

# HECA Response to the consultation on the reform of the Higher Education Authority legislation

March 2021



**Higher Education Colleges Association (HECA)**

## Contents

HECA Response to the .....	
consultation on the reform of the Higher Education Authority legislation .....	
Overview .....	1
1. Introduction .....	2
2. HECA Response to Section 5 and 6 of the Update on the Reform of the Higher Education Authority Act, 1971.....	3
Section 5: THE FURTHER DEVELOPMENT OF A GOVERNANCE AND REGULATORY FRAMEWORK FOR HIGHER EDUCATION.....	3
Section 6: Updates on other areas which have been developed and/or amended since the publication of the Consultation Report. ....	4
3. Conclusion.....	6
4. Appendix 1 .....	8
HECA Members .....	8
Contact .....	8

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## Overview

The Higher Education Colleges Association (HECA) welcomes the opportunity to respond to the public consultation of the reform of the Higher Education Act 1971. Higher Education Institutions (HEI) and the learner population have changed significantly over the last fifty years and HECA welcomes the opportunity to make an input into the underpinning legislative proposals of the reform the 1971 HEA Act. The legislation needs to be up to date to enable it to assist in providing a higher education system that can meet Ireland's higher educational and skills needs, reflect current thinking in governance, accountability and performance management and improve and broaden access to higher education to meet the increasing demand.

The submission is divided into two parts:

1. The first introduces the Higher Education Colleges Association (HECA) which represents the majority of the private higher education institutions in Ireland and addresses the main challenges that HECA believes the HEA needs to address for our sector.
2. Secondly, this submission responds to Section 5 and 6 of the Update on the Reform of the Higher Education Authority Act, 1971.

# 1. Introduction

HECA was established in 1991 and serves as a representative voice for thirteen (Appendix 1) established and state accredited privately funded institutions of higher education, advocating on behalf of and supporting its members in achieving their strategic goals. In the last academic year, HECA member HEIs had 27,000 enrolled students representing 12% of the total HE student population in Ireland.

HECA actively facilitates a community of practitioners committed to best practice, the promotion of excellence and quality assured higher education amongst its members. HECA HEIs are located across Ireland. All HECA members have Quality Assurance and Enhancement processes agreed with Quality & Qualifications Ireland (QQI) and offer QQI validated programmes across a very diverse range of disciplines, from levels 6 upwards on the National Framework of Qualifications.

The HECA sector is supportive of the Minister for Further and Higher Education, Research, Innovation and Science stated ambition to refresh legislation for the HE sector. The basis of this consultation is on the substantial *Update on the Reform of the Higher Education Authority Act, 1971* document which covers a broad range of items; however, it is notable that there is only one reference to private higher education institutions as follows:

*“It is intended that the co-regulation model in the reformed HEA legislation will find the correct balance between autonomy and accountability of both the publicly funded HEIs and the not-for-profit/private HEIs which are designated as institutions of higher education”.*

The reform of the HEA Act needs to consider the private higher education sector as a permanent part of the higher education landscape, who is responsive to the scale and depth of changes in the higher education sector, including the ever-increasing share of the population participating in higher education. We welcome the shared responsibility between publicly funded and the private HEI’s to ensure appropriate governance and the provision of quality driven education in accommodating the increasing demographic demand.

However, the proposed legislative changes need to ensure an inclusive ethos and structures to accommodate both publicly funded and private HE sectors. Legislation should also consider the best use of exchequer funds and how private HEIs can facilitate the state to meet the demand for higher education places at a more cost-effective price than the public sector. HECA firmly contends that the current inequality in terms of funding is one issue that should be looked at by the HEA reform in the context of existing funding models and providing additional places in higher education. Private HEI’s represent approximately 12% of current places in higher education programmes in Ireland and have contributed substantially to achieving national priorities in areas of economic and social development. Regardless, private HEIs have obtained a very low share of public funding through the HEA. The new funding proposals should allow for recognition of the role currently being filled by private HEIs in the overall provision of learner places and future potential for greater competition for funding between public and private institutions. HECA believes that student choice should be a primary influencing factor in terms of the funding of places in HEI’s.

## 2. HECA Response to Section 5 and 6 of the Update on the Reform of the Higher Education Authority Act, 1971.

### **Section 5: THE FURTHER DEVELOPMENT OF A GOVERNANCE AND REGULATORY FRAMEWORK FOR HIGHER EDUCATION**

#### **5.1 INTERNAL GOVERNANCE OF HIGHER EDUCATION INSTITUTIONS**

The revised legislation must take due account of the greater number and diversity of HE institutions that will come under the remit of the HEA. The appreciation and accommodation of greater diversity refers to the need to respect the fact that privately and publicly funded HEIs should operate on parity, but not necessarily in the same ways. Such accommodation would need to both take account of and arguably learn from the distinctive missions, values, divergent governance systems and organisational structures evident in the private sector and the publicly funded sector.

HECA member HEIs as with other private HEIs whose awards are made and validated by QQI have re-engagement processes with QQI, which means that their Quality Assurance Structures, Governance Systems, accountability processes etc., are peer reviewed and independently appraised in terms of their fitness for purpose as required by the Quality and Qualifications Act 2012 (and Amendment Act 2019). All HECA HEIs are also subject to state regulations for protection of the enrolled learner.

There needs to be uniformity between HEA and QQI visions of what constitutes good governance across private HEIs. HEA developments in this area need to take account of the outcomes of re-engagement. It would be supportive if there was clear differentiation of lines of accountability between HEIs, QQI and the HEA to provide clarity of expectations.

HECA welcomes student engagement at certain levels of internal governance, i.e., TLA strategy, research strategy, programmatic reviews, student engagement, etc. but would have concerns at Board/Senior Management level where strategic direction is set and which is guided by other principles, e.g., financing costs, investment decisions, shareholder interests, etc. Consideration should be given to a clear governance code for both public and private HEIs akin to the Higher Education Code of Governance published by the Committee of University Chairs (CUC) in the UK. Currently some of HECA HEIs follow this code which ensures there is adequate representation of students in the governance of the HEIs whilst enabling HEIs to not have student representation on Board/Senior Management level.

Consideration must also be given to the implications of private HEIs becoming subject to mandatory governance structures which may breach current corporate structures and legislation.

#### **5.2 A GOVERNANCE FRAMEWORK BETWEEN HIGHER EDUCATION INSTITUTIONS AND THE HEA**

Currently a framework does exist between HEIs and the HEA, though the important element is that the HEA does not yet have the authority to enforce it in the same way it will when the proposed reform of legislation.

There is some ambiguity in it in relation to governance issues and particularly regarding private HEI's. A key element of the proposed model is contained in 5.2 The Governance Framework on page 16, which states:

*‘A statutory Code of Practice for the Governance of HEIs. This will be developed by the HEA following consultation with the HEIs and provisions will take account of the distinction between publicly funded and non-publicly funded institutions’.*

This may be interpreted that there will be a distinction between public and private HEIs for some aspects of governance and some provision for modifications of the model for private HEIs. This could be clearer. The governance model currently used by private HEIs replicates a lot of what is proposed in the document. However, further clarity is required in relation to what is mandated, implicated and for example, how it will apply to private HEI’s who have different performance metrics to publicly funded HEI’s?

Concern and caution are also advised in relation to the reporting provisions. These may be particularly onerous if applied to private HEIs in their current format and may also have potential legal implications and challenges. For example, regarding the review provisions of the HEA; how will the HEA determine these provisions and their implementation?

In achieving clarity and a consistency of vision between QQI and the HEA it would be most useful if a joint regulatory approach, with one reporting process, was developed between the HEA and QQI.

### **5.3 AUTONOMY AND ACCOUNTABILITY**

Currently, HEIs have, in effect, full autonomy when it comes to educational purpose and operations. Their accountability, however, needs to be increased and the careful appointment of members to the Boards of HEIs is important to ensure this. Currently there is too much opportunity for conflicts of interest to prevail.

In relation to co-regulation, the document refers that *‘It is intended that the co-regulation model in the reformed HEA legislation will find the correct balance between autonomy and accountability of both publicly funded HEI’s and the not-for-profit/private HEI’s which are designated as institutions of higher education’.* (pg 18). While the intent here may be to accommodate the private HEI sector, concern is expressed on the potential for increasing the regulatory burden on the private HE sector. For example, the changes to QQI legislation in recent years has resulted in an increasing regulatory burden for private HEI’s, which are far more onerous in many respects than those that apply to the public HEI’s. Further clarity on the what the co-regulation model will mean for the private HE sector is required.

## **Section 6: Updates on other areas which have been developed and/or amended since the publication of the Consultation Report.**

### **6.1 STRATEGY FOR HIGHER EDUCATION (INCLUDING TEACHING, LEARNING AND RESEARCH)**

It is essential that the legislation ensures that all relevant stakeholders, HE representative bodies and designated institutions of higher education, whether public or private are consulted on HE strategies. In addition, national policies to support excellence in teaching and learning should not discriminate on grounds of whether the HEI is public or private. In this matter, private HEIs are excluded from funding or the opportunity to lead educational projects of excellence in teaching and learning with the National Forum of Teaching and Learning even if it is a private HEI’s initiative/work.

To support excellence in teaching, learning and research for the benefit of the whole of the HE sector, the HEA should remove the restrictions on cross sectoral partnership between public and private HEIs.

## **6.2 NO CHANGE OF NAME OF THE HIGHER EDUCATION AUTHORITY**

The Government's decision to retain the name - the Higher Education Authority, is welcomed and avoids unnecessary costs associated with brand/name changes.

## **6.3 BOARD OF THE HEA**

The reduction the Board membership of the HEA is welcome. Given the probability that the role of private HEIs will continue to grow in Ireland's higher education sector, some serious attention should be given to how this is reflected in the overall system of governance and board membership. HECA proposes that membership of the Board of the HEA includes expert representation from the private higher education sector where faculty are in constant communication with industry and business to ensure their programmes are designed to meet current and future skills needs.

## **6.4 ENGAGEMENT WITH STUDENTS**

While we welcome requirements such as annual student reviews, concerns on the onerousness for small private HEIs should be considered.

## **6.5 RESEARCH**

Consider aims to have research more embedded in higher education and enabling opportunities for the private HEIs to deepen their research initiatives and involvement with other partners.

## **6.6 DATA COLLECTION AND SHARING**

It is envisaged that the HEA will have stronger regulatory rights to:

- collect HEI data pertinent to staff and students.
- oversee private HEIs.

The purpose and intent of the HEA in relation to data collection and sharing from private HEIs needs to be transparent and clearly articulated, e.g., is it for the purposes of quality oversight, to enable funding to be provided or both or otherwise? QQI also have a role in overseeing quality in the private HEIs and already collect data from private HEIs. Concern is expressed in relation to the duplication of data collection from both bodies and indeed, the increasing time, burden and onerousness in providing the data, especially for smaller private HEIs.

While many of our HEI members welcome the data collection and sharing with the HEA and may currently be restricted in sharing such data due to GDPR legislation, clarity on the HEA perspective regarding its collection of data is merited.

## **6.7 EQUITY OF PARTICIPATION**

Considering that a designated institution of higher education will be required to report annually to the HEA on the implementation of the equity of participation plan in their institution (providing details of the goals and targets met in the implementation of the equity of participation plan), there are notable omissions in legislation which can exclude students from EDI related (equality, diversity and inclusion) state supports if attending the majority of private 'designated institutions of higher education'. This is a fundamental discrimination in the heart of a provision of equity of participation

and therefore, in the overall regulation. Note, the majority of students in private HEI's are specifically excluded from the state student supports that are available to students of public HEI's.

The HEA have a duty to be responsible for the delivery of an inclusive HE system that is more representative of the whole of society. The HEA needs to establish progress initiatives that will support HEIs including private HEI in delivering student success in under-represented groups. While HEIs' access strategies support DEIS and the School Completion Programme, there is still a significant under-representation of students from DEIS areas. This is a significant problem and requires innovative ways of thinking and application to ensure inclusiveness in higher education. It is important that the HEA ensure that there is equitable access and progression for all under-represented groups across all HEIs, public and private. Several progression support initiatives should be considered including funding for smaller class size and mentoring in both public and private HEI. When reforming the HEA Act, the HEA should consider policy initiatives that demonstrate a positive impact on an inclusive higher education sector for the entire populace.

### **6.8 DESIGNATION**

It is noted that the HEA Act provides for designation of institutions under that Act but no designations have been made in recent years. Is the intention here that private colleges will be designated institutions of higher education? And that, in turn, will be a protected title?

The designation model proposed in the Consultation Report published in July 2019 provided for the automatic designation of HEIs which are currently designated as institutions of higher education under the 1971 Act and the mandatory designation of all other HE providers, whose principal purpose is HE based on a proposed definition of an institution of higher education to be included under the legislation. Is the intention that here that all private HEI will be designated institutions of HE who will have to apply all governance rules – governing authority composition, academic council, etc?

### **6.9 FUNDING OF HEI'S**

Currently under the Student Supports Act 2011, students at designated institutions of higher education are eligible for state student supports subject to meeting certain criteria. While there is provision for the reformed HEA legislation to provide funding to a wider list of designated institutions, it is also noted that under this proposed legislation, a designated institution will have no entitlement to funding. Transparency on this discretion and decision making needs to be public. In addition, does this caveat also imply that student at designated institutions may not necessary be entitled to state student supports? Clarity on the implications in relation to the Student Support Act is warranted.

Further clarity on the implications of what 'designated institution of higher education' means for the private HEIs under the HEA regulatory reform is also warranted.

## **3. Conclusion**

This is an extremely important time to shape HE in Ireland and essential that all sectors of higher education are considered in the drafting of this legislation which may have effects on the higher education landscape, equality, diversity and inclusion for another fifty years. The reform of the HEA



legislation should not miss the opportunity of address key inequalities in the Irish HE sector including exclusion of state student support for students studying at private HEIs.

Transparency concerning the implication of terminologies utilised in this reform is needed. In addition, transparency of the provision of accurate, comparable and timely data to the HEA is as a general principle, beneficial for the sector but note that international experience points at keeping regulatory requests to what is necessary and the avoidance of duplication across regulatory bodies.

HECA would welcome further discussion on Section 5 and 6 of the proposed legislation and would like to know how the HEA will develop their advice to the Minister of Further and Higher Education, Research, Innovation and Science specifically in relation to its proposed effects on private 'designated institutions of higher education'.

## 4. Appendix 1

### HECA Members

- CCT College <https://www.cct.ie/>
- DBS-Dublin Business School <http://www.dbs.ie/>
- Dorset College <https://www.dorset-college.ie/>
- Griffith College <https://www.griffith.ie/>
- Galway Business School <https://www.galwaybusinessschool.ie/>
- Hibernia College <https://hiberniacollege.com/>
- ICHAS - Irish College of Humanities & Applied Sciences <http://ichas.ie/>
- IICP College <https://www.iicp.ie/>
- NCI - National College of Ireland <https://www.ncirl.ie/>
- OTC - Open Training College <https://opentrainingcollege.com/>
- Setanta College <https://www.setantacollege.com/>
- SQT Training <https://www.sqt-training.com/>
- SMSI - St Nicholas Montessori Society Ireland <https://smsi.ie/>

### Contact

[Redacted Contact Information]