



Higher Education Authority Bill, 2022

Introduction

1. The purpose of this document is briefly to introduce the broad proposals contained within the Higher Education Authority Bill 2022. As is outlined below, the Bill, which is lengthy in nature, contains

(a) provisions which are relevant to Trinity but are not *specific* to it (that is, they relate to all Irish HEIs or, as they are now to be known ‘designated institution of Higher Education’¹) and finally

(b) provisions which are specific to Trinity.

In this document, we consider first the ‘Trinity specific’ provisions and secondly the more general provisions of the Bill.

This document is not any kind of deep legal analysis of the various sections, nor does it contain value judgements about the provisions of the Bill – rather it simply outlines them. It would seem likely that there will be further deeper analysis of the legal complexities contained within the legislation.

Trinity College Specific Provisions

Board Composition

2. Part 10 of the Bill, which amends substantially the Universities Act 1997, makes provision to change the Board (governing authority) composition of all universities. This is probably the provision discussed in most detail already, and which, if it is to apply *will* require a change to *our* college statutes. Thus s. 74 of the Bill (inserting a new s.16A into the 1997 Act) provides that the Trinity Board will consist of:

(a) 19 members appointed in accordance with amended s.16 and

(b) Such further number of members, who are Fellows of TCD appointed by the Board provided that the number of external members (including the chairperson) of the Board shall comprise not less than 40% of its membership.

In this regard, s.16 states that the members of the Board shall be

(a) An external chairperson appointed by the Board

¹Throughout this document, I have generally used the term ‘University’ rather than ‘Designated Institution of Higher Education’, the term used in the Bill, because our concern is with its application to Trinity College.

- (b) The Provost
 - (c) 5 internal members (other than the Provost) appointed in accordance with regulations made by the university (with the approval of the Minister)
 - (d) Three student members appointed by the Board
 - (e) Nine external members (other than the chairperson) appointed by the Board.
 - (f) Of the external members, three are nominated by the Minister. The other six (and the external chairperson) are appointed by the Board in accordance with a process determined by the Board and approved by the Minister.
 - (g) Finally, the Minister and the Board are required to have regard to the objectives of at least 40% of members being male and at least 40% female, and that the membership should broadly reflect the composition of Irish society.
3. Subsequent sections deal with the appointment of the chair (s.75); the functions of the Board (s.76); the capacity of the Board to order a review of something it regards as important (s.77); transitional arrangements for ensuring that the changes to the Board required by the Act will happen in 12 months (s.78); preparation of strategic plans by the Board (s.80). There are other relatively mundane changes contained in ss 81-84 all of which involve amendments to the 1997 Act.

The HEA Petitioning the Visitors

4. s.74 also makes provision for a new s.16B in the 1997 Act, which enables the HEA if it has a concern with the governance of Trinity, to request the Visitors of Trinity College to make a general visitation in accordance with the statutes of TCD as regards the matter (and thus this is an aspect of the legislation which may require a change to our statutes). The Visitors may carry out such a visitation if they are satisfied that there are reasonable grounds for doing so and that it is appropriate to do so.

The Charter Amendment Process to be Adopted

5. It is proposed that the Trinity Board makes a Supplemental Charter to bring the new Board composition in to the Trinity Charters and Letters Patent. This maintains the important principle that Trinity initiates the changes to its Charters and Letters Patent. The Supplemental Charter will be submitted (by way of petition as provided for in Statutes, Chapter on the Board Section 10(4) External Relations) to the Government which will recognise it by Government Order after the HEA Bill, 2022, is enacted.

Aspects of the Legislation Not Dealing Specifically with Trinity College

6. Part 1 of the Bill (ss.1-6) is introductory and standard in nature to most statutes. Part 2 (sections 7-32) deals with the organisation of the HEA (in the act referred to as An tÚdarás) including s.9 (the functions of the HEA); s.11-14 (the relationship between the HEA and the Minister); s.17 (the relationship between the HEA and other bodies); s.25-26 the role of the CEO.

Strategic Planning For Higher Education

7. Part 3 of the Bill speaks of **strategic planning** for Higher Education. In the first place, under s.33 the Minister is required to prepare a strategy for the provision of tertiary education. Secondly under s.34, the HEA is required to plan for the provision of higher education 'by maintaining an on-going review of the demand for it'. Following such review, it is required to make recommendations to the Minister 'as to the overall requirement for student places to be provided within the higher education system' (s. 34(4)).
8. S. 35 requires the HEA to prepare (in consultation with the Minister) a performance framework for the higher education and research system not less than every 5 years. Finally the HEA is required to enter into a performance agreement with designated institutions of higher education for not more than five years (s.36).

Provision of Funding by the HEA

9. Ss. 37-42 deal with the provision of funding by the HEA. First, it is required to construct a funding framework (s.37). Secondly, the CEO may impose conditions on funding (for universities) (s.38), and there is an obligation for universities to comply with such conditions (s.40), with this being monitored by the CEO (S.41), with remedial measures being provided for if such compliance is not found to exist (s.42).

Students

10. Part 4 deals with students. In the first place, s.43 makes provision for the HEA to promote formal engagement between students and their universities and to encourage universities to develop formalised engagement processes with students (which might include, but are clearly not limited to, training for students participating as members of university Boards). S. 45 then provides for the HEA, in conjunction with the Qualifications and Quality Assurance Authority of Ireland (QQI), to conduct surveys of students.
11. Part 5 broadly speaking, focuses on access to education, equality and related matters. Thus under s.46, the HEA is required to prepare a draft plan (for the Minister to approve) that focuses on equity of access to education and then universities are bound to have regard to this in preparing their strategic development plan/equality statement. Under s.47, the HEA is required to support universities in the development and provision of lifelong and flexible learning for learners.

Data Protection and Sharing

12. Part 6 imposes obligations on universities to provide (on request by the HEA) both non-personal and personal data which are necessary and proportionate for the HEA to perform certain listed functions under the Bill pertaining to both students and staff (ss.48-49) and also allows the HEA to furnish both personal and non-personal data to various bodies (ss. 50-51).

Designated Institutions of Higher Education

- 13.** Part 7 deals broadly with 'Designated Institutions of Higher Education'. Established universities such as Trinity are deemed to be such. The rest of the Part, however, deals with the making of designation orders for entities that would wish to be deemed as a designated institution of higher education, so has no application to Trinity.

Oversight of Governance by the CEO of the HEA

- 14.** Part 8 relates to oversight by the CEO of the HEA. Thus the CEO, if s/he is concerned with such governance, may seek a review by the relevant institution (s. 64), may determine the matter (s.65) and may impose remedial measures (s.66) or order an independent review (s.68). There is (s.69) an appeals Board, that can hear appeals in relation to some aspects of the legislation.

Codes of Practice

- 15.** Finally, in terms of non-Trinity specific material that may be relevant, under s.143, the HEA may prepare, adopt and issue guidelines, codes or policies to universities for any purpose relating to the legislation.
