

██████████ opened with the questions put forward by the Seanad Independent Group (SIG)

### Governing Bodies Internal Members

The SIG asked considering that the composition of the 5 internal members on the governing bodies of higher-education institutions as listed in the HEA Bill 2022 does not guarantee either trade union or academic staff representation explicitly, how will this bill guarantee that those with a democratic mandate will sit on governing bodies of our institutions?

- The legislation allows for a flexible mix of academic, non-academic in accordance with the procedures set out by individual HEIs as the individual HEI requires.

### Autonomy of Student Unions

The SIG asked considering that the bill does not guarantee that student representatives are elected to governing bodies of higher-education institutions, how will this bill protect the autonomy of student unions and their democratic mandate to be on governing bodies?

- Procedures will be set out by each governing body regarding the election of students to its governing body.

### Competency Based Governing Bodies

The SIG asked as the legislation aims to create smaller, “competency-based” and more efficient governing bodies. However, international practice shows that the best performing universities are the ones with the most diverse and democratic composition of governing bodies.

- This is a moot point as the evidence for either case can be brought forward, however as governing boards in some Irish HEI’s currently have 40 members they have become unworkable and this legislation aims to fix this

### Universities and the State Balance Sheet

The SIG asked about the real risk if the state exercises greater control of the education sector through this legislation there would be a real risk that existing loans of institutions would be cast onto the State balance sheet. Seven institutions have debt of close to a billion euro that could be affected in this way. Such an overstep must be avoided as it could hamper the ability of universities to borrow in the future. The quest for necessary accountability cannot lead to micromanagement of the education sector

- The Department agrees that this is an extremely important point and DFHREIS has engaged with the CSO on their own engagement with Eurostat regarding the classification of HEI’s in Ireland. The Department understands that there is a very fine line between autonomy, academic freedom and accountability. There are also other major factors external to the legislation such as the percentage of overall funding that comes from the state that a HEI receives.

## Student or/and the students' unions of the institution

Senator ██████ sought clarification around his proposed amendments to sections 61 & 62 to change *student or the students' unions of the institution* to *students and the students' unions of the institution*.

- section 61 relates to the strategic development plan of designated institutions of higher education other than universities, technological universities, institutes of technology and the National College of Art and Design. The provisions in relation to strategic development plans of those institutions are included in the sectoral legislation. However, under sections 80, 92, 112 and 128, the Bill inserts provisions in relation to consultation on the strategic development plans for those institutions.
- the definition of student in the sectoral legislation is different in that it includes officers of the student union of the institution. Therefore the references to students in sections 80, 92, 112, and 128 include the student union of the institution.

## The academic freedom of students of higher education providers

Senator ██████ also discussed his proposed amendment to Section 8 - Object 8 (1)(f) as follows –

*(f) to respect the academic freedom of students of higher education providers and academic staff in those providers*

- the HEA Bill needs to be read in conjunction with the sectoral legislation.
  - The Universities Act includes an Object – *to foster a capacity for independent critical thinking amongst its students*.
  - The Technological Universities Act includes a function – *to promote critical and free enquiry, informed intellectual discourse and public debate within the technological university and in wider society*
- It is therefore not considered necessary to provide for the academic freedom of students. There is no restriction in this Bill or in the sectoral legislation on students expressing their views. Students have a different status to academic staff in an institution as they are not employed by the institution and therefore they cannot be subject to any unfavourable contract, remuneration or employment related treatment.

## Student Union Definition

Senators ██████, ██████ and ██████ sought clarification around proposed amendments to the definition of a Student and Students Union.

““students' union” means an independent and self-governing body, recognised by a higher education provider or by the Minister, that is established for the purpose of promoting the general interests of students of a designated higher education institution, and of representing students, both individually and collectively, in respect of their well-being and academic, disciplinary and other matters arising within, and outside of that institution;”.

— *Senators* ██████ ██████ ██████ ██████ ██████

- There is already a definition of students union in the Universities Act and the Technological Universities Act 2018. Also, Sections 106 and 117 of the Bill insert

mirror definitions of the S.2(1) definition of “student union” into the Institutes of Technology Acts and the National College of Art and Design Act 1971. Any change to the definition of “student union” in section 2(1) of the Bill would put that definition out of line with the definitions in the Sectoral legislation.

- The role for students unions in the Bill is limited to that of a right to be consulted on a number of areas including planning for provision of higher education, preparation of strategic development plan and equality statement of a HEI and the preparation of guidelines / codes / policies.
- There is large degree of variation between the students unions / bodies across the higher education sector and an overly prescriptive provision could lead to the inadvertent exclusion of some students unions / bodies from the right to be consulted in the Bill.

#### Definition of Student in Sectoral legislation

Universities Act, 1997:

“student”, in relation to a university, means a person registered as a student by the university or a full-time officer of the Students Union or other student representative body in the university recognised by the governing authority who was first elected or appointed to his or her office while he or she was a registered student of the university.

Technological Universities Act, 2018:

“student”, in relation to an institute or technological university, means –

- (a) A person registered as a student by the institute or technological university, or
- (b) A full-time officer of the student union who was first elected to his or her office while he or she was registered as a student by the institute or technological university

Institutes of Technology Act: (definition to be inserted by section 106 of the Bill)

“student”, in relation to a college, means a person registered as a student by the college or a full-time officer of the student union who was first elected or appointed to his or her office while he or she was registered as a student by the college.

#### Land or other assets

Senator ██████ sought clarification on the need for the consent of the Minister to be required for a HEI to dispose of land or other assets

- There is no provision in the Bill to provide that the Minister or An tÚdarás has the power to compel designated higher education institutions to dispose of land or other assets or to change the primary use of land or other assets owned by such institutions.
- Section 9 (1)(s) provides that the HEA shall 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 designated institution of higher education, where the consent of the Minister is required for such a transaction.
- Section 88 of the Bill removes the requirement for the consent of the Minister for Public Expenditure and Reform to acquire, hold and dispose of land.. Section 107 and 108 of the Bill amend the Institutes of Technology Act to provide that the consent of the Minister is

required to acquire, hold and dispose of land. Section 118 amends the National College of Art and Design Act to provide that the consent of the Minister is required to acquire, hold and dispose of land. These provisions have been inserted for consistency with the Technological Universities Act.

- There is no provision or requirement for the Minister to provide consent for universities to acquire, hold and dispose of land.

### Students Union as an **elected** represented body

Senator [REDACTED] asked if the definition in its current scope could include non-elected representative student bodies as there are issues currently with a non-elected representative body being given placement on boards over an already established elected representative body that covers the same cohort

### Remedial Measures - Approval of the Board

Senators asked why some remedial measures required the CEO to seek board approval and others didn't.

DFHERIS explained that ongoing consultation with representatives had resulted in amendments during the Dáil stages to ensure Board approval for some measures but that it was important that remedial measures around financial measures should be taken by the CEO, as the CEO of the HEA is the accountable officer. It may be necessary in certain circumstances to act quickly to impose a remedial measure in order to rectify an issue. For example if there is an issue with misappropriation or inappropriate use of Exchequer funding, the CEO, as an accounting officer, must be in a position to impose appropriate remedial measures such as withholding funding or controlling the release of funding to the relevant institution, to avoid the continuation of the issue.

### Promoting the democratisation of the structure of higher education

Senator [REDACTED] sought clarity over his submitted amendment around the role of the HEA in supporting democracy and the democratisation of the higher education system. He believes in the current global environment (with reference to events in Hungary), that spelling this out is important.

- There was a provision in the 1971 Act in relation to "promoting the democratisation of the structure of higher education"
- Following an examination of the debates on the original 1971 Act, it appears that the intent of this function has been met with the legislation to date (Universities Act, Regional Technical Colleges Act and the Technological Universities Act) including the HEA Bill.
- It is not considered that an amendment is needed to provide for the HEA to support the role of the higher education system in contributing to democracy and democratic values.

## Minister Guidelines – (Section’s 76 & 119)

Senator ██████ sought clarification over the balance of power with regards Ministerial Guidelines, especially those in sections 76 & 119. The Senator feels there is overreach and that the legislation needs a check on autonomy, the Senator also mentioned that when you add the power of the CEO that she disagrees with the Department that they have struck the right balance of power.

(Section 18 of the Act of 1997 is amended— (a) by the insertion of the following subsections after subsection (1):“(1A) The governing authority of a university shall— (b) satisfy itself that appropriate systems, procedures and practices are in place— (iii) in order to implement, and report on 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,)

- Section 12 provides that the Minister may issue guidelines in writing to An tÚdarás for the purposes of this Act.
- It is important that the Minister has the power to issue guidelines to An tÚdarás.
- This provision is qualified by “to the extent that these policies may affect or relate to the functions of the university”.

## Engagement with Research Groups

Senator ██████ sought clarification as to why Science Foundation Ireland (SFI) were listed in the legislation but Irish Research Council (IRC) and the Health Research Board are not.

- It is also planned to develop a new Research Bill where these amendments could be considered further.
- It should also be noted that the functions of the HEA in section 9 (r) provides for promoting co-operation and collaboration with authorities having responsibility for higher education in places outside the State.
- Irish Research Council is a non-statutory body this is why it is not listed, it is part of the HEA

The Senator also asked regarding the inclusion of public-public partnerships and why they were not in the Bill and was this a general bias towards PPP.

- The provisions in relation to research in this Bill are general enabling provisions.

## Sustainable development

Senator ██████ sought clarification as to why the brundtland report was used as this definition comes from 1987. The issue with this definition is it does not include recognising historic responsibility for climate change and its effects on current populations. The Senator believes it would be better not to include a definition if this is the only usable and rely on best practice.

- A number of amendments were made to the HEA Bill at Report Stage of the Dáil which strengthened the provisions related to sustainable development and climate change, including the addition of the definition to environmental development and sustainability in the Bill which was carefully considered and developed through the drafting process.
- It is considered that the definition used is appropriate, as it is a widely used and accepted definition. It is also a broad enabling provision.

### Universal Design

Senators sought clarification as to why Universal Design wasn't explicitly mentioned within the Bill following on a recommendation at PLS. The Department explained that Universal Design would be included under the equality, diversity and inclusion measures and will be addressed in the implementation of the Bill.

### Making time for further Consultation

Senator [REDACTED] questioned why the legislation could not wait until after Citizen's Assembly for education has concluded.

She asked for a commitment from the Department not to guillotine the Bill at report stage tomorrow.

She also asked for a commitment to further debate and to allow amendments and as a consequence allow the Bill to return to the Dáil.

D/FHERIS officials stated that this was a matter for the Minister.