
Submission on Proposed Legislative Reform of the Higher Education Authority Act 1971

The Higher Education Commission consultation is a missed opportunity to address all key issues in the sector.

The current Government process and consultation aims to update the Higher Education Authority Act, 1971, which sets out the functions of the HEA and provided for its governance.

The Act provides for the funding and overall financial monitoring of designated institutions of higher education by the HEA. It established the HEA as the advisory body to the Minister for Education and Skills on the higher education sector.

Continual monitoring of the effectiveness of our higher education institutions is necessary and essential. The HEA has played a very important role in this respect over many decades and it is appropriate that, after almost half a century of operation, existing legislation should be reviewed and improved, where necessary

It is worth emphasising two very relevant current specific roles as specified on the HEA website:

"The Higher Education Authority is the statutory agency responsible for the allocation of exchequer funding to the universities, institutes of technology (IoTs) and other higher education institutions (HEIs)."

and

"The HEA has a statutory responsibility, at central government level, for the effective governance and regulation of higher education institutions and the higher education system."

It is also worth noting a further clearly stated function:

"In exercising our mandate the HEA works to ensure that ... we have due regard to institutional autonomy and academic freedom".

In the view of IFUT, therefore, the HEA currently has three clearly specified functions, which should be assessed in any review:

- Funding.
- Governance.
- Academic freedom.

Further clarification and strengthening of the HEA's role, accompanied by necessary additional enabling legislation or regulations to boost its function, should be considered and implemented where advisable.

The announcement by government last July of a speedy process on "*detailed legislative proposals and a consultation report on reform of regulation of higher education*" addresses just one of what IFUT believes are the three core essentials, as specified above, to ensure a vibrant higher education sector.

It is significant that the government, in instituting this review, does not in any way seek to address principles or issues around funding, given the perpetuation of chronic crisis in that regard.

Neither does the Review deal with the issue of academic freedom which has been equally affected and threatened by changes and pressures over the past number of decades.

Consistent recent government policy highlights that the areas of funding and academic freedom are exposed to continued, persistent, erosion and threat.

The third area on which the review solely focuses, of ensuring good governance and addressing any governance shortcomings at third level, is important. The type and nature of governance issues highlighted in this area in recent years, however, could more appropriately be addressed by reference to a strengthening of current HEA procedures and tackling other, more central issues.

Suggestions that external representation should feature prominently in university governance, particularly if it were to constitute a majority influence, would be a negative development. Higher Education is different in kind from the provision of, for example, health or other services. The university enterprise has to do with ideas and concepts. Any drift towards giving overarching control to individuals primarily motivated by other concerns, whether business, social, economic, would not be appropriate.

Externalising the governance of universities would not improve performance by any objective measure. It is hardly coincidence that the two highest-ranking universities in the UK (Oxford and Cambridge), and Trinity College Dublin, are precisely those where governance by academics has not been diluted by external governance influence.

The process, therefore, is significantly deficient in concentrating the attention of government and higher education institutions on issues of governance and regulation.

Indeed in the *'Review of the Allocation Model for Funding Higher Education Institutions Final Report by the Independent Expert Panel for the HEA, (Dec 2017), the Report addressed existing governance issues clearly.*

It states:

"We are conscious of the significant attention given to governance matters in higher education in recent years, and the introduction of a governance framework for the higher education system by the HEA to provide clarity and oversight on responsibilities in this regard. ... This was recognised by the HEIs themselves, and we propose an enhanced focus on governance within the system performance framework, coupled with a penalty based system for red line governance compliance issues to provide further assurance in this area."

It is difficult in this context, to understand the stated need for a 'priority' aim to establish a new Higher Education Commission, as per the government statement of July 29 last, to *"re-constitute Higher Education Authority (HEA) as Higher Education Commission with new statutory responsibilities, including regulation and oversight of private higher education bodies"*.

Why were the 2017 recommendations of the HEA commissioned report not responded to in a more practical manner?

The further references in the July 24 Department of Education statement that:

"A central objective of the proposed legislative approach is to ensure that the Higher Education Commission has a strong and clear statutory basis in terms of its regulatory responsibilities in overseeing the governance ..."

and

"ensuring that the Higher Education Commission has the necessary legal powers to underpin the performance of its key regulatory roles ..."

suggests that a far different and narrower focus and model for relations between the Department of Education and higher education institutions is being considered or may result from the current process, compared to what might be delivered through the HEA model or an updated HEA model.

Best practice should involve policy setting by Government and policy implementation for relevant agencies such as the HEA.

These proposals may facilitate a future drawing of operational matters under Departmental control, at regulatory and certainly at academic freedom and funding levels.

The absence of reference to academic freedom and funding issues in the current consultation process exacerbates fears that funding, course development, and academic freedom will be subject to increasingly greater direct government controls.

For example, the new €300m Human Capital Initiative, announced in last year's Budget, involves a process under which the state is stealthily increasing control on the allocation of funding. Funding decisions and direction are being increasingly removed from the existing HEA, even in advance of the envisaged Commission becoming established.

The move to a Higher Education Commission risks further diminishing its 'authority' as a statutory agency and instead resulting in increased micromanagement by the Department of Education and interference at university level.

The 2017 'Review of the Allocation Model for Funding Higher Education Institutions Final Report by the Independent Expert Panel for the HEA' referred very specifically to funding issues as follows:

*"... having analysed system finances, operations, performance and outcomes, it is the clear view of the Expert Panel that **Ireland cannot continue to increase student numbers without a commensurate increase in investment.** ... We endorse the conclusion of the Cassells report that the current funding system is not fit for purpose and fails to recognise the current pressures facing higher education institutions and the scale of the coming demographic changes. Cassells recommended that additional annual funding of €600 million needs to be provided by 2021 and €1 billion by 2030 to deliver higher quality outcomes and provide for increased demand, and identified three sources of potential additional funding: the state, the student and employers."*

Would a new Higher Education Commission have power to assess funding issues and make recommendations to government in such a direct manner?

Conclusions:

The sole emphasis on regulation and governance in this consultation:

- Is a missed opportunity to address other key issues affecting higher education, notably funding and academic freedom.
- Conveys an implication that the key issue and crisis for the sector is governance, which is not the case.
- Diverts attention from the failure of government, to date, to meaningfully address and make decisions related to the Recommendations of the 2016 Cassells Report regarding state funding for higher education.
- Fails to provide a forum to address issues around the drift to a 'skills based' education model, increasingly funded by, and dictated by, short-term business interests, which may alter radically and suddenly as a result of international considerations, including the impact of Brexit.

Recommendations:

1. The HEA has proved an effective governing authority for higher education. Its work and structures should be modernised and strengthened where appropriate.
2. The current governance review should be extended to include an assessment of very serious funding and academic freedom issues existing currently.
3. A comprehensive report and recommendations should be prepared on all areas of current HEA competence, rather than a specifically governance focussed document.