



Submission on behalf of the Technological Higher Education Association (THEA) on the reform of the Higher Education Authority (HEA) legislation

Oireachtas Joint Committee Education, Further and Higher Education, Research, Innovation, & Science

Technological Higher Education Association

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Chairman, members of the Joint Committee, I appreciate this opportunity to offer input as part of the Committee's Pre-legislative Scrutiny of the General Scheme of the Higher Education Authority Bill, 2021. This has been an inclusive process to date and given the range of contribution here today, I'll be selective and refer members to the written submission previously lodged.

Dynamic nature of the call

It is exactly 50 years since the promulgation of Act Number 22 of 1971 and consideration of the renewed legislation has been underway for some time now. In July 2018 the then minister, Mary Mitchell O'Connor TD, initiated a consultation process on the updating of the HEA Act and subsequently hosted a consultation forum. The original proposal recognized that the 1971 Act is no longer aligned with the current role and responsibilities. The scope has broadened with a focus on designation and the enhancement of governance in higher education in general and thus the views of the higher education institutions become even more important in this consideration. In addition, the recent passing of the Technological Universities Act (2018) has brought with it governance changes which are only now being assimilated. It is early to pass judgement on the efficacy of those changes, thus it is important to ensure that enhancement in one area does not destabilize other work that is bedding down.

A collaborative approach

A key characteristic in the most recent consultative documentation is the adoption of a collaborative approach as seen in the internal shared governance model and in the coregulation model between the HEA and the institution. This is welcome as it recognizes the maturity and the critical responsibility that must lie with an institution while affording the HEA the wherewithal to manage its oversight role in respect of the risk-based regulatory approach as outlined in the document. The

recent establishment of a Governance Forum by the HEA and including IUA and THEA is regarded as a positive manifestation of this shared approach.

This raises an interesting question as to whether a regulatory agency can also be a fostering body. THEA's view is that we live on a small island. We work to a common goal; facilitating the realization of personal potential; contribution toward social cohesion; and the growth and sustenance of our economy. In a mature construct, it is not only possible, but advisable and consistent with Heads 8 & 9, to work collegiately while retaining respect for the statutory functions appropriate to all actors.

In that sense, the coregulation advocated in the document is warmly welcomed. So too is the risk-based regulatory approach. It does, however, suggest that a change in the system performance framework will have to follow.

The HEA has a role in defending the valued diversity of our higher education system. Moves that lead to the homogenizing of the system, consciously or otherwise, should proactively be resisted as they will ultimately undermine the clear policy direction set out in recent legislation.

The shared governance model

The updated paper sets out a concept of a shared governance model that separates the corporate, executive, and academic strands. While the architecture and the roles of the three strands are generally understood, there can be questions on the margins of what lies within the competence of any given strand. As example, the role of the governing authority in the academic oversight of an institution – and thus the nature of its relationship with the academic council – deserves particular attention.

The role of the Chief Officer is understated in the draft to date. The leader of the institution and supporting executive are key to the character and success of an institution and s/he acts as the pivot that links the tripartite construct.

Governing Authority composition

There has been a drive for some time now to effect a reduction in the size of governing authorities. The desire to achieve this in the Technological Universities Act (2018) was not fully realized and it pointed again the cultural challenge of moving from a representative to a competency-based structure. THEA is in favour of the proposal that states governing authorities are more effective when the number of members is limited; however, this comes with the following caveats:

1. The relevant Heads read like a work in progress.
2. There is risk in constructing governing bodies that are too small. In the recent discussion with the D/FHERIS on this topic, the voices of our chairs were particularly telling. Given the increasing complexity and responsibilities of these organizations, a cap of members results in practical housekeeping difficulties: it can be hard to achieve a quorum, to comprehend the range of skill sets that are essential, and to lead and people the principal subcommittees.
3. The Technological Universities Act is bedding down at this stage, and it sets out in Section 12 the membership of governing body. There would be a logic in the technological sector in settling on a figure that is within the lower end of that frame for consistency.
4. Essential to this is a shared willingness to embrace a competency-based model of governance. This is not to deprive anyone or any group of a voice, but given the shared governance model that is proposed here we would be advised to move to a conception of

governance, and especially at the apex, that is grounded in a diverse and informed view of what is best for the institution and those it serves.

Concerning the external element in the current construct, that objective responsibility is effectively concentrated in the chair and four members. Given the connected nature of the technological sector, there is undoubted merit in having a stronger external voice. A competency-based construct will assist in this.

One comment that emerged in the recent verbal feedback that might be noted is the geographical extent of the regions covered by the technological universities. Being consistent with the argument in favour of a competency focus, the question of ensuring that all of a given region can identify, and feel an affinity, with the university is itself an argument for a slightly larger governing authority than proposed in the paper.

The terms of office and the staggered appointment to boards are considered good practice.

Role of D/FHERIS

There is the danger of perceiving the HEA as an extension of the D/FHERIS. This is not fair to either party and can only serve to confuse. It would be advisable to have that relationship carefully documented within the scheme and this may fit with the department's current work on its own strategic plan.

One of the central considerations in the initial discussion around this renewed legislation centred on the independence of the HEA. Based on the nature of the relationship mentioned above, it is the THEA view that the system is best served by a strong and independent Authority.

Research & Innovation

The draft obliges the HEA to promote research in higher education although it is light on detail under Head 53. It includes providing funding for R&I through the core grant to higher education institutions, and dedicated funding to support capacity building in technological universities, in accordance with the TURN Report. The role of the HEA in research needs to be aligned with the role of D/FHERIS in research policy.

In relation to the Irish Research Council, it would be beneficial for the Council to have increased autonomy; this would allow the Council to align better its resources and systems with its mandate, putting arts, humanities, and social sciences research on an equal statutory footing.

Equality, Diversity, and Inclusion

Concerning equality, diversity, and inclusion, the updated paper appears to focus on supporting equality/equity of participation at student level. The work commenced by the HEA Centre of Excellence for Gender Equality might be reflected in the legislation.

Borrowing Framework

Under Section 21 of the Technological Universities Act (2018) it is stated that an tÚdarás has a role in formulating rules to be complied with by a technological university in relation to any borrowing,

guaranteeing, or underwriting. Realizing that the full potential of the system will necessitate access to the borrowing framework, THEA trusts that the new legislation will not inhibit this ambition.

Data sharing

There is a shared desire to see evidence-informed policy creation. As a system, we have access to a significant volume of data and there would be merit in the alignment of data sets between defined entities under appropriate controls. Formal recognition of representative bodies would assist in managing this in an aggregated fashion at sectoral level.

Autonomy & Accountability

In conclusion, the muscle in this General Scheme lies in Chapter 3 of Part 7 dealing with oversight of designated institutions. Achieving balance between respect for institutional autonomy and requirement for accountability instruments will be the test of the legislation.