

Reform of HEA Act – Consultation Report

General

1. It is timely and appropriate to review and amend the HEA Act which has been in place (largely un-amended) for almost 50 years. The higher education landscape and the importance of higher education and research for national policy and development have changed dramatically in the interval.

Autonomy and Accountability

2. The proposal to retain the provisions in S14 UA 1997 and S.10 TUA 2018 is welcome. It is important from the perspective of competitiveness (understood in its widest interpretation) that Ireland should have a top performing HEIs and higher education sector. International experience indicates that institutional autonomy is directly correlated with institutional effectiveness. Autonomy and its positive consequential impact on effectiveness can be enhanced by appropriate sensitivity and awareness of accountability and responsibility to a range of stakeholders. Accountability should not be narrowly understood as “control by the centre”. The latter not only limits institutional capacity and flexibility to respond to challenges but also lead to inappropriate levels of passive dependency on central authority, inefficiencies (including as regards public expenditure) and other unintended and undesirable consequences.
3. The stated intent to provide for appeal processes in the event of adverse determination against an institution is an essential provision. A model already exists in UA 1997 (S.57 (as inserted by QQA Act 2019)). Given the importance of such a provision, consideration might be given to including a serving or retired judicial person in Appeals Boards constituted for this purpose (which is not the case in S.57 UA 1997).

Composition of Governing Bodies

4. There would be value in including eminent independent academics with experience in HEI governance working abroad among the independent external members.

Particular concerns relating to RCSI

5. The proposals relating to the composition of Governing Bodies would cause a particular difficulty for RCSI - if it is proposed to apply them to RCSI which may not be the case given that the legislation (Sections 54-58 UA 1997 (inserted by QQA Act 2019) allowing for the ‘university

authorisation' achieved by RCSI was only recently inserted and RCSI is not included among the institutions listed in the 'Application' provision (S.4) of UA 1997. There are a number of considerations which in our view suggest that the application of the proposals to RCSI is unnecessary and seriously problematic.

(i) Independence and fitness of purpose of the Governing Body

6. The Council of the Royal College of Surgeons in Ireland is the statutory governing body for the RCSI (University of Medicine and Health Sciences). The Council is statutorily constituted under the provisions of the founding Charter of 1784. The members are fully independent of the RCSI university structures¹ and operations and indeed, under the provisions of the legislation applying to charities cannot be employees of RCSI.
7. Amending legislation would be required to change the functions, composition and role of the Council. The Council was originally established as a professional regulatory body entrusted with setting and supporting standards for surgical training and practice **in all of Ireland**. There are similar professional regulatory bodies for surgery and indeed other areas of medicine internationally – particularly in Anglophone countries. The Royal College of Surgeons in Ireland was established by Charter as have been a number of other regulatory and charitable bodies. The established process for amending Charters in respect of their governance and operations is for a Chartered body to seek parliamentary approval for Private legislation sponsored by the entity itself. The tabling of legislation on the initiative of the Government in respect of **governance** of a Chartered Body which was not substantially publicly funded would be an exceptional measure – and probably only justified in an emergency situation and by serious public concerns concerning its governance and operations. Other than in these situations the use of primary legislation would be regarded as an issue of concern both nationally and internationally.
8. The Council of the Royal College of Surgeons in Ireland established a framework which provides for the delegation of university governance functions to the Medicine and Health Sciences Board (MHSB) – the structure and composition of which parallels the governing bodies of those universities encompassed by the application of S.4 of UA 1997. The composition of the MHSB could be changed in the event of the passage of the HEA Reform legislation.
9. RCSI achieved 'university authorisation' after a rigorous and objective evaluation process conducted within the framework of S 54 of the HEA Act (as amended by QQA Act 2019). The RCSI application had to satisfy the requirement in S.55 (iv)(I) that it *"has integrated, coherent and effective governance structures in place concerning academic, administrative, financial and management matters"*. An independent review undertaken by the HEA at the request of the Minister, prior to the making of the Ministerial Order in respect of 'university authorisation', confirmed that this was the case.

¹ Elected by surgeon Members and Fellows of the Royal College of Surgeons in Ireland

10. RCSI has a robust appeals system applying to students with ultimate decisions by a statutory independent Appeals Commissioner

(ii) RCSI operations do not constitute any risk to the public finances or to fiscal policy

11. HEA funding for RCSI equates to circa 3% of total RCSI revenues.

12. Unlike substantially publicly funded HEIs, RCSI employment policies do not constitute any risks for public pensions or pay policies. RCSI funds its staff payroll and pension liabilities from its own resources.

13. RCSI funds its own capital expenditures.

(iii) Ultimate safeguards for the public interest

14. Unlike any other university, the 'university authorisation' for RCSI can be revoked by the Minister following statutory process (S 56-58 of UA 1997 (as amended by QQA Act 2019)). This is a much more severe sanction than those applying or envisaged for other HEIs.