

**Irish Congress of Trade Unions
Education Sector Group**

**Submission to the Department of Further & Higher
Education Consultation on Reform of HEA
Legislation/ HEI Governance**

March 2021

Introduction

The Congress Education Sector Group welcomes the opportunity to respond and feed into the consultation process in respect of the size and composition of the governing bodies of Higher Education Institutions (HEIs) and wider governance issues across the further and higher education sector.

Key Issues of Concern

Fundamentally, the Congress Education Group believes that the overall focus of the consultation process **on regulation and governance is misplaced** as this implies that governance is the essential and overriding problem in the sector. This is clearly not the case.

In that respect, the process appears to be a missed opportunity to address the deeper and more problematic structural issues relating to **funding, representation and academic freedom/ independence**.

Indeed, a comprehensive and deep dive into **all areas of Higher Education Authority (HEA) competence**, may well have been a far more productive and beneficial exercise.

Congress is firmly of the view that, as currently constituted, the board of the HEA remains **unrepresentative** of all key stakeholders in sector, given the glaring absence of any form of trade union representation.

This deficit must be addressed.

Another issue of concern to emerge from this process is the lack of clarity or certainty around the **proposed expansion of the role and functions of the HEA**, as it remains unclear as to how this might impact, overlap or even align with role of both the Minister and the new Department of Further & Higher Education.

In addition, affiliates have expressed concern that proposed reductions and changes to composition of HEI Governing Councils and Boards could have a **significantly detrimental impact on staff representation**.

It is our strong view that the **level of staff representation must not be reduced**, as part of this process.

Equally, we believe that the creation of any **competency-based process** for the selection of governing authority or board membership has the capacity to

fundamentally undermine and erode the very right of staff representation, across the sector.

In our view, such a process could prove to be a profoundly undemocratic exercise and, as such, detrimental to the wider ethos of the entire sector.

Specific issues also arise with respect to **Technological Universities** and adequate staff representation where multiple locations and sites are utilised.

In addition, changes to the both the size and composition of governing authorities within such institutions would **require a change to existing 2018 Act** and would require consultation/ dialogue and agreement.

The potential loss or erosion of **academic freedom/ independence** under the proposed changes is also a key concern for Congress.

There are also real concerns in relation to the possible introduction of **performance-based funding models that**, in our view, often serve to exacerbate and perpetuate social and educational division. Such models would also likely replicate the errors seen in the failed approach adopted in the UK.

Ultimately, the sector urgently requires a **clear and coherent funding framework** that is developed out of a process of consultation and dialogue with all key stakeholders, including trade unions.

Below are specific issues, observations and concerns raised by individual affiliated unions, in respect of the consultation process and proposed changes.

1. Issues Raised by the TUI

A draft of the proposed/amended legislation must be provided to all stakeholders.

It must be made clear what specific reforms from the *Proposals for Reform of the HEA Act 1971* (July 2019) and the recent *Update on the Reform of the HEA Act* (Feb 2021) will be included in the proposed amendments to the HEA Act.

Any proposed legislative changes to the Technological Universities Act (2018) must be carried out in consultation with TUI. The changes to the size and composition of Governing Authorities outlined in the proposals would require a change to this legislation and these changes - as proposed - are not acceptable to TUI.

The proposed functions/objects of the HEA as outlined, expand greatly on those in the the 1971 Act. These functions - if enacted - would grant the HEA significant legislative and regulatory authority/power. This implies a substantial change in how the Department of Further and Higher Education engages with the HEA and where the responsibility for key decisions would lie.

In our view, institutional autonomy and academic freedom need to be assured in the proposed legislation.

TUI would also welcome stronger regulation and oversight of Quality Assurance in the Higher Education sector.

Co-Regulation

The proposed reforms place a huge emphasis on what is described as a 'co-regulation' governance model. However, we need to ensure there is a balance and that regulatory reform does not dissolve the independence of the university sector. It is recognised that the university sector should remain independent but that is also has responsibilities in terms of accountability and transparency.

A significant regulatory framework for internal governance would be required to achieve a co-regulation model. To date, governance structures in Institutes of Technology and Technological Universities have been dominated by Executive Management. In our view, the roles and functions of Academic Councils and Governing Bodies need to be strengthened.

Competency Based Governance Models

Academic representation is essential on Governing Bodies. Academic staff must be central to Strategic Planning for HEIs. Strategic planning (primarily academic) cannot be relegated to a corporate Governing Body function, where the majority of members do not have academic competencies.

Marketised Funding Model

There is no reference in the proposals to a collaborative, non-competitive funding model. Instead, what is proposed is a **very competitive, marketised, performance-based model**. This is hugely disappointing and regressive. Such models are overly deterministic and restrictive, thereby, limiting innovation and growth.

System Performance Frameworks

Compacts and Key Performance Indicators (KPIs) can be hugely problematic and detached from material reality on the ground. Academics can be put under pressure to maintain quality assurance processes and procedures without been provided with the necessary resources to do this work.

Reform of Governing Authorities of HEI

The proposed changes would negatively impact on Governing Bodies in multi-campus Technological Universities. There must be a balance between Governing Bodies that are competency based and representational.

It is possible that some campuses might not have any representation on a Governing Body of a TU. This could have a significantly negative affect on the local regions served by TU campuses. TUI does not support any changes to Governing Body composition and size as legislated for in the Technological Universities Act 2018.

Academic Councils in IoTs and Technological Universities are legislated for in the Technological University Act 2018. Any proposed reforms that would require an amendment to the Act would require consultation directly with TUI.

Chief Officer Role

It is crucial that the Chief Officer does not interfere or exert undue influence on the **Governing Body** and that there is a clear division between their respective roles and functions.

Stakeholder Involvement

“The governing authorities are the top level of institutional governance and accountability in a HEI and should not be regarded as internal representational structures.”

The above statement contradicts the co-regulation/shared governance model outlined earlier, which states the need for internal shared governance between Academic Councils, Chief Officer/Executives and Governing Bodies.

Governance Framework between HEIs and the HEA

TUI supports a Code of Practice for the Governance of HEIs. This must be agreed through consultation and negotiation.

Protected Disclosure

Regulation and oversight of governance in Higher Education is welcome. However, if an individual wishes to make a protected disclosures, it is unclear who they make the disclosure to: the HEA, the Minister, the Department?

Withholding or Refund of Grant

Poor management and/or governance should not be rewarded. However, financial penalties (if any) should not be used to run-down a HEI (and/or its campuses), or make it unsustainable and unattractive to students.

Autonomy and Accountability

TUI supports both autonomy and accountability within a strong regulatory framework but would have concerns around the metrics used for performance-based funding.

Performance-based funding should not lead to HEI league tables or enable a division between what might be considered top performers and low performers. This model has not worked elsewhere, in particular in the UK.

Engagement with Students

Engagement with students is important. However, engagement must be appropriate and relevant to matters of concern to students. The setting up of a student panel should have clear terms of reference to ensure that it does not become a forum for specific political or lobbying agendas and/or interests.

Research

It is proposed that the functions of the HEA will include research performance. TUI would have concerns around how research will be evaluated. Current lecturers in the IoT/TU sector should be supported and actively encouraged to conduct research, allowing alleviation from their heavy teaching workload. Significant consultation is required around a HEA legislative role for research and what this would entail.

Equity of Participation

TUI fully supports equity of participation, including access to Higher Education, but it must be demonstrable on a structural level and funding must be provided.

Equity of participation should apply to students and all staff in HEIs. There must also be reference in the proposed legislation of a strong commitment to equality, diversity and inclusion.

Designation

Clarification is required to ensure that designation as a HEI will not undermine existing legislation, specifically the Technological Universities Act (2018).

Funding

TUI supports and advocates for a publicly funded Higher Education sector. Funding should not solely be competitive and performance-based. A collaborative/co-operative funding model should also be considered.

2. Issues Raised by IFUT

The Higher Education Commission consultation is a missed opportunity to address all key issues in the sector.

The current Government process and consultation aims to update the Higher Education Authority Act, 1971, which sets out the functions of the HEA and provided for its governance.

The Act provides for the funding and overall financial monitoring of designated institutions of higher education by the HEA. It established the HEA as the advisory body to the Minister for Education and Skills on the higher education sector.

Continual monitoring of the effectiveness of our higher education institutions is necessary and essential. The HEA has played a very important role in this respect over many decades and it is appropriate that, after almost half a century of operation, existing legislation should be reviewed and improved, where necessary.

It is worth emphasising two very relevant current specific roles as specified on the HEA website:

“The Higher Education Authority is the statutory agency responsible for the allocation of exchequer funding to the universities, institutes of technology (IoTs) and other higher education institutions (HEIs).”

and

“The HEA has a statutory responsibility, at central government level, for the effective governance and regulation of higher education institutions and the higher education system.”

It is also worth noting a further clearly stated function:

“In exercising our mandate the HEA works to ensure that ... we have due regard to institutional autonomy and academic freedom”.

In the view of IFUT, therefore, the HEA currently has three clearly specified functions, which should be assessed in any review:

- **Funding;**
- **Governance;**
- **Academic freedom.**

Further clarification and strengthening of the HEA's role, accompanied by necessary additional enabling legislation or regulations to boost its function, should be considered and implemented where advisable.

It is significant that the government, in instituting this review, does not in any way seek to address principles or issues around funding, given the perpetuation of chronic crisis in that regard.

Neither does the Review deal with the issue of academic freedom which has been equally affected and threatened by changes and pressures over the past number of decades.

Consistent recent government policy highlights that the areas of funding and academic freedom are exposed to continued, persistent, erosion and threat.

The third area on which the review solely focuses, of ensuring good governance and addressing any governance shortcomings at third level, is important.

The type and nature of governance issues highlighted in this area in recent years, however, could more appropriately be addressed by reference to a strengthening of current HEA procedures and tackling other, more central issues.

Suggestions that external representation should feature prominently in university governance, particularly if it were to constitute a majority influence, would be a negative development. Higher Education is different in kind from the provision

of, for example, health or other services. The university enterprise has to do with ideas and concepts.

Any drift towards giving overarching control to individuals primarily motivated by other concerns, whether business, social, economic, would not be appropriate.

Externalising the governance of universities would not improve performance by any objective measure. It is hardly coincidence that the two highest-ranking universities in the UK (Oxford and Cambridge), and Trinity College Dublin, are precisely those where governance by academics has not been diluted by external governance influence.

The process, therefore, is significantly deficient in concentrating the attention of government and higher education institutions on issues of governance and regulation.

Indeed in the *‘Review of the Allocation Model for Funding Higher Education Institutions Final Report by the Independent Expert Panel for the HEA, (Dec 2017),* the Report addressed existing governance issues clearly. It states:

“We are conscious of the significant attention given to governance matters in higher education in recent years, and the introduction of a governance framework for the higher education system by the HEA to provide clarity and oversight on responsibilities in this regard. ... This was recognised by the HEIs themselves, and we propose an enhanced focus on governance within the system performance framework, coupled with a penalty based system for red line governance compliance issues to provide further assurance in this area.”

It is difficult in this context, to understand the stated need for a ‘priority’ aim to establish a new Higher Education Commission, as per the government statement of July 29 last, to *“re-constitute Higher Education Authority (HEA) as Higher Education Commission with new statutory responsibilities, including regulation and oversight of private higher education bodies”*.

The question needs to be asked as to why the 2017 recommendations of the HEA commissioned report were not responded to in a more practical manner?

There are key references in the July 24 Department of Education statement: *“A central objective of the proposed legislative approach is to ensure that the Higher Education Commission has a strong and clear statutory basis in terms of its regulatory responsibilities in overseeing the governance ...”*

and

“ensuring that the Higher Education Commission has the necessary legal powers to underpin the performance of its key regulatory roles ...”

These suggest that a far different and narrower focus and model for relations between the Department of Education and higher education institutions is being considered or may result from the current process, compared to what might be delivered through the HEA model or an updated HEA model.

Best practice should involve policy setting by Government and policy implementation for relevant agencies such as the HEA.

These proposals may facilitate a future drawing of operational matters under Departmental control, at regulatory and certainly at academic freedom and funding levels.

The absence of reference to academic freedom and funding issues in the current consultation process exacerbates fears that funding, course development, and academic freedom will be subject to increasingly greater direct government controls.

For example, the new €300m Human Capital Initiative, announced in last year's Budget, involves a process under which the state is stealthily increasing control on the allocation of funding. Funding decisions and direction are being increasingly removed from the existing HEA, even in advance of the envisaged Commission becoming established.

The move to a Higher Education Commission risks further diminishing its 'authority' as a statutory agency and instead resulting in increased micromanagement by the Department of Education and interference at university level.

The 2017 *'Review of the Allocation Model for Funding Higher Education Institutions Final Report by the Independent Expert Panel for the HEA'* referred very specifically to funding issues as follows:

*"... having analysed system finances, operations, performance and outcomes, it is the clear view of the Expert Panel that **Ireland cannot continue to increase student numbers without a commensurate increase in investment.** ... We endorse the conclusion of the Cassells report that the current funding system is not fit for purpose and fails to recognise the current pressures facing higher education institutions and the scale of the coming demographic changes. Cassells recommended that additional annual funding of €600 million needs to be provided by 2021 and €1 billion by 2030 to deliver higher quality outcomes and provide for increased demand, and identified three sources of potential additional funding: the state, the student and employers."*

Would a new Higher Education Commission have power to assess funding issues and make recommendations to government in such a direct manner?

Key Issues

The sole emphasis on regulation and governance in this consultation is a missed opportunity to address other key issues affecting higher education, notably funding and academic freedom.

It conveys an impression that the key issue for the sector is governance, which is not the case.

It diverts attention away from the failure of government, to date, to meaningfully address and make decisions related to the Recommendations of the 2016 Cassells Report regarding state funding for higher education.

It fails to provide a forum to address issues around the drift to a 'skills based' education model, increasingly funded by, and dictated by, short-term business interests, which may alter radically and suddenly as a result of international considerations, including the impact of Brexit.

The suggestion that external representation should feature prominently in university governance, particularly if it were to constitute a majority influence, would, if realised, be a negative development.

A university motivated by other concerns - be they business, social, economic - would not be appropriate. Externalising the governance of universities would not improve performance by any objective measure.

Governing Bodies

The UCD Governing Authority currently has 40 members. A reduction down to 12 would be quite drastic and questionable. This should be compared with the recommendation in the **OECD Review of Higher Education in Ireland** (September, 2004) which recommended a figure of **almost twice that number** (20).

There are dangers in shrinking Governing Bodies so dramatically and the risks in terms of **loss of expertise** are significant.

For organisations as complex as HEIs, particularly the larger ones, four (4) members of staff is a very small number of people to bring all the competencies required to the table of a Governing Body.

IFUT does not believe that there is an appetite to return to small governance bodies where **a lot of power was concentrated in the hands of a few**.

Diversity of knowledge and expertise is important, and HEI's need to ensure that this is developed within their governance.

It is the strong view of IFUT that:

The HEA has proved an effective governing authority for higher education. Its work and structures should be modernised and strengthened where appropriate.

The current governance review should be extended to include an assessment of very serious funding and academic freedom issues existing currently.

A comprehensive report and recommendations should be prepared on all areas of current HEA competence, rather than a specifically governance focussed document.

3. Issues Raised by Siptu

Siptu has serious concerns around makeup of the present Board of the HEA, which is not in any way representative of all stakeholders in the Higher Education sector.

To address this deficit, there is a clear need for a trade union representative on the Board of the HEA.

Siptu also has concerns that attempts to reduce size of Governing Authorities/ Boards will reduce the representation from staff, particularly administrative and support staff. Such levels of representation must be retained.

In Technological Universities there is a clear need for recognition of the issues for staff representation, where there are multiple sites.

We also need clarity on the proposed use of a competency-based interview process to select members of the Governing Authority/ Board.

This is not acceptable for elected staff or student nominations. As we have previously stated the Minister for Education - or any other elected member of government - does not have to undertake a competency based interview in order to take up their position.

This is a fundamental tenet of the democratic system and it utterly inappropriate for the higher education sector to seek to depart from this.

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