

Outline of the Legislative Proposals for the Reform of the Higher Education Authority Act, 1971

The Government has approved an overall policy approach to the reform of the Higher Education Act, 1971. The legislative proposals set out in this document will, subject to further consultation, contribute to the development of a General Scheme of a New Bill.

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Long Title

An Act to revoke the Higher Education Authority Act, 1971 and to put in place a new Act to provide for the change of name of the Higher Education Authority to the Higher Education Commission; to provide for the functions and governance of the Higher Education Commission; to provide for the designation of institutions of higher education; to provide for a System Performance Framework; to provide for Strategic Development Plans and Equality Statements of Institutions of Higher Education; to provide for funding of institutions of higher education and other bodies by the HEC; to provide for the governance of institutions of higher education by the HEC; to provide for reviews by the HEC of institutions of higher education and bodies funded by the HEC; to provide for the imposition of penalties by the HEC on institutions of higher education and bodies funded by the HEC; to provide for data collection and sharing by the HEC; to provide for the consequential amendment of certain enactments and to provide for related matters.

PART 1

PRELIMINARY AND GENERAL

1 Short Title and Commencement

This section sets out the short title by which the Bill will be known and allows for a phased implementation by empowering the Minister to commence different provisions of the Bill at different times.

2 Definitions

This section sets out common terms used in the Bill.

“institution of higher education” has the meaning assigned to it by section 32;

“higher education provider” is an institution which provides programmes leading to at least one higher education award that is included within the National Framework of Qualifications;

3 Orders

This section provides for the making of orders under certain sections and the approval of the orders by each House of the Oireachtas.

4 Expenses of Minister

This section provides that the expenses incurred by the Minister in the administration of the Act may be paid out of monies provided by the Oireachtas.

5 Repeals and Revocations

This section provides for the repeal of the Higher Education Authority Act, 1971 on the commencement of this section of the Act by Commencement Order made by the Minister under section 1.

6 Offences

This section sets out conditions in relation to an offence under this Act and provides that if an offence is committed by a person who is a member of the HEC Board that proceedings may be taken by the HEC.

PART II

The Higher Education Commission

Chapter 1 – Continuation and Functions of the Higher Education Commission

7 The Higher Education Commission

This section provides 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) and its operation in accordance with the provisions in the Bill.

The Higher Education Commission is referred to in this document as the HEC.

It also provides that the HEC is a body corporate with perpetual succession and an official seal and shall have the power to sue, and may be sued, in its corporate name, and may with the consent of the Minister and the Minister for Public Expenditure and Reform, acquire, hold and dispose of land, an interest in land or any other property.

It provides that the seal of the HEC shall be authenticated by –

- (a) the signatures of two members of the HEC, or
- (b) the signatures of a member of the HEC and a member of the staff of the HEC

It provides that judicial notice shall be taken of the seal of the HEC and any document purporting to be an instrument made by and sealed with the seal of the HEC shall, unless contrary is shown, be received in evidence and taken to be such an instrument without further proof.

Transitional provisions will be included in the legislation to provide for any legal and other issues due to the change of name to the Higher Education Commission.

8. Objects

This section provides that the HEC shall have regard to the following objects in undertaking its functions -

- (a) to provide that, as far as practicable and having regard to resources available, the needs of the student shall be a primary consideration
- (b) to promote and maintain a high quality higher education system with an excellent international reputation operating under the highest levels of governance and to pursue continuous improvement in the higher education system
- (c) to promote equality of access and opportunity in higher education for all citizens of the State

- (d) to promote excellence in teaching, learning and research in higher education
- (e) to respect institutional autonomy while holding institutions to account for high performance
- (f) to promote, support, implement and monitor good governance in the higher education sector
- (g) to maximise the contribution of higher education to national and regional social, economic and civic development
- (h) to have regard to its responsibility to the Exchequer to deliver value for money
- (i) to promote the official languages of the State, with special regard to the preservation, promotion and use of the Irish language and the preservation and promotion of the distinctive cultures of Ireland
- (j) to respect the Academic Freedom of higher education institutions and the academic staff of higher education institutions

9 General Functions of the HEC

This section provides that the general functions of the HEC shall be to –

- (a) Develop higher education policy 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
- (b) Implement higher education policy 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
- (c) Further the development of high quality higher education and higher education research by -
 - (i) Promoting an appreciation of the value of higher education and higher education research
 - (ii) Promoting the provision of programmes of education and training aimed at the needs of individuals, business, enterprise, the professions, the community, local interests and other stakeholders in different regions of the State
 - (iii) Promoting cooperation between the institutions of higher education in the provision of higher education
 - (iv) Promoting and supporting the effective governance of institutions of higher education in accordance with this Act
 - (v) Collecting and sharing data in relation to higher education and higher education research, in accordance with sections 62, 63 and 64

- (vi) Co-operating with the Department of Business, Enterprise and Innovation, other Government Departments and other bodies as appropriate in relation to the development and provision of high quality higher education and higher education research
- (d) Promote the attainment and maintenance of excellence in learning, teaching and research in higher education, including the Open Science and research integrity agendas
- (e) Implement the necessary and appropriate governance structures to underpin public confidence in the higher education sector and to provide value for money for taxpayers and to support institutions of higher education in adhering to these responsibilities and taking into account the learning from reviews undertaken in accordance with section 49, research undertaken by the HEC and any other relevant sources.
- (f) Provide advice to the Minister in accordance with section 11 including advice on state investment in higher education and higher education research and prepare proposals for such investment
- (g) Provide advice to the Minister and the institutions of higher education on governance taking into account the learning from reviews undertaken in accordance with section 49, research undertaken by the HEC and any other relevant sources
- (h) Provide funding to bodies in accordance with section 45 and monitor expenditure by bodies to which funding is allocated
- (i) Promote and provide funding for apprenticeship provision in institutions of higher education and other bodies
- (j) Measure, assess and strengthen the performance of the higher education system through a system performance framework or other means in accordance with section 40 to ensure accountability while respecting institutional autonomy
- (k) Promote equality of access and opportunity in higher education and promote the attainment of equality within institutions of higher education and bodies funded under section 45
- (l) Promote links between the Irish higher education system and the international higher education system to support quality enhancement, improved student learning experience, higher education research and opportunities for mobility of students.

- (m) Conduct research on higher education and issues related to higher education as appropriate.
- (n) Develop a framework and codes to promote and facilitate the collaboration of institutions of higher education in regional areas in accordance with section 43

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.

This section also provides that

- The Minister may issue policy directions to the HEC in relation to the performance of its functions under this Act.
- The HEC shall, upon a request from the Minister, provide the Minister with information, in such form and manner as the Minister may specify in relation to higher education
- The HEC shall have all such powers as are necessary or expedient for the performance by it of its functions
- Subject to this Act, the HEC shall be independent in the performance of its functions
- The HEC may perform any of its functions through or by any member of the staff of the HEC authorised in that behalf by the HEC

Note: The functions will be aligned to correspond with existing legislation to ensure the new HEC legislation complements the existing legislation and functions of QQI, ETBs, SOLAS etc. and the Universities Act, Technological Universities Act, IoT legislation and NCAD legislation.

10 Strategy for Higher Education and Higher Education Research

This section provides 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. 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. It 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. The Strategy will have appropriate review and update points. The HEC may consult with

institutions of higher education, the Department of Business, Enterprise and Innovation, other Government Departments and other bodies in the preparation of this Strategy statement. The HEC will give the Strategy statement to the Minister for his/her approval and it shall be published.

11 Advice to the Minister

This section provides that

- (1) The HEC is the national advisory body on higher education and an advisory body on higher education research
- (2) The HEC may provide advice to the Minister on –
 - (a) Priorities for higher education and higher education research
 - (b) The amount of funding required from the Oireachtas to fund higher education and higher education research
 - (c) The development of strategies and frameworks for the continued development of higher education and higher education research
 - (d) The governance of higher education institutions including the learning from reviews undertaken in accordance with section 49, research undertaken by the HEC and other sources
 - (e) The number of student places within the higher education system
 - (f) The geographical distribution of student places within the higher education system
 - (g) The performance of the higher education system and proposals to enhance the performance of the higher education system including advice on the Systems Performance Framework in accordance with section 40
 - (h) The acquisition, holding and disposal of land, an interest in land or any other property by institutes of technology and technological universities
 - (i) Any matter connected with the functions of the HEC
 - (j) Such other areas in relation to higher education and higher education research that the HEC deems appropriate
 - (k) Such other areas in relation to higher education and higher education research that the Minister may from time to time request
- (3) This section will have due regard to the whole of Government approach to research policy in Ireland and 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.
- (4) The advice provided by the HEC shall be based on the evidence available including information and research gathered by the HEC or other bodies as appropriate.

12 Advice to higher education institutions and other bodies

This section provides that the HEC can give advice to institutions of higher education in respect of any matter related to the performance of its functions. It also provides that the HEC can give advice to bodies funded under section 45, Government Departments, the EU or any other appropriate body.

13 Conferral of additional functions on the HEC

This section provides that the Minister may with the consent of the Minister for Public Expenditure and Reform confer additional functions connected with the functions for the time being of the HEC by Order. This would be following discussion with the HEC and would take due cognisance of the resource requirements arising from any additional functions.

14 Co-operation with other bodies

This section provides that the HEC can work with and co-operate with other bodies in the performance of its functions and may list the relevant bodies QQI, Solas, Central Applications Office, EU etc.

15 Co-operation with QQI

This section will make specific references to the Qualifications and Quality Assurance (Education and Training) Acts and to the HEC recognising compliance with this Act. Specific reference will be made to quality assurance requirements, the framework of qualifications, the International Education Mark and the Learner Protection Fund. The HEC may include compliance with some or all of these provisions in the setting of conditions of funding under section 45.

16 Co-operation with Solas

This section will provide that the HEC will make an agreement with Solas to ensure an integrated approach to the performance of the functions and the vision of the two bodies to ensure:

- the human capital and skills needs of the economy are met;
- the integration of the further education and training sector with the higher education sector;
- an integrated approach to transfer and progression pathways from the further education and training sector to the higher education sector;
- an integrated approach to employer engagement;
- an integrated approach to meeting the skill needs of the economy and of society;
- an integrated approach to increasing the availability of apprenticeship training.

Chapter 2 – Chief Executive Officer of the HEC

17 Chief Executive Officer

This section provides for the continuation in office of the chief executive officer who is in place on the commencement day. It also provides for the appointment of a new chief executive officer by the HEC with the consent of the Minister. It provides that the chief executive officer may be removed from office by the HEC for stated reasons and that the chief executive officer will hold office subject to the terms and conditions determined by the HEC with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform. It provides that the chief executive officer shall not hold any other office or employment.

18 Functions of Chief Executive Officer

This section outlines the functions of the Chief Executive Officer and provides that the chief executive officer is required to provide information to the Board, can delegate functions to another employee (but still remains accountable for delegated functions) and provides that the HEC may designate another employee to perform the functions of the chief executive officer in the absence of the chief executive officer where the position is vacant.

19 Accountability of chief executive officer to Public Accounts Committee

This section provides for the accountability of the chief executive officer to the Public Accounts Committee

20 Accountability of chief executive officer to other Oireachtas Committees

This section provides for the accountability of the chief executive officer to other Oireachtas Committees.

Chapter 3 Staff of the HEC

21 Staff

This section provides that the HEC can employ staff members in accordance with terms and conditions approved by the Minister and the Minister for Public Expenditure and Reform. It provides for the payment of remuneration, fees, allowances and expenses as approved by the Minister with the consent of the Minister for Public Expenditure and Reform. It provides for the dismissal or suspension of a staff member in accordance with procedures agreed with trade unions. It provides for the secondment of staff members who become a member of either House of the Oireachtas or the European Parliament and it provides that a member of either House of the Oireachtas or the European Parliament cannot become a staff member of the HEC.

22 Existing Staff of the Higher Education Commission

This section provides that existing staff of the Higher Education Authority remain as staff of the HEC after the commencement of the Act under the same terms and conditions of service unless an agreement is negotiated with a recognised trade union or staff association.

23 Disclosure by member of staff of the HEC of certain interests

This section provides that if a staff member has a material interest in any contract, agreement or arrangement to which the HEC is a party the staff member shall disclose this interest to the HEC and take no part in the negotiation of the contract, agreement or arrangement and shall not influence or seek to influence a decision or recommendation to be made in the matter.

24 Prohibition on unauthorised disclosure of confidential information

This section provides that a staff member of the HEC or an advisor or consultant to the HEC shall not disclose confidential information related to the HEC.

25 Superannuation

This section provides that new appointees to the HEC shall be a member of the Single Scheme or the HEA superannuation scheme as appropriate. It also provides that existing members of the HEA continue in membership of the single scheme or the HEA superannuation scheme as appropriate. It provides that the HEC may with the Ministers approval amend the HEA superannuation scheme/s made under Section 15 of the HEA Act 1971 and it also provides that the HEC may with the Ministers approval amend a scheme made under this section. Schedule 1 outlines the detailed requirements for the HEC superannuation scheme.

26 Saver in respect of certain schemes

This is a saver in respect of any schemes (including superannuation schemes) which were in force immediately before the commencement day of this Act. The Higher Education Act 1971 is being revoked therefore any schemes made under that Act are saved under this Section.

27 Advisory committee and persons

This section provides for the appointment of an advisory committee or person to advise the HEC relating to its functions and provides for the payment of the person/s appointed with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform.

Chapter 4 Finance and Reporting

28 Gifts

This section provides that the HEC may accept gifts or money, land or other property with the consent of the Minister and the Minister for Public Expenditure and Reform but shall not accept a gift if the trusts or conditions attaching to it are inconsistent with its functions.

29 Exemption from Stamp Duty

This section provides that stamp duty shall not be charged on any conveyance or other instrument executed for the purpose of vesting property or any interest in property in the HEC.

30 Accounts of the HEC

This section provides for the keeping of accounts by the HEC in such form as approved by the Minister with the consent of the Minister for Public Expenditure and Reform and the submission of the accounts for audit to the C&AG and the submission of the accounts to the Minister immediately after completion of the Audit and the laying of the accounts and the C&AG report on the accounts before each House of the Oireachtas.

31 Annual Report

This section provides that the HEC prepares and submits to the Minister an annual report by 30 June each year or such other date as specified by the Minister and that this report is laid before the Houses of the Oireachtas and is published in an appropriate manner.

Part III

Designated Institutions of Higher Education

32 Designated institutions of higher education

This section defines an institution of higher education as an institution which is included on the most recent schedule of institutions of higher education published by the HEC, in accordance with section 33 and 34 and which has not had its designation as an institution of higher education removed under section 55.

The institutions on the schedule of institutions of higher education will be known as institutions of higher education for the purposes of this Act.

There is no guarantee of funding under section 45 to any institution of higher education.

33 Publication of the first schedule of institutions of higher education by the HEC

This section provides that the HEC will publish, as soon as practicable after enactment of the Bill, a schedule of institutions of higher education. Institutions of higher education listed under section (1) of the 1971 Act will automatically be designated as institutions of higher education (with the exception of DIT which is now a TU and the Royal Irish Academy).

The schedule of institutions of higher education will include:

- A university to which the Universities Act 1997 applies
- A technological university within the meaning of the Technological Universities Act 2018
- A college to which the Institutes of Technology Acts 1992 to 2006 apply
- Royal College of Surgeons in Ireland
- National College of Art and Design
- Other colleges (possibly certain other colleges such as Mary Immaculate College, St. Angela's College etc. to be agreed)
- 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 and which the HEC determines is an institution of higher education for the purposes of this Act in accordance with section 35.

This definition may also need to specifically 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.

34 Publication of revised schedules of institutions of higher education by the HEC

This section provides that the HEC will publish a revised schedule of institutions of higher education on at least an annual basis. The revised schedule of institutions of higher education will replace the existing schedule of institutions of higher education.

The revised schedule of institutions of higher education will include:

- The institutions of higher education which are on the most recent schedule of institutions of higher education and which have not had their designation as an institution of higher education removed under section 55
- 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 and which the HEC determines is an institution of higher education for the purposes of this Act in accordance with section 35.

This definition may also need to specifically 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.

35 Designation as an institution of higher education

A higher education provider will be designated as an institution of higher education if:

- (1) It provides programmes leading to at least one higher education award that is included within the National Framework of Qualifications, and

- (2) The HEC determines that it was established and is operated for the principal purposes of higher education

The Minister may make regulations as soon as practicable after the operative date specifying the criteria for determining that an institution of higher education is established and operated for the principal purposes of higher education.

The HEC will obtain a list from QQI on an annual or more frequent basis of higher education providers which provide programmes leading to at least one higher education award that is included within the National Framework of Qualifications. The HEC will rely on the QQI decision regarding the institutions which provide programmes leading to at least one higher education award that is included within the National Framework of Qualifications.

For the first schedule compiled of institutions of higher education in accordance with section 33, the HEC will assess each higher education provider on the QQI list, with the exception of the automatically designated institutions (universities, institutes of technology, technological universities and other specified colleges), to establish whether it was established and is operated for the principal purposes of higher education and will make a determination regarding whether it is an institution of higher education for the purposes of this Act. The HEC may request such information and documents as it may reasonably require to make a determination under this section.

For each revised schedule compiled of institutions of higher education in accordance with section 34, the HEC will only assess those institutions on the QQI list which are not included on the most recent schedule of institutions of higher education to make a determination regarding whether it is an institution of higher education for the purposes of this Act.

The HEC may re-examine institutions on the QQI list which it previously determined were not institutions of higher education if it is of the view that they may now meet the requirements for designation as an institution of higher education. The HEC may determine that an institution which it previously found was not an institution of higher education is now an institution of higher education for the purposes of this Act.

The HEC may undertake a new determination of designation if there has been a change of circumstances in accordance with section 36.

The HEC will inform the relevant higher education providers of the determination prior to publishing the schedule of “institutions of higher education”. There will be provision for an appeals procedure under section 58 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”.

36 Change of circumstances of an institution of higher education

This section provides that where an institution of higher education:

- No longer provides programmes leading to at least one higher education award that is included within the National Framework of Qualifications or

- a significant material change occurs in relation to an institution of higher education that could reasonably be said to affect its ability to meet the criteria for determining that it was established and is operated for the principal purposes of higher education in accordance with any regulations made under section 35,

the institution shall notify the HEC immediately of the change and the HEC may make a new determination of designation in accordance with section 35 and may remove the designation as an institution of higher education in accordance with section 55. The HEC may make a new determination of designation even if the institution does not notify the HEC of the change of circumstances. This section will align with existing legislative provisions in the QQI Act.

37 Use of the title Designated Institution of Higher Education

The title “Designated Institution of Higher Education” will be protected under the legislation. Only those institutions which are designated as institutions of higher education and are on the schedule published by the HEC of institutions of higher education will be permitted to use this title in Ireland. It will be an offence for any institution not on the HEC schedule to use this title in Ireland.

Part IV

Plans and Statements

38 Strategic Development Plan of the HEC

This section recognises any existing strategy statement and provides that the HEC shall prepare a strategy statement after commencement day or on the expiration of the existing strategy statement, whichever is later. It also provides for an updated strategy statement to be prepared every three to five years. The strategy statement will: be in accordance with the national strategy statement for higher education and higher education research approved by the Minister, the strategy statement for the Department of Education and Skills and national objectives as appropriate; specify the objectives of the HEC for the period specified in the plan and the strategies for achieving those objectives; specify the purposes for which the HEC proposes to use its resources; include a review of the outcomes and effectiveness of the preceding strategy statement; specify the manner in which the HEC proposes to assess its performance and include any other matters directed by the Minister. The Minister will lay the strategy statement before the houses of the Oireachtas and it shall be published.

39 Work Programme

This section provides that the HEC shall prepare and submit a work programme to the Minister at least 2 months before the commencement of each financial year.

40 System Performance Framework

This section provides for the development and implementation of a performance framework for institutions of higher education by the HEC with the approval of the Minister. This framework will take account of the Strategy for Higher Education and Higher Education Research in section 10, and national policy and objectives with the priorities for implementation identified by the Minister in consultation with the HEC. It provides that different categories of system performance framework may apply to institutions of higher education depending on the level and type of funding provided by the HEC. If no funding is provided to an institution of higher education a system performance framework may not apply. It provides for the implementation of this framework by a strategic dialogue process where the performance objectives are agreed between the institutions of higher education and the HEC. It also provides for the monitoring and review of the implementation of previous frameworks. The purpose of this process is to enhance accountability and performance whilst respecting institutional autonomy and there may also be recognition/incentive for good performance.

41 Strategic Development Plan of Institutions of Higher Education

This section provides that institutions of higher education are required to develop a Strategy Statement and provide it to the HEC and provides for an updated strategy statement to be prepared every three to five years. This Strategy statement should take account of the System Performance Framework in section 40 as appropriate.

The following requirements will apply to all institutions of higher education which are not covered by the Universities Act 1997, Technological Universities Act 2018 or the Institutes of Technology Acts 1992 -2006.

A strategic development plan shall specify

- the objectives of the institution of higher education for the period specified in the plan and the strategies for achieving those objectives
- the purposes for which the institution of higher education proposes to use its resources
- how the institution of higher education shall comply with any requirements imposed on it under this Act including requirements in relation to governance and conditions attached to funding
- the plans of the institution of higher education to provide programmes of education and training that meet the needs of individuals, business, enterprise, the professions, the community and other stakeholders in the State and in the region in which the institution of higher education is located and
- the plans of the institution of higher education to develop and promote strong social and cultural links, and links supporting creativity, between the institution of higher education and the community in the region in which the institution of higher education is located
- any other requirement as specified by the HEC.

The following requirements will apply to all institutions of higher education including those which are covered by the Universities Act 1997, Technological Universities Act 2018 or the Institutes of Technology Acts 1992 -2006.

A strategic development plan shall take into consideration national policy objectives for higher education and higher education research approved by the Minister or the Government. The Strategic Development Plan and conditions of funding will be aligned. The HEC shall have the power to review strategic development plans in draft form and comment on them and require governing bodies to have regard to the views of the HEC.

42 Equality Statement of Institutions of Higher Education

This section provides that institutions of higher education which are not covered by the Universities Act 1997, Technological Universities Act 2018 or the Institutes of Technology Acts 1992 -2006 will be required to prepare an Equality Statement. The equality statement shall be for a period of between 3 and 5 years and it will take account of the Statement of Strategy (section 41) and the System Performance Framework (section 40) The equality statement shall specify the policy of the institution of higher education for enabling access to it, and the education it provides, by economically or socially disadvantaged persons, by persons who have a disability and by persons from sections of society significantly under-represented in the student body and the policy of the institution of higher education relating to equality, including gender equality, in all activities of the institution of higher education.

43 Regional Collaboration

This section provides for the HEC to develop a framework and codes to promote and facilitate 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.

Regional Clusters may be formed and a regional cluster strategy/plan/framework may be developed by the HEC and implemented by the HEC in collaboration with the relevant institutions of higher education for these regional clusters. Funding may be provided to the

regional clusters by the HEC with the funding split as agreed between the higher education institutions which form part of the cluster.

Part V

Funding

44 Grants to the HEC

This section provides that a grant is provided to the HEC each year out of moneys provided by the Oireachtas, after consultation with the HEC, by the Minister with the consent of the Minister for Public Expenditure and Reform.

45 Grants by the HEC

This section provides that grants may be issued by the HEC to:

- institutions of higher education
- other education providers which are not designated as institutions of higher education
- other bodies including support services or representative bodies.

These grants will be provided in accordance with a governance and funding framework developed by the HEC. It provides that the HEC will develop and establish a framework for the allocation of funding to institutions of higher education and other bodies and that this framework may provide for different funds to achieve the principles and functions of the HEC. The governance and funding framework will have a particular focus on outputs and outcomes in accordance with the strategy for higher education and higher education research and the strategic performance framework and as advised by the Minister 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. The conditions of funding may include:

- designation as an institution of higher education,
- quality assurance requirements in accordance with the QQI Act,
- one or more programmes on the framework of qualifications,
- International Education Mark
- Membership of the Learner Protection Fund (for those bodies not excluded from membership)
- compliance with a financial framework,
- compliance with a HR framework (ECF or delegated sanction),
- compliance with a legal framework,
- compliance with a code of governance,

- equality of access provisions,
- a requirement to provide requested information including accurate robust financial data.

The governance and funding framework will include financial monitoring by the HEC including the HEC role in identifying institutions of higher education with financial deficits.

46 Accounts of an institution of higher education and a body funded by the HEC

This section provides that an institution of higher education or a body funded by the HEC under section 45 shall keep all proper and usual accounts and records of all moneys received or expended by it. (Note: IOTs, TU and Universities already have this provision in their legislation so this section may not be applicable to those sectors). The section also provides that the accounts are audited and a copy of the audited accounts should be submitted to the Minister within a specified time period.

Part Vi

Governance

47 Codes of Practice for Governance

This section provides that the HEC will develop and establish Codes of Practice for the governance of institutions of higher education which will provide guidelines on the effective governance of the institutions of higher education. The HEC will publish the Codes of Practice. Different Codes of Practice may apply to different sectors of institutions of higher education. The institutions of higher education must comply with the Code of Practice applicable to them but time-limited exemptions may be agreed with the HEC for individual institutions of higher education as appropriate.

The Codes of Practice will have regard to any state governance codes which are in place from time to time.

Institutions of higher education institutions will be required to provide a statement to the HEC each year that they are in compliance with the relevant Code of Practice or that they are substantially compliant with the relevant Code of Practice and listing any section of the Code of Practice which they do not comply with, providing an explanation for the non-compliance and requesting a time-limited or ongoing derogation from compliance with the relevant section of the Code of Practice. If in the opinion of the HEC a higher education institution is not compliant or not substantially compliant with the relevant Code of Practice the HEC may direct the institution of higher education to comply with the relevant Code of Practice or undertake a review in accordance with section 49.

48 Compliance with Public Sector numbers and remuneration

This section provides 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.

Section 14 of the Technological Universities Act, Sections 11 and 11A of the Institutes of Technology Acts 1992-2006 and section 14, 25 and 50 of the Universities Act 1997 include the provisions relating to staff numbers and remuneration in each of the sectors. The provisions in the Universities Act 1997 are different to the provisions in the TU and IoT Acts and include provision for the departures framework. These Acts may have to be amended if changes are agreed to the HEC powers.

The HEC will have the power to carry out a review under section 49 if it is of the opinion that the relevant body may not be in compliance with the public sector staff number and public sector remuneration level requirements notified to the relevant body by the HEC.

The HEC will have the power following the review to reach and enforce a determination in accordance with section 50 and to direct the relevant body to comply with the HEC requirements regarding public sector staff numbers and public sector remuneration requirements.

49 Reviews

This section provides that the HEC may appoint a person to carry out a review of:

- (i) any matter relating to the functions of the HEC
- (ii) any matter concerning the performance of its functions by an institution of higher education
- (iii) the funding provided to any body under section 45 if the HEC is of the opinion that the body
 - may not have complied or may not be complying with the conditions of funding applying to the award of the grant, or
 - may have failed to meet a requirement in law, or
 - may have applied funds to a purpose considered not to be in accordance with good commercial practice , or
 - may be severely underperforming or there may be a serious risk to the viability of the body, or
 - may have refused to provide information requested by the HEC in accordance with section 62.
 - may have failed to meet a requirement relating to its governance or adhering to its code of practice for governance

This section provides that the reviewer will receive the co-operation of members of the governing body, employees or contractors of an institution of higher education or body funded under section 45 for the purpose of the review as required. The reviewer will have access to equipment and records (any document, or any other written or printed material in any form, including information stored, maintained or preserved by means of any

mechanical or electronic device, whether or not stored, maintained or preserved in a legible form) as required to perform his or her functions under this section. The reviewer will prepare a draft report and will provide it to the HEC and any institution of higher education or body funded under section 45 as appropriate. The reviewer will give the HEC, the governing body or other person the opportunity to make representations within a specified period on the draft report. As soon as practicable after the expiration of the specified period and having considered any representations made the reviewer may amend the draft report and will provide the final report to the HEC. The HEC will provide the final report on the review to the Minister and the Minister may publish the report in such form or manner as is deemed appropriate.

The HEC may make a determination in accordance with section 50 following consideration of this report.

50 Determination following a review

The HEC may make a determination following a review to:

- Provide assistance to an institution of higher education or other body funded under section 45 in accordance with section 52
- Withhold or request a refund of the grant under section 53
- Impose a non-financial penalty under section 54
- Advise QQI of any issue related to a provision under the QQI legislation
- Appoint an observer in accordance with section 51
- Make a recommendation to the Minister to suspend/dissolve and replace the governing body of an Institute of Technology, University, Technological University, NCAD (in accordance with the relevant Acts).

There will be provision to appeal any determination made by the HEC under section 58

51 Appointment of an Observer

This section provides that if the HEC is of the opinion that the operations or long-term viability of an institution of higher education is at risk or in accordance with a determination under section 50, it may appoint an observer to the governing body of the institution. The section provides that the observer may attend any meeting of the governing body or committee of the institution; may offer advice to the governing body or committee and may report to the HEC on any matter raised or discussed at a meeting. This section will provide that the observer is not a member of the governing body or committee and may not vote or exercise any of the powers or perform any of the functions of a member. It will provide for a time limit for the appointment and the withdrawal of the observer.

52 Provision of assistance to bodies

This section provides that the HEC has the power to provide assistance to any body funded under section 45 in accordance with a determination under section 50 or if it is of the opinion that the operations or long-term viability of the body is at risk. It also provides that

any body funded under section 45 may request assistance under this section. The assistance provided may include:

- The appointment by the HEC Board of Advisors for a specified period,
- The appointment by the HEC Board of specialist assistance for a specified period,
- Issuing guidance instructions and mandatory (enforced) directions for a specified period.

This section will outline the details of the appointment of the advisor or specialist assistance and the powers of these appointees.

This section provides that the HEC will undertake a review of these measures after a defined period of time and may

- End the period of assistance to the body
- require the continuation of the period of assistance to the body
- require an additional or different type of assistance to be provided to the body
- require the HEC to undertake a new review under section 49
- require the revision of the Code of Governance

53 Withholding or refund of grant

This section provides for the withholding of a grant or the refund of a grant from any body funded under section 45 in accordance with a determination under section 50.

54 Non-financial penalties

This section provides that the HEC has the power to impose non-financial penalties on any body funded under section 45 in accordance with a determination under section 50. These penalties may include

- an admonishment or a censure taking into account any professional regulatory regimes
- Imposition of more stringent HR requirements
- Temporary exclusion from particular categories of grants from the HEC
- Mandatory governance training for HEI Boards and Executives
- Attach revised or new conditions of funding
- Imposition of an issue rectification plan with clear quarterly targets and monitoring requirements
- Review of Code of Governance
- Review of Strategic Development Plan

This section provides that the HEC will undertake a review of the compliance with these measures after a defined period of time and may

- lift the non-financial penalties

- require the continuation of the non-financial penalties for a defined period of time pending further review

55 Removal of designation as an institution of higher education

This section provides for the removal of designation as an institution of higher education, by the HEC :

- following a determination by the HEC that the body is not a designated institution of higher education under section 35 or
- the cessation of provision of programmes leading to at least one higher education award that is included within the National Framework of Qualifications

The HEC will inform QQI of the names of the institutions removed from designation as an institution of higher education and the reasons for the removal.

56 Board of the HEC

This section provides for the establishment of the Board of the HEC and the appointment of members in accordance with the Guidelines on Appointments to State Boards. It provides that the existing Board will cease on commencement day but that the existing members can be re-appointed. It provides that the Board will have no more than 9 members. It provides that the 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, including research. It provides for gender balance on the Board. It provides for at least two members from outside Ireland with relevant experience of higher education. There will be further consideration of the appropriate number of Ministerial appointments including a possible appointment by the Minister for Business, Enterprise and Innovation to cover the research agenda. It provides that the terms of office of the members shall not exceed 5 years and members may not serve more than 2 consecutive terms of office.

57 Establishment of the Irish Research Council on a Statutory Basis

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.

58 Appeals

This section provides for an appeals process following determinations made under sections 35 or 50. The appeal will be to an appeals panel and board. There will be provision for a panel of 10 to be established and provision for 3 persons appointed to an appeals board on receipt of appeal to make a determination on that appeal.

Part VII

Higher Education Provision

59 Review of demand and need for higher education

This section provides that the HEC shall review on an ongoing basis the demand and need for higher education, may consult with relevant bodies and shall recommend to the Minister the overall provision of student places having regard to: the distribution of the total number of students between the different sectors of the higher education system, the institutions of higher education and other bodies; the geographical distribution of students; access by economically or socially disadvantaged persons, persons who have a disability and by persons from sections of society significantly under-represented in higher education; the preservation, promotion and use of the Irish language and the preservation and promotion of the distinctive cultures of Ireland; equality including gender equality; education and skills requirements of the State, and social and cultural requirements.

60 Equality of Access

This section provides that the HEC prepares an equality of access plan which is in accordance with any national/government policies on equality and addresses access to the higher education system by economically or socially disadvantaged persons, by persons who have a disability and by persons from sections of society significantly under-represented in the student body of higher education; transfer and progression pathways from further education to higher education and within higher education; flexible modes of learning; and the requirements of institutions of higher education with regard to the implementation of the equality of access statement. The institutions of higher education shall have regard to the equality of access statement when they are preparing their strategy statement and equality statement and the HEC may review the implementation of the equality of access statement. This section also provides that the HEC may develop policy and guidelines around an admissions process for every HEI to ensure equality of access.

61 Lifelong Learning

This section will provide that the HEC will promote and provide support to the institutions of higher education in the provision of and development of education and training that meet the needs of individuals, business, enterprise, the professions, the community, local interests and other Stakeholders both on a national and regional level. This section will cover lifelong and flexible learning, meeting the skill needs of the economy and encouraging upskilling and reskilling.

Part VIII

Data Collection and Sharing

62 Supply of information

This section provides that institutions of higher education and bodies in receipt of funding under section 45 shall provide to the HEC any information requested by the HEC, in the format requested, regarding the body or the students attending the body which the HEC requires to perform its functions. This section also provides that the HEC can make a written direction to the body to provide this information. This section provides that subject to the Data Protection Act 2018, the HEC may publish the information which it receives in such form or manner as is deemed appropriate.

Consider listing the types of information required (e.g. financial data, PPSN data, SUSI grant code etc.) and/or that the types of information required will be listed by Statutory Instrument under the Bill and that new types of information for collection can be added by Statutory Instrument.

63 Sharing of Information

This section provides that the HEC may furnish information to institutions of higher education and bodies in receipt of funding under section 45 and other bodies which comes to its attention in the course of performing its functions and which relates to one or more functions of that other body, subject to the Data Protection Act 2018.

Consider a provision for a Statutory Instrument to list the types of information which may be shared and to whom and that this list can be added to by Statutory Instrument at any time.

64 Sharing of Information with Public Bodies

This section provides that the HEC may share information with other Public Bodies and other Public Bodies may share information with the HEC in accordance with the Data Sharing and Governance Act 2019.

65 Research

This section provides that the HEC may carry out studies and research in the Higher Education Sector on any issue related to its functions and that it may appoint a person, body or higher education institution to conduct the study or research on its behalf. It provides that the institution of higher education institution or body funded under section 45 must provide information and co-operate with the study or research as required. It also provides that the HEC may publish reports of such studies and research.

66 Engagement with Students

This section provides that the HEC may, in partnership with other bodies, engage with students of bodies funded under section 45 through research, surveys, forums or other

means to capture feedback from students and use this feedback to inform national and regional policy and other specific issues in relation to higher education and research. The engagement may target particular groups or sectors of students.

Part IX

Amendment to Universities Act, 1997

67 Removal of section 19 and 20 (Visitor and Visitation)

This section provides for the revoking of section 19 and section 20 of the Universities Act, 1997 which provide for the appointment of a Visitor to the university and provision for a visitor to inquire into a matter where the Minister is of the opinion that there are reasonable grounds for contending that the functions of a university are being performed in a manner which *prima facie* constitutes a breach of the laws, statutes or ordinances applicable to the university. The HEC has the power to instigate a review of the University under section 49 of this Act so the Visitor provision is no longer required.

68 Amendment of section 21 (Suspension of governing authority)

This section provides for the amendment of section 21 of the Universities Act which relates to the suspension of a governing authority by the Government on the recommendation of the Minister following the report of a visitor. The references to the report of an inquiry by a Visitor will be amended to the report of a review under section 49 and 50 of the HEC Act. The references to Visitor will be amended to reviewer or HEC as appropriate.

The provisions of this section will have the same effect but the governing body can now be suspended following a review under the HEC Act instead of an inquiry by a Visitor under the Universities Act.

69 Information requested by Minister

This section provides for the amendment of section 51 of the Universities Act (which provides that universities shall provide the HEA with information relating to the number of employees employed by the university, their composition by grade, their terms and conditions of employment and any other related matters) with the additional provision that a governing body furnishes to the Minister and the HEC any information requested by the Minister or the HEC concerning the performance by a university of its functions.

70 Governing Authority

This section provides for a reduction in size and a change in composition of the governing authorities of universities as follows:

- The number of members to be in the range of 10 to 15
- A majority of external members

- Quorum for meetings of a governing authority should require a majority of external members
- External members to be selected based on a competency framework which reflects the objects of a university as set down in statute and the specific mission of the individual university rather than being nominated by specific groups or political entities
- Outgoing governing authority to establish a nominations committee to fill the external members positions on the new Authority
- Some positions filled by public advertisement
- Between 1 and 2 positions appointed by the Minister
- Internal members to be selected by way of election as is current practice
- Current approach to selection and appointment of the Chair to be maintained
- Gender balance to be pursued through the appointment processes

71 Amendment of the Third Schedule to the Universities Act 1997

This section provides for the updating of the third schedule to the Universities Act 1997 to take account of the amendments in section 70 of this document and which is in compliance with the code of practice for the governance of state bodies.

72 Amendment of Section 17 of the Universities Act 1997

This section provides for the removal of the provisions in the Universities Act 1997 for the Chief Executive Officer to be appointed as the Chairperson of the governing authority.

73 Amendment of Section 28 of the Universities Act 1997

This section provides for an amendment to the Universities Act, 1997 to include a provision to limit the membership of the Academic council to 50 to 70 members.

74 Amendment of Section 37 of the Universities Act 1997

This section provides for an amendment of the provisions of the Universities Act in relation to 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.

75 Amendment of Section 50 of the Universities Act 1997

This section provides for the removal of the provision in section 50 (2) of the Act that guidelines issued by the HEA regarding numbers and grades of employees of the university and the proportion of the budget of the university to be applied to the different activities of the university are not binding on a university and that the HEA shall not as a result of a departure from the guidelines impose restrictions or conditions on the use of moneys paid

to the university by An tÚdarás or otherwise limit moneys payable to the university by the HEA. This section is in conflict with section 53 of the proposed new HEC Bill.

Part X

Amendment to the Technological Universities Act, 2018

76 Removal of section 26 (Investigator and report)

This section provides for the revoking of section 26 of the Technological Universities Act, 2018 which provides for the appointment of an investigator by the Minister to carry out an investigation into any matter specified in writing by the Minister concerning the performance by a technological university of its functions. The HEC has the power to instigate a review of a Technological University under section 49 of this Act so the investigator provision is no longer required.

77 Removal of section 27 (2) and (3)

This section provides for the revoking of section 27 (2) and 27 (3) of the Technological Universities Act, 2018 as this section relates to the request and provision of information linked to an investigation.

78 Inclusion of new section (Suspension of governing authority)

This section provides for the inclusion of a new section in the Technological Universities Act 2018 to provide for the dissolution of a governing authority.

- The Minister may dissolve the governing body of a technological university if:
 - The Minister is satisfied that the functions of the governing body of a technological university are not being duly and effectively discharged
 - A governing body wilfully neglects to comply with any order, direction or regulation of the Minister made or given in pursuance of the provisions of this Act
 - A governing body fails to comply with any judgement or order of any court of competent jurisdiction
 - the Minister agrees with the determination of the HEC recommending the dissolution and replacement of the governing body of a technological university under section 50 of the new HEC Act following a review of the governing body
- Whenever the Minister makes an order dissolving a governing body the Minister may appoint any body of persons as the Minister thinks fit to perform the functions of the governing body
- The Minister shall provide for the re-establishment of a governing body not later than one year following the dissolution in accordance with the provisions in the Technological Universities Act, 2018 relating to the appointment of Board members.

Part XI

Amendment to the Institutes of Technology Acts, 1992-2006

79 Amendment of section 5 (1) (i)

This section provides for the amendment of section 5 (Functions of Colleges) of the Regional Technical Colleges Act 1992. Section 5 (1) (i) “subject to the approval of the HEA to acquire land” is replaced with the wording “subject to the consent of the Minister and the Minister for Public Expenditure and Reform, to acquire, hold and dispose of land, an interest in land or any other property”. This amendment is being made for the purposes of consistency with the Technological University legislation.

80 Removal of section 20 (Investigator and report)

This section provides for the revoking of section 20 of the Institutes of Technology Acts 1992-2006 which provides for the appointment of an investigator by the Minister to carry out an investigation into any matter specified in writing by the Minister concerning the performance by an institute of technology of its functions. The HEC has the power to instigate a review of an institute of technology under section 49 of this Act so the investigator provision is no longer required.

81 Removal of section 14 (2A) and section 14 (4)

This section provides for the revoking of section 14 (2A) and 14 (4) of the Institutes of Technology Acts, 1992 - 2006 as these sections relate to the request and provision of information linked to an investigation.

82 Amendment to section 8 (Dissolution of governing body)

This section provides for the inclusion of an additional reason for the dissolution of a governing authority.

- The Minister may dissolve the governing body of an institute of technology if the Minister agrees with the determination of the HEC recommending the dissolution and replacement of the governing body of an institute of technology under section 49 of the new HEC Act following a review of the governing body

83 Amendment to section 2 of the Regional Technical Colleges (Amendment) Act, 1994 (Appointment of Commission)

Section 2 of the Regional Technical Colleges (Amendment) Act, 1994 provides for the appointment of a commission to an institute of technology by the Minister following an investigation if the Minister is satisfied that the affairs of the institute of technology are not being managed in an effective manner.

This section replaces the wording in section 2 (1) “after considering the report of an inspector under section 20 of the Principal Act” with the wording “after considering the report of a review undertaken in accordance with section 49 and any determination by the HEC in accordance with section 50”.

Part XII

Amendment to the National College of Art and Design Act 1971

84 Removal of section 15A (Investigator and report)

This section provides for the revoking of section 15A of the National College of Art and Design Act, 1971 which provides for the appointment of an investigator by the Minister to carry out an investigation into any matter specified in writing by the Minister concerning the performance by the NCAD of its functions. The HEC has the power to instigate a review of the NCAD under section 49 of this Act so the investigator provision is no longer required.

85 Removal of section 16 (3) and section 16 (4)

This section provides for the revoking of section 16 (3) and 16 (4) of the NCAD Act, 1971 as these sections relate to the request and provision of information linked to an investigation.

86 Inclusion of new section (Suspension of governing authority)

This section provides for the inclusion of a new section in the NCAD Act 1971 to provide for the dissolution of a governing authority.

- The Minister may dissolve the governing body of the NCAD if:
 - The Minister is satisfied that the functions of the governing body of the NCAD are not being duly and effectively discharged
 - A governing body wilfully neglects to comply with any order, direction or regulation of the Minister made or given in pursuance of the provisions of this Act
 - A governing body fails to comply with any judgement or order of any court of competent jurisdiction
 - the Minister agrees with the determination of the HEC recommending the dissolution of the governing body of the NCAD under section 50 of the new HEC Act following a review of the governing body
- Whenever the Minister makes an order dissolving a governing body the Minister may appoint any body of persons as the Minister thinks fit to perform the functions of the governing body
- The Minister shall provide for the re-establishment of a governing body not later than one year following the dissolution in accordance with the provisions in the NCAD Act, 1971 relating to the appointment of Board members.

Schedule 1

Superannuation

The schedule provides the detail regarding the making of a scheme amending the existing HEA schemes made under Section 15 of the Higher Education Authority Act 1971.

Schedule 2

Board of the HEC

This schedule provides the detailed regulations regarding the operation of the Board of the HEC.