Submission on behalf of the Technological Higher Education Association on the reform of the Higher Education Authority legislation

March 2021

The Minister for Further & Higher Education, Research, Innovation, and Science, Simon Harris TD, has launched a further stakeholder consultation on the reform of the Higher Education Authority legislation. A report to update stakeholders on the recent developments in the reform of the legislation has also been published.

The Higher Education Authority (HEA) is responsible for the funding and oversight of the higher education sector. The legislation governing the HEA is 50 years old and in that time there has been a transformation in the higher education sector.

THEA is pleased to support this work and agrees with the minister's contention that *it is important that robust and refreshed legislation for the higher education sector is in place.*

Submission to: heconsultation@dfheris.gov.ie by 5 March 2021.

Submission on behalf of the Technological Higher Education Association

Introduction

The Technological Higher Education Association welcomes the opportunity to contribute to this important public consultation and appreciates that the facility is provided by the Department of Further & Higher Education, Research, Innovation, and Science (D/FHERIS) to make a submission that is appropriately informed by the technological sector. This final submission has benefitted from the briefing supplied by the D/FHERIS to chairs and presidents in the technological sector on Wednesday, 24 February 2021. The return is informed by the commentary that has resulted from that engagement.

Consultation to date

The then minister, Mary Mitchell O'Connor TD, initiated a consultation process on the updating of the HEA Act in July 2018 and hosted a consultation forum in November 2018. The Consultation Report is a report on this process together with the response of the Department of Education and Skills to the issues raised and the proposed framework for the new legislation. All the relevant papers including the previous submissions from THEA in 2018 and to the second call in 2019 can be found through the following link:

https://www.education.ie/en/The-Education-System/Higher-Education/update-of-the-higher-education-authority-act-1971-public-consultation.html

This submission complements the earlier ones and will not labour points recorded previously.

Dynamic nature of the call

The nature of the call has shifted over the recent years. The original proposal in 2018 recognized that the Higher Education Authority Act, 1971 which established the Higher Education Authority (HEA), set out the functions of the Authority and provided for the governance of the HEA, is no longer aligned with the current role and responsibilities of the HEA. That purpose remains but it has become broader with a focus on 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. Given that the second Technological University, MTU, has come into being only at the start of this year, it is early to pass judgement on the efficacy of those changes. It is also 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.

The coregulation advocated in the document is warmly welcomed. So too is the risk-based regulatory approach.

The new approach does suggest that a change in the system performance framework will have to follow.

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 as an element of compromise was introduced to facilitate calls for representation of particular stakeholders. 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. Twelve members is 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 12 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. While there is recourse to external input, the link to the governing authority proper is important and a somewhat larger number facilitates this.
2. We have just passed the Technological Universities Act. It is bedding down at this stage and it sets out in Section 12 that a governing body, where the technological university concerned was established… by not more than 3 applicant institutes, shall have not fewer than 14 and

not more than 22 members. There would be a logic in the technological sector in settling on a figure that is within that frame for consistency.

3. 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 rather than what can become a compromise between differing stakeholder perceptions. While it may take some time to shift culture sufficiently to achieve this end, the proposal here is that an objective competency-based construct is best placed to win the support of all parties.

Concerning the external element in the current construct, it is noted that the desired balance is achieved through the classification of student members as external. Given the student-centred nature of modern legislation, this may not be advisable. Effectively that centres the objective responsibility in the chair and four members. Given the connected nature of the technological sector, there would be merit in looking again at this to afford 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

In the verbal feedback to date what was not considered so clear was the relationship between the new D/FHERIS and the HEA. It would be advisable to have that relationship documented within the scheme and this may be current given 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

One of the stated core objectives of the HEA legislation is "*Promote and support HEIs in achieving excellence in teaching, learning and research in higher education*." Turning to research (and its partner, innovation) in particular, the HEA should have a role in the development of the overall higher education research and innovation (R&I) system. This includes providing funding for R&I through the core grant to higher education institutions, and dedicated funding to support R&I capacity building in technological universities, in accordance with the TURN Report. The HEA can also have a strong role in relation to oversight and regulation of the higher education research ecosystem, building on the work begun in 2020 with the publication of the 'HEA Principles of Good Practice in Research within Higher Education Institutions'.[1] It would be helpful if the legislation were to refer specifically to the HEA's role in supporting higher education institutions to reinforce good

---

[1] https://hea.ie/assets/uploads/2017/04/HEA-Principles-of-Good-Practice-in-Research-in-Irish-HEIs-2020.pdf

practice in research conduct. This would fill a current gap in our national research ecosystem which has led to confusion over where oversight of good research practice (as defined in the HEA Principles) lies, and which has led to research funders taking steps to fill the gap themselves, and perhaps overstepping the bounds of their own statutes.

Section 6.5 of the update paper outlines that the new legislation will potentially include the following function in relation to research – "*to promote, support and evaluate excellent research in the higher education sector across all disciplines in accordance with national research policy and in partnership as appropriate with Departments of State, relevant Government agencies and any other body the HEA considers appropriate*". This function of the HEA needs to be carefully considered in light of the establishment of D/FHERIS and its role in research policy. It will be important that each agency under the aegis of the department has a clear mission and effective boundaries with respect to its role in the national R&I system, and that clear lines of responsibility are set between the department and its agencies. The Higher Education Research Group (HERG), of which the HEA was a founding member, has been an important vehicle for dialogue on R&I in the higher education sector and to develop collective positions to feed into the work of the Innovation 2020 Implementation Group.   As the structures to support the implementation of the forthcoming revised national R&I strategy are developed, the HERG (perhaps with a revised membership) should continue to have a place within those structures.

In relation to the Irish Research Council, it would be beneficial for the Council to have its own statutory footing separate to the HEA; we have supported this in previous submissions. This would bring it in line with the other research funding agency under the aegis of D/FHERIS (Science Foundation Ireland), would allow the Council to align better its resources and systems with its mandate, and would put arts, humanities, and social sciences research on an equal statutory footing with science, technology, engineering, and mathematics research.

With the launch of the new department's own strategic plan and the preparation of the new research and innovation strategy, there is argument for ensuring that these are factored into the revised HEA legislation given that the Authority is proposed to have specific functions with regard to research.

Academic Council and Governing Authority/Body Composition with respect to research

The updated paper states "*Academic Councils should review their operation to ensure that students have an effective voice on the Council and appropriate amendments should be made to the regulations/statutes governing the membership of the Academic Council if necessary*". It is important that in doing so, the voice of students encompasses postgraduate research students in addition to taught students. The need to improve participation of postgraduate students in decision-making across Irish higher education has recently been a focus for the National Student Engagement Programme.[2] Similarly, the paper recommends that there are two student members of Governing Authority/Body. It would be advantageous if postgraduate representation could be mandatory. In addition, Governing Authorities/Bodies should be inclusive of the voice of research staff.

---

[2] https://studentengagement.ie/2020/08/28/student-associate-interns-join-nstep/

Equality, Diversity, and Inclusion

Concerning equality, diversity, and inclusion (EDI), the updated paper seems to focus on supporting equality/equity of participation at student level. The work commenced by the HEA Centre of Excellence for Gender Equality (currently being broadened to a wider EDI remit) needs to be reflected in the legislation.

Borrowing Framework

Under Section 21 of the Technological Universities Act (2018) it is stated that *an tÚdarás shall, from time to time with the approval of the Minister, given with the consent of the Minister for Public Expenditure and Reform and the Minister for Finance, make 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 the ambition to have Eurostat agree that such borrowings are not carried on the State Balance Sheet.

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 it is not an unfair observation to state that as a connected system we may not mine this efficiently. Equipping all relevant actors with the access to relevant data consistent with reasonable data protection regulation would make for enhanced decision making and for more targeted supports, where required. 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.