

**Submission in response to the invitation by the Minister of State for Higher Education, Mary Mitchell O'Connor, TD, for views on updating the Higher Education Authority Act 1971**

The Higher Education Authority is pleased to submit its observations on the HEA Act, 1971 and welcomes this timely initiative on the Minister's part. This submission represents the views of the Higher Education Authority at this point in time. The HEA may wish, however, to elaborate and supplement its views as the legislative review process progresses.

**Overview of developments since 1971.**

The HEA was established on a statutory basis by the Higher Education Authority Act 1971. The funding role of the HEA, which forms the backbone of its 1971 legislation, has been significantly overtaken by a much enhanced and expanded system-performance role. In the intervening 47 years a great deal has changed in the environment and context in which the HEA operates;

- Participation rates in higher education have grown significantly from a level of 20% in the early 1970s to over 50% today.
- The number and range of institutions funded by the HEA has grown significantly today from just 5 Universities and a number of smaller bodies in the early 1970s today to over 20 today.
- The range of programme funding provided by the exchequer through the HEA has grown from €15m in core and capital funding in 1973/74 to €1.157 bn in 2017. Over the intervening period the HEA has provided funding to support initiatives such as access to higher education, research funding and labour market initiatives such as Springboard.
- In the case of some Universities the proportion of total revenue coming from the exchequer has fallen below 50%
- New legislation has been enacted by the Oireachtas including
  - The Universities Act, 1997
  - The Institutes of Technology Act, 2006
  - Qualifications and Quality Assurance (Education and Training) Act 2012.
  - Technological Universities Act, 2018

- The publication of the National Strategy for Higher Education in 2011 envisages a new role for the HEA, specifically the monitoring of the performance of higher education institutions and providing accountability to the Minister in respect of performance outcomes for the sector. Following publication of the National Strategy the HEA has been expected to adopt a more regulatory role in its dealings with the Higher Education Institutions (HEIs) that it funds, but the legal basis for this expanded role is not currently available.

### **The HEA as a regulatory body**

The HEA recognises that its role in overseeing the HEIs has evolved since 1971 and it is now seen as a regulatory body. Indeed, the HEA is listed as a regulatory body in a paper on the Department of An Taoiseach's website *Bodies in Ireland with Regulatory Powers*<sup>1</sup> It is recognised that the HEA may require additional powers to exercise its role, however the HEA is of the view that such powers should be proportional and incremental in nature. The HEA believes that it is important to recognise the autonomy of the HEIs and, accordingly additional powers should be exercised only if there are demonstrated breaches of good governance or inadequate performance in meeting national objectives as set out by the Minister. As noted in the National Strategy "At the heart of this strategy is the recognition that a diverse range of strong, autonomous institutions is essential if the overall system is to respond effectively to evolving and unpredictable societal needs. Funding and operational autonomy must, however, be matched by a corresponding level of accountability for performance against clearly articulated expectations."

### **Access to data**

The enactment of the GDPR necessitates the need for more explicit reference to the ability of the HEA to collect student, staff, financial and research data from funded HEIs and other bodies. The key objective of a statutory provision will be to put beyond doubt that the HEA can have access to the kind of data it needs to monitor compliance and performance, plan and co-ordinate the higher education and research system and to share its data in a way that supports these objectives and overall national policy.

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[https://www.taoiseach.gov.ie/attached\\_files/Pdf%20files/Bodies%20in%20Ireland%20with%20Regulatory%20Powers.pdf](https://www.taoiseach.gov.ie/attached_files/Pdf%20files/Bodies%20in%20Ireland%20with%20Regulatory%20Powers.pdf)

The HEA has agreed the following 19 recommendations in response to the Minister's request. Where possible they are listed these under the eight broad questions listed in the Minister's consultation paper.

### **What should be the key functions of the Higher Education Authority?**

1. Legislation should give specific powers to the HEA to develop and publish guidelines and codes relating to the governance and financial management of HEIs; provide a requirement on governing bodies to abide by such codes and to report to the HEA on their implementation at such frequency as the HEA decides.
2. A new and comprehensive statement of the HEAs powers and functions should be provided in law. This should have a statement of the extent of independence of the HEA and address a range of issues including;
  - The role of the HEA in relation to research including advising the Minister and Government on priority areas for research investment across the higher education sector and the impact of such investment.
  - The role of the HEA in relation to teaching and learning
  - The role of the HEA in relation to the promotion of equity of access to higher education and the attainment of equality within the HEIS
  - The role of the HEA in promoting an internationalisation of Irish higher education
  - The role of the HEA in relation to system performance and development
  - The provision of policy advice to the Minister
  - Advancing matters of concern to the institutions with regard to Irish higher education
  - The attachment of conditions to the provision of funding
  - The power to approve redundancy schemes and other schemes proposed by the HEIs to improve efficiency and effectiveness within their institutions (Subject to Ministerial approval)

### **What role should the Minister have in relation to regulation of the Higher Education Sector?**

3. The HEA believes the powers and limitations on the powers of the HEA and those of the Minister should be clearly set out in legislation.

The 2001 Cromien report, reiterated by the OECD in its 2004 Review of Higher Education in Ireland, recommended that the Department should remove itself from operational roles and focus more strongly on strategy and policy development.

### **Are there any related updates required to other Acts?**

4. Consideration should be given to reducing the size of HEI governing bodies

5. Appointments to HEI Governing Bodies, other than ex-officio members, SU President/other student representatives and staff members should be through the PAS process and all eligible members should receive payment for their services
6. Paragraph 4.9 of the Code of Practice for the Governance of State Bodies states a Board should meet at least twice a year without executive Board members or management present to discuss any matters deemed relevant. Consideration should be given to making provision for HEIs Governing Bodies to meet at least twice per annum without the President being present.

**Is a Registration model for Higher Education Institutions appropriate?**

7. The HEA notes that QQI operates a Register of Providers, this may provide the basis for an alternative to designation. The HEA notes that the current designation model does not automatically entitle an institution to core exchequer funding and it is assumed that the adoption of the QQI Register of Providers would not entitle an institution to core exchequer funding. The HEA would be happy to contribute to any review of the QQI Register of Providers.

The HEA notes that there may be an increase in the establishment of non-Irish higher education institutions following Brexit. While these may not be entitled to core exchequer funding they may be eligible for funding under initiatives such as Springboard +.

**Are there international models of regulation which should be examined as part of the process of updating the Act?**

**The following are some of the areas that could be considered for updating and/or inclusion in the Act. Are there other areas which should be considered?**

8. The HEA should have specific powers to collect student data electronically or otherwise from institutions funded by the HEA. This should include provision to collect;
  - PPSN data
  - Eircode data
  - SUSI Grant Code
  - Other data in accordance with Statutory Instrument
9. The HEA should have specific powers to collect student data electronically or otherwise from private higher education institutions. This should include provision to collect;
  - PPSN data
  - Eircode data
  - Other data in accordance with Statutory Instrument

10. The HEA should have specific powers to collect staff data electronically or otherwise from HEA funded institutions and private institutions. This should include provision to collect;
  - PPSN data
  - Salary bands
  - Gender
  - Other data in accordance with Statutory Instrument
11. The HEA should have specific powers to collect financial and other information from institutions funded by the Higher Education Authority.
12. The HEA should have the power to collect data from other state bodies necessary to carry out its statutory functions. It is noted that the Government has published a Data Sharing and Governance Bill.
13. The size of the HEA Board should be between 12-15 members. Board membership should include provision for;
  - Members employed by institutions funded by the HEA
  - International Members
  - A representative nominated by a recognised national students' union
  - A representative from the Department of Education and Skills

#### **How should the HEA monitor compliance within the Higher Education Sector?**

14. The HEA proposes a graduated, time specific, proportional system to address scenarios where there is non-compliance with governance standards or severe underperformance. These would include the appointment by the HEA Board of: Advisors, Specialist assistance, or issuing Guidance Instructions and Mandatory (Enforced) Instructions, all made in sequence over a specified timeline.
15. The HEA proposes that the Minister should have the power to appoint an Inspector to all institutions funded by the HEA.
16. The HEA should have powers to investigate governing bodies and executive bodies in the HEIs.
17. Subject to safeguards, the HEA should have the power to impose financial penalties or withhold funding from HEIs for stated misconducted or poor performance.

#### **Are there any other relevant issues which you wish to comment on?**

18. The Irish Research Council should be established as a statutory body operating under the aegis of the HEA. The HEA notes the Council have made its own submission.

19. Consideration should be given to the HEA having an oversight in the governance of the Employer contribution to the NTF?

The HEA is pleased to make this submission and looks forward to further engagement with the Minister/Department as the legislation is designed and progressed.

