



Ollscoil na hÉireann
National University of Ireland

Introduction

The National University of Ireland is pleased to make a submission to the public consultation on the review of the Higher Education Authority Act 1971. NUI believes that good communication and dialogue between government and Higher Education Institutions is critical to the sustainable development of Higher Education in Ireland. In this context, NUI is supportive of a strengthening of the role of the Higher Education Authority as an intermediary body between the HEIs and government.

The National University of Ireland (NUI) makes a submission to this consultation in the context of our unique status in Irish higher education. Established under the Irish Universities Act 1908 and restructured under the Universities Act 1997, NUI is a federal university comprising four autonomous constituent universities. In addition, NUI is empowered statutorily under its charter to recognise other higher education institutions and award degrees and other qualifications in those recognised colleges. This is confirmed in the 2012 Quality and Qualifications (Education and Training) Act, 2012. Under this Act, NUI is a designated awarding body (D.A.B.) which awards qualifications in linked providers and also in the Royal College of Surgeons in Ireland, a Designated Awarding Body in its own right.

NUI Mission¹

NUI's mission is to support the higher education sector at home and abroad, by serving the interests of our member universities and colleges, and their students and graduates.

NUI actively promotes, recognises and rewards academic distinction and scholarship at university level and we assure comparable, high, academic standards for degrees and qualifications awarded by NUI. We undertake activities to advance Higher Education, and contribute to the civic, cultural and intellectual life of Ireland.

Response to consultation.

NUI is responding to this public consultation as an Awarding Body. NUI's response reflects the reality that the University is not a provider of the education and research degrees and other qualifications that it awards, but in line with our mission, we seek to support higher education at home and abroad and to serve the interests of our member institutions and their graduates.

¹ NUI's Mission statement is contained in the NUI Strategic Plan 2014-17 (see: www.nui.ie/about/governance.asp) and in the forthcoming NUI Strategic Plan 2018-22 (same web reference).

1. What should be the key functions of the Higher Education Authority?

Overarching role:

NUI considers it important to highlight the key role of the HEA as an intermediary body between the government of the day, through the Minister and the Department of Education and Skills, and the specified Higher Education Institutions (HEIs). For Irish higher education to thrive, it is essential that the intermediary body has adequate and clear statutory bases for its functions, and also has the capacity and capability to exercise these functions well. The HEA needs to enjoy the full confidence both of the Department and the universities and other higher education institutions.

Relationship-management is at the core of the intermediary body role. The HEA requires the statutory scope, as well as support from government and from the HEIs themselves, to develop and maintain good relationships with all parties. As is the case in all good relationships, trust is key and can only be developed via good communication and dialogue based on mutual respect between parties.

Specific HEA Functions:

NUI supports the retention of the 1971 Act's key functions relating to i) funding of the sector, ii) policy advice to government and iii) designated regulatory oversight.

Funding

In relation to the funding of the sector, NUI considers it problematic that the HEA's "Statement on the role of the Higher Education Authority" (supplied in connection with this consultation) emphasises the performance-based funding model (related to agreed objectives in HEA-HEI compacts) in an operating environment where the recurrent funding shortfall remains unmet, and there is no political decision as to the basis on which the sector will be funded into the future. Regrettably this remains the case notwithstanding government acceptance of the recommendations of the Cassell's report of 2016.

Policy

NUI considers that an updated Act should include more statutory emphasis on the HEA's policy advisory role.

Government's role, through the Minister for Education and Skills, is clearly to manage the *political* process of developing and agreeing a set of expected outcomes for Higher Education. A wide range of economic and social stakeholders contribute to this political process, and national outcomes for Higher Education can be agreed only within the overall context of outcomes across all public policy areas. In this dynamic context, the independence of HEA's policy advisory function should be made more explicit in the Act. In addition, we suggest that the HEA in its advisory role in relation to the demand/need for HE student places (section 5 of the Act), should be enabled to take into consideration not only those institutions coming within its remit but also other private providers of higher education which, as has also been observed in other countries, are becoming increasingly significant in higher education. All student places, whether publicly or privately funded, form part of the system-wide offering to prospective students. The input of private providers should not be overlooked in public policy formulation.

Regulatory oversight: Governance and accountability

In relation to governance and regulation of the sector, in light of the continuing "massification" (Teichler, 1998) of higher education and pressure on the public purse, NUI fully accepts the need for good governance within and accountability from the sector. We look forward to the 2018

publication of the revised (2012) Code of Governance for Universities/Higher Education Institutions.

Relevant legislation clearly sets out the primary governance and accountability role of the Governing Authorities of the Universities (1997 Universities Act); the Institutes of Technology (IoT Acts 1992 – 2006) and the Technological Universities Act (2018). NUI considers that the updated 1971 Act should clearly articulate how this legislative framework provides the statutory basis for governance and accountability of the sector, with due provision for institutional autonomy and academic freedom.

Guided by the 2012 Code of Governance for Universities, and the separate Code for the IoT sector, institutions have developed their Governing Authorities and have gained experience in good corporate governance practices. NUI suggests that the 1971 Act be updated to give stronger statutory underpinning to the HEA's relationship with the Governing Bodies and the statutory primacy of the Governing Bodies in terms of the public accountability of universities and other HEIs reaffirmed. (in whatever format this takes, such as annual financial reporting and other reporting arising from the Strategic Dialogue process and the Compacts).

General HEA functions and the NUI

NUI believes that the general functions provided for in section 3 of the 1971 Act remain valid functions for the HEA into the future. The NUI's mission aligns well with some of these general functions, in particular section 3a) *furthering the development of higher education*, and 3c) *promoting an appreciation of the value of higher education and research*.

In relation to the latter function, NUI will shortly publish its new Strategic Plan for the 2018-22 period, a major strategic goal of which is to "*Support Irish Higher Education and advocate for its advancement at home and abroad*".² We envisage more collaboration with our member HEIs and a range of other organisations, including the HEA, to advocate for and advance the interests of Higher Education at home and abroad.

NUI also supports retention of the Act's general duty 4, with respect to the national aim of restoring the Irish language and preserving the national culture. In line with NUI's own mission and values, NUI is open to collaboration with the HEA in this regard.

2. What role should the Minister have in relation to regulation of the Higher Education Sector?

NUI does not have specific views on the more detailed points raised in relation to the role of the Minister.

In summary, NUI considers that the Minister's role is primarily political in nature. The Minister should not need to have a role in the day to day, or perhaps even the annual regulation of the HE sector. The Minister's role is to create medium-long term political choices for Higher Education in Ireland, to ensure that decisions are taken about these choices and that the strategic and operational environment for HE provision is optimally aligned for the implementation of these decisions. The creation of regulation is an important part of creating the strategic and operating environment, however the implementation of regulation, and its monitoring and review with the HEI Governing Bodies is a matter for the intermediary body, the HEA.

3. Are there any related updates required to other Acts?

² See: www.nui.ie, where the 2018-22 Strategic Plan will be published by 8th November 2018.

NUI has not reviewed the related Acts in detail as part of this consultation response.

4. Is a Registration model for Higher Education Institutions appropriate?

NUI is interested in this idea and would value further consultation on specific proposals in due course.

NUI has a long-standing statutory role to recognise institutions of higher education as part of the NUI federation. NUI awards degrees and qualifications in these colleges, enabled by the enactment of the policies, procedures and regulations of NUI Senate. These work towards ensuring that the degrees and qualifications awarded in the recognised colleges are of a comparable academic standard to those awarded by the constituent universities of the NUI federation, and also align with the QA requirements set out by the Qualifications and Quality Authority (QQI). Currently NUI has three Recognised Colleges (RCs): the Royal College of Surgeons in Ireland (RCSI), Uversity (to end October 2018) and the Institute of Public Administration (IPA).

A Registration model

Given the growing variation in Irish HE provider size and "type" (public/private/mixed funding, with or without transnational academic programmes, diversity of student population profiles etc.), NUI acknowledges that there may be benefit in a more flexible approach to the process of application and establishment of new HE institutions.

In NUI's view, it is important, that any new Irish model is inclusive of all providers, regardless of their funding profile. Notwithstanding, given the size and scale of the general population and the Irish HE sector, government should carefully consider the cost-benefit of moving towards a registration model such as is currently in operation by the Office of Students in the UK, where the scale of the sector is much larger.

In addition, since registration implies the possibility of de-registration, careful thought will be needed about the conditions of ongoing registration of providers, and what steps might be taken by the HEA before de-registration, or a change in registration "type" is implemented for a given provider. NUI also notes that any new registration model managed by the HEA would necessarily require co-ordination with the Register of Providers legislated for in the 2012 Quality and Qualifications (Education and Training) Act.

The title "University"

If a national registration model were to include a determination on the use by a HE provider of the title "university", this may have implications for the NUI given our current statutory role to recognise colleges of higher education but not universities.

NUI would also flag a need to consider the Education (Miscellaneous Provisions) Act 2015, which requires Ministerial authorisation for a relevant provider to be described as a university outside the state, for specified purposes. NUI takes this opportunity to raise as anomalous the current legislative status of the Royal College of Surgeons in Ireland (RCSI). Authorised to use the university title outside of the state, in line with the 2015 Act, RCSI is precluded from university status within the state, remaining a Recognised College of the NUI, in line with the 1908 NUI Statute, the provisions of the 1997 Universities Act and the 2012 Qualifications and Quality Assurance (Education and Training) Act, 2012.

RCSI is a valued member of the NUI family. As such, NUI encourages and supports discussions on the progression of RCSI towards university status within the state and within the NUI federation.

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

Academic literature, as well as OECD and UNESCO reports, are a valuable source of information and analysis on models of HE regulation internationally. Since the 1980s, scholars have analysed shifts by many western states to “arms-length”, ex-post regulatory approaches in higher education, including time-bound “contracts or compacts”. There are mixed views as to the impacts of such regulatory approaches on university performance in the medium and long-term. The work of Guy Neave (1998)³ and Martin Lodge (2015)⁴ provide particularly useful insights into the “contractualisation” (Neave, 1998) of HE regulation in the UK, France, the Netherlands and Canada and Australia.

In our nearest neighbor, the UK’s recent creation of an Office for Students (merging HEFCE and the Office for Fair Access)⁵ and more “risk-based” British approach to meta-regulation of the sector requires careful examination. Cecile Houreau (2011)⁶ provides a useful analysis of the four-year “contract”-based system in France in the 1980s’ and the changing role of the French intermediary body, the French Comité National d’Evaluation (CNE).

6. 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?

Section 13 of the 1971 Act provides that the HEA may institute and conduct studies on such problems of higher education and research as it considers appropriate and may publish reports of such studies. NUI considers that this function should have stronger statutory underpinning and suggests a more explicit link with the general functions of the Authority, including the policy advisory role. NUI is of the view that a public information and communications role for the HEA should be considered for inclusion in the Act. In line with its Mission and Values, and as expressed in its current and forthcoming Strategic Plan 2018-22, NUI plans a stronger role in promoting better understanding of the role of Higher Education in Irish society and would be pleased to collaborate with the HEA and other organisations in this respect.

7. How should the HEA monitor compliance within the Higher Education Sector?

Earlier comments in relation to the governance and accountability role of the Governing Authorities also apply to this question.

In a general sense, NUI believes that government and the HEA should be guided by a responsive regulatory approach, as the ideal-type arrangement in the HE sector. Responsive regulation is defined by the scholar John Braithwaite as follows:

*“Responsive regulation suggests that governance should be responsive to the regulatory environment and to the conduct of the regulated, in deciding whether a more or less interventionist response is needed”.*⁷

³ Guy Neave “The Evaluative State reconsidered” in *European Journal of Higher Education* (1998), 33(3), p.265-284.

⁴ Martin Lodge “Higher Education regulation: a comparative perspective”, in Martin Lodge (ed.) “The Regulation of higher education”, Centre for Analysis of Risk and Regulation, LSE, Discussion Paper no 77, May 2015. Accessible at: <http://www.lse.ac.uk/accounting/assets/CARR/documents/Regulation-in-Crisis/DP-77-The-regulation-of-higher-education.pdf>

⁵ See: <https://www.officeforstudents.org.uk/>

⁶ Cecile Hoareau, “Globalisation and higher education policy-making in France: love it or hate it?”, *French Politics* (2011), vol.9, 3, p.222-239.

⁷ Braithwaite, John, in P.Drahos, *Regulatory Theory: Foundations and Applications*, 2017, ANU Press, pp.475-520.

A responsive approach to regulation is one that emphasizes listening and dialogue and incentivises and rewards good behavior, as well as being clear about the process of escalation that may be required when repeated efforts to improve compliance have failed.

Braithwaite suggests:

"Signal, but do not threaten a range of sanctions to which you can escalate; signal that ultimate sanctions are formidable and are used when necessary, though only as a last resort".⁸

7. Are there any other relevant issues which you wish to comment on?

No.

8. Please provide the following contact details

Note: Any personal details you provide will remain confidential and will only be used for the purpose of this project, in accordance with data protection legislation.

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⁸ John Braithwaite "The essence of responsive regulation", (2010), UBC law review, 44:3.