

General Scheme of the Higher Education Authority Bill 2021

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Long Title

An Act to revoke the Higher Education Authority Act, 1971 and to put in place a new Act to provide for the objects, functions and governance of the Higher Education Authority; to provide for a Board for the Higher Education Authority; to provide for Ministerial powers and information; to provide for co-operation of the Higher Education Authority with other bodies; to provide for funding and accountability of the Higher Education Authority; to provide for staff and superannuation in the Higher Education Authority; to provide for strategic planning for the higher education sector; to provide for funding of the higher education sector by the Higher Education Authority; to provide for engagement with students; to provide for equity of participation and lifelong learning; to provide for data collection and sharing by the Higher Education Authority; to provide for research and research integrity; to provide for the designation of institutions of higher education; to provide for the duties of the designated institutions of higher education; to provide for a reporting, review and remedial measures system for designated institutions of higher education by the Higher Education Authority; to provide for appeals; to amend the Universities Act 1997; to amend the Technological Universities Act 2018; to amend the Institutes of Technology Acts, 1992-2006; to amend the National College of Art and Design Act 1971; to amend the Student Support Act 2011; to amend the Industrial Training Act 1967; to amend the Social Welfare Consolidation Act 2005; and to provide for related matters.

Explanatory Note

The Long Title of the Bill provides for an Act to revoke the Higher Education Authority Act, 1971 and to put in place a new Act and lists the main functions of the Higher Education Authority and lists the amendments to other Acts.

PART 1

PRELIMINARY AND GENERAL

Head 1 Short Title and Commencement

Provides that

- (1) This Act may be cited as the Higher Education Authority Act 2021.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose of provision and different days may be so appointed for different purposes or provisions.

Explanatory Note

This Head sets out the short title by which the Bill will be known and allows for a phased implementation by empowering the Minister to commence different provisions of the Bill at different times.

This Head is set out in accordance with standard provisions for Short Title and Commencement based on a recent precedent in the Further Education And Training Act 2013.

Head 2 Interpretation

Provides that

In this Act -

“academic post” means a post in a designated institution of higher education, all or part of the duties of the holder of which is to teach any students of the institution or to carry out research;

“appointed day” has the meaning assigned to it by section 7;

“chief officer” means the chief officer, director, president or provost of the designated institution of higher education;

“Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“designated institution of higher education” has the meaning assigned to it by section 55;

“education provider” means a person or institution which provides a programme of education or training leading to at least one award that is included within the National Framework of Qualifications;

“funded body” means a designated institution of higher education, other higher education provider, other education provider, other body or person which receives or received funding from An tÚdarás under section 39;

“funded higher education provider” means a higher education provider which receives or received funding from An tÚdarás under section 39;

“governing body” means a governing body or a governing authority or a governing board of a designated institution of higher education;

“higher education provider” means a person or institution which provides at least one programme of education and training, leading to the award of a degree or other qualifications which are to at least bachelor degree level and which are included within the National Framework of Qualifications;

“information” means information excluding personal information except where personal information is provided or shared for a specified purpose in accordance with section 49 or section 51;

“Minister” means the Minister for Further and Higher Education, Research, Innovation and Science;

“Non-personal information” means information that cannot be used to identify an individual;

“Personal information” means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person, as per Article 4 GDPR;

“Previously established university” means a university specified in paragraphs (a) to (d) of section 4(1) of the Universities Act, 1997;

“Public Bodies” shall be construed in accordance with Section 10 of the Data Sharing and Governance Act 2019;

“Report” means a report including information excluding personal information except where personal information is provided or shared for a specified purpose in accordance with section 49 or section 51;

“student” means a person registered as a student by a higher education provider;

“student union” means a student union or other student representative body recognised by a higher education provider or by the Minister.

Explanatory Note

This Head sets out the common terms used in the Bill.

Head 3 Orders

Provides that

Where an order under section 7, section 10, section 48, section 49, section 56 or section 61 is proposed to be made, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

Explanatory Note

This Head provides for the making of an order under section 7 which appoints a day to be the appointed day or under section 10 which provides for the conferral of additional functions on An tÚdarás or under section 48 and section 49 which provides for non-personal and personal data collection by An tÚdarás from designated institutions of higher education and funded bodies or under section 56 which designates a higher education provider as an institution of higher education or under section 61 which revokes a designation as an education provider order.

This Head is set out in accordance with standard provisions for Orders based on a recent precedent in the Technological Universities Act 2018.

Head 4 Expenses of Minister

Provides that

The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

Explanatory Note

This Head provides that the expenses incurred by the Minister in the administration of the Act may be paid out of monies provided by the Oireachtas.

This Head is set out in accordance with standard provisions for Expenses of Minister based on a recent precedent in the Technological Universities Act 2018.

Head 5 Repeals and Revocations

Provides that

- (1) The Higher Education Authority Act, 1971 is repealed.

Explanatory Note

This Head provides for the repeal of the Higher Education Authority Act, 1971.

Head 6 Offences

Provides that

- (1) A person guilty of an offence under this Act shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or to both.
- (2) Summary proceedings for an offence under this Act may be brought and prosecuted by the Higher Education Authority, including where an offence under this Act is committed by a person who is a member of the Board of the Higher Education Authority.

Explanatory Note

This Head sets out conditions in relation to an offence under this Act and provides that summary proceedings for an offence under this Act may be brought and prosecuted by the Higher Education Authority, including where an offence under this Act is committed by a person who is a member of the Board of the Higher Education Authority.

This Head has been adapted from standard provisions for Offences based on a recent precedent in the Technological Universities Act 2018.

PART 2

The Higher Education Authority

Chapter 1 – Continuation and Functions of An tÚdarás

Head 7 The Higher Education Authority

Provides that

- (1) The body known as An tÚdarás um Ard-Oideachas (in this Act referred to as An tÚdarás) , which was established under Section 2 of the Higher Education Authority Act, 1971 shall continue in operation in accordance with the provisions of this Act.
- (2) An tÚdarás is a body corporate with perpetual succession and an official seal and shall have the power to sue, and may be sued, in its corporate name, and may with the consent of the Minister and the Minister for Public Expenditure and Reform, acquire, hold and dispose of land, an interest in land or any other property.
- (3) The seal of An tÚdarás shall be authenticated by –
 - (a) the signatures of two members of An tÚdarás, or
 - (b) the signatures of a member of An tÚdarás and a member of the staff of An tÚdarás.
- (4) Judicial notice shall be taken of the seal of An tÚdarás and any document purporting to be an instrument made by and sealed with the seal of An tÚdarás shall, unless contrary is shown, be received in evidence and taken to be such an instrument without further proof.
- (5) The Minister shall by order appoint a day to be the appointed day for the purposes of this Section.

Explanatory Note

This section provides for the continuation of An tÚdarás Um Ard-Oideachas (in this Act referred to as An tÚdarás) and its continued operation in accordance with the provisions in the Bill.

It also provides that An tÚdarás um Ard-Oideachas is a body corporate with perpetual succession and an official seal and shall have the power to sue, and may be sued, in its corporate name, and may with the consent of the Minister and the Minister for Public Expenditure and Reform, acquire, hold and dispose of land, an interest in land or any other property.

It provides that the seal of An tÚdarás Un Ard-Oideachas shall be authenticated by –

- (a) the signatures of two members of An tÚdarás, or*
- (b) the signatures of a member of An tÚdarás and a member of the staff of An tÚdarás*

It provides that judicial notice shall be taken of the seal of An tÚdarás and any document purporting to be an instrument made by and sealed with the seal of An tÚdarás shall, unless contrary is shown, be received in evidence and taken to be such an instrument without further proof.

This Head is set out in accordance with standard provisions for Establishment of an Agency based on a recent precedent in the Further Education and Training Act 2013.

Head 8. Objects

Provides that

- (1) An tÚdarás shall have regard to the following objects in undertaking its functions
 -
 - (a) to promote excellence in teaching, learning and research in a high quality higher education system,
 - (b) to support higher education providers in contributing to social, economic, cultural and environmental development and sustainability through leadership, innovation and agility.
 - (c) to hold higher education providers to account for performance and for securing value-for-money from the use of Exchequer funding,
 - (d) to advance equality, diversity and inclusion in higher education,
 - (e) to strengthen engagement with the wider education system and wider society, and
 - (f) to respect the academic freedom of higher education providers and academic staff in higher education providers.
- (2) In furthering these objects, An tÚdarás shall provide that, as far as practicable and having regard to resources available, the needs of the student are a primary consideration.

Explanatory Note

This Head lists the Objects which An tÚdarás will have regard to when undertaking its functions. The objects are:

- *to promote excellence in teaching, learning and research in a high quality higher education system,*
- *to support higher education providers in contributing to social, economic, cultural and environmental development and sustainability through leadership, innovation and agility.*
- *to hold higher education providers to account for performance and for securing value-for-money from the use of Exchequer funding,*
- *to advance equality, diversity and inclusion in higher education,*
- *to strengthen engagement with the wider education system and wider society, and*
- *to respect the academic freedom of higher education providers and academic staff in higher education providers.*

This Head also provides that in the furtherance of these objects An tÚdarás shall provide that the needs of the student are a primary consideration, as far as practicable and having regard to the resources available. The Objects are a set of overall principles applying to the Higher Education System.

Head 9 General Functions of An tÚdarás

Provides that

- (1) The general functions of An tÚdarás shall be to –
 - (a) promote the objects of An tÚdarás,
 - (b) promote and support student engagement and student success in higher education and the attainment by students of a high quality educational experience in higher education,
 - (c) secure and evidence value-for-money from Exchequer investment in higher education allocated to designated institutions for higher education and other bodies,
 - (d) plan for higher education provision and make recommendations to the Minister on the overall provision of student places,
 - (e) support the provision of a range of programmes of higher education and training aimed at meeting the educational and skills needs of individuals, business, enterprise, the professions, the community, local interests and other stakeholders locally, regionally and nationally,
 - (f) facilitate cooperation at national, regional and local level between higher education providers and other education providers,
 - (g) co-operate with higher education providers, the Qualifications and Quality Assurance Authority of Ireland, An tSeirbhís Oideachais Leanúnaigh Agus Scileanna, other Departments of State and other bodies as appropriate in relation to the development and provision of higher education,
 - (h) promote, support and fund 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 relevant body An tÚdarás considers appropriate,
 - (i) provide capital and current funding to bodies, monitor expenditure by bodies to which funding is allocated and recoup funding in certain circumstances,
 - (j) measure and assess the performance of higher education providers with a view to strengthening the performance of the higher education system and the higher education providers and to ensure accountability,

- (k) support the effective governance of higher education providers by overseeing appropriate governance frameworks to underpin public confidence in the higher education sector and to provide value for money for taxpayers and ensure accountability and compliance with these governance frameworks,
 - (l) support equality, diversity and inclusion in higher education including the participation and success of under-represented sections of society in higher education,
 - (m) advise the Minister in relation to national policy on higher education in accordance with section 15,
 - (n) provide a recommendation to the Minister in relation to the proposed acquisition or disposal of land, an interest in land or any other property by a higher education provider, where the Minister's consent is required for such transaction,
 - (o) research any matters relating to the objects and functions of An tÚdarás, and
 - (p) collect statistical information and maintain an evidence base in order to provide high quality evidence-based policy advice in accordance with sections 48, 49, 50 and 51.
- (2) An tÚdarás shall have all such powers as are necessary or expedient for the performance by it of its functions.
 - (3) An tÚdarás may perform any of its functions through or by any member of the staff of An tÚdarás authorised in that behalf by An tÚdarás.
 - (4) An tÚdarás may perform any of its functions through or by any persons authorised in that behalf by An tÚdarás.

Explanatory Note

This Head lists the general functions of An tÚdarás. It also provides:

- *An tÚdarás shall have all such powers necessary or expedient for the performance by it of its functions,*
- *An tÚdarás may perform any of its functions through or by any member of the staff of An tÚdarás as authorised by An tÚdarás,*
- *An tÚdarás may perform any of its functions through or by any persons as authorised by An tÚdarás.*

Head 10

Additional Functions

Provides that

- (1) The Minister may, following consultation with An tÚdarás and with the consent of the Minister for Public Expenditure and Reform, confer on An tÚdarás, by order such additional functions connected with the functions for the time being of An tÚdarás as he or she thinks fit, subject to such conditions (if any) as may be specified in the order.
- (2) An order under this section would take due cognisance of the resource requirements arising from any additional functions.
- (3) An order under this section may contain such incidental, supplemental and consequential provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

Explanatory Note

This head provides that the Minister may confer on An tÚdarás by order, additional functions connected with the functions for the time being of An tÚdarás, following consultation with An tÚdarás and with the consent of the Minister for Public Expenditure and Reform. Any such order would take due cognisance of the resource requirements arising from any additional functions.

This Head is set out in accordance with standard provisions (with some addition) for Conferral of additional functions based on a recent precedent in the Further Education And Training Act 2013.

Head 11 Consultants and advisers

Provides that

- (1) An tÚdarás may appoint such consultants and advisers, as it considers necessary for the performance of its functions.
- (2) An tÚdarás shall comply with any directions concerning the employment of consultants and advisers which may from time to time be given to it by the Minister, given with the consent of the Minister for Public Expenditure and Reform.
- (3) Any remuneration due to a consultant or adviser shall, having regard to guidelines issued from time to time by the Minister or the Minister for Public Expenditure and Reform, be paid out of moneys at An tÚdarás's disposal.

Explanatory Note

This Head is set out in accordance with standard provisions for the appointment of consultants and advisers based on a recent precedent in the Sport Ireland Act 2015.

Chapter 2 Ministerial Powers and Information

Head 12 Power of Minister to give direction to An tÚdarás

Provides that

- (1) The Minister may give a direction in writing to An tÚdarás for any purpose relating to this Act and concerning—
 - (a) any matter or thing referred to in this Act or any other enactment, and
 - (b) the implementation of any policy or objective of the Minister or the Government.
- (2) An tÚdarás shall comply with a direction given by the Minister under this section.
- (3) An tÚdarás shall, within the time specified by the Minister in the direction, inform the Minister of the measures taken by An tÚdarás to comply with that direction.
- (4) The Minister may, by direction, in writing, amend or revoke a direction under this section (including a direction under this subsection).

Explanatory Note

This Head provides that that the Minister may give a direction in writing to An tÚdarás requiring it to comply with any matter referred to in this Act or any other enactment or the implementation of any policy or objective of the Minister or the Government. It provides that An tÚdarás shall comply with any such direction and shall inform the Minister of the measures taken to comply with that direction. It also provides that the Minister may amend or revoke any such direction in writing.

This Head is set out based on recent precedents in section 12 of the Sport Ireland Act 2015 and section 47 of the Child and Family Agency Act 2013.

Head 13 Power of Minister to issue guidelines to an tÚdarás

Provides that

- (1) The Minister may at any time issue guidelines in writing to An tÚdarás for the purposes of this Act.
- (2) Such guidelines may relate to—
 - (a) codes of practice for governance or other such codes that may be issued from time to time by a Minister of the Government,
 - (b) additional policy guidance or changes in policy, and
 - (c) changes in prioritisation of annual plan commitments.
- (3) In performing its functions under this Act, An tÚdarás shall have regard to any guidelines issued by the Minister under this section.

Explanatory Note

This Head provides that the Minister may at any time issue guidelines in writing to An tÚdarás for the purposes of this Act which may relate to codes of practice for governance or other codes, additional policy guidance or changes in policy and changes in prioritisation of annual plan commitments. An tÚdarás shall have regard to any guidelines issued by the Minister in performing its functions under this Act.

This Head is set out based on recent precedents in section 48 of the Child and Family Agency Act 2013.

Head 14**Reports and Information to the Minister**

Provides that

- (1) An tÚdarás shall provide reports and information to the Minister in such form and manner and at such time as the Minister may specify on any matter related to the functions of An tÚdarás.

Explanatory Note

This Head provides that An tÚdarás shall provide reports and information to the Minister in such form and manner and at such time as the Minister may specify on any matter related to the functions of An tÚdarás.

Head 15

Advice to the Minister

Provides that

- (1) An tÚdarás may provide advice to the Minister on any matter related to the functions of An tÚdarás.
- (2) An tÚdarás shall provide advice as requested by the Minister in such form and manner and at such time as the Minister may specify on any matter related to the functions of An tÚdarás.

Explanatory Note

This Head provides that An tÚdarás may provide advice to the Minister on any matter related to the functions of An tÚdarás. It also provides that An tÚdarás shall provide advice as requested by the Minister on any matter related to the functions of An tÚdarás.

Chapter 3 Board and Committees

Head 16 Board of An tÚdarás

Provides that

- (1) An tÚdarás shall have a Board established under this Act to perform the functions of An tÚdarás.
- (2) The Second Schedule shall apply to the Board of An tÚdarás.
- (3) The Board shall—
 - (a) oversee the development of the corporate plan and the annual plan for An tÚdarás,
 - (b) satisfy itself that appropriate systems, procedures and practices are in place—
 - (i) to achieve the objects of An tÚdarás,
 - (ii) for the internal performance management and accountability of An tÚdarás in respect of —
 - I. performance of its functions,
 - II. achieving objectives in accordance with the corporate plan, and
 - III. achieving objectives in accordance with the annual plan,and
 - (iii) in order to enable compliance with the policies (whether set out in codes, guidelines or other documents, or any combination thereof) of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of An tÚdarás, and
 - (c) establish and implement arrangements for the management of the performance of the chief executive officer.
- (4) The Board is accountable to the Minister for the performance of its functions under subsections (1) and (3).
- (5) The Board may delegate in writing to the chief executive officer any of the functions of An tÚdarás with the exception of the functions of An tÚdarás under subsection (3).
- (6) If a function of An tÚdarás is delegated to the chief executive officer under subsection (5), the delegation remains in force until the Board revokes the delegation by notice in writing given to that officer.

- (7) The Board shall notify the Minister in writing of any delegation made under subsection (5) and of any revocation of such delegation.
- (8) The Board shall inform the Minister in writing of any matter that it considers requires the Minister's attention.

Explanatory Note

This Head provides that An tÚdarás shall have a Board established under this Act to perform the functions of An tÚdarás. The Board shall oversee the development of the corporate plan and the annual plan for An tÚdarás, satisfy itself that appropriate systems, procedures and practices are in place to achieve the objects of An tÚdarás, for the internal performance management and accountability of An tÚdarás, and in order to enable compliance with the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of An tÚdarás, and the Board shall also establish and implement arrangements for the management of the performance of the chief executive officer.

The Board is accountable to the Minister for the performance of its functions. The Board may delegate in writing to the chief executive officer any of the functions of An tÚdarás with the exception of the specific functions outlined in subsection (3) and the Board shall notify the Minister in writing of any delegation made and of any revocation of such delegation.

The Board shall inform the Minister in writing of any matter that it considers requires the Minister's attention.

This Head is based on a recent precedent in the Health Service Executive (Governance) Act 2019.

Head 17 Membership of the Board of An tÚdarás

- (1) The members of an tÚdarás who held office immediately before the appointed day shall cease to hold office upon such day but shall be eligible to be reappointed for a term not exceeding 4 years as a member of An tÚdarás subject to subsection (10).
- (2) The Board of An tÚdarás shall consist of the following members -
 - (a) a chairperson,
 - (b) a deputy chairperson, and
 - (c) 10 ordinary members.
- (3)
 - (a) Subject to paragraph (b), the chairperson, the deputy chairperson and the ordinary members of the Board shall be appointed by the Minister from among persons who, in the opinion of the Minister, have sufficient experience and expertise relating to -
 - (i) matters connected with the functions of An tÚdarás to enable them to make a substantial contribution to the effective and efficient performance of those functions, or
 - (ii) matters connected to education, teaching and learning, research, international perspectives, organisational and financial governance, management or public administration.
 - (b) At least 1 of the persons appointed under paragraph (a) shall be a student or a full-time officer of a national student union, nominated by a national student union.
- (4) The Minister when making appointments to the Board of An tÚdarás shall have regard to the objective that at least 40 per cent of members of the Board shall be women and at least 40 per cent shall be men.
- (5) The chairperson shall hold office for such period, not exceeding 4 years from the date of appointment, as the Minister shall determine.
- (6) The deputy chairperson shall hold office for such period, not exceeding 4 years from the date of appointment, as the Minister shall determine.
- (7) Subject to subsection (8), an ordinary member shall hold office for such period, not exceeding 4 years from the date of appointment, as the Minister shall determine.
- (8) Of the ordinary members of the Board first constituted under this section—

- (a) 5 members shall hold office for a period of 2 years from the date of appointment to the office, and
 - (b) 5 members shall hold office for a period of 4 years from the date of such appointment.
- (9) Subject to subsection (10), a member of the Board whose term of office expires by the efflux of time shall be eligible for reappointment to the Board.
- (10) A person who is reappointed to the Board in accordance with subsection (9) shall not hold office for more than 2 consecutive terms and in any event may not serve for a period of more than 8 years.

Explanatory Note

This head provides that the existing Board will cease on commencement day but that the existing members can be re-appointed. It provides that the Board will have 12 members (chairperson, deputy-chairperson and 10 ordinary members) and that all appointments are made by the Minister. It provides that the board shall consist of persons who, in the opinion of the Minister, have sufficient experience and expertise relating to matters connected with the functions of An tÚdarás to enable them to make a substantial contribution to the effective and efficient performance of those functions, or matters connected to education, teaching and learning, research, international perspectives, organisational or financial governance, management or public administration. It also provides that at least 1 of the members shall be a student or a full-time officer of a national student union, nominated by a national student union.

It provides for gender balance on the Board and that the terms of office of the members shall not exceed 4 years and members may not serve more than 2 consecutive terms of office up to a maximum of 8 years.

This Head is based on a recent precedent in the Health Service Executive (Governance) Act 2019.

Chapter 4 Co-operation with other bodies

Head 18 Co-operation with other bodies

Provides that

- (1) An tÚdarás may co-operate, support and undertake joint programmes of work with other bodies in the performance of its functions subject to section 19 for co-operation with the Qualifications and Quality Assurance Authority of Ireland and subject to section 20 for co-operation with An tSeirbhís Oideachais Leanúnaigh Agus Scileanna.
- (2) The bodies under section (1) may include –
 - (a) the Qualifications and Quality Assurance Authority of Ireland,
 - (b) An tSeirbhís Oideachais Leanúnaigh Agus Scileanna,
 - (c) Science Foundation Ireland,
 - (d) representative bodies for higher education providers,
 - (e) local or national student unions,
 - (f) representative bodies of staff and researchers in higher education providers,
 - (g) professional representative bodies,
 - (h) grant awarding bodies,
 - (i) Central Applications Office, and
 - (j) other bodies which An tÚdarás considers appropriate.

Explanatory Note

This Head provides that An tÚdarás may co-operate, support and undertake joint programmes of work with other bodies in the performance of its functions including the Qualifications and Quality Assurance Authority of Ireland, An tSeirbhís Oideachais Leanúnaigh Agus Scileanna, Science Foundation Ireland, , representative bodies for higher education providers, local or national student unions, representative bodies of staff in higher education providers, professional representative bodies, grant awarding bodies, Central Applications Office and other appropriate bodies.

Head 19 Co-operation with the Qualifications and Quality Assurance Authority of Ireland

Provides that

- (1) An tÚdarás shall co-operate with the Qualifications and Quality Assurance Authority of Ireland as appropriate in the performance of its functions and shall make a formal agreement with the Qualifications and Quality Assurance Authority of Ireland in relation to the functions of the two bodies.
- (2) The formal agreement under subsection (1) shall -
 - (a) identify the distinct functions of each body in relation to higher education providers,
 - (b) ensure that where there is a common function that agreement is reached on the role of each body,
 - (c) ensure a coherent and co-operative approach to engagement with higher education providers, including the sharing of information gathered between the two bodies in accordance with section 50 and section 51,
 - (d) ensure that the timing of any reviews of higher education providers carried out in accordance with the Qualifications and Quality Assurance (Education and Training) Act 2012 and any reviews of higher education providers carried out in accordance with this Act are appropriately aligned, and
 - (e) cover other issues agreed by the two bodies, in accordance with the functions of the two bodies.

Explanatory Note

This Head provides that An tÚdarás shall co-operate with the Qualifications and Quality Assurance Authority of Ireland as appropriate in the performance of its functions. It also provides that An tÚdarás shall make a formal agreement with the Qualifications and Quality Assurance Authority of Ireland in relation to the functions of the two bodies.

Head 20 Co-operation with An tSeirbhís Oideachais Leanúnaigh Agus Scileanna

Provides that

- (1) An tÚdarás and An tSeirbhís Oideachais Leanúnaigh agus Scileanna shall co-operate as appropriate in the performance of their functions and shall make a formal agreement in relation to the functions of the two bodies.
- (2) The formal agreement under subsection (1) shall ensure a coherent and co-operative approach to the performance of the functions of the two bodies in relation to –
 - (a) meeting the human capital and skills needs of the economy and society,
 - (b) enhanced co-operation and collaboration between the further education and training sector and the higher education sector including between providers at regional level,
 - (c) transfer and progression pathways between the further education and training sector and the higher education sector,
 - (d) enterprise and employer engagement,
 - (e) national-level development, monitoring, review and management of the apprenticeship system, and
 - (f) other common functions agreed by the two bodies.
- (3) The agreement under subsection (1) will provide for the establishment of a shared office to facilitate collaboration on the national-level development, monitoring, review and management of the apprenticeship system and may provide structures for cross sectoral collaboration for one or more of the purposes set out in subsection (2).
- (4) The structures at subsection (3) shall be set out in a formal agreement between the two bodies and agreed by their Boards.

Explanatory Note

This Head provides that An tÚdarás and An tSeirbhís Oideachais Leanúnaigh Agus Scileanna shall co-operate as appropriate in the performance of their functions and shall make a formal agreement between the two bodies to ensure a coherent and co-operative approach to the performance of the functions of the two bodies.

This Head also provides for the establishment of a shared office to facilitate collaboration on the national-level development, monitoring, review and management of the apprenticeship system and may provide structures for cross sectoral collaboration for one or more of the purposes set out in the Head. These structures will be set out in a formal agreement between the two bodies and agreed by their Boards.

Chapter 5 Funding and Accountability of An tÚdarás

Head 21 Grants to An tÚdarás

Provides that

- (1) In each financial year, the Minister shall advance to An tÚdarás out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine.
- (2) An tÚdarás shall not, in a financial year exceed the moneys provided by the Oireachtas.
- (3) An tÚdarás shall ensure that the moneys provided are utilised effectively and in accordance with value-for-money principles and guidelines.

Explanatory Note

This Head provides that a grant is provided to An tÚdarás each year out of moneys provided by the Oireachtas, by the Minister with the consent of the Minister for Public Expenditure and Reform.

It also provides that An tÚdarás shall not exceed the moneys provided and shall ensure that the moneys provided are utilised effectively and in accordance with value-for-money principles and guidelines.

This Head is set out in accordance with standard provisions for Grants to Agencies based on a recent precedent in the Further Education And Training Act 2013.

Head 22 Corporate Plan

Provides that

- (1) An tÚdarás shall prepare and adopt a corporate plan to be submitted to the Minister for approval, with or without amendment, for each ensuing 3 year period.
- (2) A corporate plan shall—
 - (a) include the key objectives, outputs and related strategies of An tÚdarás,
 - (b) include a review and evaluation of the work of An tÚdarás in the performance of its statutory functions in the previous 3 years,
 - (c) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister,
 - (d) be prepared and submitted to the Minister no later than—
 - (i) in respect of the first corporate plan after the appointed day, no later than 3 months after the appointed day, and
 - (ii) in respect of each subsequent corporate plan, not later than 3 months after the expiration of the existing corporate plan,
 - (e) be in accordance with the strategy for higher education under section 36 and the Performance Framework under section 38, and
 - (f) accord with the policies and objectives of the Minister and the Government as they relate to the functions of an tÚdarás.
- (3) When preparing the corporate plan, An tÚdarás -
 - (a) shall consult with the Minister, and
 - (b) may consult with such other persons or bodies as it considers appropriate.
- (4) Within 30 days of receiving a corporate plan, the Minister shall—
 - (a) approve the plan,
 - (b) issue directions regarding amendments to the proposed plan, or
 - (c) refuse to approve the plan where the plan is not amended in accordance with any directions that may be given by the Minister to An tÚdarás.
- (5) An approved corporate plan may be amended by—
 - (a) the Minister at any time, or
 - (b) An tÚdarás, where—
 - (i) An tÚdarás submits the proposed amendment to the Minister for approval, and

- (ii) the amendment is approved by the Minister.
- (6) Nothing in a corporate plan shall limit An tÚdarás in the performance of its functions.
- (7) As soon as practicable after approving the corporate plan, the Minister shall cause a copy of the corporate plan to be laid before each House of the Oireachtas.
- (8) An tÚdarás shall ensure that, as soon as practicable after copies of an approved corporate plan are laid before the Houses of the Oireachtas, the plan is published in such manner as the Minister may specify.

Explanatory Note

This Head provides that An tÚdarás shall prepare and adopt a corporate plan every 3 years. The corporate plan will include the key objectives, outputs and related strategies of An tÚdarás, include a review and evaluation of the work of An tÚdarás in the performance of its statutory functions in the previous 3 years, be in accordance with the strategy for higher education under section 36 and the Performance Framework under section 38, and accord with the policies and objectives of the Minister and the Government as they relate to the functions of an tÚdarás.

The first corporate plan after the appointed day will be prepared and submitted to the Minister no later than 3 months after the appointed day and each subsequent corporate plan will be prepared and submitted to the Minister no later than 3 months after the expiration of the existing corporate plan.

Within 30 days of receiving a corporate plan, the Minister shall approve the plan, issue directions regarding amendments to the proposed plan, or refuse to approve the plan where the plan is not amended in accordance with any directions that may be given by the Minister to An tÚdarás.

An approved corporate plan may be amended by the Minister at any time, or An tÚdarás if the Minister approves the amendment.

The Minister will lay the corporate plan before the houses of the Oireachtas and it shall be published.

This Head is set out in accordance with the provisions in sections 42 and 43 of the Child and Family Agency Act 2013.

Head 23 Annual Plan

Provides that

- (1) An tÚdarás shall prepare and submit to the Minister, no later than 28 days following notification of the financial allocation by the Minister for the next financial year, an annual plan relating to the discharge of its functions.
- (2) An annual plan shall—
 - (a) outline the proposed activities for An tÚdarás for the period to which the annual plan relates and the performance targets relating to those activities,
 - (b) detail the proposed allocation of the total resources (both financial and human) of An tÚdarás for the period to which the annual plan relates and the objectives and outcomes achieved from public investment in designated institutions of higher education and other bodies,
 - (c) detail the monitoring arrangements of the performance targets,
 - (d) detail the reporting arrangements to the Minister,
 - (e) detail how An tÚdarás shall deliver on the objects under section 8,
 - (f) contain any other information specified by the Minister, and
 - (g) accord with the guidelines, policies and objectives of the Minister and the Government as they relate to the functions of An tÚdarás.
- (3) In preparing the annual plan, An tÚdarás shall have regard to the corporate plan under section 22 and the strategy for higher education under section 36 and any direction given by the Minister under subsection (4).
- (4) The Minister may, from time to time, issue directions or guidelines to An tÚdarás concerning the preparation of the annual plan.
- (5) An tÚdarás shall implement the annual plan prepared in accordance with *subsection (2)* unless the Minister, within 30 days of the submission of the annual plan, directs An tÚdarás in writing to amend the annual plan if, in the Minister's opinion, the annual plan—
 - (a) does not contain any information required under *subsection (2)*,
 - (b) does not comply in any other respect with *subsection (2)*, or
 - (c) has been prepared without regard to the matters specified in *subsection (2)* or (3).
- (6) When giving a direction to An tÚdarás under subsection (5), the Minister shall give his or her reasons in writing for the direction to An tÚdarás.

- (7) An tÚdarás shall comply with a direction under *subsection (5)* within the period, if any, specified in the direction.
- (8) An tÚdarás may amend an annual plan, in accordance with a direction under *subsection (5)*, and where it does so *subsections (2) to (7)* shall apply, with any necessary modifications, to the preparation of the amended annual plan as they apply to an annual plan prepared under *subsection (1)*.
- (9) An tÚdarás shall—
 - (a) inform the Minister of the measures taken to achieve the priorities determined and the performance targets established under this section and of the outcome of those measures, and
 - (b) provide that information at intervals specified by the Minister or, if no such intervals are specified, in the annual report.

Explanatory Note

This Head provides that An tÚdarás shall prepare and submit an annual plan to the Minister, no later than 28 days following notification of the financial allocation by the Minister for the next financial year.

The annual plan shall outline the proposed activities for An tÚdarás for the period to which the annual plan relates and the performance targets relating to those activities, detail the proposed allocation of the total resources (both financial and human) of An tÚdarás for the period to which the plan relates and the objectives and outcomes achieved from public investment in designated institutions of higher education and other bodies, detail the monitoring arrangements of the performance targets, detail the reporting arrangements to the Minister, detail how it will deliver on the objects under section 8 of this legislation, contain any other information specified by the Minister, accord with the policies and objectives of the Minister and the Government as they relate to the functions of An tÚdarás and have regard to the corporate plan under section 22 and the strategy for higher education under section 36 and any direction given by the Minister with regard to the annual plan.

The Minister may within 30 days of the submission of the plan, direct An tÚdarás in writing to amend the plan if, in the Minister's opinion, the plan does not contain the information required or does not comply with this section and An tÚdarás may amend an annual plan in accordance with this direction.

An tÚdarás shall inform the Minister of the measures taken to achieve the priorities determined and the performance targets established under this section and of the outcome of those measures, and provide that information at intervals specified by the Minister or, if no such intervals are specified, in the annual report.

This Head is modelled on provisions under section 46 of the Child and Family Agency Act, 2013.

Head 24

Accounts of An tÚdarás

Provides that

- (1) An tÚdarás shall keep, in such form as may be approved by the Minister with the consent of the Minister for Public Expenditure and Reform all proper and usual accounts and records of all moneys received or expended by it.
- (2) An tÚdarás shall each year submit accounts kept under subsection (1) for audit to the Comptroller and Auditor General to the extent and by such date as he or she may from time to time direct.
- (3) Immediately after the audit referred to in subsection (2) An tÚdarás shall furnish to the Minister a copy of –
 - (a) the accounts, and
 - (b) the report of the Comptroller and Auditor General on the accounts.
- (4) The Minister shall cause a copy of the accounts furnished under this Head and a copy of the report of the Comptroller and Auditor General on those accounts, to be laid before each House of the Oireachtas.

Explanatory Note

This Head provides for the keeping of accounts by An tÚdarás in such form as approved by the Minister with the consent of the Minister for Public Expenditure and Reform and the submission of the accounts for audit to the C&AG and the submission of the accounts to the Minister immediately after completion of the Audit and the laying of the accounts and the C&AG report on the accounts before each House of the Oireachtas.

This Head is set out in accordance with standard provisions for Accounts based on a recent precedent in the Technological Universities Act 2018.

Head 25

Annual Report

Provides that

- (1) An tÚdarás shall, not later than 30 June in each year, or such other date as the Minister may specify in writing, prepare and submit to the Minister a report on its activities in the immediately preceding year.
- (2) The Minister shall, as soon as may be after receiving the report, cause copies of it to be laid before each House of the Oireachtas.
- (3) As soon as may be following the copies being laid before each House of the Oireachtas under subsection (2), An tÚdarás shall arrange for the report to be published in such manner as An tÚdarás considers appropriate.

Explanatory Note

This Head provides that An tÚdarás prepares and submits to the Minister an annual report by 30 June each year or such other date as specified by the Minister and that this report is laid before the Houses of the Oireachtas and is published in an appropriate manner.

This Head is set out in accordance with standard provisions for Annual Report based on a recent precedent in the Technological Universities Act 2018.

Head 26

Gifts

Provides that

- (1) An tÚdarás may, with the consent of the Minister and the Minister for Public Expenditure and Reform, accept gifts or money, land or other property upon such trusts and conditions (if any) as may be specified by the donor.
- (2) An tÚdarás shall not accept a gift if the trusts or conditions attaching to it would be inconsistent with its functions.

Explanatory Note

This Head provides that An tÚdarás may accept gifts or money, land or other property with the consent of the Minister and the Minister for Public Expenditure and Reform but shall not accept a gift if the trusts or conditions attaching to it are inconsistent with its functions.

This Head is set out in accordance with standard provisions for Gifts based on a recent precedent in the Further Education And Training Act 2013.

Chapter 6 – Chief Executive Officer

Head 27 Chief Executive Officer

Provides that

- (1) An tÚdarás shall have a chief executive officer.
- (2) The chief executive officer shall be appointed by An tÚdarás with the consent of the Minister subject to subsection (3).
- (3) The person who immediately before the appointed day under section 7 was the chief executive officer of an tÚdarás um Ard-Oideachas may continue in office as the chief executive officer of An tÚdarás in accordance with the terms and conditions of his or her appointment.
- (4) The chief executive officer may be removed from office by An tÚdarás for stated reasons.
- (5) The chief executive officer shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) as may be determined by An tÚdarás, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.
- (6) The chief executive officer shall not hold any other office or employment or carry on any business without the consent of An tÚdarás.

Explanatory Note:

This Head provides for the appointment of the chief executive officer by An tÚdarás with the consent of the Minister. It also provides for the continuation in office of the chief executive officer who is in place immediately before the appointed day. It provides that the chief executive officer may be removed from office by An tÚdarás for stated reasons and that the chief executive officer will hold office subject to the terms and conditions determined by An tÚdarás with the approval of the Minister and the consent of the Minister for Public Expenditure and Reform. It provides that the chief executive officer shall not hold any other office or employment.

The provisions in the above Head are standard provisions for the appointment of Chief Executive Officers and are based on a recent precedent for the appointment of a President of a technological university in section 13 of the Technological Universities Act 2018.

Head 28

Functions of Chief Executive Officer

Provides that

- (1) The chief executive officer shall carry on and manage, and control generally, the administrative and financial activities of An tÚdarás and matters relating to its staff and perform such other functions (if any) as may be determined by An tÚdarás, and for those purposes shall have such powers as are necessary or expedient.
- (2) The chief executive officer shall perform his or her functions subject to such policies as may be determined from time to time by An tÚdarás, and shall be accountable to An tÚdarás for the efficient and effective management of An tÚdarás and for the due performance of his or her functions.
- (3) The chief executive officer may make proposals to An tÚdarás on any matter relating to its functions.
- (4) The chief executive officer shall provide the members of An tÚdarás with all necessary information to enable the effective performance of the Board in accordance with the relevant governance frameworks for State Bodies as approved by the Minister.
- (5) The chief executive officer shall provide the members of An tÚdarás with any such information (including financial information) in relation to the performance of his or her functions as the members may request.
- (6) An tÚdarás may designate a member of the staff of An tÚdarás to perform the functions of the chief executive officer in the absence of the chief executive officer or where the position of the chief executive officer is vacant, and a member so designated shall in such absence or upon such position being vacant, perform those functions.
- (7) The chief executive officer may delegate any of his or her functions to another employee of An tÚdarás, and the employee concerned shall be accountable to the chief executive officer for the performance of the functions so delegated.
- (8) The chief executive officer shall, notwithstanding any delegations made by him or her in accordance with subsection (7), at all times remain accountable to An tÚdarás for the performance of any functions so delegated.
- (9) The chief executive officer may revoke a delegation made in accordance with subsection (7).

Explanatory Note

This section outlines the functions of the Chief Executive Officer and provides that the chief executive officer is required to provide information to the Board, can delegate functions to another employee (but still remains accountable for delegated functions) and provides that An tÚdarás may designate another employee to perform the functions of the chief executive officer in the absence of the chief executive officer where the position is vacant.

The provisions in the above Head are mainly standard provisions in relation to the functions of Chief Executive Officers and are based on a recent precedent for the functions of a Chief Executive in sections 16 and 17 of the Qualifications and Quality Assurance (Education and Training) Act 2012..

Head 29 Committee

Accountability of chief executive officer to Public Accounts

Provides that

- (1) The chief executive officer shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (in this section referred to as the “Committee”), give evidence to that Committee in relation to –
 - (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that An tÚdarás is required by this Act to prepare,
 - (b) the economy and efficiency of An tÚdarás in the use of its resources,
 - (c) the systems, procedures and practices employed by An tÚdarás for the purpose of evaluating the effectiveness of its operations, and
 - (d) any matter affecting An tÚdarás referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in clause (a), (b) or (c) that is laid before Dáil Éireann.
- (2) In the performance of his or her duties under this paragraph, the chief executive officer shall not question or express an opinion on the merits or any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

Explanatory Note

This section provides for the accountability of the chief executive officer to the Public Accounts Committee

This Head is set out in accordance with standard provisions for Accountability of chief executive officer to Public Accounts Committee based on a recent precedent in the Further Education And Training Act 2013.

Head 30 Committees

Accountability of chief executive officer to other Oireachtas

Provides that

- (1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such Committee.
- (2) Subject to subsection (3), the chief executive Officer shall, at the request in writing of a Committee, attend before it to give account for the general administration of An tÚdarás.
- (3) The chief executive officer shall not be required to give account before a Committee for any matter that is or has been or may be the subject of proceedings before a court or Tribunal in the State.
- (4) Where the chief executive officer is of the opinion that a matter in respect of which he or she is requested to give account before a Committee is a matter to which subsection (3) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and unless the chief executive officer does so at a time when he or she is before the Committee, he or she shall do so in writing.
- (5) Where the chief executive officer has informed a Committee of his or her opinion in accordance with subsection (4) and the Committee does not withdraw the request referred to in subsection (2) in so far as it relates to a matter the subject of that opinion –
 - (a) the chief executive officer may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question of whether the matter is one to which subsection (3) applies, or
 - (b) the Chairperson of the Committee may, on behalf of the Committee, make an application,and the High Court shall determine the matter.
- (6) Pending the determination of an application under subsection (5), the chief executive officer shall not attend before the Committee to give account for the matter the subject of the application.

- (7) If the High Court determines that the matter concerned is one to which subsection (3) applies, the Committee shall withdraw the request referred to in subsection (2), but if the High Court determines that subsection (3) does not apply, the chief executive officer shall attend before the Committee to give account for the matter.
- (8) In the performance of his or her duties under this section, the chief executive officer shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government, or the merits of the objectives of such a policy.

Explanatory Note

This section provides for the accountability of the chief executive officer to other Oireachtas Committees.

This Head is set out in accordance with standard provisions for Accountability of chief executive to other Oireachtas Committees based on a recent precedent in the Further Education And Training Act 2013.

Chapter 7 Staff and Superannuation

Head 31 Staff

Provides that

- (1) An tÚdarás may, with the consent of the Minister and the Minister for Public Expenditure and Reform, appoint such and so may persons to be member of staff of An tÚdarás as it from time to time considers appropriate.
- (2) The staff of An tÚdarás shall be employed on such terms and conditions as may be determined by An tÚdarás from time to time subject to the consent of the Minister and the Minister for Public Expenditure and Reform.
- (3) There shall be paid by An tÚdarás to its staff such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister with the consent of the Minister for Public Expenditure and Reform.
- (4) An tÚdarás may, in accordance with procedures established by An tÚdarás following consultation with each trade union or staff association recognised by it, suspend or dismiss a member of its staff.
- (5) Where a member of staff of An tÚdarás is –
 - (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
 - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,he or she shall thereupon stand seconded from employment by An tÚdarás and shall not be paid by, or be entitled to receive from, An tÚdarás any remuneration, fees, allowances or expenses in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected (as the case may be), and ending when such person ceases to be a member of either such House or a member of such Parliament.
- (6) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified from employment in any capacity by An tÚdarás.
- (7) A period mentioned in subsection (5) shall not, for the purposes of any superannuation benefit, be reckoned as service with An tÚdarás.

Explanatory Note

This Head provides that An tÚdarás can employ staff members in accordance with terms and conditions approved by the Minister and the Minister for Public Expenditure and Reform. It provides for the payment

of remuneration, fees, allowances and expenses as approved by the Minister with the consent of the Minister for Public Expenditure and Reform. It provides for the dismissal or suspension of a staff member in accordance with procedures agreed with trade unions. It provides for the secondment of staff members who become a member of either House of the Oireachtas or the European Parliament and it provides that a member of either House of the Oireachtas or the European Parliament cannot become a staff member of An tÚdarás.

This Head is set out in accordance with standard provisions for Staff on a recent precedent in the Technological Universities Act 2018 and the Further Education and Training Act 2013 (in relation to membership of either House of the Oireachtas or European Parliament)

Head 32

Existing Staff of the Higher Education Authority

Provides that

- (1) Every person who, immediately before the appointed day –
 - (a) was a member of the staff of An tÚdarás shall, on the appointed day, become a member of staff of An tÚdarás, and
 - (b) was a fixed-term employee of An tÚdarás shall, on the appointed day, become a fixed-term employee of An tÚdarás for the duration of his or her contract of employment.
- (2) Except in accordance with a collective agreement negotiated with a recognised trade union or staff association, a person referred to in subsection (1) shall be subject to such terms and conditions of service including terms and conditions relating to remuneration, as are not less favourable than the terms and conditions of service, including terms and conditions relating to remuneration, to which the person was subject immediately before the commencement day.
- (3) In subsection (2), a reference to terms and conditions relating to remuneration does not include conditions in relation to superannuation.

Explanatory Note

This Head provides that existing staff of An tÚdarás become staff of An tÚdarás after the commencement of the Act under the same terms and conditions of service unless an agreement is negotiated with a recognised trade union or staff association.

Head 33

Disclosure by member of staff of An tÚdarás of certain interests

Provides that

- (1) Where a member of staff of An tÚdarás has a material interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which An tÚdarás is a party, that person shall –
 - (a) disclose to An tÚdarás his or her interest and the nature thereof,
 - (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by An tÚdarás or members of the staff of An tÚdarás in relation thereto, and
 - (c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement.
- (2) Subsection (1) shall not apply to contracts or proposed contracts of employment of member of the staff of An tÚdarás with An tÚdarás.
- (3) Where a person contravenes this section, An tÚdarás may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's employment.

Explanatory Note

This Head provides that if a staff member has a material interest in any contract, agreement or arrangement to which An tÚdarás is a party the staff member shall disclose this interest to An tÚdarás and take no part in the negotiation of the contract, agreement or arrangement and shall not influence or seek to influence a decision or recommendation to be made in the matter.

This Head is set out in accordance with standard provisions for Disclosure by members of staff based on a recent precedent in the Further Education And Training Act 2013.

Head 34 Prohibition on unauthorised disclosure of confidential information

Provides that

- (1) A person shall not disclose confidential information obtained by him or her while performing functions as a member of the staff of, or an adviser or consultant to An tÚdarás, or a member of the staff of such an adviser or consultant, unless he or she is authorised by An tÚdarás to so do.
- (2) A person who contravenes subparagraph (1) commits an offence.
- (3) Nothing in this paragraph shall prevent the disclosure of information –
 - (a) in a report made to An tÚdarás,
 - (b) by or on behalf of An tÚdarás to the Minister,
 - (c) by a member of An tÚdarás to the Minister, or
 - (d) by a person in the circumstances referred to in section 35 (2) of the Ethics in Public Office Act 1995.
- (4) In this paragraph “confidential information” includes –
 - (a) information that is expressed by An tÚdarás to be confidential either as regards particular information or as regards information of a particular class or description, and
 - (b) proposals of a commercial nature or tenders submitted to An tÚdarás by contractors, consultants or any other person.

Explanatory Note

This Head provides that a staff member of An tÚdarás or an advisor or consultant to An tÚdarás shall not disclose confidential information related to An tÚdarás.

This Head is set out in accordance with standard provisions for Prohibition on unauthorised disclosure of confidential information based on a recent precedent in the Technological Universities Act 2018.

Head 35

Superannuation

Provides that

- (1) Subject to section 48 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, a pensionable public servant who –
 - (a) is not a member of the Single Public Service Pension Scheme, and
 - (b) is appointed under section 31 to be a member of An tÚdarásshall on his or her appointment to An tÚdarás become and be a member of a relevant superannuation scheme in accordance with its terms and conditions.
- (2) A person referred to in section 32 who, immediately before the appointed day, was a member of a relevant superannuation scheme or the Single Public Service Pension Scheme shall, on the appointed day, continue to be a member of such scheme in accordance with its terms and conditions.
- (3) An tÚdarás may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under Section 15 of the Higher Education Authority Act 1971 and the amended scheme shall be made in accordance with Schedule 1 of this Act.
- (4) An tÚdarás may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this Section and Schedule 1 of this Act and the amended scheme shall be made in accordance with Schedule 1 of this Act.
- (5) In this section “relevant superannuation scheme” means a scheme or schemes made under Section 15 of the Higher Education Authority Act 1971 as amended from time to time by the Minister with the consent of the Minister for Public Expenditure and Reform.
- (6) Insert a saver in respect of the existing superannuation schemes to ensure that the pension rights of the existing and former employees of An tÚdarás um Ard Oideachais are not affected by this legislation.

Explanatory Note

This Head provides that new appointees to An tÚdarás shall be a member of the Single Scheme or the HEA superannuation scheme as appropriate. It also provides that existing members of the HEA continue in membership of the single scheme or the HEA superannuation scheme as appropriate. It provides that An tÚdarás may with the Minister’s approval amend the HEA superannuation scheme/s made under Section 15 of the HEA Act 1971 and it also provides that An tÚdarás may with the Minister’s approval amend a scheme made under this section.

A saver may also need to be included in relation to the existing HEA superannuation schemes as the HEA Act 1971 is being revoked which may mean that the pension schemes made under this act are also

revoked. The relevant superannuation schemes made under Section 15 of the HEA Act 1971 are An tÚdarás um Ard-Oideachas Staff Superannuation Scheme 1980 and An tÚdarás um Ard-Oideachas Spouses' and Children's Contributory Pensions Scheme, 1985.

Schedule 1 outlines the detailed requirements for An tÚdarás superannuation scheme.

This Head has been adapted from a recent precedent in the Technological Universities Act 2018 in relation to the single scheme.

Part 3

Higher Education Sector

Chapter 1 Strategic Planning

Head 36 Strategy for Higher Education

Provides that

- (1) The Minister shall prepare a Strategy encompassing the provision in the State of higher education, including teaching, learning and research, as soon as practicable and no later than two years after the appointed day.
- (2) The Strategy under subsection (1) shall be for such period as the Minister considers appropriate being a period of not less than five years and not more than seven years.
- (3) The Minister shall prepare each subsequent Strategy no later than 3 months after the expiration of the previous Strategy.
- (4) The Minister shall, in the preparation of a strategy under this section have regard to –
 - (a) any relevant national policies,
 - (b) the wider tertiary education sector,
 - (c) the likely cost of implementing any such strategy, and
 - (d) the availability of resources.
- (5) The Strategy shall include key objectives and outputs for the higher education sector as part of the wider tertiary education sector.
- (6) The Minister shall for the purpose of preparing a strategy under this section, consult with any bodies or persons the Minister considers appropriate.
- (7) The Minister shall publish the strategy as soon as practicable after completion in such manner as the Minister considers appropriate.
- (8) A strategy under this section shall be reviewed by the Minister at least every four years or by decision of the Minister and the strategy may be amended following the review.

- (9) The Minister shall publish any review of the strategy and any amended strategy under subsection (8) as soon as practicable after completion in such manner as the Minister considers appropriate.

Explanatory Note

This Head provides that the Minister will develop a strategy encompassing the provision of higher education (including teaching, learning and research) in the State as soon as practicable and no later than two years after the appointed day. The strategy shall be for a period of between five and seven years. It also provides that the Minister shall prepare each subsequent Strategy no later than 3 months after the expiration of the previous Strategy. The Strategy shall include key objectives and outputs for the higher education sector as part of the wider tertiary education sector

This Head provides that in the preparation of a strategy the Minister

- *shall have regard to any relevant national policies, the tertiary education sector, the likely cost of implementing any such strategy and the availability of resources. .*
- *shall consult with any bodies or persons the Minister considers appropriate. A strategy under this section shall be reviewed by the Minister at least every four years or by decision of the Minister and the strategy may be amended following the review.*

The Minister shall publish the strategy, any review of the strategy and any amended strategy as soon as practicable after completion in such manner as the Minister considers appropriate.

Head 37 Planning for higher education provision

Provides that

- (1) An tÚdarás shall plan for higher education provision by maintaining a continuous review of the demand for higher education.
- (2) An tÚdarás may for the purpose of maintaining a review of the demand for higher education under subsection (1), consult with –
 - (a) relevant Departments of State,
 - (b) An tSeirbhís Oideachais Leanúnaigh Agus Scileanna,
 - (c) the Qualifications and Quality Assurance Authority of Ireland,
 - (d) higher education providers or their representative bodies,
 - (e) national students unions, and
 - (f) any other bodies or persons it considers appropriate.
- (3) An tÚdarás shall in the undertaking of a review under subsection (1) –
 - (a) measure the current number and distribution of students in each of the designated institutions of higher education,
 - (b) measure the current number of students in each discipline,
 - (c) measure the participation by disadvantaged persons or groups in higher education, and
 - (d) assess the demand for higher education regionally and nationally and in each discipline having regard to –
 - (i) the current numbers of students,
 - (ii) demographic projections,
 - (iii) the participation and demand for further education and training,
 - (iv) equality, diversity and inclusion,
 - (v) education and skills requirements of the State,
 - (vi) environmental sustainability,
 - (vii) graduate outcomes,
 - (viii) emerging needs,
 - (ix) social economic and cultural requirements, and
 - (x) other relevant issues.
- (4) An tÚdarás shall recommend to the Minister the overall provision of student places to be made within the higher education system having regard to –
 - (a) the review under subsection (1),
 - (b) the Strategy for Higher Education under Section 36,
 - (c) any policy directions given by the Minister,
 - (d) the current numbers of students,

- (e) demographic projections,
- (f) any relevant national policies,
- (g) equality, diversity and inclusion,
- (h) education and skills requirements of the State,
- (i) the participation and demand for further education and training,
- (j) environmental sustainability,
- (k) graduate outcomes,
- (l) emerging needs,
- (m) social, economic and cultural requirements, and
- (n) other relevant issues.

Explanatory Note

This Head provides that An tÚdarás shall plan for higher education provision by maintaining a continuous review of the demand for higher education.

An tÚdarás may for the purpose of maintaining a review of the demand for higher education consult with relevant Departments of State, An tSeirbhís Oideachais Leanúnaigh Agus Scileanna, the Qualifications and Quality Assurance Authority of Ireland, higher education providers or their representative bodies, national students unions, and any other bodies or persons it considers appropriate.

An tÚdarás shall in the undertaking of a review:

- measure the current number and distribution of students in each of the designated institutions of higher education,
- measure the current number of students in each discipline,
- measure the participation by disadvantaged persons or groups in higher education, and
- assess the demand for higher education regionally and nationally and in each discipline having regard to the current numbers of students, demographic projections, the participation and demand for further education and training, equality, diversity and inclusion, education and skills requirements of the State, environmental sustainability, graduate outcomes, emerging needs, social, economic and cultural requirements and other relevant issues.

An tÚdarás shall recommend to the Minister the overall provision of student places to be made within the higher education system having regard to –

- the review under subsection (1),
- the Strategy for Higher Education under Section 37,
- any policy directions given by the Minister,
- the current numbers of students,
- demographic projections,
- any relevant national policies,
- equality, diversity and inclusion,
- education and skills requirements of the State,
- the participation and demand for further education and training,
- environmental sustainability,
- graduate outcomes,
- emerging needs,
- social, economic and cultural requirements, and
- other relevant issues.

Head 38 Performance Framework

Provides that

- (1) The Minister shall develop a performance framework for the higher education sector which the Minister wishes to achieve with Exchequer funding at least every four years and shall advise An tÚdarás of this performance framework.
- (2) The performance framework at subsection (1) shall take account of -
 - (a) the Strategy for higher education under section 36,
 - (b) national policy and objectives, and
 - (c) priorities for implementation identified by the Minister.
- (3) The performance framework at subsection (1) shall include –
 - (a) performance objectives for the higher education sector through utilisation of Exchequer funding, and
 - (b) an implementation, monitoring, assessment and reporting process for the performance framework for the higher education sector.
- (4) The Minister shall review the performance framework from time to time as required.
- (5) The Minister may amend the performance framework following a review under subsection (4).
- (6) An tÚdarás shall agree at least every four years a performance agreement in accordance with the performance framework at subsection (1) and in consultation with the relevant body for –
 - (a) a previously established university,
 - (b) an educational institution established as a university under section 9 of the Universities Act 1997,
 - (c) a technological university within the meaning of the Technological Universities Act 2018,
 - (d) a college to which the Institutes of Technology Acts 1992 to 2006 apply,
 - (e) the National College of Art and Design,
 - (f) St. Angela’s College,
 - (g) Mary Immaculate College, and
 - (h) Other designated institutions as determined by An tÚdarás in receipt of significant public funds.
- (7) An tÚdarás may agree at least every four years a performance agreement in accordance with the performance framework at subsection (1) for a designated

institution of higher education not listed in subsection (6) in consultation with the relevant body.

- (8) The performance agreement for a designated institution of higher education under subsection (6) or (7) shall be in accordance with the performance framework at subsection (1) and shall take account of -
 - (a) the Strategy for higher education under section 36,
 - (b) national policy and objectives,
 - (c) any strategic development plan of the designated institution of higher education, and
 - (d) priorities for implementation identified by the Minister in consultation with An tÚdarás.
- (9) The performance agreement for a designated institution of higher education under subsection (6) or (7) shall include –
 - (a) performance objectives agreed between the designated institution of higher education and An tÚdarás, and
 - (b) an implementation, monitoring, assessment and reporting process agreed between the designated institution of higher education and An tÚdarás.
- (10) An tÚdarás shall review annually the performance agreements agreed at subsection (6) and (7) for the designated institution of higher education, in consultation with the relevant designated institution of higher education.
- (11) An tÚdarás may amend the performance agreement agreed at subsection (6) or (7) for any designated institution of higher education following a review under subsection (10).
- (12) A designated institution of higher education shall provide reports to An tÚdarás on a regular basis in accordance with the monitoring, assessment and reporting process for the performance agreement agreed under subsection 9 (b).
- (13) An tÚdarás shall compile an annual report on the performance framework which shall include information on –
 - (a) the implementation of the performance framework in the higher education system, including the achievement of the objectives set by the Minister in the performance framework in accordance with subsection (3) and
 - (b) information on the performance of individual designated institutions of higher education in accordance with subsection (12).
- (14) An tÚdarás shall submit the annual report at subsection (13) to the Minister.

- (15) An tÚdarás shall publish the report under subsection (14) in such manner as An tÚdarás considers appropriate.

Explanatory Note

This Head provides that the Minister shall develop at least every four years a performance framework for the higher education sector and shall advise An tÚdarás of this performance framework. It provides that the performance framework shall take account of the Strategy for higher education, national policy and objectives and priorities for implementation identified by the Minister. It also provides that the performance framework shall include performance objectives and a monitoring, assessment and reporting process. It also provides for review and amendment of the framework on an annual basis.

The Head also provides that An tÚdarás shall agree at least every four years in consultation with the individual designated institutions of higher education a performance agreement for universities, technological universities, institutes of technology, the NCAD and any other public sector designated institutions of higher education. It provides that An tÚdarás may agree at least every four years a performance agreement for other designated institutions of higher education. It provides that the performance agreement shall take account of the Strategy for higher education, national policy and objectives and any strategic development plan of the designated institution of higher education and priorities for implementation identified by the Minister in consultation with An tÚdarás. It also provides that the performance agreement shall include performance objectives and a monitoring, assessment and reporting process. It provides for review and amendment of the agreement on an annual basis.

There is provision for an annual reporting process to An tÚdarás, the submission of the annual report to the Minister and the publication by An tÚdarás of the report.

Chapter 2 Provision of funding by An tÚdarás

Head 39 Grants by An tÚdarás

Provides that

- (1) An tÚdarás may provide funding from moneys provided to An tÚdarás under Section 21 to -
 - (a) a designated Institution of higher education,
 - (b) a higher education provider which is not a designated institution of higher education,
 - (c) a body which provides support services for higher education, or
 - (d) other education providers, bodies or persons which provide services consistent with the functions of An tÚdarás

in such manner and subject to such conditions as may be determined by An tÚdarás and in accordance with subsections (2) and (3) and sections 40, 41 and 42.
- (2) An tÚdarás shall with the approval of the Minister from time to time develop and establish a framework for the allocation of funding under subsection (1) consistent with the Objects and Functions of An tÚdarás as set out in this Act and in accordance with any policy directions given by the Minister. This framework –
 - (a) shall establish such criteria, terms and conditions for the provision of funding as An tÚdarás with the approval of the Minister deems appropriate,
 - (b) may establish different criteria, terms and conditions for different funding schemes and programmes,
 - (c) may provide that certain funding schemes and programmes are allocated to –
 - (i) certain named designated institutions of higher education only,
 - (ii) certain named higher education providers only, or
 - (iii) certain named other bodies or persons only,
 - (d) may provide that certain funding schemes and programmes are allocated based on a competitive selection process,
 - (e) may provide for a funding scheme or programme to address specific strategic policy priorities with identified policy outcomes,
 - (f) may provide for performance based funding,
 - (g) may provide for a funding scheme or programme to target students who are underrepresented in higher education, and
 - (h) may provide that funding is for a specific time period.

- (3) The criteria, terms and conditions of the framework for the provision of funding in relation to specific funding schemes and programmes under subsection (2) may include –
- (a) the requirement to be a public sector higher education provider,
 - (b) the requirement to be a designated institution of higher education under this Act,
 - (c) the requirement to provide programmes which lead to at least one higher education award that is included within the National Framework of Qualifications,
 - (d) that the body has integrated, coherent and effective governance structures in place concerning academic, administrative, financial and management matters,
 - (e) that the body has been established and is operated for the principle purposes of higher education and training,
 - (f) that the body has, under section 28 of the Qualifications and Quality Assurance (Education and Training) Act 2012, established procedures in writing for quality assurance in relation to which -
 - (i) no notice has been furnished by the Qualifications and Quality Assurance Authority of Ireland under section 36(1) of the Qualifications and Quality Assurance (Education and Training) Act 2012, or
 - (ii) approval has not been withdrawn under section 36 of that Act,
 - (g) that the body is financially viable and has sufficient financial resources available to meet the requirements for which funding is provided,
 - (h) that the body promotes access to the education it provides, by economically or socially disadvantaged persons, by persons who have disability and by persons from sections of society who are significantly under-represented in its student body,
 - (i) that the body has a good track record in relation to performance in the field of education,
 - (j) that the body is delivering programmes that respond to the delivery of policies or objectives of the Government or the Minister as they relate to higher education and training and to the needs of business, enterprise, the professions, the community, local interests and other stakeholders,
 - (k) that the qualifications of the academic staff of the body are at a sufficiently high level to provide the educational programmes for which funding is provided, and
 - (l) other criteria, terms and conditions as determined by An tÚdarás with the approval of the Minister.

- (4) Nothing in this section shall guarantee that a designated institution of higher education, other higher education provider, other education provider, other body or person will be allocated funding by An tÚdarás in a financial year.

Explanatory Note

This Head provides that grants may be issued by An tÚdarás to -

- (i) A designated Institution of higher education,*
- (ii) A higher education provider which is not a designated institution of higher education,*
- (iii) a body which provides support services for higher education, or*
- (iv) other education providers, bodies or persons which provide services consistent with the functions of An tÚdarás*

in such manner and subject to such conditions as may be determined by An tÚdarás.

It provides that An tÚdarás shall develop and establish a framework from time to time with the approval of the Minister for the allocation of funding, which is consistent with the objects and functions of An tÚdarás as set out in this Act and in accordance with any policy directions given by the Minister. This framework –

- will establish such criteria, terms and conditions for the provision of funding as An tÚdarás with the approval of the Minister deems appropriate,*
- May establish different criteria, terms and conditions for different funding schemes and programmes,*
- May provide that certain funding schemes and programmes are allocated to –*
 - certain named designated institutions of higher education only,*
 - certain named higher education providers only, or*
 - certain named other bodies or persons only.*
- May provide that certain funding schemes and programmes are allocated based on a competitive selection process,*
- May provide for a funding scheme or programme to address specific strategic policy priorities with identified policy outcomes,*
- May provide for performance based funding,*
- May provide for a funding scheme or programme to target students who are underrepresented in higher education,*
- May provide that funding is for a specific time period.*

This Head also sets out the criteria terms and conditions for the provision of funding to specific schemes and programmes under the framework.

It provides that nothing in this section guarantees funding to a designated institution of higher education, other higher education provider, other education provider, other body or person.

Head 40 Conditions of Funding

- (1) Funding provided to a body from An tÚdarás under section 39 shall be made in such manner and subject to such conditions of funding as An tÚdarás provides. The conditions of funding may include –
- (a) the requirement to provide financial and other data,
 - (b) the requirement for cost effectiveness and the beneficial use of resources,
 - (c) the requirement to operate according to standards of good governance,
 - (d) the requirement to comply with guidelines, codes and policies developed by An tÚdarás under section 66,
 - (e) continued compliance with the framework for the provision of funding,
 - (f) financial compliance requirements,
 - (g) compliance by public sector bodies with public service policy on recruitment, pay, remuneration and staffing,
 - (h) compliance with other sections of this Act, and
 - (i) other conditions as determined by An tÚdarás.

Explanatory Note

This Head provides that funding to bodies under section 39 shall be made in such manner and in accordance with such conditions of funding as determined by An tÚdarás.

Head 41 Reliance on information from the Qualifications and Quality Assurance Authority of Ireland

- (1) An tÚdarás may request from, use and rely on information provided by Quality and Qualifications Ireland in -
 - (a) establishing if an education provider meets the criteria, terms and conditions of the framework for the provision of funding under section 39 (3), and
 - (b) ensuring that a funded body is compliant on an ongoing basis with the conditions of funding under section 42.

Explanatory Note

This Head provides that An tÚdarás may request from, use and rely on information provided by Quality and Qualifications Ireland in establishing if an education provider meets the criteria, terms and conditions of the framework for the provision of funding under section 39 and ensuring that a funded body is compliant on an ongoing basis with the conditions of funding under section 42.

Head 42 Compliance with conditions of funding

Provides that

- (1) A funded body shall provide An tÚdarás with such information in relation to the expenditure of the funding provided by An tÚdarás under section 39 and compliance with conditions of funding applying to the award of a grant under section 40 in such form and at such time as An tÚdarás may require.
- (2) If the funded body does not provide An tÚdarás with the information required under subsection (1) or An tÚdarás is of the opinion that there are serious deficiencies in the continued compliance with the conditions of funding by the funded body An tÚdarás may enforce remedial action under subsection (3).
- (3) The remedial measures imposed by An tÚdarás on the funded body may comprise one or more of the actions in this section -
 - (a) a direction to the funded body to comply with the conditions of funding within a specific time period,
 - (b) exclusion for a specific time period from receipt of some or all categories of grants from An tÚdarás,
 - (c) the application of revised conditions of funding,
 - (d) controlled release of funding,
 - (e) withholding of a grant due to be paid to the funded body, or
 - (f) refund by the funded body of a grant paid by An tÚdarás to the funded body.

Explanatory Note

This Head provides that a funded body shall provide An tÚdarás with information in relation to the expenditure of the funding provided by An tÚdarás and compliance with conditions of funding applying to the award of a grant.

It provides that If the funded body does not provide An tÚdarás with the information requested or An tÚdarás is of the opinion that there are serious deficiencies in the continued compliance with the conditions of funding by the funded body An tÚdarás may enforce remedial action. The remedial measures imposed by An tÚdarás on the funded body may comprise one or more of the actions in this section –

- *a direction to the funded body to comply with the conditions of funding within a specific time period,*
- *exclusion for a specific time period from receipt of some or all categories of grants from An tÚdarás,*
- *the application of revised conditions of funding,*
- *controlled release of funding,*
- *withholding of a grant due to be paid to the funded body, or*
- *refund by the funded body of a grant paid by An tÚdarás to the funded body.*

Part 4

Students

Head 43 Engagement with Students

Provides that

- (1) An tÚdarás shall in partnership with the Qualifications and Quality Assurance Authority of Ireland and national student unions, promote student engagement programmes between student unions and designated institutions of higher education.
- (2) These programmes may include training for students on governing bodies,
- (3) Designated institutions of higher education shall provide an annual report to An tÚdarás providing information on –
 - (a) student engagement activities undertaken,
 - (b) training for student members of governing bodies, and
 - (c) a summary of the issues raised by students and the student union and how these issues were addressed.

Explanatory Note

This Head provides that An tÚdarás shall in partnership with the Qualifications and Quality Assurance Authority of Ireland and national student unions, promote student engagement programmes between student unions and designated institutions of higher education. The Head also provides that designated institutions of higher education shall provide an annual report to An tÚdarás on student engagement activities undertaken, training for student members of governing bodies and a summary of issues raised by students and the student union and how these issues were addressed.

Head 44 Student Forum

- (1) An tÚdarás shall establish a student forum to engage with student representatives which shall meet no less than twice each year in accordance with subsection (2) and (3).
- (2) The student forum at subsection (1) shall be comprised of –
 - (a) representatives of students including national student unions,
 - (b) one member of An tÚdarás Board,
 - (c) one or more members of staff of An tÚdarás,
 - (d) a representative of the Qualifications and Quality Assurance Authority of Ireland,
 - (e) a representative from the national forum for the enhancement of teaching and learning,
 - (f) representatives from higher education providers or their representative bodies, and
 - (g) other relevant representatives as agreed by An tÚdarás.
- (3) The student forum shall –
 - (a) provide student feedback on the student experience of higher education and specific programmes, including postgraduate research,
 - (b) engage on issues related to higher education and any particular concerns of students related to the functions of An tÚdarás, and
 - (c) engage on any other issue related to the functions of An tÚdarás which An tÚdarás considers appropriate.

Explanatory Note

The Head provides that An tÚdarás shall establish a student forum to engage with student representatives which shall meet no less than twice each year. The student forum shall provide student feedback on the student experience of higher education and specific programmes, engage on issues related to higher education and any particular concerns of students, and engage on any other issue related to the functions of An tÚdarás which An tÚdarás considers appropriate.

Head 45 Student Survey

- (1) An tÚdarás shall undertake in partnership with national student unions, national representatives of designated institutions of higher education, designated institutions of higher education and the Qualifications and Quality Assurance Authority of Ireland a student survey which shall –
 - (a) be undertaken at suitable intervals in respect of under-graduate students and postgraduate students,
 - (b) document the student experience in higher education identifying good practice and challenges,
 - (c) provide information to enhance student engagement, teaching and learning at a local and national level,
 - (d) provide information on student opinion on important issues of higher education practice and policy at a local and national level, and
 - (e) collect other information as agreed from time to time by An tÚdarás, national student unions, national representatives from designated institutions of higher education and the Qualifications and Quality Assurance Authority of Ireland.
- (2) Personal information collected under subsection (1) shall be provided in accordance with section 49.
- (3) An tÚdarás shall publish a report of each student survey undertaken in accordance with subsection (1) in such manner as An tÚdarás considers appropriate.

Explanatory Note

The Head provides that An tÚdarás shall undertake in partnership with national student unions, national representatives from designated institutions of higher education, designated institutions of higher education and the Qualifications and Quality Assurance Authority of Ireland a student survey which shall be undertaken at suitable intervals in respect of under-graduate students and postgraduate students, document the student experience in higher education identifying good practice and challenges, provide information to enhance student engagement, teaching and learning at a local and national level, provide information on student opinion on important issues of higher education practice and policy at a local and national level, and collect other information as agreed from time to time by An tÚdarás, national student unions, national representatives from designated institutions of higher education and the Qualifications and Quality Assurance Authority of Ireland. An tÚdarás shall publish a report of each student survey undertaken.

Part 5

Participation and Skills

Head 46 Equity of Access and Participation

Provides that

- (1) An tÚdarás shall prepare and submit to the Minister an equity of access and participation plan which is in accordance with any government policies on equity and inclusion as soon as practicable and no later than one year after the appointed day unless directed otherwise by the Minister.
- (2) The plan shall be for such period as the Minister considers appropriate. The Minister may decide to extend the duration of any plan following consultation with An tÚdarás.
- (3) An tÚdarás shall prepare each subsequent plan not later than 3 months after the expiration of the existing plan.
- (4) An tÚdarás shall, in the preparation of the plan under this section have regard to –
 - (a) any policy directions given by the Minister,
 - (b) any relevant national or European Union policies,
 - (c) the likely cost of implementing any such plan, and
 - (d) the availability of resources.
- (5) An tÚdarás shall for the purpose of the plan under this section, consult with –
 - (a) the Minister,
 - (b) relevant Departments of State,
 - (c) representatives of disadvantaged persons or groups,
 - (d) an tSeirbhís Oideachais Leanúnaigh Agus Scileanna,
 - (e) the Qualifications and Quality Assurance Authority of Ireland,
 - (f) designated institutions of higher education or their representative bodies,
 - (g) student unions, and
 - (h) any other bodies or persons it considers appropriate.
- (6) The plan may specify -
 - (a) the plan for enabling access, participation and success in the higher education system by under-represented groups,
 - (b) the goals, objectives, actions and targets for improving access, participation and success in the higher education system by under-represented groups,
 - (c) the goals, objective, actions and targets for access, transfer and progression to higher education by under-represented groups,

- (d) the requirements of designated institutions of higher education with regard to the implementation of the plan,
 - (e) an evaluation, stakeholder engagements and progress measurement plan, and
 - (f) any policy directions given by the Minister.
- (7) The Minister shall, as soon as practicable after the submission to him or her of a plan under this section –
 - (a) approve the plan with or without modifications or
 - (b) refuse to approve the plan and give a direction to An tÚdarás to prepare a new plan under subsection (3).
- (8) An tÚdarás shall publish the plan as soon as practicable after the approval by the Minister, in such manner as An tÚdarás considers appropriate.
- (9) A designated institution of higher education shall have regard to the plan when it is preparing its strategic development plan and its equality statement.
- (10) A designated institution of higher education shall report annually to An tÚdarás on the implementation of the plan in their institution providing details of the goals and targets met in the implementation of the plan.
- (11) An tÚdarás shall compile an annual report on the plan which shall include information on the implementation of the plan in the higher education sector and information on the implementation of the plan in individual designated institutions of higher education and shall provide this report to the Minister.
- (12) An tÚdarás shall publish the annual report on the plan as soon as practicable after submission to the Minister, in such manner as An tÚdarás considers appropriate.
- (13) A plan under this section shall be reviewed by An tÚdarás at least once in the lifetime of the plan or on the written direction of the Minister. An tÚdarás may include in the review recommendations for amendments to the plan and the review shall be submitted to the Minister for approval.
- (14) A designated institution of higher education shall provide such information and assistance as may reasonably be required for the purposes of the review under subsection (13).
- (15) The Minister shall, as soon as practicable after the submission to him or her of a review of the plan under subsection (13) –

- (a) approve the review and any amendments to the plan with or without modifications,
 - (b) refuse to approve the review and give a direction to An tÚdarás to undertake a new review, or
 - (c) refuse to approve the review and give a direction to An tÚdarás to prepare a new plan under subsection (3).
- (16) An tÚdarás shall publish any review of the plan under section (13) as soon as practicable after the approval by the Minister of the review of the plan in such manner as An tÚdarás considers appropriate.

Explanatory Note

This Head provides that An tÚdarás prepares an equity of access and participation plan which is in accordance with any government policies on equity and inclusion following consultation with relevant Departments of State and other bodies. The Head provides that the plan may specify the plan for enabling access, participation and success in the higher education system by under-represented groups, goals, objectives, actions and targets for improving access, participation and success in the higher education system by under-represented groups, the goals, objectives, actions and targets for access, transfer and progression to higher education by under-represented groups, the requirements of designated institutions of higher education with regard to the implementation of the plan, an evaluation, stakeholder development and measurement plan and any policy directions given by the Minister. .

The Head also provides that the designated institutions of higher education shall have regard to the plan when they are preparing their strategic development plan and equality statement and includes provisions for an annual report and review of the plan.

Head 47 Lifelong Learning

Provides that

- (1) An tÚdarás shall promote and support designated institutions of higher education in the development and provision of lifelong and flexible learning for learners which -
 - (a) is learner centred,
 - (b) is at a pace which suits the needs of the learner,
 - (c) is provided in a mode or location suitable to the needs of the learner,
 - (d) meets the needs of individuals, business, enterprise, the community, local interests and others at a national and regional level,
 - (e) promotes well-being, active citizenship, community engagement and health in the learner,
 - (f) meets the skills needs of the economy and society, and
 - (g) improves employment prospects for the learner.
- (2) An tÚdarás shall support the implementation of procedures for access, transfer and progression by institutions of higher education which have been approved by the Qualifications and Quality Assurance Authority of Ireland under section 56 of the Qualifications and Quality Assurance (Education and Training) Act 2012.

Explanatory Note

This Head will provide that An tÚdarás will promote and support designated institutions of higher education in the development and provision of lifelong and flexible learning. It also provides that An tÚdarás shall support the implementation of procedures for access, transfer and progression by designated institutions of higher education which have been approved by the Qualifications and Quality Assurance Authority of Ireland under section 56 of the Qualifications and Quality Assurance (Education and Training) Act 2012.

Part 6

Data and Research

Head 48 Supply of non-personal information

Provides that

- (1) A designated institution of higher education and a funded body shall furnish to An tÚdarás any non-personal information requested by An tÚdarás in the format requested with regard to –
 - (a) the designated institution of higher education or funded body,
 - (b) the students attending the designated institution of higher education or funded body, and
 - (c) the staff of the designated institution of higher education or funded bodywhich An tÚdarás may require for the purpose of performing its functions.
- (2) The non-personal information requested by An tÚdarás from a designated institution of higher education or a funded body under subsection (1) may include –
 - (a) financial information,
 - (b) information on staff numbers, remuneration and other staff information,
 - (c) information on student numbers, student success and other student information, and
 - (d) other data as may be specified by the Minister by Order in consultation with An tÚdarás.
- (3) If a designated institution of higher education or funded body fails to provide information when requested to do so under subsection (1), An tÚdarás may by notice in writing direct the designated institution of higher education or funded body to provide that information within a specified period.
- (4) Where An tÚdarás makes a direction under subsection (3) the designated institution of higher education or funded body to which the direction is made shall comply with the direction within the time specified in the direction.
- (5) An tÚdarás may, by notice in writing, amend or revoke a direction under this section.
- (6) An tÚdarás may publish the information received in such form and manner as is deemed appropriate, subject to the Data Protection Regulation and the Data Protection Act 2018.

Explanatory Note

This Head provides that designated institutions of higher education and funded bodies shall provide to An tÚdarás any non-personal information requested by An tÚdarás, in the format requested, regarding the body, the students attending the body or the staff of the body which An tÚdarás requires to perform its functions. It lists some of the types of information required and provides that the Minister may specify by order other types of information for collection by An tÚdarás. This section also provides that An tÚdarás can make a written direction to the body to provide this information. This section provides that subject to the Data Protection Regulation and the Data Protection Act 2018, An tÚdarás may publish the information which it receives in such form or manner as is deemed appropriate.

Head 49 Supply of personal information

Provides that

- (1) A designated institution of higher education and a funded body shall, if requested by An tÚdarás, furnish to An tÚdarás personal information, as necessary and proportionate, in the format requested with regard to –
 - (a) personal information relating to a student attending the designated institution of higher education or funded body including name, address, date of birth, student number, PPSN data, Eircode, SUSI grant code, CAO data, details of educational history, details of ethnicity, disability and socio-economic status,
 - (b) personal data of a staff member of the designated institution of higher education or funded body, including PPSN, salary bands of staff, gender breakdown of staff, disability information, ethnicity, and
 - (c) other personal information as may be specified by the Minister by Order in consultation with An tÚdarás,

which An tÚdarás requires for the purpose of fulfilling the functions of An tÚdarás with respect to sections 9 (1) (b), (c), (d), (i), (j), (l) and (p) and subject to the Data Protection Regulation and the Data Protection Act 2018.

- (2) The personal information required by An tÚdarás from a designated institution of higher education or a funded body may include special category data as defined in Article 9 of the Data Protection Regulation, subject to suitable and specific measures taken to protect the data, (as per Section 36 of the Data Protection Act 2018). These measures shall include –
 - (a) limitations on access to the personal data undergoing processing within a workplace in order to prevent unauthorised consultation, alteration, disclosure or erasure of personal data,
 - (b) strict time limits for the erasure of personal data and mechanisms to ensure that such limits are observed,
 - (c) specific targeted training for those involved in processing operations, and
 - (d) where possible, the aggregation of personal data.
- (3) If a designated institution of higher education or funded body fails to provide information when requested to do so under subsection (1) or (2), An tÚdarás may by notice in writing direct the designated institution of higher education or funded body to provide that information within a specified period.
- (4) Where An tÚdarás makes a direction under subsection (3) the designated institution of higher education or funded body to which the direction is made shall comply with the direction within the time specified in the direction.

- (5) An tÚdarás may, by notice in writing, amend or revoke a direction under this section.
- (6) An tÚdarás may publish the information received in such form and manner as is deemed appropriate, subject to the Data Protection Regulation and the Data Protection Act 2018.

Explanatory Note

This Head provides that designated institutions of higher education and funded bodies shall provide to An tÚdarás certain personal information, as necessary and proportionate, requested by An tÚdarás, in the format requested, which An tÚdarás requires to perform certain functions – sections 9 (1) (b), (c), (d), (i), (j), (l) and (p) .

These functions are:

- *promote and support student engagement and student success in higher education and the attainment by students of a quality educational experience in higher education*
- *secure and evidence value-for-money from Exchequer investment in higher education allocated to designated institutions for higher education and other bodies,*
- *plan for higher education provision and make recommendations to the Minister on the overall provision of student places,,*
- *provide capital and current funding to bodies, monitor expenditure by bodies to which funding is allocated and recoup funding in certain circumstances,*
- *measure and assess with a view to strengthening the performance of the higher education system and the higher education providers and to ensure accountability while respecting institutional autonomy,*
- *promote equality, diversity and inclusion in higher education including the participation and success of under-represented sections of society in higher education*
- *collect statistical data and maintain an evidence base in order to provide high quality evidence-based policy advice in accordance with sections 48 to 51.*

The Head lists the information required and provides that the Minister may specify by order other types of information for collection by An tÚdarás. This section also provides that An tÚdarás can make a written direction to the body to provide this information. This section provides that subject to the Data Protection Regulation and the Data Protection Act 2018, An tÚdarás may publish the information which it receives in such form or manner as is deemed appropriate.

Head 50 Sharing of Non-personal information

Provides that

- (1) An tÚdarás may share with -
 - (a) a designated institution of higher education,
 - (b) a funded body,
 - (c) public bodies including Departments of State, the Office of the Revenue Commissioners, the Qualifications and Quality Assurance Authority of Ireland, An tSeirbhís Oideachais Leanúnaigh Agus Scileanna, the Central Applications Office, or
 - (d) any other body An tÚdarás considers appropriate,non-personal information which comes to its attention in the course of performing its functions, and which relates to one or more functions of that other body.
- (2) Other Public Bodies may share non-personal information with An tÚdarás.

Explanatory Note

This head provides that An tÚdarás may share non-personal information with a designated institution of higher education, a funded body, a public body or any other body An tÚdarás considers appropriate. It also provides that other public bodies may share non-personal information with An tÚdarás.

Head 51 Sharing of Personal Information

Provides that

- (1) Subject to the Data Protection Regulation, the Data Protection Act 2018, the Data Sharing and Governance Act 2019 and subsection (3) An tÚdarás may share with other Public bodies including designated institutions of higher education, Departments of State, the Office of the Revenue Commissioners, the Qualifications and Quality Assurance Authority of Ireland, An tSeirbhís Oideachais Leanúnaigh Agus Scileanna, the Central Applications Office and any other public body An tÚdarás considers appropriate, personal information as necessary and proportionate which comes to its attention in the course of performing its functions, and which relates to one or more functions of that other body.
- (2) Subject to the Data Protection Regulation, the Data Protection Act 2018, the Data Sharing and Governance Act 2019 and subsection (3) other Public Bodies may share personal information with An tÚdarás.
- (3) The personal information to be shared under subsections (1) and (2) shall be for the purpose of fulfilling the functions of An tÚdarás with respect to sections 9 (1) (b), (c), (d), (i), (j), (l) and (p).

Explanatory Note

This head provides that An tÚdarás may share personal information as necessary and proportionate with other public bodies and other public bodies may share personal information with An tÚdarás subject to the Data Protection Act 2018 and the Data Sharing and Governance Act 2019.

The Head provides that the personal information to be shared shall be for the purpose of fulfilling the functions of An tÚdarás with respect to sections 9 (1) (b), (c), (d), (i), (j), (l) and (p) .

Head 52 Research by An tÚdarás

Provides that

- (1) An tÚdarás may institute and conduct studies and research on any issue related to its functions.
- (2) An tÚdarás may appoint a person, another body or a higher education provider to conduct the study or research on its behalf and may make such payment to the person, body or higher education provider appointed to undertake the study or research as is deemed appropriate.
- (3) Subject to the Data Protection Regulation and the Data Protection Act 2018 a designated institution of higher education, funded body or education provider shall provide any information requested by An tÚdarás or the person, body or higher education provider appointed to undertake the study or research, in relation to any study or research undertaken under subsection (1).
- (4) A designated institution of higher education, funded body or education provider shall co-operate as required by An tÚdarás in relation to any study or research undertaken under subsection (1).
- (5) An tÚdarás may publish reports of such studies and research.

Explanatory Note

This head provides that An tÚdarás may carry out studies and research on any issue related to its functions and that it may appoint a person, body or higher education provider to conduct the study or research on its behalf. It provides that the designated institution of higher education, funded body or education provider must provide information subject to the Data Protection Regulation and the Data Protection Act 2018 and co-operate with the study or research as required. It also provides that An tÚdarás may publish reports of such studies and research.

Head 53

Research

Provides that

- (1) This Head will provide for arrangements to ensure An tÚdarás discharges its function in relation to research to promote, support and fund 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 relevant body An tÚdarás considers appropriate.
- (2) This Head may also provide for arrangements regarding the Irish Research Council following further consultation and consideration.

Explanatory Note

This Head will provide for arrangements to ensure An tÚdarás discharges its function in relation to research to promote, support and fund 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 relevant body An tÚdarás considers appropriate.

This Head may also provide for arrangements regarding the Irish Research Council following further consultation and consideration.

Head 54 Research Integrity

Provides that

- (1) This Head will provide for arrangement for promoting and seeking to ensure the highest levels of research integrity are implemented in designated institutions of higher education.

Explanatory Note

This Head will provide for arrangement for promoting and seeking to ensure the highest levels of research integrity are implemented in designated institutions of higher education.

Part 7

Designated Institutions of Higher Education

Chapter 1 Designation of Institutions of Higher Education

Head 55 Designated Institutions of higher education

Provides that

- (1) A designated institution of higher education is -
 - (a) a previously established university,
 - (b) an educational institution established as a university under section 9 of the Universities Act 1997,
 - (c) a technological university within the meaning of the Technological Universities Act 2018,
 - (d) a college to which the Institutes of Technology Acts 1992 to 2006 apply,
 - (e) the National College of Art and Design,
 - (f) an education provider which has a university authorisation order made in respect of it in accordance with section 54 of the Universities Act, 1997 and the university authorisation order has not been revoked under section 56 of the Universities Act, 1997, and
 - (g) such other higher education providers as may be designated by order under section 56 and which have not had their designation revoked by order under section 61.
- (2) An tÚdarás shall publish the list of designated institutions of higher education in such manner as it considers appropriate and shall publish a new list of designated institutions of higher education if –
 - (a) a designation as an institution of higher education order is made in respect of a higher education provider under section 56, or
 - (b) a designation as an institution of higher education order is removed in respect of a higher education provider under Section 61.

Explanatory Note

This Head provides that certain named higher education institutions are defined as designated institutions of higher education for the purposes of this Act. This list includes universities, Institutes of Technology, Technological universities and certain other higher education providers which are publicly funded or were designated as an institution of higher education in the 1971 Act. This Head also provides that other higher education providers may be designated by Order as designated institutions of higher education in accordance with Section 56.

This Head also provides for the publication by An tÚdarás of the list of designated institutions of higher education and the publication of a revised list every time a higher education provider is added or removed from the list.

Head 56 Designation as an institution of higher education

Provides that

- (1) The Minister may designate by order a higher education provider as a designated institution of higher education in accordance with this section.
- (2) An tÚdarás shall provide a list to the Minister, on an annual basis or on request of the Minister, of higher education providers which in the opinion of An tÚdarás meet the conditions specified in section 57 (1) subject to subsections (4), (5) and (6).
- (3) An tÚdarás shall provide such information as the Minister may direct in respect of the higher education providers listed under subsection (2).
- (4) An tÚdarás shall by notice in writing inform a higher education provider which it is proposed to include on the list under subsection (2) and which is not a designated institution of higher education.
- (5) A higher education provider may make representations to An tÚdarás in relation to inclusion on the list under subsection (2) not later than 14 days after the giving of notice under subsection (4).
- (6) An tÚdarás shall consider any representations made pursuant to subsection (5) before submitting the list under subsection (2) to the Minister.
- (7) Subject to the following subsections and sections 57 and 59, the Minister may decide to make, or may decide to refuse to make, an order under this subsection (in this Act referred to as a ‘designation as an institution of higher education order’) that designates a higher education provider as a designated institution of higher education for the purposes of this Act and where the Minister decides to make such an order, the Minister shall, subject to subsection (9), make the order accordingly.
- (8) In making a decision under subsection (7), the Minister—
 - (a) shall consider the higher education providers included on the list under subsection (2) and which are not designated institutions of higher education,
 - (b) shall consult with An tÚdarás,
 - (c) may request from, use and rely on information provided by other Public bodies including the Qualifications and Quality Assurance Authority of Ireland, and

- (d) may appoint an advisory panel, that may include national and international experts having a special interest in or expertise in, or knowledge of, matters relating to higher education, and may receive and have regard to advice given by that panel with respect to the higher education provider's qualification as a designated institution of higher education,

and the Minister shall not make a decision to make a designation as an institution of higher education order unless the Minister is satisfied that the conditions specified in section 57(1) are complied with in respect of the higher education provider concerned.

- (9) The higher education provider concerned shall provide to the Minister such information and documentation as the Minister may specify for the purpose of considering whether to make a designation as an institution of higher education order in respect of it under subsection (1).
- (10) The Minister shall make a decision under subsection (7) within a period of 3 months after the date of receipt of the list from An tÚdarás under subsection (2).
- (11) The Minister shall notify, in writing, the higher education provider concerned of the Minister's decision under subsection (7) as soon as may be after the making of it and the notification shall state the reasons for the decision.
- (12) Where the Minister makes a decision under subsection (7) to make a designation as an institution of higher education order or refuse to make a designation as an institution of higher education order in respect of the higher education provider concerned, the provider may, in accordance with section 74, appeal against that decision within 30 days after the service of the notice under subsection (11).
- (13) Where a designation as an institution of higher education order is proposed to be made, a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.
- (14) Each of the conditions specified in section 57 (1) shall be regarded as a continuing condition, that is to say each such condition shall operate as a condition that must continue to be complied with in respect of a higher education provider in receipt of a designation as an institution of higher education order.

Explanatory Note

This Head provides that the Minister may designate by order a higher education provider as a designated institution of higher education. An tÚdarás shall provide a list and information to the Minister, on an annual basis or on request of the Minister, of higher education providers which in the opinion of An tÚdarás meet the designation conditions. An tÚdarás shall inform a higher education provider that it is proposed to include it on this list and a higher education provider may

make representations to An tÚdarás in relation to inclusion on the list and An tÚdarás shall consider any representations made prior to submitting the list to the Minister.

The Minister shall make a decision on designation as an institution of higher education within 3 months of the receipt of the list from the HEA. In making the decision the Minister shall consider those education providers which are included on the HEA list and are not designated institutions of higher education, shall consult with An tÚdarás, may request from, use and rely on information provided by other public bodies including the Qualifications and Quality Assurance Authority of Ireland and may appoint an advisory panel to advise him/her. The Minister shall not make a decision to approve the application unless he/she is satisfied that the conditions specified in section 57(1) are complied with in respect of the higher education provider concerned. The higher education provider will be required to provide the Minister with such information as is requested by the Minister. The Minister shall notify the higher education provider of the decision and the notification shall state the reasons for the refusal. Where the Minister makes a decision to designate an education provider or refuse to designate an education provider, the education provider may, in accordance with section 74, appeal against that decision within 30 days after the receipt of the notification. Where the Minister approves the application a draft designation as an institution of higher education order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.

A higher education provider in receipt of a designation as an institution of higher education order must continue to comply with the conditions in section 57 (1).

Head 57 Conditions to be complied with for making of a designation as an institution of higher education order

Provides that

- (1) The Minister shall, as soon as practicable after the appointed day, following consultation with An tÚdarás prescribe by regulation the conditions to be complied with for making of a designation as an institution of higher education order.
- (2) The conditions under subsection (1) shall be consistent with the Objects and Functions of An tÚdarás as set out in this Act and shall specify the appropriate conditions which must apply to a higher education provider for designation as an institution of higher education under this Act. The conditions may include -
 - (a) that the higher education provider has been established and is operated for the principal purposes of higher education and training,
 - (b) that the higher education provider provides a specified number of programmes of education and training and conducts examinations, which lead to education awards at a specified higher education level that are included within the National Framework of Qualifications,
 - (c) that the higher education provider has a good track record in relation to performance in the field of education and provides the programmes described under subsection 2 (b) for a specified number of years in the State prior to the date of making the application,
 - (d) that the qualifications of the academic staff of the higher education provider are at a sufficiently high level to provide the programmes of education and training which it provides,
 - (e) that the higher education provider has integrated, coherent and effective governance structures in place concerning academic, administrative, financial and management matters,
 - (f) that the higher education provider has, under section 28 of the Qualifications and Quality Assurance (Education and Training) Act 2012, established procedures in writing for quality assurance in relation to which -
 - (i) no notice has been furnished by the Qualifications and Quality Assurance Authority of Ireland under section 36(1) of the Qualifications and Quality Assurance (Education and Training) Act 2012, or
 - (ii) approval has not been withdrawn under section 36 of that Act,

- (g) that the higher education provider is financially viable and has sufficient financial resources available to meet any projected costs and to provide education for a specified period arising from the making of a designation as an institution of higher education authorisation order in respect of it,
- (h) that the higher education provider promotes access to the education it provides, by economically or socially disadvantaged persons, by persons who have disability and by persons from sections of society who are significantly under-represented in its student body,
- (i) that the higher education provider provides teaching and facilitates learning that is informed by research and promotes excellence at appropriate levels of higher education and training within the National Framework of Qualifications,
- (j) that the higher education provider has strong links with business, enterprise, the professions, the community, local interests and other stakeholders,
- (k) that subject to the right and responsibility to preserve the principles of academic freedom in the conduct of its internal and external affairs, the higher education provider provides programmes that respond to the delivery of policies or objectives of the Government or the Minister as they relate to higher education and training and to the needs of business, enterprise, the professions, the community, local interests and other stakeholders,
- (l) that the higher education provider contributes in so far as possible in the education and training and other activities it provides to the promotion of the economic, cultural, social and scientific development of the State, while fostering and respecting the diversity of its own traditions, and
- (m) other conditions as determined by the Minister in consultation with An tÚdarás.

(3) In subsection (2)—

‘award’ means an award that is included within the National Framework of Qualifications (within the meaning of the Qualifications and Quality Assurance (Education and Training) Act 2012);

‘level’ means included at the level concerned within the National Framework of Qualifications.

Explanatory Note

This Head specifies the conditions which a higher education provider must comply with in order that a designation as an institution of higher education order is made in respect of that higher education provider. These conditions are referenced in section 56 (8). The Head provides that these conditions are made by regulation by the Minister in consultation with An tÚdarás. .

Head 58 Change of circumstances of a designated institution of higher education

Provides that

- (1) A designated institution of higher education shall inform An tÚdarás if a significant material change occurs which could reasonably affect the ability of the designated institution of higher education concerned to meet the conditions specified in section 57 (1).

Explanatory Note

This Head provides that a designated institution of higher education shall inform An tÚdarás if a significant material change occurs which could reasonably affect the ability of the designated institution of higher education to meet the conditions of designation to be complied with for the making of a designation as an institute of higher education order.

Head 59 Review of compliance with designation conditions

Provides that

- (1) An tÚdarás shall, as soon as practicable after the appointed day establish procedures for the review by An tÚdarás of continued compliance with the conditions to be complied with under section 57 (1) for the making of a designation as an institution of higher education order, by higher education providers in receipt of a designation as an institution of higher education order.
- (2) An tÚdarás shall review the activities of a higher education provider in receipt of a designation as an institution of higher education order in accordance with the procedures established under subsection (1) -
 - (a) at least once every 7 years from the date of the making of a designation as an institution of higher education order in respect of the higher education provider,
 - (b) if it has been informed of a change of circumstances by a designated institution of higher education under section 58 (1),
 - (c) if it is of the opinion that a significant material change may have occurred which could reasonably affect the ability of the designated institution of higher education concerned to meet the conditions specified in section 57 (1), and
 - (d) from time to time as An tÚdarás thinks appropriate.
- (3) Where a review under subsection (2) is being conducted An tÚdarás shall, by notice in writing, request the higher education provider concerned to provide to it such information, in relation to the activities of the higher education provider, as is specified in the notice and the higher education provider shall provide that information to An tÚdarás within such period as is specified in the notice.
- (4) An tÚdarás shall prepare a report setting out the results of a review under subsection (2).
- (5) An tÚdarás shall provide a copy of the report prepared under subsection (4) to the higher education provider concerned and the higher education provider may, within one month from the provision of the report to it, submit in writing any observations it has on the report to An tÚdarás.

- (6) After consideration of any observations submitted to An tÚdarás under subsection (5), An tÚdarás may make any amendments to the report that An tÚdarás considers appropriate.
- (7) An tÚdarás shall provide a copy of the final report to the higher education provider and shall publish the report in such form and manner as it thinks appropriate.

Explanatory Note

This Head provides that An tÚdarás shall, as soon as practicable after the appointed day establish procedures for the review by An tÚdarás of continued compliance with the conditions to be complied with under section 57 (1) for the making of a designation as an institution of higher education order, by higher education providers in receipt of a designation as an institution of higher education order.

It provides that An tÚdarás shall review the activities of a higher education provider in receipt of a designation as an institution of higher education order in accordance with these procedures

- *at least once every 7 years from the date of the making of a designation as an institution of higher education order in respect of the higher education provider*
- *if it has been informed of a change of circumstances by a designated institution of higher education under section 58 (1)*
- *if it is of the opinion that a significant material change may have occurred which could reasonably affect the ability of the designated institution of higher education concerned to meet the conditions specified in section 57 (1), and*
- *and from time to time as An tÚdarás thinks appropriate.*

It provides that where a review is being conducted An tÚdarás shall, by notice in writing, request the higher education provider concerned to provide to it such information, in relation to the activities of the higher education provider, as is specified in the notice and the higher education provider shall provide that information to An tÚdarás within such period as is specified in the notice. Following the review, An tÚdarás shall prepare a report setting out the results of a review and shall provide a copy of the report prepared to the higher education provider concerned and the higher education provider may, within one month from the provision of the report to it, submit in writing any observations it has on the report to An tÚdarás. After consideration of any observations submitted, An tÚdarás may make any amendments to the report that An tÚdarás considers appropriate. An tÚdarás shall provide a copy of the final report to the higher education provider and shall publish the report in such form and manner as it thinks appropriate.

This Head is modelled on provisions in the Qualifications and Quality Assurance (Education and Training) Act 2012 for the review of quality assurance procedures.

Head 60 Directions of an tÚdarás following review of compliance with designation conditions

Provides that

- (1) Where An tÚdarás has carried out a review under section 59, it may, following consultation with the higher education provider concerned, issue such directions in writing to that higher education provider as it thinks appropriate in relation to continued compliance with the conditions to be complied with under section 57 (1) for the making of a designation as an institution of higher education order by that higher education provider.
- (2) Where a direction is issued under subsection (1) to a higher education provider, the higher education provider shall comply with the direction.
- (3) A higher education provider issued with a direction under subsection (1) shall provide An tÚdarás with information when requested to do so by An tÚdarás regarding compliance by that higher education provider with the direction.

Explanatory Note

This Head provides that where An tÚdarás has carried out a review under section 59, it may, following consultation with the higher education provider concerned, issue appropriate directions in writing to that higher education provider in relation to continued compliance with the conditions to be complied with under section 57 (1) for the making of a designation as an institution of higher education order by that higher education provider.

The higher education provider is required to comply with the direction and provide An tÚdarás with information when requested to do so by An tÚdarás regarding compliance by that higher education provider with the direction.

This Head is modelled on provisions in the Qualifications and Quality Assurance (Education and Training) Act 2012 for the review of quality assurance procedures.

Head 61 Removal of a designation as an institution of higher education order

Provides that

- (1) Where following a review under section 59, An tÚdarás considers that –
 - (a) directions issued by An tÚdarás to the higher education provider under section 60 have not been complied with, or
 - (b) there are serious deficiencies in the continued compliance with the conditions to be complied with under section 57 (1) for the making of a designation as an institution of higher education order by that higher education provider,

it shall inform the Minister, in writing, of its opinion and the reasons for the opinion.
- (2) Where the Minister is informed by An tÚdarás, under subsection (1), that it is of the opinion referred to in that subsection, the Minister may decide to make an order revoking the designation as an institution of higher education order in respect of that higher education provider (in this section referred to as a ‘revocation order’).
- (3) In making a decision under subsection (2), the Minister—
 - (a) shall consult with An tÚdarás,
 - (b) may request from, use and rely on information provided by the Qualifications and Quality Assurance Authority of Ireland, and
 - (c) may appoint an advisory panel, that may include national and international experts having a special interest in or expertise in, or knowledge of, matters relating to higher education, and may receive and have regard to advice given by that panel with respect to the higher education provider’s continued compliance with the conditions to be complied with under section 57 (1) for the making of a designation as an institution of higher education order.
- (4) Where the Minister proposes to make a revocation order he or she shall, by notice in writing to the higher education provider concerned, inform the provider that he or she proposes to make such an order in respect of it and state the reasons for the proposed revocation.
- (5) A notice under subsection (4) shall state that the higher education provider may make representations to the Minister in relation to the reasons for the proposed revocation that have been stated in the notice not later than 30 days after the service of the notice on the provider.
- (6) Where, after consideration of representations (if any) made to the Minister in accordance with subsection (5), the Minister decides, for the reasons stated in the notice concerned under subsection (4), to make a revocation order in respect of the higher education provider, the Minister shall notify, in writing, the provider of that

decision and of the date that the Minister proposes to specify in the order as the date on which the order shall come into operation (which date shall not be a date earlier than the end of the period within which an appeal may be brought under subsection (7)).

- (7) Where the Minister makes a decision under subsection (6) to make a revocation order in respect of the higher education provider, the higher education provider may, in accordance with section 74, appeal against that decision within 30 days after the service of the notice under subsection (6).
- (8) Unless, within the foregoing period, an appeal is made in accordance with section 74 against the decision of the Minister referred to in subsection (6), the Minister shall make the revocation order in respect of the higher education provider.

Explanatory Note

This Head provides that the Minister may make an order revoking a Designation as an Institution of Higher Education Order made under section 56. Where following a review under section 59, An tÚdarás considers that directions issued by An tÚdarás to the higher education provider under section 60 have not been complied with, or there are serious deficiencies in the continued compliance with the conditions to be complied with under section 57 (1) for the making of a designation as an institution of higher education order by that higher education provider, it shall inform the Minister, in writing, of its opinion and the reasons for the opinion.

The Minister may decide following receipt of this opinion from An tÚdarás to make an order revoking the designation as an institution of higher education order (a revocation order) in respect of that higher education provider (in this section referred to as a ‘revocation order’).

In making this decision, the Minister shall consult with An tÚdarás, may request from, use and rely on information provided by the Qualifications and Quality Assurance Authority of Ireland, and may appoint an advisory panel, that may include national and international experts having a special interest in or expertise in, or knowledge of, matters relating to higher education, and may receive and have regard to advice given by that panel with respect to the higher education provider’s continued compliance with the conditions to be complied with for the making of a designation as an institution of higher education order.

Where the Minister proposes to make a revocation order he or she shall, by notice in writing to the higher education provider concerned, inform the provider that he or she proposes to make such an order in respect of it and state the reasons for the proposed revocation. A higher education provider may make representations to the Minister in relation to the reasons for the proposed revocation that have been stated in the notice not later than 30 days after the service of the notice on the provider and the Minister shall consider any representations made. Where the Minister decides, following consideration of any representations made, to make a revocation order in respect of the higher education provider, the Minister shall notify, in writing, the provider of that decision and of the date that the Minister proposes to specify in the order as the date on which the order shall come into operation. The higher education provider may, in accordance with section 74, appeal against that decision within 30 days after the service of the notice.

This Head is modelled on provisions in the Qualifications and Quality Assurance (Education and Training) Act 2012 for the review of quality assurance procedures.

Head 62 Use of the title Designated Institution of Higher Education

Provides that

- (1) A higher education provider which is a designated institution of higher education in accordance with section 55 (1) may use the title “Designated Institution of Higher Education” to describe itself.
- (2) A body which is not a designated institution of higher education in accordance with section 55 (1) shall not use the title “Designated Institution of Higher Education” to describe itself.
- (3) An tÚdarás may apply to the High Court for an injunction to restrain any person from using the title “Designated Institution of Higher Education” in contravention of subsection (2).

Explanatory Note

This Head provides that a higher education provider which is a designated institution of higher education in accordance with section 55 (1) may use the title “Designated Institution of Higher Education” and it precludes a body which is not a designated institution of higher education in accordance with section 55 (1) from using the title “Designated Institution of Higher Education”. It provides that An tÚdarás may apply to the High Court for an injunction to restrain any person from using the title “Designated Institution of Higher Education” if it is not a designated institution of higher education under section 55 (1).

Chapter 2 Duties of Designated Institutions of Higher Education

Head 63 Strategic Development Plan of Designated Institutions of Higher Education

Provides that

- (1) A designated institution of higher education which is not -
 - (a) a previously established university,
 - (b) an educational institution established as a university under section 9 of the Universities Act 1997,
 - (c) a technological university within the meaning of the Technological Universities Act 2018, or
 - (d) a college to which the Institutes of Technology Acts 1992 to 2006 apply,shall, as soon as practicable after the appointed day or following designation as an institution of higher education, whichever is later, prepare a plan (in this section called a “strategic development plan”) for the period specified in the plan in accordance with this section.
- (2) The strategic development plan for the designated institution of higher education shall be for a period of not less than 3 years and not more than 5 years.
- (3) The designated institution of higher education shall prepare each subsequent strategic development plan not later than 3 months after the expiration of the existing plan.
- (4) The designated institution of higher education shall for the purpose of preparing a strategy under this section, consult with –
 - (a) the Minister,
 - (b) such Departments of State as the designated institution of higher education considers appropriate,
 - (c) An tÚdarás,
 - (d) students or the student union of the designated institution of higher education,
 - (e) employees of the designated institution of higher education,
 - (f) the Academic Council,
 - (g) relevant Education and Training Board (s),
 - (h) relevant local authorities, and
 - (i) any other bodies or persons the designated institution of higher education considers appropriate.
- (5) A strategic development plan shall specify -
 - (a) the objectives of the designated institution of higher education for the period specified in the plan and the strategies for achieving those objectives,
 - (b) how the plan links to any performance agreement in place under section 38,

- (c) the purposes for which the designated institution of higher education proposes to use its resources,
 - (d) how the designated institution of higher education shall comply with any requirements imposed on it under this Act including requirements in relation to governance and conditions attached to funding,
 - (e) the plans of the designated institution of higher education to provide programmes of education and training that meet the needs of individuals, business, enterprise, the professions, the community and other stakeholders in the State and in the region in which the designated institution of higher education is located,
 - (f) the plans of the designated institution of higher education to develop and promote strong social and cultural links, and links supporting creativity, between the designated institution of higher education and the community in the region in which the designated institution of higher education is located, and
 - (g) any other requirement as specified by An tÚdarás.
- (6) The strategic development plan prepared by the designated institution of higher education shall be in such form as An tÚdarás may from time to time direct.
- (7) The designated institution of higher education shall provide a copy of the strategic development plan to An tÚdarás and shall publish it in such manner as it considers appropriate.

Explanatory Note

This Head provides that a designated institution of higher education which is not a previously established university, a university established under section 9 of the Universities Act 1997, technological university or institute of technology shall prepare a strategic development plan and provide it to An tÚdarás. It provides that an updated strategic development plan should be prepared every three to five years and outlines what should be included in the plan.

Note: There are existing provisions in place for the preparation of strategic development plans in the Universities Act 1997, the technological universities Act 2019 and the institutes of technology Acts 1992 - 2006 which is the reason they are excluded from this provision. The provisions in this Head apply to a university established under section 54 of the Universities Act 1997.

This Head is set out in accordance with standard provisions for Strategic Development Plans based on a recent precedent in the Technological Universities Act 2018.

Head 64 Equality Statement of Designated Institutions of Higher Education

Provides that

- (1) A designated institution of higher education which is not –
 - (a) a previously established university,
 - (b) an educational institution established as a university under section 9 of the Universities Act 1997,
 - (c) a technological university within the meaning of the Technological Universities Act 2018, or
 - (d) a college to which the Institutes of Technology Acts 1992 to 2006 apply,shall, as soon as practicable after the appointed day or following designation as an institution of higher education, whichever is later, prepare a statement (in this section called an “equality statement”) for the period specified in the statement, in accordance with this section.
- (2) The period to which the equality statement relates shall be such period as the designated institution of higher education considers appropriate, being a period of not less than 3 years and not more than 5 years from the date the equality statement is prepared under subsection (1).
- (3) The designated institution of higher education shall prepare each subsequent equality statement not later than 3 months after the expiration of the existing equality statement.
- (4) The designated institution of higher education shall for the purpose of preparing a strategy under this section, consult with –
 - (a) the Minister,
 - (b) such Departments of State as the designated institution of higher education considers appropriate,
 - (c) An tÚdarás,
 - (d) students or the student union of the designated institution of higher education,
 - (e) employees of the designated institution of higher education,
 - (f) the Academic Council,
 - (g) relevant Education and Training Board (s),
 - (h) relevant local authorities, and
 - (i) any other bodies or persons the designated institution of higher education considers appropriate.
- (5) The equality statement shall specify –
 - (a) the policy of the designated institution of higher education for enabling access to it, and the education it provides, by economically disadvantaged persons, by persons who have a disability and by persons from sections of society significantly under-represented in the student body, and

- (b) the policy of the designated institution of higher education relating to equality, including gender equality, in all activities of the designated institution of higher education, and
 - (c) how the plan links to any strategic development plan under section 63 and any performance agreement in place under section 38.
- (6) The designated institution of higher education shall implement the policies set out in the equality statement.
- (7) The designated institution of higher education shall provide a copy of the equality statement to An tÚdarás and shall publish it in such manner as it considers appropriate.

Explanatory Note

This Head provides that a designated institution of higher education which is not a previously established university, a university established under section 9 of the Universities Act 1997, technological university or institute of technology will be required to prepare an Equality Statement. The equality statement shall be for a period of between 3 and 5 years and it will take account of the Strategic Development Plan (section 63) and the Performance Agreement (section 38). The equality statement shall specify the policy of the designated institution of higher education for enabling access to it, and the education it provides, by economically or socially disadvantaged persons, by persons who have a disability and by persons from sections of society significantly under-represented in the student body and the policy of the designated institution of higher education relating to equality, including gender equality, in all activities of the designated institution of higher education.

Note: There are existing provisions in place for the preparation of strategic development plans in the Universities Act 1997, the technological universities Act 2019 and the institutes of technology Acts 1992 - 2006 which is the reason they are excluded from this provision. The provisions in this Head apply to a university established under section 54 of the Universities Act 1997.

This Head is set out in accordance with standard provisions for Equality Statements based on a recent precedent in the Technological Universities Act 2018.

Head 65 Accounts of designated institutions of higher education and funded higher education providers

Provides that

- (1) A designated institution of higher education which is not –
 - (a) a previously established university,
 - (b) an educational institution established as a university under section 9 of the Universities Act 1997,
 - (c) a technological university within the meaning of the Technological Universities Act 2018,
 - (d) a college to which the Institutes of Technology Acts 1992 to 2006 apply, or
 - (e) the National College of Art and Designshall keep, in such form as An tÚdarás may approve all proper and usual accounts and records of all moneys received or expended by it.
- (2) A designated institution of higher education and a funded higher education provider shall submit accounts kept under subsection (1) for audit to an auditor to the extent and by such date as An tÚdarás may from time to time direct.
- (3) Immediately after the audit referred to in subsection (2) the designated institution of higher education or the funded higher education provider shall furnish to An tÚdarás a copy of –
 - (a) the accounts, and
 - (b) the report of the auditor on the accounts.
- (4) Immediately after the audit referred to in subsection (2) the designated institution of higher education or the funded higher education provider shall publish the accounts and the report of the auditor on the accounts.

Explanatory Note

This Head provides that a designated institution of higher education or a funded higher education provider which is not a previously established University, a university established under section 9 of the Universities Act 1997, Institute of Technology, Technological University or the National College of Art and Design shall keep all proper and usual accounts and records of all moneys received or expended by it. It also provides that the accounts are audited and a copy of the audited accounts should be submitted to An tÚdarás and published within a specified time period.

IOTs, Technological Universities, Universities and NCAD already have this provision in their legislation so there is not a need to apply this provision to them. This provision applies to Institutions established as universities under section 54 of the Universities Act.

This Head is set out in accordance with standard provisions for Accounts based on a recent precedent in the Technological Universities Act 2018.

Head 66 Guidelines, Codes and Policies

Provides that

- (1) An tÚdarás may develop guidelines, codes or policies for the higher education sector for any purpose relating to this Act and concerning—
 - (a) any matter or thing referred to in this Act or any other enactment, and
 - (b) the implementation of any policy or objective of the Minister or the Government.
- (2) An tÚdarás shall, for the purposes of the preparation of guidelines, codes or policies under subsection (1), consult with –
 - (a) relevant Departments of State,
 - (b) designated institutions of higher education or their representative bodies,
 - (c) National student unions, or
 - (d) any other bodies or persons it considers appropriate.
- (3) The Minister may give a direction in writing to An tÚdarás to develop guidelines, codes or policies under subsection (1) and An tÚdarás shall comply with any direction given by the Minister under this section.
- (4) An tÚdarás shall send a copy of the guidelines, codes or policies under section (1) to the designated institutions of higher education.
- (5) An tÚdarás may publish the guidelines, codes or policies in such manner as an tÚdarás considers appropriate.
- (6) The designated institutions of higher education shall report to An tÚdarás annually or as requested by An tÚdarás on the implementation of the guidelines, codes and policies under subsection (1).

Explanatory Note

This Head provides that An tÚdarás may develop guidelines, codes or policies for the higher education sector for any purpose relating to this Act and concerning any matter or thing referred to in this Act or any other enactment, and the implementation of any policy or objective of the Minister or the Government. An tÚdarás shall, in the preparation of guidelines, codes or policies consult with relevant Departments of State, higher education providers or their representative bodies, National student unions, and any other bodies or persons it considers appropriate.

The Minister may give a direction in writing to An tÚdarás to develop guidelines, codes or policies.

An tÚdarás shall send a copy of the guidelines, codes or policies to the designated institutions of higher education and An tÚdarás may publish the guidelines, codes or policies in such manner as an tÚdarás considers appropriate.

The designated institutions of higher education shall report to An tÚdarás annually or as requested by An tÚdarás on the implementation of the guidelines, codes or policies.

Chapter 3 Oversight by An tÚdarás of Designated Institutions of Higher Education

Head 67 Report to An tÚdarás

Provides that

- (1) An tÚdarás may request the governing body of a designated institution of higher education to undertake a review if An tÚdarás has concerns about the governance or performance of the designated institution of higher education or its functions or responsibilities including in relation to requirements under any Codes, Guidelines or Policies.
- (2) An tÚdarás shall specify in writing to the governing body of the designated institution of higher education the matter to be reviewed and the reason for the review.
- (3) The governing body of the designated institution of higher education shall -
 - (a) arrange for appropriate review of the matter, and
 - (b) provide a report on the matter to An tÚdarás.
- (4) The governing body of the designated institution of higher education shall provide a report on the matter to An tÚdarás not later than 60 days after the request was made. This timeframe can be extended by 30 days with the approval of An tÚdarás.
- (5) An tÚdarás may -
 - (a) determine that no further action is necessary, or
 - (b) make a determination for action in accordance with section 68following consideration of this report.
- (6) An tÚdarás shall provide a copy of the final report to the Minister.
- (7) An tÚdarás may publish this report in such form or manner as is deemed appropriate.

Explanatory Note

This Head provides that An tÚdarás may request the governing body of a designated institution of higher education to undertake a review where An tÚdarás has concerns about the governance or performance of a designated institution of higher education or its functions or responsibilities including in relation to requirements under any Codes, Guidelines or Policies.

An tÚdarás shall issue a written request to the governing body of the designated institution of higher education specifying the matter to be reviewed and the reason for the report. The governing body of the designated institution of higher education shall arrange for an appropriate review of the matter and provide a report of the matter to An tÚdarás within 60 days and the timeframe can be extended by 30 days with the approval of An tÚdarás.

An tÚdarás may determine that no further action is necessary or make a determination for action in accordance with section 68 following consideration of this report.

An tÚdarás shall provide a copy of the final report to the Minister. An tÚdarás may publish this report in such form or manner as is deemed appropriate.

Head 68 Determination by An tÚdarás

Provides that

- (1) An tÚdarás may make a determination for action –
 - (a) following consideration of a final report under section 67 if it is not satisfied its concerns regarding the performance of a designated institution of higher education of its functions have been properly allayed or resolved,
 - (b) if the designated institution of higher education does not undertake a review or provide a report in accordance with section 67, or
 - (c) following a recommendation of the Observer appointed under section 72.
- (2) The determination for action may provide for one or more of the actions in this section, in relation to a designated institution of higher education -
 - (a) provision of assistance in accordance with section 69,
 - (b) imposition of remedial measures in accordance with section 70,
 - (c) provision of information to QQI on any issue related to a provision under the QQI legislation in accordance with section 71,
 - (d) appointment of an observer in accordance with section 72, or
 - (e) undertake a review in accordance with section 73.
- (3) An tÚdarás may make a subsequent determination for action following or during a determination for action which has been or is being undertaken in accordance with sections 69 – 73.
- (4) A determination for action may be appealed by the designated institution of higher education to whom it applies, in accordance with section 74.
- (5) An tÚdarás may publish any determination for action in such form or manner as is deemed appropriate.

Explanatory Note

This Head provides that An tÚdarás may make a determination for action following consideration of a final report under section 67 if it is not satisfied that its concerns regarding the performance by the designated institution of higher education have been allayed or resolved, or if the designated institution of higher education does not undertake a review or provide a report in accordance with section 67 or following a recommendation of the Observer appointed under section 72.

The determination for action may provide for one or more of the following actions, in relation to a designated institution of higher education -

- *provision of assistance in accordance with section 69*
- *imposition of remedial measures in accordance with section 70*
- *provision of information to QQI on any issue related to a provision under the QQI legislation in accordance with section 71*
- *appointment of an observer in accordance with section 72, or*
- *undertake a review in accordance with section 73*

An tÚdarás may make a subsequent determination for action following or during a determination for action which has been or is being undertaken in accordance with sections 69 – 73.

A determination for action may be appealed by the designated institution of higher education to whom it applies, in accordance with section 74.

An tÚdarás may publish any determination for action in such form or manner as is deemed appropriate.

Head 69 Provision of assistance

Provides that

- (1) An tÚdarás may provide assistance in accordance with this section, to a designated institution of higher education -
 - (a) following a determination for action under section 68 (2) (a), or
 - (b) following a written request for assistance from a designated institution of higher education.
- (2) An tÚdarás shall provide written notice to the designated institution of higher education on the type of assistance to be provided in accordance with subsection (3) and the duration of the assistance provided.
- (3) The assistance provided by An tÚdarás to the designated institution of higher education may comprise one or more of the actions in this section -
 - (a) the appointment by An tÚdarás of a person or persons or a body to provide specialist assistance to the designated institution of higher education for a specified period,
 - (b) issuing guidance instructions for a specified period, or
 - (c) issuing mandatory directions for a specified period.
- (4) The person, persons or body appointed under subsection 3 (a) by An tÚdarás to provide specialist assistance to the designated institution of higher education may -
 - (a) provide advice, assistance or recommendations to the designated institution of higher education on any matter related to its functions or its future sustainability,
 - (b) carry out an assessment of relevant reports, financial plan, governance practices, undertaking of key functions, and may make recommendations to the designated institution of higher education based on the assessment(s),
 - (c) agree a plan with the designated institution of higher education on any matter related to the implementation of its functions or its future sustainability,
 - (d) monitor the implementation of any recommendations and agreed plans and identify any deviation from agreed plans, and
 - (e) provide a report to An tÚdarás on the assistance provided and the action taken by the designated institution of higher education.
- (5) A designated institution of higher education shall comply with any advice, guidance, recommendations, directions or agreed plans made by the person, persons or body appointed under subsection 3 (a) in accordance with subsection (4).

- (6) An tÚdarás shall review the provision of assistance under this section at the end of the period specified under subsection (2) and may -
- (a) end the period of assistance to the designated institution of higher education,
 - (b) require the continuation of the period of assistance to the designated institution of higher education for a specified period,
 - (c) require an additional or different type of assistance to be provided to the designated institution of higher education under subsection (3),
 - (d) request a review and report from the designated institution of higher education in accordance with section 67, or
 - (e) require a new determination for action in accordance with section 68.

Explanatory Notes

This Head provides that An tÚdarás may provide assistance to a designated institution of higher education following a determination for action under section 68 or following a written request for assistance from a designated institution of higher education .

This Head provides that An tÚdarás will provide written notice and the duration of the type of assistance to be provided, which may comprise one or more of the following actions:

- *appointment by An tÚdarás of a person or persons or a body to provide specialist assistance to the designated institution of higher education for a specified period,*
- *issuing guidance instructions for a specified period, or*
- *issuing mandatory directions for a specified period.*

The Head provides details regarding the specialist assistance which may be provided by the person, persons or body appointed by An tÚdarás to provide specialist assistance to the designated institution of higher education . It also provides that a designated institution of higher education will comply with this advice, guidance, recommendations, directions or agreed plans.

The Head provides that An tÚdarás will review the provision of assistance at the end of the specified period and may:

- *end the period of assistance to the designated institution of higher education,*
- *require the continuation of the period of assistance to the designated institution of higher education for a specified period,*
- *require an additional or different type of assistance to be provided to the designated institution of higher education,*
- *request a review and report from the designated institution of higher education in accordance with section 67, or*
- *require a new determination for action in accordance with section 68.*

Head 70 Remedial Measures

Provides that

- (1) An tÚdarás may impose remedial measures in accordance with this section, on an designated institution of higher education following a determination for action under section 68 (2) (b).
- (2) An tÚdarás shall provide written notice to the designated institution of higher education on the type of remedial measure or measures to be imposed in accordance with subsection (3) and the duration of the remedial measures.
- (3) The remedial measures imposed by An tÚdarás on the designated institution of higher education may comprise one or more of the actions in this section -
 - (a) admonishment or a censure taking into account any professional regulatory regimes,
 - (b) mandatory governance training for the board or staff,
 - (c) imposition of an issue rectification plan with clear periodic targets and monitoring requirements,
 - (d) review of Strategic Development Plan,
 - (e) temporary exclusion from particular categories of grants from An tÚdarás,
 - (f) the application of revised conditions of funding,
 - (g) controlled release of funding,
 - (h) withholding of a grant due to be paid to the designated institution of higher education,
 - (i) refund of a grant paid by An tÚdarás to a designated institution of higher education, or
 - (j) imposition of a financial penalty.
- (4) An tÚdarás shall review the imposition of remedial measures under this section at the end of the period specified under subsection (2) and may -
 - (a) end the period for which remedial measures apply,
 - (b) require the continuation of the remedial measures for a specified period,
 - (c) provide for the payment of any grant withheld by An tÚdarás from a designated institution of higher education under subsection 3 (i),
 - (d) require an additional or different type of remedial measure to be applied to the designated institution of higher education under subsection (3),
 - (e) request a review and report from the designated institution of higher education in accordance with section 67, or
 - (f) require a new determination for action in accordance with section 68.

Explanatory Notes

This section provides that An tÚdarás has the power to impose remedial measures on any designated institution of higher education in accordance with a determination for action under section 68.

This Head provides that An tÚdarás will provide written notice and the duration of the type of remedial measure to be imposed, which may comprise one or more of the following actions:

- *admonishment or a censure taking into account any professional regulatory regimes,*
- *mandatory governance training for the board or staff,*
- *imposition of an issue rectification plan with clear periodic targets and monitoring requirements,*
- *review of Strategic Development Plan,*
- *temporary exclusion from particular categories of grants from An tÚdarás,*
- *the application of revised conditions of funding,*
- *controlled release of funding,*
- *withholding of a grant due to be paid to the designated institution of higher education,*
- *refund of a grant paid by An tÚdarás to a designated institution of higher education, or*
- *imposition of a financial penalty.*

The Head provides that An tÚdarás will review the imposition of the remedial measures at the end of the specified period and may:

- *end the imposition of remedial measures,*
- *require the continuation of the remedial measures for a specified period,*
- *provide for the payment of any grant withheld by An tÚdarás from a designated institution of higher education under this section,*
- *require an additional or different type of remedial measure to be applied,*
- *request a review and report from the designated institution of higher education in accordance with section 67, or*
- *require a new determination for action in accordance with section 68.*

Head 71 Provision of information to QQI on any issue related to a provision under the QQI legislation

Provides that

- (1) An tÚdarás shall provide information to QQI on any issue concerning a designated institution of higher education relating to one or more functions of the QQI, following a determination for action under section 68 (2) (c).
- (2) An tÚdarás shall provide information to QQI on any issue concerning a designated institution of higher education, following a determination for action under section 68 (2) (c) relating to –
 - (a) section 29A, 29B and 29C of the Qualifications and Quality Assurance (Education and Training) Act 2012,
 - (b) section 34 of the Qualifications and Quality Assurance (Education and Training) Act 2012,
 - (c) section 42 of the Qualifications and Quality Assurance (Education and Training) Act 2012,
 - (d) section 46 of the Qualifications and Quality Assurance (Education and Training) Act 2012,
 - (e) section 54 of the Qualifications and Quality Assurance (Education and Training) Act 2012,
 - (f) section 55G of the Qualifications and Quality Assurance (Education and Training) Act 2012,
 - (g) section 57 of the Qualifications and Quality Assurance (Education and Training) Act 2012,
 - (h) section 61 of the Qualifications and Quality Assurance (Education and Training) Act 2012, or
 - (i) section 63 of the Qualifications and Quality Assurance (Education and Training) Act 2012.

Explanatory Note

This Head provides that An tÚdarás shall provide information to QQI following a determination for action on any issue concerning a designated institution of higher education relating to the functions of the QQI or relating to sections 29A, 29B, 29C, 34, 42, 46, 54, 57, 61 or 63 of the Qualifications and Quality Assurance (Education and Training) Act 2012.

These sections relate to :

- *Section 29A, 29B, 29C - Criteria concerning capacity and capability of providers and related criteria*
- *Section 34 – Review by Authority of quality assurance procedures of relevant providers*
- *Section 42 – Quality Reviews by Authority*
- *Section 46 – Review of programme validation*
- *Section 54 – Review by Authority of delegated authority to make award*
- *Section 55G – Review of listed awarding bodies*

- *Section 57 – Review by Authority of implementation of procedures for access, transfer and progression*
- *Section 61 – International education mark*
- *Section 63 – Review by Authority of providers compliance with code of practice and provider's use of international education mark.*

Head 72 Appointment of an Observer

Provides that

- (1) An tÚdarás may appoint a person to be an Observer in accordance with this section, to the governing body of a designated institution of higher education following a determination for action under section 68 (2) (d).
- (2) An tÚdarás shall provide written notice to the designated institution of higher education on the appointment of the observer and the duration of the appointment.
- (3) The observer may –
 - (a) attend any meetings of the governing body or sub-committees of the designated institution of higher education,
 - (b) offer advice to the governing body or sub-committees of the designated institution of higher education,
 - (c) work with the governing body or sub-committees of the designated institution of higher education to rectify any issues, and
 - (d) report to An tÚdarás on any matter that comes to the attention of the observer.
- (4) The employees and the members of the governing body or sub-committees of the designated institution of higher education shall co-operate with the observer as required to facilitate the observer in carrying out his or her functions under this section.
- (5) The observer shall not be a member of the governing body or any sub-committees of the designated institution of higher education and shall not have a vote at the governing body or sub-committee meetings and shall not exercise any of the powers or perform any of the functions of a member of the governing body or sub-committees of the designated institution of higher education.
- (6) The Observer shall be appointed for a period not exceeding 6 months. The Observer shall be withdrawn after the appointment period.
- (7) The Observer may submit preliminary draft reports to An tÚdarás and the designated institution of higher education during the period of appointment. An tÚdarás and the designated institution of higher education may make representations to the Observer on any such reports.
- (8) The Observer must provide a draft report to An tÚdarás and the designated institution of higher education no later than 30 days after the withdrawal of the observer.

- (9) An tÚdarás and the designated institution of higher education may make representations to the Observer on the draft report no later than 28 days after the report is furnished to them.
- (10) As soon as practicable after the expiration of the 28 days and having considered any representations made the Observer may amend the draft report and shall provide the final report to An tÚdarás.
- (11) The report from the Observer may make a recommendation -
- (a) that An tÚdarás should request a review and report from the designated institution of higher education in accordance with section 67, or
 - (b) that An tÚdarás should make a new determination for action in accordance with section 68.
- (12) An tÚdarás shall consider the report of the Observer and may -
- (a) request a review and report from the designated institution of higher education in accordance with section 67, or
 - (b) make a new determination for action in accordance with section 68.
- (13) An tÚdarás may publish the report of the Observer.
- (14) An tÚdarás may provide a copy of the final report to the Minister.

Explanatory Notes

This Head provides that An tÚdarás may appoint a person to be an Observer to the governing body of a designated institution of higher education following a determination for action. An tÚdarás will provide written notice to the designated institution of higher education on the appointment of the observer and the observer will be appointed for a period not exceeding 6 months.

The purpose of the observer will be to observe the operation of the designated institution of higher education by attending governing body or sub-committee meetings, offering advice and working with the governing bodies or sub-committees to rectify any issues and to report to An tÚdarás on any issues. The observer shall not be a member of the governing body or any sub-committees, shall not have a vote or shall not exercise any of the powers or perform any of the functions of a member of the governing body or sub-committees of the designated institution of higher education. The employees and members of the Governing Body or subcommittees of the designated institution of higher education shall co-operate with the observer.

The Observer may submit preliminary draft reports to An tÚdarás and the designated institution of higher education during the period of appointment and An tÚdarás and the designated institution of higher education may make representations to the Observer on any such reports.

The Observer must provide a draft report to An tÚdarás and the designated institution of higher education no later than 30 days after the withdrawal of the observer. An tÚdarás and the designated institution of higher education may make representations to the Observer on the draft report no later than 28 days after the report is furnished to them. As soon as practicable after the expiration of the 28 days and having considered any representations made the Observer may amend the draft report and will provide the final report to An tÚdarás.

The report from the Observer may make a recommendation that An tÚdarás should request a review and report from the designated institution of higher education in accordance with section 67, or that An tÚdarás should make a new determination for action in accordance with section 68.

An tÚdarás will consider the report of the Observer and may -

- request a review and report from the designated institution of higher education in accordance with section 67, or*
- make a new determination for action in accordance with section 68.*

An tÚdarás may publish the report of the Observer and An tÚdarás may provide a copy of the final report to the Minister

Head 73 Review

Provides that

- (1) An tÚdarás may appoint a person (in this section referred to as a ‘reviewer’) to carry out a review of a designated institution of higher education in accordance with a determination for action under section 68.
- (2) An tÚdarás shall by notice in writing inform the governing body of its proposal to appoint a reviewer under subsection (1) and the matter to be reviewed.
- (3) Employees and members of the governing body of the designated institution of higher education under review shall comply with a request of the reviewer to provide such information and assistance as the reviewer may reasonably require for the purposes of the review.
- (4) As soon as practicable after the review, the reviewer shall prepare a draft of the report on the review and shall furnish the draft report to An tÚdarás and the governing body of any designated institution of higher education reviewed and may furnish the draft report, or part of the draft report, to any other person he or she considers necessary and shall give notice to An tÚdarás, the governing body or bodies and such other person, that they may make representations concerning the draft report or, as the case may be, part of the draft report, not later than 28 days after it is furnished to them.
- (5) As soon as practicable after the expiration of the 28 days referred to in subsection (4) and, having considered any representations made pursuant to that subsection, the reviewer may amend the draft report and shall furnish the final report on the review to An tÚdarás.
- (6) An tÚdarás shall furnish the final report on the review to the Minister.
- (7) An tÚdarás may publish the report in such form or manner as is deemed appropriate.
- (8) An tÚdarás shall consider the report of the review and may make a determination for action in accordance with section 68.

Explanatory Note

This Head provides that An tÚdarás may appoint a person to carry out a review of a designated institution of higher education in accordance with a determination for action under section 68.

An tÚdarás shall inform the governing body in writing of its proposal to appoint a reviewer and the matter to be reviewed.

Employees and members of the governing body of the designated institution of higher education shall provide such assistance and information as the reviewer may reasonably require.

The reviewer shall prepare a draft of the report on the review and shall furnish the draft report to An tÚdarás and the governing body of any designated institution of higher education reviewed and may furnish the draft report, or part of the draft report, to any other person he or she considers necessary and

they may make representations concerning the draft report not later than 28 days after it is furnished to them.

The reviewer having considered any representations made may amend the draft report and shall furnish the final report on the review to An tÚdarás and An tÚdarás shall furnish the final report on the review to the Minister. An tÚdarás may publish the report in such form or manner as is deemed appropriate.

An tÚdarás shall consider the report of the review and may make a determination for action in accordance with section 68.

This Head is adapted from Investigator provisions in the Technological Universities Act 2018.

Part 8

Appeals

Head 74 Appeals

Provides that

- (1) The Minister shall as soon as practicable after the receipt of an appeal, establish an Appeals Board of 3 persons with a special interest or expertise in, or knowledge of, higher education or the functions of An tÚdarás (other than members of An tÚdarás or staff of An tÚdarás) to be members of that Appeals Board.
- (2) A person shall not be appointed to an Appeals Board if he or she is a person to whom any of paragraphs (a) to (f) of subsection (10) is applicable.
- (3) A member of an Appeals Board shall hold office for such period, as the Minister shall determine.
- (4) The Minister shall appoint a chairperson of an Appeals Board from among the members of the Appeals Board.
- (5) A member of an Appeals Board whose term of membership of the Appeals Board expires shall be eligible for reappointment as a member of another Appeals Board.
- (6) A member of an Appeals Board is entitled to be paid such remuneration, fees or allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines.
- (7) A member of an Appeals Board may at any time resign from office by giving notice in writing to the Minister of his or her resignation.
- (8) A resignation under subsection (7) takes effect on the day on which the Minister receives the notice.
- (9) The Minister may at any time remove from office a member of an Appeals Board if, in the opinion of the Minister—
 - (a) the member has become incapable through ill-health of effectively performing his or her functions,
 - (b) the member has committed stated misbehaviour, or
 - (c) the removal of the member appears to the Minister to be necessary for the effective performance by the Appeals Board of its functions.
- (10) A member of an Appeals Board shall cease to be qualified for office and shall cease to hold office if he or she—
 - (a) is adjudicated bankrupt,
 - (b) makes a composition or arrangement with creditors,

- (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
 - (d) is convicted of any indictable offence in relation to a company,
 - (e) is convicted of an offence involving fraud or dishonesty, or
 - (f) is the subject of an order under section 160 of the Companies Act 1990.
- (11) If a member of an Appeals Board dies, resigns, ceases to be qualified for office or is removed from office, the Minister may appoint a person to be a member of the Appeals Board to fill the casual vacancy so occasioned.
- (12) A person appointed to be a member of an Appeals Board pursuant to subsection (11)—
- (a) holds office for so much of the term of office of the member who occasioned the casual vacancy concerned as remains unexpired at the date of the appointment, and
 - (b) is eligible for reappointment as a member of another Appeals Board on the expiry of that period.

Explanatory Note

This Head provides for the establishment of an Appeals Board by the Minister on receipt of an appeal who shall appoint 3 people with a special interest or expertise in, or knowledge of, higher education or the functions of An tÚdarás (other than members of An tÚdarás or staff of An tÚdarás) to be members of that Appeals Board. The Head provides for the terms and conditions of membership, appointment, resignation and removal from an Appeals Board.

This Head is set out in accordance with the appeals provisions in the Qualifications and Quality Assurance (Education and Training) Act 2012(as amended).

Head 75 Determination of appeal by Appeals Board.

Provides that

- (1) An appeal—
 - (a) shall be lodged with the Minister within the time provided for by procedures prescribed under section 76, and
 - (b) shall state the grounds for the appeal.
- (2) An appeal shall be accompanied by such fee (if any) as may be determined by An tÚdarás.
- (3) The chairperson of the Appeals Board shall regulate the procedure of the Board.
- (4) An Appeals Board may refuse to hear an appeal where, in the opinion of the Board, the appeal lodged is not made in good faith or is frivolous or vexatious.
- (5) An Appeals Board may hold such hearings as it considers necessary for the purpose of determining an appeal.
- (6) Each of the parties to an appeal is entitled to be heard at the hearing and to present evidence to the Appeals Board.
- (7) An Appeals Board may adjourn the hearing by it of a matter until a date specified by it.
- (8) A decision by a majority of the members of an Appeals Board shall suffice for any purpose.
- (9) In determining an appeal, an Appeals Board may—
 - (a) affirm the decision of An tÚdarás or the Minister, or
 - (b) quash the decision of An tÚdarás or the Minister and direct An tÚdarás or the Minister, for stated reasons, to reconsider its decision.
- (10) An Appeals Board shall communicate its determination under subsection (9), including the reasons under paragraph (b) of that subsection, to the person or body who brings the appeal, An tÚdarás and the Minister.
- (11) In the case of determination under subsection 9 (b) An tÚdarás or the Minister shall reconsider its decision.
- (12) An Appeals Board is independent in the performance of its functions.

Explanatory Note

This Head provides that an appeal shall be lodged with the Minister in accordance with the procedures set out in section 76. This Head includes provisions for refusal to hear an appeal, holding hearings, presenting evidence and adjourning the hearing. The decisions are made by a majority of the members of an Appeals Board and in determining an appeal, an Appeals Board may—

- *affirm the decision of An tÚdarás or the Minister, or*

- *quash the decision of An tÚdarás or the Minister and An tÚdarás or the Minister shall reconsider its decision.*

The Head provides that the Appeals Board is independent in the performance of its functions.

This Head is set out in accordance with the appeals provisions in the Qualifications and Quality Assurance (Education and Training) Act 2012(as amended).

Head 76 Appeal procedures

Provides that

- (1) Procedures shall be prescribed for the hearing and determination of the appeals provided for in this Act, following consultation with An tÚdarás.
- (2) Different procedures may be prescribed under subsection (1) for appeals under different provisions.
- (3) Without prejudice to the generality of subsection (1), procedures prescribed under this section may—
 - (a) specify the forms to be used for bringing an appeal,
 - (b) specify the time within which an appeal shall be brought after the date of the decision of An tÚdarás or the Minister that is being appealed,
 - (c) specify the time within which an appeal shall be heard,
 - (d) specify the information which shall be provided to the Appeals Board,
 - (e) require specified notifications to be given in respect of the bringing of an appeal, and
 - (f) specify the period within which the Appeals Board hearing the appeal shall, from the date of completion by it of a hearing or hearings in relation to an appeal, make its determination in relation to the matter.

Explanatory Note

This Head provides that procedures shall be prescribed for the hearing and determination of the appeals provided for in this Act, following consultation with An tÚdarás.

This Head is set out in accordance with the appeals provisions in the Qualifications and Quality Assurance (Education and Training) Act 2012(as amended).

Part 9

Amendment to Universities Act, 1997

Head 77 Amendment of Section 16 (Composition of Governing Authority)

Provides that

The Universities Act 1997 is amended by the substitution of the existing section 16 with new provisions for Governing Authorities in Universities.

In order to support the objectives of the legislation to achieve effective and efficient governance, the Governing Authorities of Universities shall be significantly smaller than current provisions (currently 20 to 40 members) and will have the following membership principles:

- A chairperson shall be appointed by the governing authority. The chairperson shall not be the chief officer, member of the academic council, member of staff or a student (or elected officers of the Student union) of the University.
- The number of external members (including the chairperson) of the governing authority shall exceed the number of internal members.
- A number of the external members shall be appointed by the Minister.
- A number of the external members shall be appointed by the governing authority in accordance with an appointments process which is developed by the governing authority and approved by the Minister
- All external members are appointed using a skills based competency framework with consideration of experience and expertise relating to
 - matters connected with the functions of the university to enable them to make a substantial contribution to the effective and efficient performance of those functions, or
 - matters connected to education, teaching and learning, research, international perspectives, organisational and financial governance, management or public administration.
- The internal members shall be elected/selected in accordance with the procedures agreed by the governing authority or other relevant body (e.g. student union/staff association)
- The duration of appointment to the governing authority shall be 4 years with a maximum of two terms (excluding the chief officer and any *ex-officio* membership)
- Appointments to the governing authority will be staggered.
- Internal members are any members who are employees of the University including the chief officer, member of the academic council, member of staff or a person who is remunerated under contract by the University.
- Student members are members who are students (or elected officers of the Student union) of the University.

- External members are any members who are neither employees of the University including the chief officer, member of the academic council, member of staff or a person who is under remunerated under contract by the University nor students (or elected officers of the Student union) of the University.
- Provision for gender balance and membership which broadly reflects the composition of Irish society.
- Transitional provisions to allow a governing authority to reconstitute itself to come within the revised overall composition and sub-categories of membership to avoid a major hiatus and loss of corporate knowledge. e.g. subject to the composition overall and by category existing external members could continue until their term expired. If there are too many such members the governing authority would determine based upon its own procedures which would continue and if there were too few a process for additional external appointees would be initiated in line with the legislation to bring the governing authority and the sub-categories of members up to complement.

It is proposed that the composition of the Trinity College governing authority will accord with the above principles but there may be some differences reflecting the distinct legislative framework – currently, the Trinity College, Dublin (Charters and Letters Patent Amendment) Act 2000.

Explanatory Note

This head provides for an updated framework for governing authorities of universities by reducing the size of governing authority membership and changing the composition of the governing authority to ensure best practices around university governance.

It is proposed that the composition of the Trinity College governing authority will accord with the above principles but there may be some differences reflecting the distinct legislative framework in place – currently, the Trinity College, Dublin (Charters and Letters Patent Amendment) Act 2000.

An amendment to the Trinity College governing authority may require the deletion of section 4 (2) to (4) and amendment of the Trinity College, Dublin (Charters and Letters Patent Amendment) Act 2000 – a Private Act.

Head 78 Amendment of Section 17 (Chairperson of governing authority)

Provides that

Section 17 of the Universities Act 1997 is amended by –

(1) The deletion of section (1) and (2) and (4).

(2) Section (3) is deleted and replaced by

“3 (a) The chairperson shall be appointed by the governing authority. The chairperson shall not be the chief officer, member of the academic council, member of staff or a student (or elected officers of the Student union) of the University. ”

(3) The insertion of the following section after section (9)

“(10) In this section, “external member” means a person who is not –

- (a) the chief officer
- (b) a member of the academic council,
- (c) a member of staff of the university, or
- (d) a student or elected officer of the student union of the university.”

Explanatory Note

This Head provides for the removal of the provisions in Section 17 of the Universities Act 1997 for the Chief Officer to be appointed as the Chairperson of the governing authority.

Head 79 Amendment of Section 18 (Functions of governing authority)

Provides that

Section 18 of the Universities Act 1997 is amended by the insertion of the following subsection after subsection (1) -

“(1A) The governing authority shall—

- (a) promote the success of the university,
- (b) satisfy itself that appropriate systems, procedures and practices are in place—
 - (i) to achieve the objects of the university,
 - (ii) for the internal performance management and accountability of the university in respect of —
 - I. the performance of its functions, and
 - II. achieving objectives in accordance with the strategic development plan,
- and
- (iii) in order to enable compliance with the policies (whether set out in codes, guidelines or other documents, or any combination thereof) of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the university, and
- (c) establish and implement arrangements for the management of the performance of the chief officer.”

Explanatory Note

This Head adds additional functions to section 18 of the universities act to provide that the governing authority shall promote the success of the university, satisfy itself that appropriate systems, procedures and practices are in place to achieve the object of the university, for the internal performance management and accountability of the university, and in order to enable compliance with the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the university and the Governing authority shall also establish and implement arrangements for the management of the performance of the chief officer.

This Head is based on a recent precedent in the Health Service Executive (Governance) Act 2019.

Head 80 Deletion of section 19 (Visitor), 20 (Visitation) and 21 (Suspension of governing authority)

Provides that

- (1) Section 19 of the Universities Act, 1997 is deleted.
- (2) Section 20 of the Universities Act, 1997 is deleted.
- (3) Section 21 of the Universities Act, 1997 is deleted.

Explanatory Note

This section provides for the revoking of section 19 and section 20 of the Universities Act, 1997 which provide for the appointment of a Visitor to the university and provision for a visitor to inquire into a matter where the Minister is of the opinion that there are reasonable grounds for contending that the functions of a university are being performed in a manner which prima facie constitutes a breach of the laws, statutes or ordinances applicable to the university. Section 21 of the Universities Act, 1997 which provides for the suspension of the governing authority of a university following a report by a Visitor is also revoked.

This legislation provides for a report from a designated institution of higher education (including universities), a determination for action, provision of assistance, remedial measures, provision of information to QQI, appointment of observer and a review of a designated institution of higher education (including universities) by An tÚdarás (Sections 67-73). Therefore the Visitor provision is no longer required.

Head 81 Amendment of Section 28 (Composition of academic council)

Provides that

- (1) Section 28 of the Universities Act 1997 is amended by the insertion of the following paragraph after paragraph (c) of subsection (1)

“(d) The Academic council shall have no more than 70 members.”

Explanatory Note

This Head provides for an amendment to section 28 of the Universities Act, 1997 to include a provision to limit the membership of the Academic council to 70 members.

Head 82 Amendment of Section 34 (Strategic Development Plan)

Provides that

Section 34 of the Universities Act 1997 is amended by –

(1) the insertion of the following subsection after subsection (1) –

“(1A) a governing authority shall for the purposes of preparing a strategic development plan under this section consult with –

- (a) the Minister,
- (b) such Departments of State as the university considers appropriate,
- (c) An tÚdarás,
- (d) students or the student union of the university,
- (e) employees of the university,
- (f) the Academic Council,
- (g) relevant Education and Training Board (s),
- (h) relevant local authorities, and
- (i) any other bodies or persons the governing authority considers appropriate.”

Explanatory Note

This Head provides for consultation by the governing authority on the preparation of the strategic development plan.

Head 83 Amendment of Section 36 (Equality Policy)

Provides that

Section 36 of the Universities Act 1997 is amended by –

(1) the insertion of the following subsection after subsection (1) –

“(1A) a governing authority shall for the purposes of preparing an equality policy under this section consult with –

- (a) the Minister,
- (b) such Departments of State as the university considers appropriate,
- (c) An tÚdarás,
- (d) students or the student union of the university,
- (e) employees of the university,
- (f) the Academic Council,
- (g) relevant Education and Training Board (s),
- (h) relevant local authorities, and
- (i) any other bodies or persons the governing authority considers appropriate.”

Explanatory Note

This Head provides for consultation by the governing authority on the preparation of the equality policy.

Head 84 Amendment of Section 37 (Budgets)

Provides that

Section 37 of the Universities Act 1997 is amended by –

(1) the substitution of the following subsection for subsection (1):

“An tÚdarás shall, on or before the first day of March in each year, notify the Chief Officer of the funding (in this section referred to as ‘allocated funding’) to be provided by an tÚdarás for that year to a university, from moneys provided to An tÚdarás under section 39 of the Higher Education Authority Act 2021.”

(2) the substitution of the following subsection for subsection (2):

“The Chief Officer shall, on or before the first day of April in each year, or such other date as an tÚdarás may approve, prepare and submit following approval by the governing authority, to An tÚdarás, in such form and manner as may from time to time be approved by An tÚdarás, a statement of the proposed expenditure and, other than allocated funding, expected income of the university for that year.”

(3) the insertion of the following subsection after subsection (2):

“(2A) The allocated funding and the expected income of the university referred to in subsection (2), shall be the budget of the university for that year.”

(4) the substitution of the following subsection for subsection (5):

“Where the Chief Officer of a university is of opinion that –

- (a) the actual expenditure in a year, or
- (b) a proposed course of action,

taking into account any increased allocation under subsection (4), will or is likely to result in expenditure in excess of the budget for that year (in this section referred to as a ‘material departure from the budget’), the Chief Officer shall so inform the governing authority and give reasons for his or her opinion.”

(5) the substitution of the following subsection for subsection (6):

“Where the governing authority, despite being so informed, decides –

- (a) In the case of subsection (5) (a), not to decrease its actual expenditure, or
- (b) In the case of subsection (5) (b), to continue with its proposed course of action,

the Chief Officer, as soon as practicable, shall, unless he or she considers that contrary to his or her foregoing opinion a material departure from the budget will not occur, inform An tÚdarás of the decision of the governing authority.”

(6) In subsection (7) by the deletion of “financial”.

Explanatory Note

Section 37 of the Universities Act provided that the governing authority is responsible for preparing the budget of the University. This Head amends that provision to provide that the Chief Officer is responsible for preparing the budget of the University, with the governing authority having the responsibility for giving or withholding its approval for the budget and recommending the approved budget to An tÚdarás.

This Head also amends the Section 37 of the Universities Act to wording similar to the Institutes of Technology Acts 1992-2006 and the Technological Universities Act 2018 to provide that if the Chief Officer has concerns regarding the actual expenditure in a year or a proposed course of action exceeding the budget for the year s/he will inform the governing authority of those concerns and if no action is taken shall inform An tÚdarás.

Head 85 Insertion of New Section 41A (Review and Report by the university)

Provides that

A new section is inserted at section 41A of the Universities Act, 1997 -

“41A Review and Report

- (1) The governing authority shall undertake a review if -
 - (a) the governing authority has concerns regarding the governance or performance of the functions or responsibilities of the university, or
 - (b) the governing authority has received a notification in writing from An tÚdarás requesting it to review a matter.
- (2) The governing authority may appoint a person to carry out the review.
- (3) The reviewer may request such information and assistance as the reviewer may require from the governing authority, the chief officer and employees of the university for the purpose of the review and the governing authority, chief officer and employees of the university shall provide such information as requested by the reviewer.
- (4) The reviewer shall prepare a report of the review and shall provide a copy of the review to the governing authority and the chief officer.
- (5) The governing authority shall put in place corrective measures if appropriate.
- (6) The governing authority shall retain a copy of the report on any review undertaken under subsection 1 (a) and provide a report to An tÚdarás annually or as requested by An tÚdarás on any reviews undertaken under subsection 1 (a).
- (7) The governing authority shall provide a copy of the report to An tÚdarás as soon as practicable after completion, including any corrective action taken under subsection (5) if it has been requested to undertake the review by An tÚdarás under subsection 1 (b). “

Explanatory Note

This head provides that the governing authority can carry out a review of a matter if it has concerns regarding the governance or performance of the functions or responsibilities of the university or if An tÚdarás requests the university in writing to undertake a review. The governing authority may appoint a person to carry out the review and the reviewer may request information from the governing authority, chief officer and members of staff of the university and they shall supply the requested information. The reviewer shall prepare a report for the governing authority and the chief officer and the governing authority shall take any corrective action necessary. The governing authority shall keep a copy of the report and report annually or on request to An tÚdarás on any reviews undertaken. If the review was requested by An tÚdarás, the governing authority shall provide An tÚdarás with the report immediately.

Head 86 Amendment of Section 50 (Guidelines)

Provides that

- (1) Section 50 of the Universities Act 1997 is deleted.

Explanatory Note

This head provides that the HEA may issue guidelines on the numbers or grades of employees of the university or the proportion of the budget of the university to be applied to the different activities of the university. It also provides that these guidelines are not binding on a university and that the HEA shall not as a result of a departure from the guidelines impose restrictions or conditions on the use of moneys paid to the university by An tÚdarás or otherwise limit moneys payable to the university by the HEA.

Section 50 (2) of this provision (which related to the guidelines not being binding) is in conflict with section 70 (Remedial Measures) of the Higher Education Authority Bill which may impose restrictions/conditions or limit moneys payable to the university by the HEA following a structured process and this needs to be deleted. However, there is concern in the University sector regarding the removal of section 50 (2) on its own as with the removal of this provision it could potentially provide that guidelines issued under section 50(1) of the Universities Act 1997 are binding. There is no longer any necessity for section 50 (1) as the provisions for a funding framework and conditions of funding address budget guidelines and there are separate provisions for the staff employed in universities in section 25 of the Universities Act, 1997. Therefore the full section 50 is deleted. .

Head 87 Amendment of the Third Schedule to the Universities Act 1997

Provides that

The third schedule to the Universities Act 1997 is amended -

- (1) In section 3 (4), insert “up to a maximum of 8 consecutive years. The maximum time period of 8 consecutive years does not apply to the Chief Officer or *ex officio* members appointed in accordance with section 16 .” after “A member of a governing authority (including a chairperson appointed under section 17 (3)) whose term of office expires by effluxion of time shall be eligible for reappointment”
- (2) By replacing section 4 (1) with “Subject to this Schedule and to section 21, the term of office of a member of the governing authority, other than the Chief Officer and the senior officers appointed in accordance with subsection 2 (c), shall not exceed 4 years and a member may not serve more than 2 consecutive terms of office.”
- (3) By replacing section 10 (1) with “A governing authority shall meet at least six times per year.”
- (4) By inserting a new section after section 10 (3) “(4) The quorum for a meeting of a governing authority shall require the number of external members participating to exceed the number of internal members participating. “

Explanatory Note

This Head updates the Third Schedule of the Universities Act 1997 to reflect the amendments to section 16 of the University Act made in section 77 and to provide for a limit of 8 consecutive years and 2 consecutive terms of office of the governing authority, the requirement for the governing authority to hold a minimum of six meetings per year and the requirement for a majority of external members as part of the quorum of the governing authority.

Head 88 Amendment of the Fourth Schedule to the Universities Act 1997

Provides that

The fourth schedule to the Universities Act 1997 is amended -

- (1) By the insertion of the following subsections after subsection (2) –
 - “(2A) The chief officer may make proposals to the university on any matter relating to its functions.
 - (2B) The chief officer shall provide the governing authority with any information (including financial information) in relation to the performance of his or her functions as the governing authority may request
 - (2C) The governing authority may designate a member of the staff of the university to perform the functions of the chief officer in the absence of the chief officer or where the position of chief officer is vacant, and a member so designated shall in such absence or upon such position being vacant, perform those functions.”
- (2) By the removal of subsection (5)

Explanatory Note

This Head updates the Fourth Schedule of the Universities Act 1997 to include some provisions in the Technological Universities Act, 2018.

It provides for the removal of the provision that the chief officer shall be entitled to be a member of and preside over every committee appointed by the governing authority.

Part 10

Amendment to the Technological Universities Act, 2018

Head 89 Amendment of Section 11 (Governing Body of technological university)

Provides that

Section 11 of the Technological Universities Act 2018 is amended by the insertion of the following subsection after subsection (1) -

“(1A) The governing body shall—

- (a) Promote the success of the technological university,
- (b) satisfy itself that appropriate systems, procedures and practices are in place—
 - (i) to achieve the objects of the technological university,
 - (ii) for the internal performance management and accountability of the technological university in respect of the —
 - I. performance of its functions, and
 - II. achieving objectives in accordance with the strategic development plan,
- and
- (iii) in order to enable compliance with the policies (whether set out in codes, guidelines or other documents, or any combination thereof) of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the technological university, and
- (c) establish and implement arrangements for the management of the performance of the President.”

Explanatory Note

This Head adds additional functions to section 11 of the Technological Universities act to provide that the governing body shall promote the success of the technological university, satisfy itself that appropriate systems, procedures and practices are in place to achieve the object of the technological university, for the internal performance management and accountability of the technological university, and in order to enable compliance with the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the technological university and the governing body shall also establish and implement arrangements for the management of the performance of the President.

This Head is based on a recent precedent in the Health Service Executive (Governance) Act 2019.

Head 90 Amendment of Section 12 (Membership of governing body of technological university)

Provides that

The Technological Universities Act 2018 is amended by the substitution of the existing section 12 with new provisions for Governing Bodies in Technological Universities.

In order to support the objectives of the legislation to achieve effective and efficient governance, the Governing Bodies of Technological Universities shall be significantly smaller than current provisions (currently 14 to 22 members or 15 to 26 members) and will have the following membership principles:

- A chairperson shall be appointed by the governing body. The chairperson shall not be the chief officer, member of the academic council, member of staff or a student (or elected officers of the Student union) of the Technological University.
- The number of external members (including the chairperson) of the governing body shall exceed the number of internal members.
- A number of the external members shall be appointed by the Minister.
- A number of the external members shall be appointed by the governing body in accordance with an appointments process which is developed by the governing body and approved by the Minister
- All external members are appointed using a skills based competency framework with consideration of experience and expertise relating to
 - matters connected with the functions of the technological university to enable them to make a substantial contribution to the effective and efficient performance of those functions, or
 - matters connected to education, teaching and learning, research, international perspectives, organisational and financial governance, management or public administration.
- The internal members shall be elected/selected in accordance with the procedures agreed by the governing body or other relevant body (e.g. student union/staff association)
- The duration of appointment to the governing body shall be 4 years with a maximum of two terms (excluding the chief officer and any *ex-officio* membership)
- Appointments to the governing body will be staggered.
- Internal members are any members who are employees of the Technological University including the chief officer, member of the academic council, member of staff or a person who is remunerated under contract by the Technological University.
- Student members are members who are students (or elected officers of the Student union) of the Technological University.

- External members are any members who are neither employees of the Technological University including the chief officer, member of the academic council, member of staff or a person who is under remunerated under contract by the Technological University nor students (or elected officers of the Student union) of the Technological University.
- Provision for gender balance and membership which broadly reflects the composition of Irish society.
- Transitional provisions to allow a governing body to reconstitute itself to come within the revised overall composition and sub-categories of membership to avoid a major hiatus and loss of corporate knowledge. e.g. subject to the composition overall and by category existing external members could continue until their term expired. If there are too many such members the governing body would determine based upon its own procedures which would continue and if there were too few a process for additional external appointees would be initiated in line with the legislation to bring the governing body and the sub-categories of members up to complement.

Explanatory Note

This head provides for an updated framework for governing bodies of technological universities by reducing the size of governing body membership and changing the composition of the governing body to ensure best practices around technological university governance.

Head 91 Amendment of Section 18 (Strategic Development Plan)

Provides that

Section 18 of the Technological Universities Act 2018 is amended by –

(1) the insertion of the following subsection after subsection (1) –

“(1A) a governing body shall for the purposes of preparing a strategic development plan under this section consult with –

- (a) the Minister,
- (b) such Departments of State as the technological university considers appropriate,
- (c) An tÚdarás,
- (d) students or the student union of the technological university,
- (e) employees of the technological university,
- (f) the Academic Council,
- (g) relevant Education and Training Board (s),
- (h) relevant local authorities, and
- (i) any other bodies or persons the governing body considers appropriate.”

Explanatory Note

This Head provides for consultation by the governing body on the preparation of the strategic development plan.

Head 92 Amendment of Section 19 (Equality Policy)

Provides that

Section 19 of the Technological Universities Act 2018 is amended by –

(1) the insertion of the following subsection after subsection (1) –

“(1A) a governing body shall for the purposes of preparing an equality policy under this section consult with –

- (a) the Minister,
- (b) such Departments of State as the technological university considers appropriate,
- (c) An tÚdarás,
- (d) students or the student union of the technological university,
- (e) employees of the technological university,
- (f) the Academic Council,
- (g) relevant Education and Training Board (s),
- (h) relevant local authorities, and
- (i) any other bodies or persons the governing body considers appropriate.”

Explanatory Note

This Head provides for consultation by the governing body on the preparation of the equality policy.

Head 93 Amendment to section 22 (3) (Accounts of a technological university)

Provides that

Section 22 (3) of the Technological Universities Act 2018 is amended by the insertion in section 22 (3) of “and An tÚdarás” after “the Minister”.

Explanatory Note

This Head provides for the amendment of section 22 (3) of the Technological Universities Act 2018 to provide that the technological university shall furnish the accounts and the report of the Comptroller and Auditor General to An tÚdarás as well as the Minister.

Head 94 Insertion of New Section 25A (Review and Report by the technological university)

Provides that

A new section is inserted at section 25A of the Technological Universities Act, 2018 -

“25A Review and Report

- (1) The governing body shall undertake a review if -
 - (a) the governing body has concerns regarding the governance or performance of the functions or responsibilities of the technological university, or
 - (b) the governing body has received a notification in writing from An tÚdarás requesting it to review a matter.
- (2) The governing body may appoint a person to carry out the review.
- (3) The reviewer may request such information and assistance as the reviewer may require from the governing body, the President and employees of the technological university for the purpose of the review and the governing body, President and employees of the technological university shall provide such information as requested by the reviewer.
- (4) The reviewer shall prepare a report of the review and shall provide a copy of the review to the governing body and the President.
- (5) The governing body shall put in place corrective measures if appropriate.
- (6) The governing body shall retain a copy of the report on any review undertaken under subsection 1 (a) and provide a report to An tÚdarás annually or as requested by An tÚdarás on any reviews undertaken under subsection 1 (a).
- (7) The governing body shall provide a copy of the report to An tÚdarás as soon as practicable after completion, including any corrective action taken under subsection (5) if it has been requested to undertake the review by An tÚdarás under subsection 1 (b).”

Explanatory Note

This head provides that the governing body can carry out a review if it has concerns regarding the governance or performance of the functions or responsibilities of the technological university or if the An tÚdarás requests the technological university in writing to undertake a review. The governing body may appoint a person to carry out the review and the reviewer may request information from the governing body, the President and employees of the technological university and the governing body, President and employees shall supply the requested information. The reviewer shall prepare a report and provide it to the governing body and the President and the governing body shall take any corrective action necessary. The governing body shall keep a copy of the report and report annually or on request to An tÚdarás on any reviews undertaken. If the review was requested by An tÚdarás, the governing body shall provide An tÚdarás with the report immediately.

Head 95 Deletion of section 26 (Investigator and report)

Provides that

- (1) Section 26 of the Technological Universities Act, 2018 is deleted.

Explanatory Note

This Head provides for the revoking of section 26 of the Technological Universities Act, 2018 which provides for the appointment of an investigator by the Minister to carry out an investigation into any matter specified in writing by the Minister concerning the performance by a technological university of its functions. An tÚdarás has the power to instigate a review of a Technological University under section 73 of this Act so the investigator provision is no longer required.

Head 96 Deletion of section 27 (2) and (3) (Information requested by Minister)

Provides that

- (1) Section 27 (2) of the Technological Universities Act, 2018 is deleted.
- (2) Section 27 (3) of the Technological Universities Act, 2018 is deleted.

Explanatory Note

This section provides for the revoking of section 27 (2) and 27 (3) of the Technological Universities Act, 2018 as this section relates to the request and provision of information linked to an investigation.

Part 11

Amendment to the Institutes of Technology Acts, 1992-2006

Head 97 Amendment of section 5 (1) (i)

Provides that

Section 5 of the Institutes of Technology Acts, 1992 – 2006 is amended by –

(1) the substitution of the following subsection for subsection (1) (i):

“subject to the consent of the Minister and the Minister for Public Expenditure and Reform, to acquire, hold and dispose of land, an interest in land or any other property”.

Explanatory Note

This Head provides for the amendment of section 5 (Functions of Colleges) of the Regional Technical Colleges Act 1992. Section 5 (1) (i) “subject to the approval of the HEA to acquire land” is replaced with the wording “subject to the consent of the Minister and the Minister for Public Expenditure and Reform, to acquire, hold and dispose of land, an interest in land or any other property”. This amendment is being made for the purposes of consistency with the Technological University legislation.

Head 98 Amendment of Section 6 (Governing Bodies)

Provides that

- (1) Section 6 of the Institutes of Technology Acts 1992 to 2006 as amended by section 82 of the Technological Universities Act 2018, is amended by the insertion of the following subsection after subsection (1) -

“(1A) The governing body shall—

- (a) promote the success of the college,
- (b) satisfy itself that appropriate systems, procedures and practices are in place—
 - (i) to achieve the objects of the college,
 - (ii) for the internal performance management and accountability of the college in respect of the —
 - I. performance of its functions, and
 - II. achieving objectives in accordance with the strategic development plan,
 - and
 - (iii) in order to enable compliance with the policies (whether set out in codes, guidelines or other documents, or any combination thereof) of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the college, and
- (b) establish and implement arrangements for the management of the performance of the Director.”

- (2) The Institutes of Technology Acts 1992 – 2006, as amended by the Technological Universities Act 2018, is amended by the substitution of the existing subsection (3) with new provisions for Governing Bodies in Institutes of Technology.

In order to support the objectives of the legislation to achieve effective and efficient governance, the Governing Bodies of Institutes of Technology shall be smaller than current provisions and will have the following membership principles:

- A chairperson shall be appointed by the governing body. The chairperson shall not be the chief officer, member of the academic council, member of staff or a student (or elected officers of the Student union) of the college.
- The number of external members (including the chairperson) of the governing body shall exceed the number of internal members.
- A number of the external members shall be appointed by the Minister.
- A number of the external members shall be appointed by the governing body in accordance with an appointments process which is developed by the governing body and approved by the Minister

- All external members are appointed using a skills based competency framework with consideration of experience and expertise relating to
 - matters connected with the functions of the college to enable them to make a substantial contribution to the effective and efficient performance of those functions, or
 - matters connected to education, teaching and learning, research, international perspectives, organisational and financial governance, management or public administration.
- The internal members shall be elected/selected in accordance with the procedures agreed by the governing body or other relevant body (e.g. student union/staff association)
- The duration of appointment to the governing body shall be 4 years with a maximum of two terms (excluding the chief officer and any *ex-officio* membership)
- Appointments to the governing body will be staggered.
- Internal members are any members who are employees of the college including the chief officer, member of the academic council, member of staff or a person who is remunerated under contract by the college.
- Student members are members who are students (or elected officers of the Student union) of the college.
- External members are any members who are neither employees of the college including the chief officer, member of the academic council, member of staff or a person who is under remunerated under contract by the college nor students (or elected officers of the Student union) of the college.
- Provision for gender balance and membership which broadly reflects the composition of Irish society.
- Transitional provisions to allow a governing body to reconstitute itself to come within the revised overall composition and sub-categories of membership to avoid a major hiatus and loss of corporate knowledge. e.g. subject to the composition overall and by category existing external members could continue until their term expired. If there are too many such members the governing body would determine based upon its own procedures which would continue and if there were too few a process for additional external appointees would be initiated in line with the legislation to bring the governing body and the sub-categories of members up to complement.

Explanatory Note

This Head adds additional functions to section 6 of the Institutes of Technology Act 1992 -2006 as amended by section 82 of the Technological Universities act to provide that the governing body shall promote the success of the college, satisfy itself that appropriate systems, procedures and practices are in place to achieve the object of the college, for the internal performance management and accountability of the college, and in order to enable compliance with the policies of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the college and the

governing body shall also establish and implement arrangements for the management of the performance of the Director..

This head provides for an updated framework for governing bodies of institutes of technology by reducing the size of governing body membership and changing the composition of the governing body to ensure best practices around institute of technology governance.

Head 99 Removal of section 14 (2A) and section 14 (4)

Provides that

- (1) Section 14 (2A) of the Institutes of Technology Acts 1992 – 2006 is deleted.
- (2) Section 14 (4) of the Institutes of Technology Acts 1992 – 2006 is deleted.

Explanatory Note

This Head provides for the revoking of section 14 (2A) and 14 (4) of the Institutes of Technology Acts, 1992 - 2006 as these sections relate to the request and provision of information linked to an investigation.

Head 100 Removal of section 20 (Investigator and report)

Provides that

- (1) Section 20 of the Institutes of Technology Acts 1992-2006 is deleted.

Explanatory Note

This Head provides for the revoking of section 20 of the Institutes of Technology Acts 1992-2006 which provides for the appointment of an investigator by the Minister to carry out an investigation into any matter specified in writing by the Minister concerning the performance by an institute of technology of its functions. An tÚdarás has the power to instigate a review of an institute of technology under section 73 of this Act so the investigator provision is no longer required.

Head 101 Amendment of Section 21C (Strategic Development Plan)

Provides that

Section 21C of the Institutes of Technology Acts 1992-2006 is amended by –

(1) the insertion of the following subsection after subsection (1) –

“(1A) a governing body shall for the purposes of preparing a strategic development plan under this section consult with –

- (a) the Minister,
- (b) such Departments of State as the college considers appropriate,
- (c) An tÚdarás,
- (d) students or the student union of the college,
- (e) employees of the college,
- (f) the Academic Council,
- (g) relevant Education and Training Board (s),
- (h) relevant local authorities, and
- (i) any other bodies or persons the governing body considers appropriate.”

Explanatory Note

This Head provides for consultation by the governing body on the preparation of the strategic development plan.

Head 102 Amendment of Section 21D (Equality Policy)

Provides that

Section 21D of the Institutes of Technology Acts 1992-2006 is amended by –

(1) the insertion of the following subsection after subsection (1) –

“(1A) a governing body shall for the purposes of preparing an equality policy under this section consult with –

- (a) the Minister,
- (b) such Departments of State as the college considers appropriate,
- (c) An tÚdarás,
- (d) students or the student union of the college,
- (e) employees of the college,
- (f) the Academic Council,
- (g) relevant Education and Training Board (s),
- (h) relevant local authorities, and
- (i) any other bodies or persons the governing body considers appropriate.”

Explanatory Note

This Head provides for consultation by the governing body on the preparation of the equality policy.

Head 103 Insertion of New Section 21G (Review and Report by the college)

Provides that

A new section is inserted at section 21G of the Institutes of Technology Act 1992 - 2006

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“21G Review and Report

- (1) The governing body shall undertake a review if -
 - (a) the governing body has concerns regarding the governance or performance of the functions or responsibilities of the college, or
 - (b) the governing body has received a notification in writing from An tÚdarás requesting it to review a matter.
- (2) The governing body may appoint a person to carry out the review.
- (3) The reviewer may request such information and assistance as the reviewer may require from the governing body, the Director and employees of the college for the purpose of the review and the governing body, Director and employees of the college shall provide such information as requested by the reviewer.
- (4) The reviewer shall prepare a report of the review and shall provide a copy of the review to the governing body and the Director.
- (5) The governing body shall put in place corrective measures if appropriate.
- (6) The governing body shall retain a copy of the report on any review undertaken under subsection 1 (a) and provide a report to An tÚdarás annually or as requested by An tÚdarás on any reviews undertaken under subsection 1 (a).
- (7) The governing body shall provide a copy of the report to An tÚdarás as soon as practicable after completion, including any corrective action taken under subsection (5) if it has been requested to undertake the review by An tÚdarás under subsection 1 (b).”

Explanatory Note

This head provides that the governing body can carry out a review if it has concerns regarding the governance or performance of the functions or responsibilities of the college or if the An tÚdarás requests the college in writing to undertake a review. The governing body may appoint a person to carry out the review. The reviewer may request information from the governing body, the Director and the employees of the college and the governing body, the Director and the employees shall supply the requested information. The reviewer shall prepare a report and provide it to the governing body and the Director and the governing body shall take any corrective action necessary. The governing body shall keep a copy of the report and report annually or on request to An tÚdarás on any reviews undertaken. If the review was requested by An tÚdarás, the governing body shall provide An tÚdarás with the report immediately.

**Head 104 Amendment to section 2 of the Regional Technical Colleges
(Amendment) Act, 1994 (Appointment of Commission)**

Provides that

Section 2 of the Regional Technical Colleges (Amendment) Act, 1994 is amended by –

- (1) the substitution in section 2 (1) of “after considering the report of an inspector under section 20 of the Principal Act” with “after considering the report of a review undertaken in accordance with section 73 of the Higher Education Authority Act 2021”.

Explanatory Note

Section 2 of the Regional Technical Colleges (Amendment) Act, 1994 provides for the appointment of a commission to an institute of technology by the Minister following an investigation if the Minister is satisfied that the affairs of the institute of technology are not being managed in an effective manner.

This section replaces the reference to an investigation with a reference to a review under section 73 of the Higher Education Authority Act, 2021 as the provision for an investigation of an institute of technology has been removed by this legislation.

Part 12

Amendment to the National College of Art and Design Act 1971

Head 105 Amendment of Section 7 (Term of office of members of An Bord)

Provides that

- (1) The National College of Art and Design Act 1971 is amended by the substitution of the following for subsection 7 (1) –

“ (1) The term of office of a member of An Bord, other than the Director, shall be four years and a member may not serve more than 2 consecutive terms of office.”

- (2) Section 7 (4) of the National College of Art and Design Act 1971 is deleted.

Explanatory Note

This Head amends section 7 of the National College of Art and Design Act to provide that the term of office of members of an Bord other than the Director is increased to four years from the current three years.

Head 106 Amendment to section 15 (2) (Accounts and audits)

Provides that

Section 15 (2) of the National College of Art and Design Act, 1971 is amended by the substitution in section 15 (2) of “presented to the Minister and An tÚdarás and the Minister shall cause copies thereof to be laid before each House of the Oireachtas” for “presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas”.

Explanatory Note

This Head provides for the amendment of section 15 (2) of the National College of Art and Design Act 1971 to provide that the NCAD shall furnish the accounts and the report of the Comptroller and Auditor General to An tÚdarás as well as the Minister.

Head 107 Replacement of section 15A (Investigator and report)

Provides that

The National College of Art and Design Act 1971 is amended by the substitution of the following for section 15A -

“15A Review and Report

- (1) An Bord shall undertake a review if -
 - (a) An Bord has concerns regarding the governance or performance of the functions or responsibilities of the college, or
 - (b) An Bord has received a notification in writing from An tÚdarás requesting it to review a matter.
- (2) An Bord may appoint a person to carry out the review.
- (3) The reviewer may request such information and assistance as the reviewer may require from An Bord, the Director and employees of the college for the purpose of the review and An Bord, the Director and employees of the college shall provide such information as requested by the reviewer.
- (4) The reviewer shall prepare a report of the review and shall provide a copy of the review to An Bord and the Director.
- (5) An Bord put in place corrective measures if appropriate.
- (6) An Bord shall retain a copy of the report on any review undertaken under subsection 1 (a) and provide a report to An tÚdarás annually or as requested by An tÚdarás on any reviews undertaken under subsection 1 (a).
- (7) An Bord shall provide a copy of the report to An tÚdarás as soon as possible following completion, including any corrective action taken under subsection (5) if it has been requested to undertake the review by An tÚdarás under subsection 1 (b).”

Explanatory Note

This head provides that An Bord can carry out a review if it has concerns regarding the governance or performance of the functions or responsibilities of the college or if the An tÚdarás requests the college in writing to undertake a review. An Bord may appoint a person to carry out the review. The reviewer may request information from An Bord, the Director and the employees of the college and An Bord, the Director and the employees shall supply the requested information. The reviewer shall prepare a report and provide a copy to An Bord and the Director and An Bord shall take any corrective action necessary. An Bord shall keep a copy of the report and report annually or on request to An tÚdarás on any reviews undertaken. If the review was requested by An tÚdarás, An Bord shall provide An tÚdarás with the report immediately.

Head 108 Removal of section 16 (3) and section 16 (4)

Provides that

- (1) Section 16 (3) of the National College of Art and Design Act 1971 is deleted.
- (2) Section 16 (4) of the National College of Art and Design Act 1971 is deleted.

Explanatory Note

This section provides for the revoking of sections 16 (3) and 16 (4) of the National College of Art and Design Act, 1971 as these sections relate to the request and provision of information linked to an investigation.

Head 109 Amendment of section 17 (The Director and Registrar and officers and servants)

Provides that

(1) The National College of Art and Design Act 1971 is amended by the substitution of the following subsection for subsection 17 (2) -

“(2) The Director shall be the chief officer of An Bord and the provisions of schedule 2 apply to the Director.”

(2) The National College of Art and Design Act 1971 is amended by the substitution of the following subsection for subsection 17 (3) -

“(3) The Registrar shall act as registrar and secretary of the College.”

Explanatory Note

This Head provides that the provisions of the new schedule 2 which is being inserted in the National College of Art and Design Act, 1971 apply to the Director.

This Head also removes from subsection 17 (3) the provision that the registrar shall keep the accounts of An Bord. Normal practice is that An Bord shall keep the accounts and this is provided for in section 15 of the Act.

Head 110 New Schedule 2

Provides that

- (1) The National College of Art and Design Act 1971 is amended by the insertion of a new Schedule 2 -

“Schedule 2 Director

1. The Director shall carry on and manage, and control generally, the academic, administrative and financial activities of the College and matters relating to its staff and perform such other functions (if any) as may be determined by An Bord, and for those purposes shall have such powers as are necessary or expedient.
2. The Director shall perform his or her functions subject to such policies as may be determined from time to time by An Bord, and shall be accountable to An Bord for the efficient and effective management of the College and for the due performance of his or her functions.
3. The Director may make proposals to An Bord on any matter relating to its functions.
4. The Director shall provide An Bord with any information (including financial information) in relation to the performance of his or her functions as An Bord may request.
5. An Bord may designate a member of the staff of the College to perform the functions of the Director in the absence of the Director or where the position of Director is vacant, and a member so designated shall in such absence or upon such position being vacant, perform those functions.
6. (1) The Director, with the consent of An Bord, may delegate in writing any of his or her functions to a specified member of staff of the College, and that member of staff shall be accountable to the Director for the performance of the functions so delegated.

(2) The Director shall be accountable to An Bord for the performance of functions delegated by him or her in accordance with subparagraph (1).

(3) The Director with the consent of An Bord in writing, may revoke a delegation made in accordance with this paragraph.

(4) In this paragraph “functions” does not include a function delegated by An Bord to the Director subject to a condition that the function shall not be delegated by the Director to anyone else.

7. A director shall not hold any other office or position without the consent of the An Bord.
8. Unless he or she resigns, retires or is removed from office, a director shall hold office for such period as An Bord, with the consent of the Minister, determines but the period shall not exceed 10 years from the date of the Director's appointment.
9. (1) The Director shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (in this section referred to as the "Committee"), give evidence to that Committee in relation to –
 - (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that An Bord is required by this Act to prepare,
 - (b) the economy and efficiency of the College in the use of its resources,
 - (c) the systems, procedures and practices employed by An Bord for the purpose of evaluating the effectiveness of its operations, and
 - (d) any matter affecting the College referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in clause (a), (b) or (c) that is laid before Dáil Éireann.
- (2) In the performance of his or her duties under this paragraph, the Director shall not question or express an opinion on the merits or any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.
10. (1) In this paragraph "Committee" means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, the Committee on Members' Interests of Dáil Éireann or the Committee on Members' Interests of Seanad Éireann) or a subcommittee of such Committee.
- (2) Subject to subparagraph (3), the Director shall, at the request in writing of a Committee, attend before it to give account for the general administration of the College.

- (3) The Director shall not be required to give account before a Committee for any matter that is or has been or may be the subject of proceedings before a court or Tribunal in the State.
- (4) Where the Director is of the opinion that a matter in respect of which he or she is requested to give account before a Committee is a matter to which subparagraph (3) applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and unless the Director does so at a time when he or she is before the Committee, he or she shall do so in writing.
- (5) Where the Director has informed a Committee of his or her opinion in accordance with subparagraph (4) and the Committee does not withdraw the request referred to in subparagraph (2) in so far as it relates to a matter the subject of that opinion –
- (a) the Director may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question of whether the matter is one to which subparagraph (3) applies, or
 - (b) the Chairperson of the Committee may, on behalf of the Committee, make an application,
- and the High Court shall determine the matter.
- (6) Pending the determination of an application under subsection (5), the Director shall not attend before the Committee to give account for the matter the subject of the application.
- (7) If the High Court determines that the matter concerned is one to which subparagraph (3) applies, the Committee shall withdraw the request referred to in subparagraph (2), but if the High Court determines that subparagraph (3) does not apply, the Director shall attend before the Committee to give account for the matter.
- (8) In the performance of his or her duties under this paragraph, the Director shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government, or the merits of the objectives of such a policy.”

Explanatory Note

This Head provides for the addition of a schedule providing for the role of the Director.

These amendments are set out in accordance with a recent precedent in schedule 2 of the Technological Universities Act 2018.

Part 13

Amendment to the Student Support Act 2011

Head 111 Amendment of section 19 (6) (Change of circumstances)

Provides that section 19 (6) of the Student Support Act 2011 is amended by the insertion of the following additional text -

“Moneys paid to or on behalf of a student in one year can be recovered in that year or any subsequent year.

An awarding authority may exercise a set off from any grant about to be awarded or from any future grants in respect of moneys paid to or on behalf of a student for which the student was not eligible to receive.”

Explanatory Note

This Head provides that an Awarding Authority can recover payments made to a student or on behalf of a student, for which the student was not entitled to receive, in any one year or subsequent years. This amendment is technical in nature and is intended to address a potential ambiguity with the extant text.

Head 112 Regulations to Prescribe Additional Functions for an Awarding Authority

Provides that the Student Support Act 2011 is amended as follows:

(2) Section 4 is amended by the insertion of a new subsection (3) as follows:

“(3) Subject to this Act, the Minister may make regulations prescribing any additional functions on an awarding authority which he/she deems necessary to further the development of access supports, in further and higher education, for persons who suffer educational disadvantage.”

Explanatory Note

This Head provides the Minister with powers to prescribe by regulations, additional functions for an awarding authority (e.g. SUSI) which further the development of access supports for persons who suffer educational disadvantage. These functions are intended to promote equality, diversity and inclusion in further and higher education including the participation and success of under-represented sections of society¹.

SUSI is an awarding authority which provides a shared service. This shared service is limited to functions relating to the award of student grants. The intention here is to try and leverage the capabilities of this shared service to deliver wider access supports which complement the grants service. For example, we want to enable SUSI to take on a role in managing other services relating to access supports such as managing a central applications facility for the delivery of scholarship and bursary schemes.

¹ See for example the functions for An tÚdarás under Head 9, Subsection(1)(m)

Part 14

Amendment of the Industrial Training Act 1967

Head 113 Amendment of section 2 of the Industrial Training Act 1967

Provides that

The Industrial Training Act 1967 is amended by the substitution of the following definition for the definition “activity of industry” –

“activity of industry” includes any activity of commerce or of a trade or occupation, and also includes any activity of a distinct branch of an industry, of commerce or of a trade or occupation;

Explanatory Note

The Industrial Training Act, 1967 sets out a framework for the regulation of some key aspects of apprenticeship. Currently Section 2 of the Act excludes ‘..an activity of agriculture, horticulture or fishing which is an activity of primary production, or any activity of a professional occupation;’ from the development of apprenticeships.

This provision creates difficulties in implementing policy to expand the apprenticeship model. In order to continue to expand the range of apprenticeship programmes at the current time and to provide for future proposals by industry and professional bodies the existing exclusions need to be removed from the legislation. There are programmes under development in applied horticulture, farm management and farm technician as well as programmes in applied accounting and advanced quantity surveying. These may not be finalised until the exclusions are removed.

An initial consultation with the competent authorities for the regulated professions is complete with no objections to the removal of the exclusions. The proposed amendment will have the effect of extending the scope of the framework for apprenticeship set out in the Industrial Training Act which is a significant development.

Head 114 Amendment of section 23 of the Industrial Training Act 1967

Provides that

The Industrial Training Act 1967 is amended by the substitution of the following for subsection (2) –

“(2) Before making an industrial training order An tSeirbhís Oideachais Leanúnaigh Agus Scileanna shall make such inquiries as it thinks proper and consult any organisation or association of organisations appearing to it to be representative of substantial numbers of employers in the activity and any organisation or association of organisations appearing to it to be representative of substantial numbers of persons employed in the activity and where the activity of industry relates to a regulated profession then the appropriate competent authority or authorities must be consulted.”

Explanatory Note

Section 23 (2) of the Industrial Training Act 1967 provides that an tSeirbhís Oideachais Leanúnaigh agus Scileanna shall consult with appropriate bodies prior to making an industrial Training Order. This Head includes the competent authorities of a regulated profession in the consultation requirement.

Part 15

Amendment of the Social Welfare Consolidation Act 2005

Head 115 **Amendment of section 266 (b) of the Social Welfare Consolidation Act 2005**

Provides that

The Social Welfare Consolidation Act 2005 is amended by the substitution of the following section for section 266 (b)

“(b) An tÚdarás, where that body requires the information for the purposes of performing its functions under sections 9 (1) (b), (c), (d), (i), (j), (l) and (p) of the Higher Education Authority Act, 2021.”

Explanatory Note

Section 266 of the Social Welfare Consolidation Act 2005 provides that a specified body may share any information prescribed with An tÚdarás um Ard Oideachas in accordance with Section 3 (a), (b) or (d) of the Higher Education Authority Act, 1971. This Head replaces this with a reference to An tÚdarás and the relevant functions section of the Higher Education Authority Act, 2021.

These functions are:

- *promote and support student engagement and student success in higher education and the attainment by students of a quality educational experience in higher education,*
- *secure and evidence value-for-money from Exchequer investment in higher education allocated to designated institutions for higher education and other bodies,*
- *plan for higher education provision and make recommendations to the Minister on the overall provision of student places,,*
- *provide capital and current funding to bodies, monitor expenditure by bodies to which funding is allocated and recoup funding in certain circumstances,*
- *measure and assess with a view to strengthening the performance of the higher education system and the higher education providers and to ensure accountability while respecting institutional autonomy,*
- *support equality, diversity and inclusion in higher education including the participation and success of under-represented sections of society in higher education,*
- *collect statistical data and maintain an evidence base in order to provide high quality evidence-based policy advice in accordance with sections 48 to 51 of the Higher Education Authority Act 2021.*

Schedule 1

Superannuation

1. An tÚdarás may after the appointed day, subject to section 38, prepare and submit to the Minister a scheme or schemes amending the schemes made under Section 15 of the Higher Education Authority Act 1971 for the granting of superannuation benefits to or in respect of -
 - (1) such of its staff (including the chief executive but not including persons to whom the Single Public Service Pension Scheme applies by virtue of Chapter 2 or Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012) as it considers appropriate and
 - (2) former members of the staff (other than those who remained in the employment of An tÚdarás from the appointed day), including those who are deceased.
2. Every scheme shall fix the time and conditions of retirement for all persons to, or in respect of whom, superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
3. The Minister for Public Expenditure and Reform may amend the time and conditions of retirement and any such amendments shall be included in the scheme.
4. An tÚdarás may at any time prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this Schedule.
5. A scheme or amending scheme submitted to the Minister under this Schedule shall, if approved by the Minister with the consent of the Minister for Public Expenditure and Reform, be carried out by An tÚdarás in accordance with its terms.
6. Every scheme made under this Schedule shall make provision for appeals.
7. A superannuation benefit shall not be granted by An tÚdarás to or in respect of any of its staff (including the chief executive officer) who are members of a scheme made under Section 15 of the Higher Education Authority Act 1971 or a scheme under this section and no other arrangement shall be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with a scheme made under Section 15 of the Higher Education Authority Act 1971 or such scheme or schemes submitted and

approved under this Schedule or an arrangement approved by the Minister and the Minister for Public Expenditure and Reform.

8. The Minister shall cause every scheme submitted and approved under this Schedule to be laid before each House of the Oireachtas as soon as may be after it is approved, and if either House within the next 21 days on which that House sits after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.

Explanatory Note

The schedule provides the detail regarding the making of a scheme amending the existing HEA schemes made under Section 15 of the Higher Education Authority Act 1971.

Schedule 2

Board of An tÚdarás

1. The Board shall retain in its possession a seal of An tÚdarás
2. (1) A member of An tÚdarás, holds office upon such terms and conditions (including terms and conditions relating to remuneration, allowances or expenses) as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.

(2) There may be paid by An tÚdarás, to its members, such remuneration (if any) and such allowances in respect of expenses (if any) as the Minister with the approval of the Minister for Public Expenditure and Reform, may determine.
3. (1) A member of An tÚdarás may resign from office by giving notice in writing to the Minister of his or her resignation and the resignation shall take effect on the day when the Minister receives the notice.

(2) Where the chairperson of An tÚdarás resigns as chairperson he or she shall at the same time cease to be a member of An tÚdarás.

(3) The Minister may at any time remove from office a member of An tÚdarás, if, in the Minister's opinion –
 - (a) the member has become incapable through ill-health of performing his or her functions,
 - (b) the member has committed stated misbehaviour, or
 - (c) the removal of the member appears to be necessary for the effective performance by An tÚdarás of its functions.
(4) A member of An tÚdarás shall cease to be qualified for office and shall cease to hold office if he or she –
 - (a) is adjudicated bankrupt,
 - (b) makes a composition or arrangement with creditors,
 - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
 - (d) is convicted of any indictable offence in relation to a company or any other body corporate,
 - (e) is convicted of an offence involving fraud or dishonesty,
 - (f) has a declaration under section 819 of the Companies Act 2014 made against him or her and is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
 - (g) is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act.

4. (1) If a member of An tÚdarás dies, resigns, ceases to be qualified for or ceases to hold office or is removed from office for any reason, the Minister may appoint a person to be a member of An tÚdarás to fill the casual vacancy so occasioned in the same manner as the member who occasioned the casual vacancy was appointed.
- (2) A person appointed to be a member of An tÚdarás pursuant to subparagraph (1) –
- (a) holds office for so much of the term of office of the member who occasioned the casual vacancy concerned as remains unexpired at the date of the appointment, and
- (b) is eligible for reappointment as a member of An tÚdarás on the expiry of that term of office.
5. (1) An tÚdarás shall hold such and so many meetings as may be necessary for the due fulfilment of its functions but in each year shall hold not less than one meeting in each period of 3 months.
- (2) The chairperson shall convene a meeting of An tÚdarás when requested to do so by not less than the number of members which constitute a quorum.
- (3) The quorum for a meeting of An tÚdarás shall be set by An tÚdarás at its first meeting following commencement day and may be amended from time to time in accordance with standing orders under paragraph 11.
- (4) At a meeting of An tÚdarás it shall appoint from amongst its members a member to be its deputy-chairperson and the deputy-chairperson shall, unless he or she sooner resigns as deputy-chairperson, hold office until he or she ceases to be a member of An tÚdarás.
- (5) At a meeting of An tÚdarás –
- (a) the chairperson shall, if present, be the chairperson of the meeting,
- (b) if and so long as the chairperson is not present or if the office of chairperson is vacant, the deputy-chairperson, if present, shall be chairperson of the meeting, or
- (c) if and so long as the chairperson is not present or the office of chairperson is vacant and the deputy-chairperson is not present or the office of deputy-chairperson is vacant, the member of An tÚdarás who are present shall choose one of their number to be chairperson of the meeting.
- (6) Every question at a meeting of An tÚdarás shall be determined by a majority of the votes of the members of An tÚdarás present and voting on the question, and,

in the case of an equal division of votes, the chairperson shall have a second or casting vote.

(7) subject to subparagraph (3) An tÚdarás may act notwithstanding one or more vacancies among its members.

(8) An tÚdarás may hold or continue a meeting by the use of any means of communication by which all the members can hear and be heard at the same time (in this Schedule referred to as an “electronic meeting”).

(9) A member of An tÚdarás who participates in an electronic meeting is taken for all purpose to have been present at the meeting.

6. (1) An tÚdarás may establish committees, consisting in whole or in part of persons who are members of An tÚdarás or members of staff of An tÚdarás to assist and advise it in relation to the performance of any of its functions.

(2) In appointing members of a committee established under this paragraph, An tÚdarás shall have regard to-

(a) the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee, and

(b) the objective that at least 40 per cent of members of the committee shall be women and at least 40 per cent shall be men.

(3) An tÚdarás may pay to members of a committee established under this paragraph such expenses incurred by them as An tÚdarás may, with the consent of the Minister and the Minister for Public Expenditure and Reform, determine.

(4) An tÚdarás may remove a member of a committee established under this paragraph from the committee at any time.

(5) The acts of a committee shall be subject to confirmation by An tÚdarás, unless An tÚdarás otherwise determines.

(6) A committee established under this paragraph may regulate, by standing order or otherwise, its procedure and business.

(7) An tÚdarás may appoint a person to be chairperson of a committee established under this paragraph.

(8) A committee shall provide An tÚdarás with such information as it may from time to time require, in respect of the committee’s activities and operations, for the purposes of the performance by An tÚdarás of its functions.

(9) An tÚdarás may at any time dissolve a committee established under this paragraph.

7. (1) Where a member of An tÚdarás is –

(a) nominated as a member of Seanad Éireann,

(b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or

(c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,

he or she shall thereupon cease to be a member of An tÚdarás.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a representative in the European Parliament shall be disqualified, while he or she is so entitled or is such a representative, from being a member of An tÚdarás or a member of a committee established under paragraph 6.

8. (1) Subparagraph (2) applies where at a meeting of An tÚdarás any of the following matters arise, namely –

(a) an arrangement to which An tÚdarás is a party,

(b) an arrangement to which An tÚdarás proposes to become a party,

(c) a contract or other agreement with An tÚdarás, or

(d) a proposed contract or other agreement with An tÚdarás.

(2) Any member of An tÚdarás present at the meeting referred to in subparagraph (1) who has a pecuniary interest or other beneficial interest in, or material to, the matter concerned shall –

(a) disclose to An tÚdarás at the meeting the fact of that interest and its nature,

(b) not influence (or seek to influence) a decision to be made in relation to the matter,

(c) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,

(d) take no part in any deliberation of An tÚdarás relating to the matter, and

(e) not vote on a decision relating to the matter

(3) Where an interest is disclosed pursuant to this paragraph, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member of An tÚdarás by whom the disclosure is made shall not be counted in the quorum for the meeting.

(4) Where at a meeting of An tÚdarás a question arises as to whether or not a course of conduct, if pursued by a member of An tÚdarás, would constitute a failure by him or her to comply with the requirements of subparagraph (2), the question may, subject to subparagraph (5), be determined by the chairperson of the meeting, whose decision shall be final, and where the question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(5) Where, at a meeting of An tÚdarás, the chairperson of the meeting is the member in respect of whom a question to which subparagraph (4) applies falls to be determined, the other members of the governing body attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.

9. Paragraph 8 shall apply to a member of a committee established under paragraph 6 where the member is not also a member of An tÚdarás and for the purposes of that application –

(a) a reference to a member of An tÚdarás shall be construed as reference to a member of the committee,

(b) a reference to An tÚdarás shall be construed as reference to the committee.

10. (1) A person shall not disclose confidential information obtained by him or her while performing functions as –

(a) a member of or an adviser or consultant to An tÚdarás, or a member of the staff of such an adviser or consultant, or

(b) a member of a committee established under paragraph 6, unless her or she is authorised by An tÚdarás to so do.

(2) A person who contravenes subparagraph (1) commits an offence.

(3) Nothing in this paragraph shall prevent the disclosure of information –

(a) in a report made to An tÚdarás,

(b) by or on behalf of An tÚdarás to the Minister,

(c) by a member of An tÚdarás to the Minister,

(d) by a person in the circumstances referred to in section 35 (2) of the Ethics in Public Office Act 1995.

(4) In this paragraph “confidential information” includes –

(a) information that is expressed by An tÚdarás to be confidential either as regards particular information or as regards information of a particular class or description, and

(b) proposals of a commercial nature or tenders submitted to An tÚdarás by contractors, consultants or any other person.

11. Subject to this Act, An tÚdarás shall regulate, by standing orders or otherwise, its procedure and business.
12. Subject to this Act, An tÚdarás may make, amend or revoke rules, (in this Act called “regulations of An tÚdarás”) as it thinks fit for the conduct of the procedure and business of An tÚdarás.

Explanatory Note

This schedule provides the detailed regulations regarding the operation of the Board of An tÚdarás.