.

6.17 TERTIARY EDUCATION SYSTEM

The Department believes in line with the outcome of the consultation process that there should be significantly more cohesion and integration between further education and training and higher education and that the relevant sectors should complement and support each other. There should be an emphasis in the new legislation on ensuring that there is a high level of co-operation and collaboration between the HEC and Solas and other relevant bodies on delivering on the shared objectives for the tertiary education system to provide for a more cohesive and adaptable system which provides for the needs of further education students in moving into higher education (e.g. access pathways) and which also meets the human capital and skills needs of the economy.

6.18 HEC GOVERNANCE

The legislation will provide for a reduction in the size of the HEC Board and a change in Board membership as recommended by the HEC and the National Strategy for Higher Education to 2030. It is anticipated that the legislation will provide for a reduction in Board size to no more than 9 members. Board members shall have expertise in relation to matters connected with the functions of the HEC and other skills and knowledge required for the effective operation of the HEC. The legislation will provide for gender balance on the Board and will provide for at least two members from outside Ireland with relevant experience of higher education. The members will be appointed in accordance with the Guidelines on Appointments to State Boards and further consideration will be given to the appropriate number of Ministerial appointments including a possible appointment by the Minister for Business, Enterprise and Innovation to cover the research agenda.

6.19 CHANGES TO OTHER ACTS

There are a number of amendments proposed to other acts in order to align them with the proposed performance and regulatory framework, which is outlined in this document.

The following are the proposed changes to the Universities Act 1997:

- Removal of sections 19 and 20 on the appointment of a Visitor to the university as the new HEC legislation includes a provision for a review by the HEA;
- Amendment of section 21, the provision for the suspension of the governing authority following the report of a Visitor with the provision for the suspension of the governing authority following a review;
- Provision for the reduction in size of the governing authorities of universities to 10 to 15 members and a change in composition of the governing authorities;
- Amendment of section 17 to remove the provision for the Chief Executive Officer to be appointed as the Chairperson of the governing authority;
- Amendment of section 28, the provision in relation to the Academic Council to limit the membership of this council to 50 to 70 members;
- Amendment of section 37 on budgets to provide that the Chief Officer is responsible for preparing the budget of the university with the governing authority having the responsibility for giving or withholding its approval for the budget and recommending the approved budget to the HEC; and
- Removal of section 50 (2) of the Act which provides that the HEA shall not impose restrictions on the use of moneys paid to the university by the HEA or limit moneys payable to the university by the HEA as a result of departure from guidelines regarding the numbers or grades of employees of the university or the proportion of the budget of the university to be applied to the different activities of the university.

The following are the proposed changes to the Technological Universities Act, 2018 and the National College of Art and Design Act 1971:

- Removal of the sections providing for the appointment of an investigator by the Minister as the new HEC legislation includes a provision for a review by the HEC; and

- Inclusion of a new section to provide for the dissolution of the governing authority by the Minister and the replacement for a period of time with a body of persons appointed by the Minister, in certain serious circumstances.

The following are the proposed changes to the Institutes of Technology Act 1992-2006:

- Removal of the sections providing for the appointment of an investigator by the Minister as the new HEC legislation includes a provision for a review by the HEC;
- Amendment of the section to provide for the dissolution of the governing authority by the Minister and the replacement for a period of time with a body of persons appointed by the Minister, in certain serious circumstances to ensure consistency with the new HEC legislation; and
- Amendment of the provisions relating to the appointment of a Commission under section 2 of the Regional Technical Colleges (Amendment) Act 1994 to remove the reference to an inspector and replace with a reference to a review.

6.20 CONCLUSION

The Department will consult further with relevant stakeholders on the key issues outlined in this report. Following this consultation the Department will move forward with the preparation of the legislation in accordance with the broad approach outlined in this report and the outcome of the further consultation. It is accepted that many of the proposals in this report are already being implemented by the HEA and HEIs but this legislation will provide a statutory basis for existing practice. The Department believes that the development and enactment of this legislation will assist in the attainment and maintenance of a high quality higher education system which is accessible to all, values the students and has an excellent reputation. The Department looks forward to the continued co-operation of the relevant stakeholders in the ongoing development and implementation of this legislation.

APPENDIX 1

PUBLIC CONSULTATION ON THE UPDATE OF THE HIGHER EDUCATION AUTHORITY ACT 1971

In the context of the Minister for Education and Skills' stated ambition for Ireland to have the best education and training system in Europe by 2026, we are committed to ensuring that the Higher Education Authority is appropriately equipped as an oversight / regulatory body to support HEIs to be the best in Europe in key areas such as supportive learning environments, inclusion of under-represented groups, promoting continuous improvement, building bridges between education and the wider community, linking research and enterprise, and governance and accountability.

In order to assist in achieving this ambition, the Action Plan for Education includes a commitment to update the HEA Act, 1971 (Action 92.4).

The Higher Education Authority Act, 1971 established the Higher Education Authority (HEA), set out the functions of the HEA and also provided for the governance of the HEA. The HEA is the statutory funding authority for the universities, institutes of technology and a number of other designated institutions and is the advisory body to the Minister for Education and Skills in relation to the Higher Education sector. The HEA also has responsibility for the effective governance and regulation of HEIs and the Higher Education system.

The Act has been updated on a number of occasions. However it is now timely to reflect on whether the current legislation fully reflects the functions, governance and authority of a modern oversight / regulatory body for the Higher Education sector.

In line with the Action Plan commitment and our ambition to be the best in Europe by 2026, the Department is now proposing to put in place new legislation which will provide the HEA with any necessary authority in relation to revised functions, governance and other related matters which more fully reflect its current central role and responsibilities in relation to higher education.

The development of a revised legislative framework also provides an opportunity to examine changing and/or expanding the role of the HEA in the future and addressing other areas within higher education which may need a clearer statutory underpinning. A key priority for the new legislation will be to clearly differentiate between the regulatory / oversight role of the HEA and the strategy and policy responsibilities of the Minister for Education and Skills in relation to the Higher Education sector.

The Department is requesting the views of all interested parties on the proposed update of the Higher Education Authority Act, 1971. The views received from this consultation process will be considered by the Minister in the context of the process of reviewing and revising the HEA legislation.

The following documents may be of assistance in informing and guiding the response to this consultation: The Higher Education Authority Act, 1971 is [HERE](#). The Universities Act, 1997 is [HERE](#). The Institutes of Technology Act, 2006 is [HERE](#). The Qualifications and Quality Assurance (Education and Training) Act 2012 is available [HERE](#). The Technological Universities Act 2018 is [HERE](#). The National Strategy for Higher Education to 2030 is [HERE](#). The System Performance Framework for HEIs is [HERE](#). The Codes of Governance for HEIs are [HERE](#).

It is proposed that there will be a feedback session in the Autumn following the completion of the consultation process. If you wish to attend this session it is requested that you include relevant contact details in your submission.

Note: Any personal details you provide will remain confidential and will only be used for the purpose of this project, in accordance with data protection legislation. However, all information and opinions you provide will be subject to the Freedom of Information Act (2014) and may be released.

The Department requests your views by completing the key questions in the questionnaire. Please forward your submissions to heconsultation@education.gov.ie by 31 August 2018.

QUESTIONNAIRE

UPDATE OF THE HIGHER EDUCATION AUTHORITY ACT 1971

1. What should be the key functions of the Higher Education Authority?

The existing general functions of the HEA are outlined in Section 3 of the Act. Other specific functions of the HEA are outlined elsewhere in the Act. The HEA is the statutory funding authority for the universities, institutes of technology and a number of other designated institutions and is the advisory body to the Minister for Education and Skills in relation to the higher education sector. The HEA also has responsibility for the effective governance and regulation of higher education institutions and the higher education system. The views of stakeholders are invited in particular on whether there are any additional functions and responsibilities that the HEA should fulfil in the future in order to support and regulate an effective higher education system. In identifying the key functions of the HEA, stakeholders views are also invited on the most appropriate level of institutional autonomy for higher education institutions in order to deliver on national priorities while balancing governance and accountability requirements, and whether the level of autonomy should be linked to the institution's performance in areas such as governance, delivering on national priorities etc.

2. What role should the Minister have in relation to regulation of the Higher Education Sector?

The Act includes a role for the Minister in designating institutions as institutions of higher education for the purposes of the Act, approval of moneys provided by the Oireachtas for institutions of higher education, approval of terms and conditions relating to HEA staff and the payment of allowances to the HEA advisory committee. Other Acts such as the Universities Act, the Institutes of Technology Act and the Technological Universities Act give authority to the Minister in relation to the higher education sector. Stakeholders' views are invited in particular on the issue of what is the most appropriate role for the Minister vis a vis the HEA in terms of regulating the higher education sector, and the relative roles and responsibilities of the Minister and the HEA in this area.

3. Are there any related updates required to other Acts?

The legislative project may identify the requirement for amendments to other legislation in order to clarify the current and future role and responsibilities of the HEA in respect of the higher education sector and to ensure that the regulatory system put in place for the HEA is effective. This could encompass updates to statutory provisions relating to strengthened corporate governance in the Universities. Stakeholders are invited in particular to consider whether the opportunity should be taken to update any other relevant statutory provisions that could impact on the current and future role of the HEA.

4. Is a Registration model for Higher Education Institutions appropriate?

The Act currently defines an institution of higher education as a university, a college of a university, a college to which the Institutes of Technology Acts 1992 to 2006 apply, Dublin Institute of Technology, Royal College of Surgeons in Ireland, National College of Art and Design, Royal Irish Academy and such educational institutions as may be designated by order under section 5 of the Act. An alternative model that could be considered is a 'registration model' where Higher Education Institutions would be registered in different categories and subject to different registration requirements depending on the nature of their relationship with the State. Views are invited on whether a more flexible and responsive regulatory model as might be achieved under a registration system would be more desirable than the current 'designation model'; what would be the main benefits; whether any particular consequences might arise from a transition towards a registration system; and what might be the key elements of such a registration model.

5. Are there international models of regulation which should be examined as part of the process of updating the Act?

Different jurisdictions have adopted different regulatory models for higher education. The HEA will be commissioning a piece of research to identify best practice internationally that could be considered in an Irish context. Stakeholders are asked to consider whether there are international models or practice that they are aware of that could be considered as part of this process.

6. The following are some of the areas that could be considered for updating and/or inclusion in the Act. Are there other areas which should be considered?

Designation/registration of Institutions, general functions of the HEA, Strategic Plans, governance of HEIs, penalties for governance or other breaches, appointment of Investigator, funding, withholding of funding, review and provision of relevant courses, gathering of information, improved data sharing to support more effective policy making while taking into account GDPR requirements and whether there are additional data sources that could be collated, reviews, research, links with other bodies, the Board. Views of stakeholders are invited on whether there are other areas that should be considered for inclusion in a new HEA Act.

7. How should the HEA monitor compliance within the Higher Education Sector?

Consideration should be given to compliance with the Act, financial compliance, governance compliance, compliance with frameworks and codes, provision of data, appropriate sanctions for non-compliance, autonomy of HEIs etc. The views of stakeholders are invited in particular on the most appropriate model of ensuring that the higher education sector operates to the highest standards of corporate governance and any particular measures that could be considered.

8. Are there any other relevant issues which you wish to comment on?

9. Please provide the following contact details

Note: Any personal details you provide will remain confidential and will only be used for the purpose of this project, in accordance with data protection legislation.

Name

Organisation (if applicable)

Address

Email Address

Please forward your submissions to heconsultation@education.gov.ie by 31 August 2018.

Submissions should be no longer than 2,000 words.

A summary of the key points raised in the submissions will be published on the DES website in due course. Please note that any personal details you provide will remain confidential and will only be used for the purpose of this project, in accordance with data protection legislation. However, all information and opinions you provide will be subject to the Freedom of Information Act (2014) and may be released.

APPENDIX 2

LIST OF BODIES WHO PROVIDED A WRITTEN SUBMISSION

1. Aontas, National Adult Learning Organisation
2. Higher Education Authority
3. Higher Education Colleges Association
4. Irish Research Council
5. Irish Universities Association
6. National College of Ireland
7. National University of Ireland
8. Quality and Qualifications Ireland
9. Royal College of Surgeons in Ireland
10. Royal Irish Academy
11. Science Foundation Ireland
12. Society of St. Vincent de Paul
13. Technological Higher Education Association
14. Trinity Centre for People with Intellectual Disabilities

APPENDIX 3

LIST OF BODIES WHO ATTENDED THE CONSULTATION FORUM

EDUCATION AND OTHER BODIES

Higher Education Authority – Board members and Executive members

Irish Research Council

Quality and Qualifications Ireland

Society of St. Vincent de Paul

Solas

Trinity Centre for People with Intellectual Disabilities

INSTITUTES OF TECHNOLOGY

Athlone IOT

Dun Laoghaire IADT

Dublin IOT

IOT Blanchardstown

IOT Carlow

IOT Sligo

IOT Tallaght

Limerick IOT

OTHER COLLEGES

Royal College of Surgeons in Ireland

Royal Irish Academy

REPRESENTATIVE BODIES

Higher Education Colleges Association

Irish Universities Association

Technological Higher Education Association

Union of Students in Ireland

UNIVERSITIES

Dublin City University

National University of Ireland

National University of Ireland, Galway

Trinity College, Dublin

University College, Cork

University College, Dublin

University of Limerick