

# University Governance

REPORT TO THE MINISTER FOR EDUCATION AND SKILLS

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## 1. Background

This report has been prepared in response to the Minister's request to the IUA that the universities consider and report to him on a number of specified governance issues. Specifically, the Minister requested the following:

*"I would now like to formally request .....a detailed proposal on the options which might be pursued in the reform of governance models within the universities. Such proposals should encompass the composition of governing bodies (size, representation etc.), their reserved functions and the role and powers of academic council and the role of the chief officer.*

*The purpose of this paper should be to identify models of best practice internationally and to relate these to broader strategy priorities and Irish system requirements and to make recommendations on the optimum legislative arrangements that should be advanced in respect of the governance of Irish Higher Education institutions into the future."*

## 2. Approach

The IUA Council mandated the formation of a multi-functional working group<sup>1</sup> to advise it on the matters raised by the Minister. In its work, the group reviewed a range of literature on the subject drawing particularly on a review which the IUA commissioned from the Institute of Public Administration (IPA). This review contains a meta-analysis of the literature in this area and an associated bibliography<sup>2</sup>.

The group reported to the IUA Council and this final report reflects the work of the group and its consideration by the Council.

The IPA report shows that while there are certain trends in evidence – for example towards smaller governing authorities – there is no single optimal structural approach. Therefore, in making our recommendations we have aimed at being pragmatic and focused, concentrating on those specific areas where we believe, consistent with the thrust of evidence on good practice internationally, improvements can be made.

Our recommendations represent the overall view of Council advised by the working group and, as such, do not necessarily reflect the views of any individual or the universities and their governors more generally.

## 3. The HE Strategy

The Higher Education Strategy forms an important context for consideration of governance issues. The overall thrust of the Strategy is to support institutional autonomy but to suggest that this should be advanced in a context which seeks greater accountability from institutions and a more systemic approach to the structure of higher education.

The relevant section (p92) from the report reads as follows:

*"In the decades ahead, higher education institutions will require effective leadership inspired by a strong vision and backed by robust strategic planning, and they will have to respond flexibly to regional and national needs. They will need to build institutional capacity to perform new management functions and to strike a balance between the demands of the market and their academic mission." J. Salmi "Autonomy from the State versus Responsiveness to Markets" in Higher Education Policy 2007, 20. They will need to be innovative and enterprising in their research and teaching, and to collaborate with industry, their local community, and other educational institutions. Governance of higher education institutions in Ireland is shared across the following:*

- A Governing Authority: the decision making body;
- A Chief Officer (President/Provost/ Director): the executive management; and,
- An Academic Council: representing the academic community.

These three elements are mutually dependent and each plays an important role.

*"A Governing Authority cannot, on its own, fulfil the requirement of a company board because it needs the involvement of senior representatives of the academic community in the governance of the institution for it to be effective. A strong academic board working jointly with the Governing Authority in areas such as strategy and resource allocation brings together the vital constituents of good governance in a university context (133 Michael Shattock (2006) Managing Good Governance in Higher Education (OUP))."*

It is widely recognised internationally that the most appropriate governance system for higher education is one that supports institutional autonomy within a clear accountability framework. This is recognised in the main statutory frameworks for Irish higher education: the Universities Act of 1997 and the Institutes of Technology Acts 1992 to 2006. A key development under those Acts was the introduction and progressive strengthening of formal Codes of Governance.

<sup>1</sup> See Appendix 1 for multi-functional working group.

<sup>2</sup> See Appendix 2 for text of the IPA report and bibliography

Within institutions, significant governance developments have taken place with an emphasis on leadership development, both at presidential and senior management level, including the key leadership and management role of the Head of School / College.

Internationally, the size and composition of governing authorities of higher education institutions have been changing. The model generally favoured is a more managerial one, with a smaller number of members and a majority of non-academic (lay) people. The OECD report on Irish higher education in 2004 was critical of the size of Irish university governing authorities and recommended that they be reduced in size and that their membership reflect the skill-set required to govern a university. This recommendation should be implemented: the size of governing authorities of higher education institutions in Ireland should be reduced to no more than 18, and the majority of members should be lay people with expertise relevant to the governance of higher education.

## 4. University Governance Structures<sup>3</sup>

University governance structures have evolved over time reflecting the specific cultural and institutional characteristics of universities: in particular, their collegial nature. While there are common issues of governance that span public and private sector institutions, caution should be exercised in any attempts to see university governance through the lens of a 'for profit' corporate governance structure. In particular, we stress the importance of the bi-cameral structure involving the Governing Authority and Academic Council which is appropriate for the current and future governance of universities.

Within that overall context, we go on to consider how the structure and functions of both bodies can be optimised as part of the overall approach to governance.

## 5. Governing Authorities

### 5.1 Current structural approaches in Ireland

There are two governing Authority approaches currently operating in Irish Universities as follows:

- That found in Trinity College where a board of approximately 20 governors (drawn predominantly from the members of the College staff and students) is responsible for governance, with the Chair being the Provost of the College,
- That found in the other six institutions where a representational Authority of external members,

students and staff with up to 39 members is in place, with the chair being external to the university.

Both of these approaches mirror those found internationally. Therefore, it should not be assumed that there is any fundamental defect in the current governing authority structures. The Trinity College approach emphasises the collegial ethos, while the model in the other six universities allows for broad involvement of stakeholders. It is supplemented by committee structures which allow further specialist expertise to be brought to bear on specific governance issues: for example, internal audit.

### 5.2 International trends

However, it can be said that the trend is away from very large bodies (with forty members considered to be large in this context). A second trend is a move away from highly representational (as opposed to representative) boards<sup>4</sup>.

In summary, these trends reflect the following concerns:

- The difficulties in effective deliberation and decision making arising from large boards;
- The danger that a representational assembly will militate against collective and collegial decision making and may not result in the full mix of desired competencies being available.
- The desire to ensure that the balance between internal and external oversight of the institution is optimised.

### 5.3 Recommendations: size and composition of Governing Authorities

#### I. Overall approach

We recommend that if the current situation is to change, it should be in the direction of smaller boards which are less representational in character. Since the representational model is strongly embedded in the Universities Act 1997, this will necessitate statutory change.

#### II. Size

We believe that the minimum size of Governing Authorities should be primarily dictated by consideration of the competencies required to effectively govern the institution. However, consistent with the movement towards smaller Authorities, we recommend that the number of members should be in the range of 10 to 20 and that this range should be provided for in statute rather than a specific number. This should continue to be supplemented by committees as is currently provided for.

<sup>3</sup> Appendix 3 gives details of the Universities' Governing Authorities and Academic Councils

<sup>4</sup> A representational board is one from which specific constituencies are guaranteed a place on the board.

### III. Internal/External Balance and appointment procedures

As regards the balance between external and internal members, we recommend that this should be in favour of a majority of external members and that the quorum for meetings of an Authority should also require a majority of external members.

The external members of the authority should be selected based on a competency framework which reflects the objects of a university as set down in statute and also the specific mission of the individual university. The growing internationalisation of the universities should be reflected in the objects and framework. The framework should be published.

We would stress that all Governors have a duty of collective responsibility and therefore it is important that all members of the Authority, howsoever selected, operate collegially in the best interests of the institution rather than any constituency or interest group.

As regards methods of selection, we recommend that the move to a competency focus should be reflected in an abandonment of the model contained in the 1997 Act whereby the predominant approach is that external members are nominated by specific groups or political entities.

As an alternative, we propose that the outgoing Governing Authority should establish a nominations committee to fill the external member positions on the new Authority. We recommend that some of these positions should be filled by public advertisement.

As the universities are statutory bodies, consideration should be given to the Minister having a continuing role in the appointment of governors. In this respect, depending on the ultimate size chosen for the Authority, we suggest that consideration be given to between one and two positions on the Governing Authority being subject to nomination by the Minister. As currently, such nomination should be based on consultation between the Minister and the Chief Officer, but also having regard to the competency framework.

As regards internal members, we conclude that the current approach to selection remains appropriate and that such members should be selected by way of election.

Likewise, we recommend that the current approach to selection and appointment of the Chair should be maintained.

Because of the various routes to appointment to the Authority currently or amended, it is difficult to have a rigidly prescriptive approach to gender balance. However, the achievement of gender balance should be pursued affirmatively through the various appointment processes recommended here.

### IV. Frequency of Meetings

To strengthen governance we recommend that a minimum frequency of meetings for governing authorities should be set down in statute. We recommend a minimum of six meetings per year.

### V. Rotation of Members

For good governance generally, it is desirable that there be a balance between continuity and collective memory, and the introduction of new blood. We recommend a change to the current approach where a governing authority has a unitary fixed term. Instead, we recommend that procedures for the rotation of members be introduced. There are well established precedents for, and approaches to this, in the legislation governing many state agency boards.

#### 5.4 Code of Governance - recommendations

As regards the functioning of the Governing Authority, a significant development in recent years has been the introduction of the Code of Governance developed by the IUA in collaboration with HEA (and subsequently adopted by the Governing Authorities). A comprehensively revised code will shortly be introduced.<sup>5</sup>

We recommend that this code, as amended from time to time, should be more explicitly brought within the statutory framework for universities. As a general observation, we believe that the concept of “a Framework agreed between the universities and An tUdaras” which is enshrined in the 1997 Act, is a useful one and has the power to be employed in other areas.

In this specific case we therefore recommend that statutory provision should be made for Governing Authorities to abide by a code of governance which shall be embodied in a framework agreed between the universities and the HEA (An tUdaras).

## 6. The Chief Officer

As regards the relationship between the Chief Officer and the Governing Authority, this is governed by both the provisions of the Act and the Chief Officer’s contract. We believe that together, these provide a robust framework for the supervisory responsibilities of the Governing Authority in respect of the Chief Officer. That framework will be further strengthened by our recommendations in relation to smaller and less representational governing authorities

While the current statutory provisions in this area are individually robust, because of the way in which the Act is structured, the nature of the relationship between the Chief Officer and Governing Authority is less well expressed than

<sup>4</sup> A representational board is one from which specific constituencies are guaranteed a place on the board.

<sup>5</sup> The 2007 Code of Governance is attached at Appendix 4 to this report. A revised and further updated code is currently under discussion between the IUA and HEA.

it might be. We therefore recommend a restructuring of those provisions, bringing related matters together into more coherent sections would make this clearer. We deal with this aspect in more substance in Section 9.

In the context of statutory change, we note also that recent draft legislation (for example the Qualifications and Quality Assurance Authority of Ireland Bill 2011) makes explicit reference of the Board's capacity to dismiss the Chief Executive and includes additional provision in respect of attendance at Oireachtas Committees. Clearly, any revision of the Universities Act 1997 is likely to reflect up to date thinking on the regulation of these matters.

### 6.1 Budgets

There is one specific aspect of the respective roles and responsibilities of the Governing Authority and Chief Officer which is anomalous and which we believe needs to be addressed. This relates to responsibility for financial planning. In this context, one would normally expect the executive to propose a budgetary plan to the board and seek its approval. In effect this allocation of responsibilities is inverted in the Universities Act.

We therefore recommend that this should change and that it should be the explicit responsibility of the Chief Officer to prepare the budget of the university, with the Governing Authority having the responsibility for giving or withholding its approval for the budget and recommending the approved budget to the HEA. This would also be consistent with the fact that the Chief Officer is, in law, the Accountable Person for the university's finances.

The change recommended here would increase transparency by ensuring that the primary locus of responsibility for the effective management of university financial resources is clearly seen to lie with the Chief Officer and senior management team, appropriately overseen by the Governing Authority.

## 7. Human Resources

We note that there is significant developmental activity in the area of human resource development underway within the universities at present. This includes the introduction of revised staffing contracts, workload allocation systems and enhancement of performance management. These developments will significantly enhance the broader governance and accountability framework for universities.

As regards statutory matters, the Universities Act 1997 provides universities with autonomy in relation to the recruitment of staff - i.e. staffing numbers (although the

statutory powers of the universities have in recent times been circumscribed by the Employment Control Framework).

In general, while Irish Universities rank well on academic autonomy, they fare worse on operational autonomy. In the area of staffing (including recruitment, remuneration, discipline and dismissal), the EUA autonomy scorecard shows Ireland falling behind a group including the UK, Switzerland and the Scandinavian countries. These are countries against which Ireland regularly benchmarks itself in respect of its education and innovation systems.

Notwithstanding current financial exigencies, we believe that constraining the universities' flexibility in the overall area of staffing is not conducive to overall effectiveness or, indeed, to maximising value for money. We therefore recommend that Governing Authorities should be given greater flexibility in this area and we propose to submit further detailed analysis and recommendations to the Minister in due course on this specific matter.

Any amendment to current approaches in this area would require statutory change. If that change is to be pursued, we recommend that Section 25 of the Universities Act, 1997 be reviewed to ensure that it most effectively reflects good practice within human resources management within the universities, nationally and internationally.

## 8. Academic Council

### 8.1 Overview of issues

As stated earlier, we believe that the bi-cameral approach to university governance remains the most appropriate model, as does the statutory relationship between the Governing Authority and Academic Council and the specific functions of the Academic Council set out in the Act.

As a collegial body which is representative of the disciplinary mix in the university, Academic Councils will always tend towards being quite large in terms of membership. However, concerns have been raised in University quality reviews about the absolute scale of some Academic Councils. In terms of concerns, in summary, very large bodies militate against consistent attendance, quality and continuity of discussion and overall efficacy.

We note that Trinity College operates an Academic Council which is significantly smaller than that found in the other universities.

## 8.2 Recommendations scale, composition and functions of Academic Councils

### 8.2.1 Scale

We therefore recommend that there should be a move towards smaller Academic Councils. In general, we believe such bodies be no larger than fifty to seventy members and potentially smaller depending on the size of the institution and other relevant institutional considerations. Where for reasons of collegiality it is deemed beneficial to maintain a larger assembly, we recommend that this should be formally supplemented by a smaller standing committee of twenty to thirty members to provide the necessary continuity to deal with key strategic issues.

Subject to the above recommendations, we believe that the processes contained in the Universities Act in relation to the selection and appointment of staff to the Academic Council remain fit for purpose and we recommend should continue.

### 8.2.2 Functions of Academic Councils

As regards the functions of Academic Councils, those specified in the Universities Act 1997 remain appropriate. We particularly emphasise the importance of the responsibility for admissions and the design of programmes of study resting with individual universities and their Academic Councils.

It may be that some improvements could be made to the drafting of Section 27 of the Universities Act 1997 (Academic Council). For example, some of the powers and functions relate to the making of recommendations. However it is not always clear to whom the recommendations are addressed.

## 9. Other statutory issues

As indicated above, our recommendations in relation to the size and or composition of the Governing Authorities and Academic Councils, and other recommendations on the respective responsibilities of the Governing Authority and Academic Council etc. would imply statutory change<sup>6</sup>.

If this is being pursued, we recommend that consideration should be given to critically assessing the structure and sequencing of the Universities Act, 1997. In the current text, matters relating to the role and responsibilities of the Chief Officer and Governing Authority, respectively, are presented in a rather fragmented way. For example, the powers and functions of the Chief Officer are relegated to a schedule.

Similarly, institutional strategy, which is a core function of the Governing Authority is not addressed in Section 10 of the Act – Functions of Governing Authority, but rather is in a separate section (35). Likewise, the matter of responsibility for oversight of quality.

While on the one level, these can be seen as purely matters of structure, the presentation and sequencing of powers and functions within the Act should be coherent, intelligible and reflective of the relative importance of the specific powers and functions.

We suggest the following sequence:

- Objects of the university;
- Functions of the university;
- Powers of Governing Body;
- Functions of Governing Body;
- Matters relating to the Chief Officer;

## 10. Conclusion

The Universities Act contains a strong statement of principle in relation to institutional autonomy. The continuing relevance of these principles is reflected in the IPA report which concludes: *“the evidence for the degree of causality of autonomy on societal performance benefits is limited, and the impact of other factors unclear. However, what empirical evidence exists is indicative of university autonomy being linked with higher performance of universities and ultimately greater benefits to society”*.

For the foreseeable future, the Universities will continue to be statutory bodies in receipt of funding from the exchequer. However, it should be noted that the manner in which universities are funded has changed and will change further. In recent years the significance of the block grant from the Department of Education and Skills has diminished. A substantial proportion of university funding now comes from competitive research grants from a range of other state departments and agencies and from non-exchequer sources. In addition, progressive increases in the student charge have brought about a major rebalancing of the unit of resource per student as and between individual students and the state. In the area of capital, the state has become a minority funder.

This new heterogeneity suggests that the emphasis should move from central ex ante control and regulation towards more emphasis on strengthened internal governance, coupled with greater clarity on outcomes and performance indicators which align with the expectations of the stakeholder group individually and collectively.

We believe that the proposals and recommendations in this report will serve that aim.

<sup>6</sup> Such change would primarily encompass the Universities Act 1997. It should also be noted that a specific legal regime applies to Trinity College deriving from its Charter.

## Appendices

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# Appendix 1

## MEMBERSHIP OF IUA GOVERNANCE WORKING GROUP

<b>Prof. Brian MacCraith</b>	(President) DCU
<b>Prof. Patrick Prendergast</b>	(Provost) TCD
<b>Prof. Philip Nolan</b>	(President) NUIM
<b>Ms. Anne Fitzgerald</b>	(Secretary) TCD
<b>Prof. Jim Walsh</b>	(Vice President Innovation) NUIM
<b>Prof. Anne Scott</b>	(Registrar and Deputy President) DCU
<b>Mr. Ciaran O’Cuinn</b>	(Director for External and Strategic Affairs) DCU
<b>Mr. Michael Farrell</b>	(Secretary and Human Resources Director) UCC
<b>Mr. Diarmuid Collins</b>	(Chief Finance Officer) UCC
<b>Mr. John Coman</b>	(Secretary) UCD
<b>Mr. Eamon Drea</b>	(Vice President Staff) UCD
<b>Mr. Gearóid O’Conluain</b>	(Rúnaí) NUIG
<b>Mr. Chris McNairney</b>	(Human Resources Director) NUIG
<b>Ms. Calista Bennis</b>	(Secretary) UL
<b>Prof. Paul McCutcheon</b>	(Registrar and Deputy President) UL
<b>Mr. Ned Costello</b>	(Chief Executive) IUA
<b>Mr. Aidan Mullany</b>	IUA (Secretary to Group)

# Appendix 2

## University Governance

Report by the Institute of Public Administration for the Irish Universities Association.

**Final Report**

**28 November 2011**

### 1. Introduction

The purpose of this research report is to examine a number of matters relating to University governance and associated autonomy in Ireland, in order to assist the Irish Universities Association Secretaries Group in its task of contributing to the implementation of the Report of the National Strategy Group on Higher Education (the Hunt Report).

Following this introduction, the report contains 4 substantive chapters. The first presents some current evidence on the social and economic contribution of universities. Following this, the next chapter turns to look in some detail at recent developments in respect of university governance in selected jurisdictions. The paper then considers governance and accountability requirements for autonomous institutions in the context of the current (and possible future) funding models for the sector. A concluding section identifies some conclusions arising from the report.

### 2. The perceived benefits of university autonomy

Universities are important actors in delivering economic and social development benefits to society and the economy (see for example Sianesi and van Reenen (2003), and van der Ploeg and Veugelers (2008) for a review of the relevant theoretical and empirical literature). Amongst the benefits to society are preparation for sustainable employment; preparation for life as active citizens in democratic societies; personal development; and the development and maintenance of a broad, advanced knowledge base (Weber 2006). Indeed, as van der Ploeg and Veugelers (2008: 99) state:

Universities are among the key actors in constructing a knowledge-based society. Through their teaching, they disseminate knowledge and improve the stock

of human capital; through the research they perform, universities extend the horizons of knowledge; and by their other activities, they transfer knowledge to the rest of society, work with established industry and create new companies. And the contribution of universities to society goes beyond economic and technical advancement, since they maintain a culture that fosters an environment for well-rounded graduates.

#### **The impact of university autonomy on benefits to the economy**

On the role of autonomy and governance of universities with regard to the societal performance benefits derived from universities, the OECD has developed a series of indicators, on the basis of surveys of its member countries measuring autonomy (divided into financial autonomy, staff policy autonomy [hiring/firing and wages], student selection and course content) and accountability (evaluation mechanisms and funding rules). Analysis of this information by van der Ploeg and Veugelers (2008: 109) shows that the USA has the highest scores on all dimensions of autonomy, while in Europe, the better performing countries in the various international university rankings, i.e. UK, Finland, Sweden and Denmark, also score high on autonomy, although there are some differences depending on the type of autonomy.

They also note that in relation to some of the weaker European performers in the international rankings, such as France, Germany, Spain and Italy, there seems to be low levels of autonomy, but relatively high levels of accountability. This is consistent with the complaint that too much and/or bad regulation is stifling of initiative, and that absence of autonomy and political micro-management can weaken universities (Weber 2006).

Further evidence linking societal performance benefits to autonomy is provided by Martins et al (2009) who explore for a number of OECD countries the impact of the institutional setting of the higher education system on graduation rates.

Their results point to a strong potential for increasing graduation rates by improving the supply side of higher education, especially the autonomy and accountability of higher education institutes:

Empirical results suggest that changing tertiary education systems in the direction of higher supply flexibility and accountability is likely to improve graduation ratios.

Directions for reform would involve more autonomy for universities in student selection and staff policy, more reliance on independent and public evaluation and funding based on outputs rather than inputs. (Martins et al 2009: 151).

Another empirical study conducted by Aghion et al (2009) investigates how university governance affects research output, measured by patenting and international university research rankings. For both European and U.S. universities, this study shows that university autonomy and competition are positively correlated with university output. This is in conformance with economic logic. In higher education, the production function is very hard to observe and under such circumstances, detailed government control can be less effective, as a form of governance, than making largely autonomous organisations compete with one another for resources.

Aghion et al (2009) found that within Europe some countries, such as the UK and Sweden, have relatively highly autonomous universities and relatively high Shanghai ranking scores (interestingly, they also found that universities in the UK with low levels of autonomy had lower ranking scores). For the USA they found that university research productivity is highest for schools in states that allow more autonomy, such as independent purchasing systems, no state approval of the university budget, and complete control of personnel hiring and pay. States with high rankings and high autonomy include Washington, Colorado, California, Wisconsin, and Michigan. States with low rankings and low autonomy include Arkansas, South Carolina, Kansas, and Louisiana.

Evidence of the impact of university autonomy on wider societal benefits is limited. While not linked to autonomy, a study by the New Economics Foundation (2011) of two UK universities (Manchester Metropolitan University (MMU) and the University of Warwick (UW)) found that they were engaged in a wide variety of community outreach work – from students mentoring school pupils to bringing cultural performances to a non-traditional audience. And that using social return on investment methodology, the public value generated from just three society-wide outcomes – greater political interest, higher interpersonal trust and better health – amount to STG£212 million from the 1.9 million current undergraduate students, equivalent to a total of STG£1.31 billion for all 11.8 million graduates in the UK.

Some degree of caution is needed in interpreting the findings as the evidence for the degree of causality of autonomy on societal performance benefits is limited, and the impact of other factors unclear. However, what empirical evidence exists is indicative of university autonomy being linked with higher performance of universities and ultimately greater benefits to society.

This is not to say that autonomy alone can guarantee societal benefits. Weber (2006) points out that autonomy is a necessary but not sufficient condition for excellence. And the driving force of competition is emphasised by Aghion et al (2009). Universities must strive for excellence through improved governance, leadership and management, and must be accountable to their sponsors (state, private sector, foundations). These are essential aspects of good governance.

The implications of these findings for governmental policy regarding university governance are well summarised by van der Poeg and Veugelers (2008: 113):

There is relatively little hard data and analysis on the link between governance and performance and the evidence not in favour of a unique optimal model. Hence, European policy makers should be careful not to impose a standardized, micro-managed governance model on their universities. They should rather try to nurture the heterogeneity of its institutions, allow for experimentation and learn from it. This calls for granting universities the space and thrust to develop autonomously their own strategies and structures...In return for being freed from the stifling blanket of over-regulation and micro-management, universities should accept full institutional accountability to society at large for their results. In many countries this would mean a new approach to policy making with less ex ante checks and greater ex post accountability of universities for quality, efficiency and the achievement of agreed objectives. For universities, this requires new internal governance systems based on strategic priorities and on professional management of human resources, investment and administrative procedures.

### 3. Developments in university autonomy in the UK, US and Australia

The notion and concept of the university within society and states has been transformed globally in recent years. Once considered as highly specialised or even elitist professional organisations founded on knowledge, academic freedom

and collegiality, they are now considered to be like many other public organisations in terms of appeal, recruitment and function (Paradeise et al. 2009). And while considerable variety exists, reforms across Europe have encouraged universities to become more similar culturally and formally to each other (Christensen 2011).

Universities have not been immune from the significant administrative reforms that have also swept across the developed world over the last twenty years. These reforms have encouraged greater formalisation of the relationship between universities and their funding Departments or agencies, and put some distance between universities and central government in terms of autonomy and governance. At the same time, the requirements on universities to act in a manner similar to other public institutions has necessitated a growth in university administrations in order to meet legal obligations, provide management and monitor performance.

However, just as the recent economic and financial crises has forced governments to reduce public spending and tighten controls over state administrations, universities are also coming under increasing pressure to reduce costs and to cede autonomy over such issues as recruitment and funding allocations. Universities have also sought to diversify their sources of income, and there is also greater emphasis on efficiency and accountability in the use of both public and private funds.

A study of university autonomy by the European University Association in 2009 (Estermann and Nokkala 2009: 6) found that while many European governments and the European Commission supported the idea of autonomous universities, and several studies had identified a trend away from direct state control towards indirect steering mechanisms (such as financial or quality assurance mechanisms), 'public authorities still retain a central role in the regulation of the higher education system and, in a large number of countries, still exert direct control.' The EUA report argued that universities required more autonomy in specific areas, and in particular in relation to managing finances.

We examine here in some details the experience in Australia, the UK and the USA.

## Australia

In Australia as elsewhere, government concern with the quality of governance and risk management in the public sector has translated into the higher education sphere and since the mid-1990s significant efforts have been made by governments examining the capacities of university governing bodies to handle their rapid growth (due to increased student numbers) and associated risk. Several reports were undertaken,

including:

- The Hoare Committee Review of Higher Education Management (1995)
- The Victorian Ministerial Committee of Advice on University Governance (1997)
- The Victorian Review of University Governance (2002)
- The Auditor General, Victoria, Report on RMIT University's finances (2003); and
- Universities Overview in the NSW Auditor-General's Report to Parliament (2005)

Over the last 14 years, Australian university governing bodies (Councils) have been reduced in size, while maintaining a majority of external representatives. The most radical change was in the University of Melbourne, which went from 40 members to between 14 and 21 members or which two-thirds were external members (University of Melbourne Act 2009;

[http://www.austlii.edu.au/au/legis/vic/num\\_act/uoma200978o2009334/](http://www.austlii.edu.au/au/legis/vic/num_act/uoma200978o2009334/)). The average size of the Councils in Australia is now 21 members. The Australian Federal Government pushed for further steps in the reform process, arguing that even 21 member councils were not conducive to sound decision making.

In 2009, the government announced a series of third-level reforms. In a report setting out its proposals, the government noted that:

...the reach, quality and performance of this nation's higher education system is central to Australia's economic and social progress. To be globally competitive and to secure the high skilled jobs of the future, Australia needs an outstanding, internationally competitive higher education system with increased participation and higher attainment levels. Australia also needs a quality higher education system to sustain the international education industry which is Australia's third largest export.

(Australia Government 2009: 6)

As part of this new departure, the government sought to 'implement a quality assurance and regulation framework that enhances overall quality in the sector and provides clear information and access to learning about what and where to study, and to provide industry and the community with assurances of graduate quality'. In 2011, the Australian government established the federal agency TEQSA (The Tertiary Education Quality and Standards Agency) as the country's regulatory and quality agency for higher education. In part, this seems to have been as a response to a traditional problem in higher education policy in Australia insofar as legislative control of universities tends to be under the remit

of individual states, but university funding is primarily derived via the Federal Government. This has also resulted in a variety of university governance arrangements. TEQSA replaces the Australian Universities Quality Agency (AUQA).

Another important feature of these reforms was the establishment of a new relationship between the Government and each university through the introduction of mission based funding ‘compacts’. The compacts allow for the alignment of institutional activity with national priorities and will be used to help set performance targets for each institution. They are due to be published in 2011 and will be in two parts, one covering teaching and learning and the other covering research.

Another development from 2012 will be the introduction of a new funding stream ‘to ensure universities meet agreed attainment, participation, engagement and quality targets.’ A new series of performance indicators will be used, including those that measure success for certain social groups and the quality of teaching and learning.

## UK

The higher education sector in England includes 129 autonomous Higher Education Institutions (institutions) funded by the Higher Education Funding Council for England (National Audit Office 2011). A Financial Memorandum accompanies the grant funding. Most, but not all, can award degrees and most can use the title ‘university’. All UK universities, like those in Australia, are legally independent, self-governing institutions with their own degree-awarding powers. They operate according to a variety of legal forms as set out below, with Royal Charters providing the maximum level of prestige, flexibility and autonomy possible. The existence of trusts has virtually ended.

Diagram 2: Legal entities



In his analysis of contemporary UK university governance, Gillies describes it as follows:

In the UK, most universities tend to recognise two pillars of university governance: a Board of Governors (or Council), and an Academic Board (or Senate). While most Boards of Governors now have a majority of external members, the Academic Board is almost universally comprised of staff and students, selected on some representational and/or ex officio basis. The

Academic Board addresses issues of academic quality and standards, both in education and in research. The Academic Boards are sometimes constituted as a committee of the Board of Governors so that the ultimate responsibility of the Board of Governors for all aspects of the institution’s operations is not compromised. Sometimes, however, the Academic Board fulfils an advisory function to the Vice-Chancellor, who is then wholly responsible to the Board of Governors, or it reports to some kind of Supervisory Board (or Court), as may also then the other pillar of governance, the Board of Governors.

(Gillies 2011)

The governing bodies are responsible for their performance, maintaining their financial sustainability, accounting for public funds, and complying with charity law. English institutions are well regarded internationally and were rated second best in the world, behind the United States, in both the Academic Ranking of World Universities (with 31 institutions in the top 500) and the QS World University Rankings. This overall strong performance is matched by the United Kingdom being the second most popular destination for the world’s foreign students in higher education.

Under legislation intended to protect academic freedom, the Department cannot direct the Higher Education Funding Council as to which institutions, or which courses and areas of research, to fund. In other areas the Department provides a limited amount of guidance and instruction. In its financial memorandum the Department assigns the Funding Council certain duties, including monitoring the financial health and risk of institutions, and promoting value for money.

A number of issues facing the UK Higher Education sector in recent years include:

- Merging of higher education institutions
- Increased private sector involvement in higher education
- Competition from private and non-UK higher education institutions establishing a presence in the UK
- The likelihood of a further move away from the public funding of universities with ‘increasing interest in raising endowments and grants, the sale of surplus assets, conventional and unconventional loan finance and possibly equity or quasi equity investment.’
- Increasing emphasis on low-cost options in higher education

(Universities UK 2009)

Following concerns about the cost of funding higher education, the Independent Review of Higher Education Funding and Student Finance published in 2010 recommended wide-ranging changes to the system of university funding in the UK. It included moving to a more market-based system by removing the cap on the level of fees that universities can charge, and increasing the income level at which graduates must begin to pay back their loans. In addition, the Government is reducing direct public funding to institutions, and remaining funding flowing via the Higher Education Funding Council for England will be targeted on high cost subjects or specific policy areas such as widening participation. By 2015 it is estimated that students will be the majority funders of most English Universities (Gillies 2011)

In comparative international terms, British universities have a high degree of autonomy. They can appoint and promote staff at all levels, approve new courses, select research activities, and, in theory at least, determine their own strategic direction. The authority for all these activities has traditionally resided with the university's Board of Governors rather than external authorities. However, Gillies (2011) notes that funding bodies can apply pressure through their funding allocations and demand adherence to grant conditions.

A recent report from the UK's National Audit Office on sectoral sustainability records the increasing risks of the new funding environment, and called for a new regulatory approach (2011: 7). It asked for clarification from the Department of Business, Innovation and Skills of the authority of the funding council to intervene in an institution "to protect the interests of taxpayers and students" as well as "when to manage the taxpayers' disengagement from an institution should this be in the public interest". It also sought clarification of what the funding council's role would be at all with institutions which receive no grant funding but whose students receive tuition-fee loans (2011: 7). The NAO report also suggested that a more diverse funding arrangement, coupled with the squeeze in public funding, could increase the level of risk within the sector.

Gillies (2011) also suggests that with the rising student and alumni stake, the accountabilities both of management and the Board of Governors will gain increasing attention of the key stakeholders: students and alumni as chief funders; staff, as the greatest institutional investment and often key opinion formers; the broader community, as chief source of employment. He suggests that a key question for governing authorities will be how to retain the trust and confidence of the various stakeholder groups, particularly the students and alumni who may replace the state as chief funding agent of higher education.

## USA

It is well documented that the United States has the highest proportion of top universities in the world (13 out of the top 20 in the recent QS World University rankings for 2011/12). Almost half of the 3,500 universities or colleges in America are public, half are private not-for-profit organisations and some 300 private for-profit organisations. We consider here some recent developments in relation to publicly-funded institutions before turning to those that are privately-funded.

### Publicly-Funded Universities

According to the Association of Governing Boards of Universities and Colleges, "the relationship between public higher education and state government is in a flux in ways not been seen for decades. The general pattern is one of reduced state support followed by sharply rising tuition and arguments for less state regulation" (Association of Governing Boards of Universities and Colleges 2004)

More recently, in a new survey of higher education governing boards in 2010, the Association found the following:

- **Size:** From 1986 to 2010, the average number of voting board members remained relatively stable over the years, at about 11 or 12.
- **Occupation:** The professional background of half (49.4 percent) of board members of public colleges and universities in 2010 was business. Other occupations of board members (in the workforce and retired), included: 24.1 percent professional service (such as accountant, attorney/law, dentist, physician/medicine, and psychologist/mental health), 15.5 percent education, 9.3 percent other occupations (nonprofit executives, clergy, homemakers, artists, government officials, and others), and 1.7 percent agriculture or ranching.
- **Students, Faculty and Staff on Boards:** In 2010, 50.3 percent of public college boards included at least one student as a voting member of the board, and 28.2 percent included at least one nonvoting student member. Of public colleges, universities, and systems, 13.3 percent included at least one faculty member as a voting board member, and 9.7 percent included a nonvoting faculty member. Of public colleges, universities, and systems, 7.2 percent included at least one staff member as a voting board member, and 3.6 percent included one or more nonvoting staff.
- **CEO as a Member of the Board:** Most public institutions (72.5 percent) did not include the chief executive as a member of the board, although 6.3 percent included the chief executive as a voting member and 21.2 percent as a nonvoting member.
- **Governor as a Member of the Board:** Most public

institutions (83.0 percent) did not include the governor as a member of the board; 11.2 percent included the governor as a voting member and 5.9 percent as a nonvoting member.

- **Alumni Board Members:** On average, half of board members of public colleges and universities were alumni, though this varied by type of institution, with more alumni serving on boards of research and doctoral universities and systems.
- **Methods of Selection:** The majority of members of most public governing boards (77 percent) were appointed by the governor, 60 percent with confirmation by the state legislature and 17 percent without; 5 percent of boards were elected, 3 percent were appointed by legislatures, and 15 percent were selected in a combination of ways or in some other manner.
- **Terms for Board Members:** The length of a single term was typically six years, and less than half of the institutions, 41 percent, had policies that limited the number of consecutive terms a board member may serve.
- **Meetings:** Public boards met an average of seven times a year, and the business portion of a meeting typically lasted four-and-a-half hours.
- **Committees:** Public college, university, and system governing boards reported an average of five standing committees in 2010, two more than in 2004. The most common board committees, in descending order, were finance (88.9 percent), audit (55.0 percent), academic affairs (52.4 percent), executive (42.9 percent), education (combination of academic and student affairs, 39.7 percent), buildings and grounds (35.4 percent), development (32.8 percent), student affairs/campus life (27.5 percent), trustees/nominating/governance (23.8 percent), personnel (21.7 percent), public/government/legislative relations (14.8 percent), investment (13.2 percent), and compensation (7.4 percent). It was more than twice as common for boards to have a separate audit committee in 2010 (55 percent) than in 2004 (23 percent).

(Association of Governing Boards of Universities and Colleges 2010: 3-4)

In the US public institutions are governed predominantly, and sometimes entirely, by Boards of Trustees, with external members appointed by the governor and/or the legislature. In general there has been a trend towards increased accountability – with a wide degree of variability. Private not-for-profit governing bodies have typically large boards, reflecting the importance of fundraising, Princeton has 40. On the other end, the University of Michigan, a public university, has eight members of its Board of Trustees (Larsson 2006).

In a recent report concerning the effect of state actions on higher education institutions in the USA (Toutsis and Novak 2011), it was identified that the contraction in public funds available for higher education institutions had been considerable as a result of the economic downturn. They note that cuts between the fiscal year 2009 to fiscal year 2010, mid-year cuts in fiscal year 2010, and predicted cuts for fiscal year 2011, combined with overall enrolment increases to accommodate demand, has meant that state support per student has declined significantly. For many states, private funding support (i.e. tuition and fees from students) now constituted a greater share of financing than public support (through state grants or appropriations). Although raising tuition fees is the primary means to generate revenue and replace lost appropriations, concerns about the effect of this on affordability and student retention remain.

Allied to the budget reductions for higher education is a ‘pervasive emphasis on degree production and college completion’ as governments and universities seek to match academic opportunities with workforce-development goals. Toutsis and Novak also found that:

Spurred by spiralling fiscal conditions, some university systems and institutions are advocating for greater autonomy and flexibility to promote efficiencies that will save time and money while increasing access. With a realization that reduced funding levels and budget cuts will continue, colleges and universities advocate for regulatory relief. Public systems and institutions have pursued (or are pursuing) deregulation of tuition, operations, capital outlay, procurement, and human resources.

With declining resources and state and higher education agendas promoting degree completion prominently, state funding models are becoming more performance-based.

(Toutsis and Novak 2011: 2)

Finally, the report notes that as a result of financial difficulties, relationships between higher education institutions and state government can be seen in structural governance changes, efforts to expand institutional autonomy and fiscal flexibility (especially around tuition setting authority), and an emphasis on funding institutions based more on college completion and less on enrolment and capacity-building.

#### Privately-funded Universities

Several of the most well-known and highly ranked American universities, including Yale, Stanford, Harvard and MIT, are private institutions and command higher tuition fees from students than do public universities. A number of prominent private universities (Notre Dame, Brigham Young) are also closely aligned with religious orders and a related ethos.

The governing authorities of private universities are usually bound by the mission of their institution's founders, and have not been subject to any significant change in recent years. Increasingly, however, private universities in the US have public duties also (including more open recruitment to allow entry to non-fee paying students) which are determined by state laws. As the examples below identify, a form of 'corporation' is common in these institutions, and typically operates alongside an academic or faculty representative body.

Harvard University has two governing boards, both of whom must approve major teaching and administrative appointments. They are:

- 1) Harvard Corporation (formally known as the President and Fellows of Harvard College) provide the executive board for the university. This seven-member board has responsibility for the day-to-day management of the university's finances and business affairs.
- 2) The Board of Overseers, which consists of 30 members, approves any important actions taken by Harvard Corporation. It is elected by graduates.

Massachusetts Institute of Technology also divides control of the university between its Faculty and its trustees. The board of trustees comprises over 100 prominent (and mainly alumni) figures in education and business, as well as senior MIT executives, and a small number of elected representatives from the Commonwealth of Massachusetts. Together they form the MIT Corporation, which include the MIT Investment Management Company. The other principal element of MIT's governance is the MIT Faculty, which meets monthly and has responsibility for the educational policy of the Institute.

Unlike MIT, in Stanford there is a limit to the membership of the Board of Trustees, set at 35. The Board is formally known as 'The Board of Trustees of the Leland Stanford Junior University' and has responsibility for managing the University's endowment and properties, setting the budget, and policy for the management of the University. It also appoints the President. Stanford also has a Faculty Senate, with a Provost who is the chief academic and budgetary officer of the University. The Provost also has responsibility for administering the University's academic program.

In Yale, the founding charters dates back to 1701 and subsequent amendments in 1792 created the Yale 'Corporation', which today comprises nineteen members. It is thus quite small when compared to the others identified above, and plays a more active role in the University. They are the President of the University, ten Trustees, six Alumni Fellows, and the Governor and Lieutenant Governor of the State of Connecticut. As well as the Corporation, the University has several advisory boards (comprised mainly of alumni)

which provide advice to the President, such as the Advisory Committee on Digital Yale. A University Council also meets twice a year to makes recommendations to the President on a range of issues concerning University life. Yale also has a Chief Investment Office to manage its funds, and in particular its large endowment which provides a considerable portion of its annual operating budget of almost \$2 billion.

## 4. Governance and accountability requirements for autonomous institutions in the context of the current (and possible future) funding models for the sector

The boom in third-level participation rates across the OECD over the last 30 years has resulted in universities requiring ever-increasing resources from governments. As a consequence of this, greater reporting and accountability requirements have been imposed on universities, mirroring the experience of public sector organizations more generally. As noted above, Aghion et al (2009) identify a positive correlation between university autonomy and competition, both in Europe and the US. They also identify a reinforcing effect (or virtuous circle) in this relationship in that higher-ranked universities (according to the Shanghai index) tend to enjoy increased management autonomy. This in turn increases the efficiency of spending and results in higher research productivity.

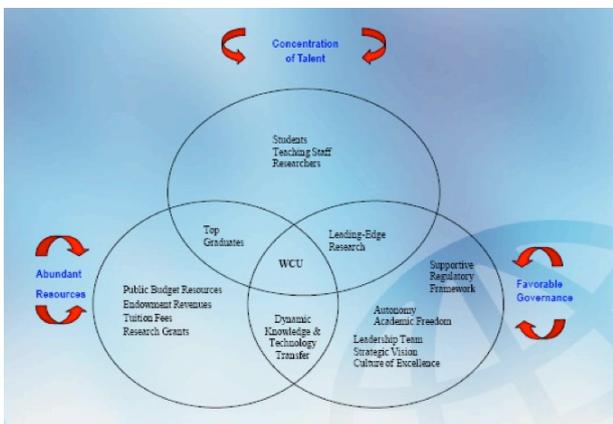
Higher education institutions today are surrounded by change and competition when recruiting students and scientists, and for funding. The OECD argues that 'expectations of higher education have changed beyond recognition' (Changing Patterns of Governance in Higher Education, OECD 2003). To be successful, Larsson argues that universities have to adapt and governing authorities have to be a driving force for the management of change. In so doing they will 'set the scene for initiatives in many different levels inside the university' (Larsson 2006).

The Hunt Report has identified three core roles for Irish universities: Teaching & Learning, Research and Engagement (Hunt 2011). The Report has noted that in the context of greater emphasis on the contribution higher education institutions must make to society and the economy, it necessitates 'the introduction of a strategic dialogue between institutions and the State.' (2011: 91). The report also states that 'it is widely recognised internationally that the most appropriate governance system for higher education is

one that supports institutional autonomy within a clear accountability framework.’ (2011: 92). How universities can demonstrate sensitivity to the market, society, and personal development is not the subject of this report.

**Future governance arrangements for universities in Ireland**

One of the most prominent writers on the issue of developing world-class universities suggests a combination of three interlocking factors contribute to the development of such universities. As Figure 1 identifies, a ‘Favourable Governance’ regime, alongside Talent and Resources, are deemed to provide the framework in which universities can improve their stature and standing.



Source: Salmi 2011, see also Salmi 2009: 8

Within the ‘Favourable Governance’ rubric, Salmi suggests that the following criteria apply:

- A supportive regulatory framework is necessary, including freedom from general civil service rules on such matter as HR, financial management and procurement.
- Management autonomy combined with academic freedom
- The selection of a leadership team which has a clear strategic vision and contributes to a culture of excellence
- Also, an independent Board which includes outside representation is recommended.

Recent high profile cases of mismanagement and maladministration in public and private sectors have occurred in organisations which were deemed to have adequate governance processes and Codes of Practice in place. Therefore, more emphasis is now being given to the manner in which Boards and governing authorities actually perform their

work, i.e. how they go about their business rather than simply demonstrating adherence to various processes and minimum required standards. As a recent study in the UK identified, the definition of what constitutes an effective governing body in higher education is complex and contentious (Leadership Foundation for Higher Education/Committee of University Chairs 2010: 1). However the study suggests that the enablers of an effective governing body are the following:

1. A commitment to effective governance, including well-defined roles, continuous improvement and demonstrable commitment of the Governing Authority and senior executives to effective governance.
2. Effective governance structures and processes, including clear systems of delegation and regularity of meetings, and an effective relationship with an academic council.
3. Effective governing body membership, including diverse skills, succession planning and induction processes, and motivated members.
4. Commitment to organisational vision, culture and values, including development of trust and confidence among staff and students in the Governing Authority.
5. Effective strategic development and performance measurement, including relevant peer review and benchmarking, and performance reviews.
6. Effective information and communication.
7. Future governance, including Governing Authority awareness of changing circumstances and forthcoming issues which have governance implications, and the match between existing corporate governance relationships and long term plans of the institution.

(Leadership Foundation for Higher Education/Committee of University Chairs 2010: 3)

**System Governance**

The Hunt report identifies how universities must seek a “balance between the demands of the market and their academic mission”. It also recommended that university governing authorities should have a majority of non academics. If this is to occur, the relationship and relative power between the various governing pillars of the university – governing authority, academic council and chief officer – may need redefining, particularly in respect of such matters as admission standards and recognition. In other words, it must be clear as to who does what, and their relative levels of autonomy and accountability for different functions. This may require amending Sections 27 and 29 of the Universities Act 1997 concerning the role of the Academic Council.

**Governing Authority Size**

A recurring theme in the debate on university governance relates to the size of the membership of the governing body. It has frequently been noted in the literature that Boards with large stakeholder memberships find it in most instances difficult to manage, co-ordinate and efficiently expedite their affairs. For example, Kelleher (2006) identifies that 'there is a perception that large bodies (say, over 25) are unwieldy and ineffective, while smaller bodies are able to debate and reach decisions in a more "business-like" manner, the implicit analogy being with the boards of directors of private companies'. He notes how in Australia a number of official reports advocated governing bodies of 10 to 15 members (see above), and a similar trend appears in the UK. Kelleher also noted that in the United States, the vast majority of board members are external, while in the United Kingdom and Australia, there is a slight majority of external members. These trends in university governance have reached some of the top-ranking European universities. In the University of Oxford, White Paper on Governance suggests that the size and composition of Council should be revised, membership should be reduced from twenty-three to fifteen; it should have seven internal and seven lay members and a lay Chair (University of Oxford 2006).

The 1997 Universities Act in Ireland allowed for considerable flexibility in governing body membership, including the ability of the body itself to determine its size. The Act provided for a number as low as 20 and a maximum of 40; though in practice most of the universities have memberships approaching the higher level. The OECD's review of higher education in Ireland published in 2004 had recommended that governing bodies in Ireland should contain no more than 20 members. A recent study of state agencies in Ireland found that the average size of governing authorities in the 188 non-commercial entities that have them was 12 members (ranging from 2 to 37 members) (MacCarthaigh 2010). If the governing authorities were to be reduced in size, it would necessitate amending Article 15 of the 1997 Universities Act.

The Hunt report has also been quite specific on this, noting that:

Internationally, the size and composition of governing authorities of higher education institutions have been changing. The model generally favoured is a more managerial one, with a smaller number of members and a majority of non-academic (lay) people. The OECD report on Irish higher education in 2004 was critical of the size of Irish university governing authorities and recommended that they be reduced in size and that their membership reflect the skill set required to govern a university. This recommendation should be implemented: the size of governing authorities of higher education institutions in Ireland should be reduced to no more than

18, and the majority of members should be lay people with expertise relevant to the governance of higher education.

(Hunt 2010: 92)

### Governing Authority Composition

The 1997 Universities Act is very specific on the composition and nomination processes for University governing authorities. While there is no ideal size for a governing authority or council, the strong trend internationally within the public sector to move away from boards comprised primarily of stakeholder representatives, (which tend to be large in size given that most organisations have multiple stakeholders), towards boards which have a primary focus on competence is relevant also to universities. And while much of the focus tends to be on the means of appointment to Boards of organisations, having the correct competency 'mix' is a vital part of ensuring the successful management of an organisation over time. Key questions arising here are:

- How nominations to a smaller governing authority would be nominated.
- How the governing authority would review its progress
- How the governing authority would be evaluated

Traditionally, universities adopt a dual-structure model whereby a Board of Governors (or Council) operates alongside an Academic Board (or Senate). A reduction in the size of either need not however mean a commensurate reduction in the level of stakeholder involvement. Other mechanisms for providing such representative input into the work of governing authorities, such as the use of external stakeholder panels or advisory forums, are successfully utilised by regulatory and other public agencies in Ireland. Were such external fora to be used, how they are to be engaged with should be reflected in Part 3 of the HEA/IUA Governance of Irish Universities document and also may require a new section in an amended 1997 Universities Act.

The use of such external forums would also meet the recommendation of the Hunt report that:

A shared sense of autonomy needs to be developed between the higher education institutions and other stakeholders, including students, private sector interests and the wider community. In return for this autonomy, institutions must become accountable in ways that are sufficiently transparent and robust to ensure the confidence of the wider society.

(Hunt 2011: 92)

### Responsibilities of governing authorities

Based on the Institute's work with numerous Boards of public organisations in Ireland, we would suggest that the three attributes of an effective board are:

- 1) Knowledge of the business
- 2) The availability of generic skills (such as those in respect of legal, financial and HR affairs)
- 3) A collegial approach to promoting the interests of the organisation

In terms of future governance requirements for the governing authorities of Irish universities, the 'Trustee Survival Kit' produced by the Association of Governing Boards of Universities and Colleges in the US identifies five key topics for higher education governing authority members which may be usefully applied in the Irish context. This identifies five key areas of responsibility, as follows:

- Responsibility for Academic Affairs
- Financial Responsibilities
- The Board's Role in Fundraising
- Risk Management
- Institutional Ethics and Values

### Accountability demands on Irish universities

As with all public sector bodies, the accountability demands on Irish universities and their managers have increased in recent years. In part these stem from new legislative developments, as well as wider demands for information and transparency in all publicly funded bodies. Communications with senior university administrators identify the multiple and diverse means through which universities are now held to account, and the resource implications of this. It is also suggested that a greater variety of information is sought by parent agencies and Departments. While there are various responsibilities to (public and private) funders concerning adherence to good practice and ethical standards in the course of their work, a number of other accountability obligations incumbent on Irish universities are outlined below.

**Public Accountability:** Parliamentary questions may be put to the Minister for Education and Skills concerning aspects of university governance and management. University Presidents (and senior management) may in turn be called to appear before Oireachtas committees to answer questions directly. Also, the Freedom of Information Acts apply to Irish third-level institutions, and good record management policies are therefore required. Universities must also respond to occasional requests for information from the Higher Education Authority and other public bodies, including the Department

of Education and Skills. The Universities Act of 1997 (Section 41) also requires that a triennial report on the performance of each university should be put before the Houses of the Oireachtas.

**Financial Accountability:** As well as routine financial management and internal audit, universities are subject to external audit by the Comptroller and Auditor-General, and must submit financial information as required to the Higher Education Authority or the Department of Education and Skills. Section 39 of the 1997 Act states that these accounts must be provided to the Oireachtas also. University governing authorities are obliged under the Code of Conduct for the Governance of State Bodies to ensure sound financial management and probity within their organisation. Universities are also subject to the stipulations of the Prompt Payments Act.

**Data Accountability:** Universities are repositories of large amounts of data, emanating not only from research activities but also from internal management processes. The stipulations of the Data Protection Act must be adhered to and universities are thus legally responsible for the security of their information systems.

**Other:** The Universities Act, 1997, contains provisions pertaining to equality policies within universities, and the requirement to prepare a statement which must be reviewed as necessary to ensure procedures are in place to, amongst other things, resolve disputes. Other legislation relating to workers rights and general labour policy in Ireland apply to university staff and universities must be able to demonstrate that their HR policy is in keeping with national law.

Universities are facing two prominent challenges – reductions in direct state subventions, and at the same time greater requirements to assist national economic and social objectives. In this context, accountability in the future may become more diverse and to a larger number of forums, including more public demonstrations of the role played by universities in achieving national objectives (such as reducing unemployment). As well as ex ante checks, greater ex post accountability to private funders and government for 'quality, efficiency and the achievement of agreed objectives' (van der Poeg and Veugelers 2008: 113). Sections 2.3 and 2.10 of the HEA/IUA 'Governance of Irish Universities' concerning risk management and reporting arrangements for Irish universities may therefore need to be revisited to reflect the reporting requirements for non-state funders and stakeholders.

The UK National Audit Office's identification of the increasing risks in the new funding environment for universities (above) is worth considering in an Irish context for prudential reasons, particularly the authority of funding organisations to intervene in an institution "to protect the interests of taxpayers

and students” as well as “when to manage the taxpayers’ disengagement from an institution should this be in the public interest”. Should such safeguards be deemed necessary, it will require amending the 1997 Universities Act and the Governance of Irish Universities Code.

Of course, identifying the appropriate governance structures alone is not enough and in earlier work Salmi (2009: 28) identified that these core elements of university autonomy ‘are necessary, though not sufficient, to establish and maintain world-class universities. Other governance features are needed, such as inspiring and persistent leaders; a strong strategic vision of where the institution is going; a philosophy of success and excellence; and a culture of constant reflection, organizational learning, and change. And in reviewing the few studies of world-class universities, Salmi (2009: 19) identifies a number of common variables: highly qualified faculty; excellence in research; quality teaching; high levels of government and nongovernment sources of funding; international and highly talented students; academic freedom; well-defined autonomous governance structures; and well-equipped facilities for teaching, research, administration, and (often) student life.

## 5. Preliminary findings and conclusions

### Benefits of universities to society

- Amongst the benefits to society of universities are preparation for sustainable employment; preparation for life as active citizens in democratic societies; personal development; and the development and maintenance of a broad, advanced knowledge base.
- OECD analysis measuring autonomy (financial, HR, student selection and course content) and accountability (evaluation mechanisms and funding rules) identifies that the USA has the highest scores on all dimensions of autonomy, while in Europe, the better performing countries in the various international university rankings, i.e. UK, Finland, Sweden and Denmark, also score high on autonomy, although there are some differences depending on the type of autonomy. In some of the weaker European performers in the international rankings, such as France, Germany, Spain and Italy, there seems to be low levels of autonomy, but relatively high levels of accountability.
- Research by Aghion et al (2009) found that for both European and U.S. universities, university autonomy and competition are positively correlated with university

output. They argue that detailed government control can be less effective, as a form of governance, than making largely autonomous organisations compete with one another for resources. For the USA they found that university research productivity is highest for schools in states that allow more autonomy, such as independent purchasing systems, no state approval of the university budget, and complete control of personnel hiring and pay.

- Some degree of caution is needed in interpreting the findings as the evidence for the degree of causality of autonomy on societal performance benefits is limited, and the impact of other factors unclear. However, what empirical evidence exists is indicative of university autonomy being linked with higher performance of universities and ultimately greater benefits to society.
- Higher education institutions are struggling to balance academic autonomy with the accountability requirements that follow public money.
- In this context, the stakeholder model of governing authority membership is being questioned, and higher education governance reforms have involved the use of smaller governing authorities, with a more explicit focus on managing change and strategic challenges.

### Developments in university autonomy in the UK, US and Australia

- In Australia, government concern with the quality of governance and risk management in the public sector has translated into the higher education sphere and since the mid-1990s significant efforts have been made by governments examining the capacities of university governing bodies to handle their rapid growth (due to increased student numbers) and associated risk.
- Over the last 14 years, Australian university governing bodies (Councils) have been reduced in size, while maintaining a majority of external representatives
- In the UK, a number of issues facing the UK Higher Education sector in recent years include the merging of higher education institutions, increased private sector involvement in higher education, competition from private and non-UK higher education institutions establishing a presence in the UK, the likelihood of a further move away from the public funding of universities, increasing emphasis on low-cost options in higher education.
- A recent report from the UK’s National Audit Office on sectoral sustainability records the increasing risks of the new funding environment, and called for a new regulatory approach.
- With a rising student and alumni stake, the

accountabilities both of management and the Board of Governors will gain increasing attention of the key stakeholders, students and alumni, staff and the broader community.

- In the US, contraction in public funds available for higher education institutions has meant that state support per student has declined significantly.
- Allied to the budget reductions for higher education is an emphasis on degree production and college completion as governments and universities seek to match academic opportunities with workforce-development goals.
- Relationships between higher education institutions and state government can be seen in structural governance changes, efforts to expand institutional autonomy and fiscal flexibility.

**Governance and accountability requirements for autonomous institutions in the context of the current (and possible future) funding models for the sector**

- The Hunt Report has identified three core roles for Irish universities: Teaching & Learning, Research and Engagement. It also suggests universities must seek a “balance between the demands of the market and their academic mission”.
- There may be a need to redefine the relationships between the pillars of university governance which may require amending Sections 27 and 29 of the Universities Act 1997 concerning the role of the Academic Council.
- Internationally, university governing authorities are becoming smaller and more strategically focused.
- If this were to similarly occur in Ireland, it would necessitate amending Article 15 of the 1997 Universities Act.
- The strong trend internationally within the public sector to move away from boards comprised primarily of stakeholder representatives, towards boards which have a primary focus on competence is relevant also to university governing authorities.
- Other mechanisms for providing such representative input into the work of governing authorities, such as the use of external stakeholder panels or advisory forums, are successfully utilised by regulatory and other public agencies in Ireland.
- Were such external fora to be used, how they are to be engaged with should be reflected in Part 3 of the HEA/IUA Governance of Irish Universities document and also may require a new section in an amended 1997 Universities Act.

- Universities are facing two prominent challenges – reductions in direct state subventions, and at the same time greater requirements to assist national economic and social objectives. In this context, accountability in the future may become more diverse and to a larger number of forums, including more public demonstrations of the role played by universities in achieving national objectives.
- Sections 2.3 and 2.10 of the HEA/IUA ‘Governance of Irish Universities’ concerning risk management and reporting arrangements for Irish universities may therefore need to be revisited to reflect the reporting requirements for non-state funders and stakeholders.

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## Appendix 3

### GOVERNING AUTHORITIES & ACADEMIC COUNCILS

University	UCD	UCC	NUIG	DCU	UL	NUIM	TCD
Governing Authority Members	40	39	40	28	35	30	27
Academic Council Members	370	187	144	131	65	69	33

# Appendix 4

## CODE OF GOVERNANCE OF IRISH UNIVERSITIES

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### References

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## Foreword

The impetus for the formulation of this Governance Code comes from a number of sources. The emergence of the worldwide governance movement and the long tradition of formal university governance structures had already been reflected in The Irish Universities Act 1997. The Act lays down a new statutory framework for university governance; this obviously has taken primacy in the drafting of the code. In addition, the introduction of the 2001 code of practice for the governance of State Bodies needed to be adapted and extended to the universities as organizations in receipt of substantial public funding. Finally, the 2001 framework, the Financial Governance of Irish Universities agreed between the HEA and the Conference of the Heads of Irish Universities (now the Irish Universities Association), was due also to be revised at this time.

The main focus of the first wave of the corporate governance movement was on accountability and this is well reflected in the Code. In addition, the Code seeks to reflect the subsequent move towards an increasing focus on ensuring effectiveness and on assurance based on identifying and managing risk. Through the Code, the universities strive to voluntarily achieve a balance between the principles of autonomy and accountability as enshrined in The Irish Universities Act 1997 and through their governance systems to assure their stakeholders that the investment being made in them is being effectively used and that the fundamental role of the university as an institution of learning and scholarship is safeguarded.

The growing size and complexity of the Irish universities, reflected in the following, present real challenges to our universities:

- New forms of relationships;
- Partnerships with communities and interests beyond their traditional remit, with many Irish universities now incorporating commercial subsidiary companies;
- Large budgets funded significantly from the state;
- Asset bases contributed to significantly by private donation;
- Overall resources greater than most privately owned businesses in their regions; and
- Diverse and potentially competing sub-missions.

The foregoing underlines the importance and the urgency of having clear, streamlined and effective governance codes in which the public can have confidence, so that appropriate responses to these, and other challenges that may arise in the future, can be planned.

The most important principle of university governance which should be underlined is that the governing authority bears ultimate responsibility for, and has ultimate authority over, all of the activities of the institution it governs.

This document enshrines the governance principles and qualities of openness, transparency, independence and accountability. It promotes the qualities of selflessness, honesty, integrity, leadership and objectivity – qualities which the members of the governing authorities of Irish universities must embody within themselves. We acknowledge a debt of gratitude to them and particularly to their chairs, for their commitment to public service in contributing their energies and wisdom to that role.

All of the Irish universities have accepted this Code, its principles and its reporting requirements, although there are likely to be some local variations of an operational nature as it is implemented. Implementation commenced in all of the universities in 2007.

It is our intention to keep the code and its implementation under review.

We wish to thank the HEA/IUA working group which drafted the Code, the IUA nominee Mr Michael Kelleher and the HEA nominee Ms Mary Kerr and particularly to thank the group's independent chair Mr Dermot Quigley.

Mr. Michael Kelly

Chairman, Higher Education Authority

Prof. John Hegarty

Provost, Trinity College Dublin

President, Irish Universities Association

# Governance of Irish Universities

## Introduction

### Background

Good governance arrangements are essential for organisations large and small and whether operating in the public or private sectors. Governance comprises the systems and procedures under which organisations are directed and controlled. A robust system of governance is vital in order to enable organisations to operate effectively and to discharge their responsibilities as regards transparency and accountability to those they serve. Given their pivotal role in society and in national economic and social development, as well as their heavy reliance on public as well as private funding, good governance is particularly important in the case of the universities.

Universities have a strong track record in relation to governance and accountability. The Universities Act, 1997 (the “1997 Act”) was very proactive in setting out a framework of accountability for the effective governance of universities. The Act also underscores the autonomy of Irish universities particularly in Section 14 (1) which provides that a university shall “have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of internal and external affairs and be entitled to regulate its affairs in accordance with its independent ethos and traditions” and “...if, in the interpretation of this Act, there is a doubt regarding the meaning of any provision, a construction that would promote the ethos and those traditions and principles shall be preferred to a construction that would not so promote”. The approach to governance set out in this document seeks to preserve the balance between accountability and autonomy which is struck in the Act.

Since the implementation of the Act in 1997 there have been a number of developments in governance and accountability. Some such developments were addressed in the 2001 report “The Financial Governance of Irish Universities: Balancing Autonomy and Accountability”, a code initiated and developed jointly by the universities and the Higher Education Authority (HEA).

The 2001 code provided for a further review after a period of three years to ascertain if further recommendations were required and to assist the universities in implementing best practice. The more recent developments in governance arrangements in the public and private sectors, both in Ireland and abroad, extend beyond financial governance which was the primary focus of the earlier code. In the light of this, the HEA and the Irish Universities Association (IUA) initiated this

further review. The provisions of the “Governance of Irish Universities” update and replace the relevant provisions of the 2001 code.

A Working Group comprising a representative of the HEA, a nominee of the IUA and an independent Chairperson undertook this review. A series of consultative meetings took place between the Working Group and representatives of the IUA (Secretaries, Chief Financial Officers and Internal Auditors). The outcome as set out in this document has now been jointly agreed by the Working Group and the IUA representatives at their levels and is being submitted to the HEA. Following approval by the HEA it will be forwarded to the individual universities for agreement and adoption.

### Content

The approach to governance set out in this document enshrines the basic principles of:

- Openness and transparency;
- Selflessness;
- Honesty;
- Leadership;
- Fairness;
- Integrity;
- Independence;
- Accountability;
- Objectivity;
- Efficiency and Effectiveness;
- Value for money.

The governance arrangements are set out in three separate parts as outlined below:

- (1) University Legislation and Related Legislative Frameworks;
- (2) Universities Code: Principles and Best Practice;
- (3) More Detailed Governance Guidelines.

- (1) University Legislation and Related Legislative Frameworks

This primarily deals with the governance requirements arising from the provisions of the 1997 Act and the agreed frameworks under that Act. These are obligatory requirements.

- (2) Universities Code: Principles and Best Practice

This is a voluntary code outlining a further set of principles and best practices, which take account of developments in governance since 1997 and are intended to be generally

applicable regarding the internal practices and external relations and accountabilities of the universities.

The Code takes account as appropriate of the corresponding Code for the Governance of State Bodies which has been put in place by the Government. It also has regard to developments since the 2001 code and to the more general comments in the OECD Examiners' Report, "Review of Higher Education in Ireland September 2004". Account has also been taken of governance issues raised in the EUA Report, "EUA/ Review of Quality Assurance in Irish Universities - Sectoral report", February 2005. In addition to the foregoing, the Working Group examined a large selection of relevant reports and other documentation dealing with governance in both the public and private sectors; a full list is contained at the end of this document.

The Working Group also received an extremely valuable presentation from Dr David Fletcher, Secretary of Committee of University Chairmen on recent developments in Governance in the UK Higher Education Sector. The Working Group would like to thank Dr Fletcher for his constructive input into the Group's work.

The governing authority of each university is primarily responsible for ensuring that its activities are governed by the ethical and other considerations enshrined in the Code. Where a university's practices are not consistent with particular provisions of this Code the reasons should be clear and documented.

The provisions of this Code are supplementary to and do not affect existing statutory requirements relating to a university (as set out in Part 1 of this document) and any other legislation applicable to it or its activities.

### (3) More Detailed Governance Guidelines

These are a set of illustrative guidelines to inform the implementation of the Universities Code: Principles and Best Practice while recognising the particular ethos, circumstances and organisational structures of each university. They are not intended to be prescriptive in their detail. It is recognised that it is not feasible or desirable to attempt to provide for all situations or to rule out flexibilities in application that may be needed to take account of the circumstances of individual universities.

## Conclusion

Good governance should be seen as an aid to effectiveness. It is not there to inhibit enterprise or innovation. Good governance arrangements necessarily involve having appropriate checks and balances in relation to decision-

making in the institutions, so as to safeguard the collective responsibility of the governing authority.

This document will assist universities and their governing authorities in the good and proper management of universities and in ensuring that appropriate procedures and controls are implemented to manage the risks facing such complex institutions, while at the same time respecting their autonomy.

It will also provide comfort to the State and the public at large that universities are operating to the highest standards of governance and accountability in relation to all their activities.

While this document deals primarily with governance issues as applicable to governing authorities<sup>7</sup>, the principles and best practices in it are equally applicable to other organs of governance, e.g. academic councils/boards, committees of the governing bodies and committees generally, faculties, schools, departments, etc.

It is intended to keep the content and operation of "Governance of Irish Universities" under review and to amend it from time to time in the light of experience and following appropriate consultation.

<sup>7</sup> "A governing authority... shall be known by whatever name the governing authority decides." [1997 Act, s. 15 (1)]. Currently, the names "Governing Authority", "Governing Body", "Údarás na hOllscoile" or "Board" are in use in the respective universities.

## Part 1 University Legislation and Related Legislative Frameworks

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## 1.1 The 1997 Act

1.1.1 The Universities Act 1997 is the primary piece of legislation governing universities. The Act imposes a number of considerable governance requirements on universities and these are detailed in this section.

## 1.2 Governing Authority

1.2.1 In accordance with Section 15 of the 1997 Act all universities are required to have a governing authority established:-

“15 – Governing Authority

- (1) Subject to section 21 [see Appendix 1A], each university shall have a governing authority established in accordance with this Act which shall be known by whatever name the governing authority decides.
- (2) Subject to this Act, the functions of a university [see Section 18 – Appendix 1A] shall be performed by or on the directions of its governing authority.
- (3) All acts and things done by a governing authority, or in the name of or on behalf of the university with the express or implied authority of the governing authority, shall be deemed to have been done by the university.
- (4) The Third Schedule shall apply to the governing authority.”

1.2.2 The governing authority determines the financial constraints within which the Academic Council operates and reviews decisions of that authority in accordance with Section 27 (1) of the 1997 Act:

“27 – Academic Council

- (1) Each university shall have an academic council which shall, subject to the financial constraints determined by the governing authority and to review by that authority, control the academic affairs of the university, including the curriculum of, and instruction and education provided by, the university.”

1.2.3 The operation of the governing authority is governed by the Third Schedule of the Act as set out below:-

Third Schedule

### GOVERNING AUTHORITY

1. (1) As soon as practicable after its establishment, the governing authority of a university shall provide and retain in its possession a seal of the university.
- (2) The seal of a university shall be authenticated by the signature of the chairperson or a member of the governing authority, and by the signature of

an employee of the university, authorised by the governing authority to act in that behalf.

- (3) Judicial notice shall be taken of the seal of a university, and every document purporting to be an instrument made by a university and to be sealed with the seal of the university (purporting to be authenticated in accordance with this Schedule) shall be received in evidence and shall, unless the contrary is shown, be deemed to be such instrument, without further proof.
2. (1) Each governing authority shall have a chairperson, as provided for in section 17 [see Paragraph 1.3], who may be designated by such title as the governing authority determines.
- (2) The chairperson may, at any time, resign from office as chairperson by letter addressed to the governing authority and the resignation shall take effect on the date on which the letter is received.
3. (1) A member of a governing authority may, for good and valid reason, be removed from office by resolution of the governing authority.
- (2) A member of a governing authority may, at any time, resign from office as a member by letter addressed to the chairperson and the resignation shall take effect on the date on which the letter is received.
- (3) A member of a governing authority who is absent from all meetings of the governing authority for a period of six consecutive months, unless the absence was due to illness or was approved by the governing authority, shall at the expiration of that period cease to be a member of the governing authority.
- (4) A member of a governing authority (including a chairperson appointed under section 17 (3)) whose term of office expires by effluxion of time shall be eligible for re-appointment.
4. (1) Subject to this Schedule and to section 21 [see Appendix 1A], the term of office of a member of each succeeding governing authority, other than an ex officio member, shall be not less than three years and not more than five years as determined by the governing authority holding office immediately before the appointment of that member.
- (2) A member of a governing authority who is a student of the university shall hold office for such period, not exceeding one year, as the governing authority may determine but may be re-appointed for a further period or further periods, on each occasion not exceeding one year.

5. (1) If a member of a governing authority dies, resigns, is removed from office or for any other reason ceases to hold office, the governing authority shall arrange for the filling of the casual vacancy so occasioned as soon as practicable.
  - (2) A person who becomes a member of a governing authority to fill a casual vacancy shall, subject to this Schedule, hold office for the remainder of the term of office of the member whose death, resignation, removal from office or ceasing for other reasons to hold office occasioned the casual vacancy and shall, subject to paragraph 3 (4), be eligible for re-appointment.
6. (1) Each governing authority shall, from time to time as the occasion requires, appoint from amongst its members a member (other than the chief officer) to be its deputy-chairperson.
  - (2) The deputy-chairperson shall, unless he or she sooner resigns as deputy-chairperson, hold office until he or she ceases to be a member of the governing authority.
7. (1) Where a member of a governing authority—
  - (a) is adjudged bankrupt or makes, under the protection or procedure of a court, a composition or arrangement with creditors,
  - (b) is sentenced to a term of imprisonment by a court of competent jurisdiction, or
  - (c) ceases to be a member of the category of person, as provided for in section 16, to which he or she belonged at the time of becoming a member, he or she shall thereupon cease to be a member of the governing authority.
  - (2) A person shall not be eligible to be a member of a governing authority if he or she—
    - (a) is an undischarged bankrupt,
    - (b) within the immediately preceding three years has, under the protection or procedure of a court, made a composition or arrangement with creditors, or
    - (c) within the immediately preceding five years, has been sentenced to a term of imprisonment by a court of competent jurisdiction.
8. (1) A member of a governing authority who has an interest in—
  - (a) a company (other than a public company of which he or she is not a director or otherwise involved in its management) or concern with which the university proposes to make a contract, or
  - (b) a contract which the university proposes to make,

shall disclose to the governing authority the fact of the interest and its nature and shall take no part in any deliberation or decision of the governing authority relating to the contract, and the disclosure shall be recorded in the minutes of the governing authority.

  - (2) A member of a governing authority of a university who is related to a person who is a candidate for appointment by the governing authority as an employee of the university, shall disclose to the governing authority the fact of the relationship and its nature and shall, if the governing authority so decides, take no part in any deliberation or decision of the governing authority relating to the appointment, and the disclosure and decision shall be recorded in the minutes of the governing authority.
  - (3) A member of a governing authority of a university shall at all times act, as a member, in the best interests of the university and shall not act as a representative of any special interest provided that nothing in this paragraph shall restrict a member from representing at meetings of the governing authority the views of those by whom he or she has been elected or to restrict the freedom of expression of that member.
9. The chairperson and members of a governing authority, other than an ex officio member who is an employee of the university, shall be paid out of funds at the disposal of the governing authority such allowances for expenses as the Minister, with the approval of the Minister for Finance, may decide.
10. (1) A governing authority shall hold such and so many meetings, and at such times, as the chairperson may determine.
  - (2) The chairperson shall convene a meeting of the governing authority whenever requested to do so by not less than the number of members which constitute a quorum.
  - (3) The quorum for a meeting of a governing authority shall be one third of the total number of members, rounded up to the nearest whole number, plus one.
11. At a meeting of a governing authority—
  - (a) the chairperson shall, if present, be the chairperson of the meeting, or
  - (b) if and so long as the chairperson is not present or the office of chairperson is vacant, the deputy-chairperson shall, if present, be the chairperson of the meeting,
  - (c) if and so long as the chairperson is not present or the office of chairperson is vacant, and the deputy-

chairperson is not present or the office of deputy-chairperson is vacant, the members of the governing authority who are present shall choose one of their number to preside at the meeting.

12. Every question at a meeting of a governing authority shall be determined by consensus, but where in the opinion of the chairperson or other person presiding consensus is not possible, the question shall be decided by a majority of the votes of members present and voting on the question and, in the case of an equal division of votes, the chairperson or other person presiding shall have a second or casting vote.
13. Subject to paragraph 10 (3), a governing authority may act notwithstanding one or more than one vacancy among its members or any deficiency in the election or appointment of a member which may subsequently be discovered.
14. Subject to this Act, a governing authority shall regulate, by standing orders or otherwise, its procedure and business.
15. Subject to this Act, the governing authority of a university may make, from time to time, such regulations as it thinks fit for the conduct of the affairs of the university.

### 1.3 Role of Chairperson and Chief Officer in relation to Governing Authority

#### Role of Chairperson

1.3.1 The roles of the Chairperson and Chief Officer are governed by the 1997 Act. The role of the Chairperson<sup>8</sup> is governed in particular by Section 17, which is reproduced below and by the Third Schedule of the Act (see paragraph 1.2.3 above).

#### “17 – Chairperson of governing authority

- (1) The first meeting of a governing authority of a university shall be chaired by the chief officer and, subject to this section, at that meeting and from time to time as the governing authority determines, the governing authority shall decide whether—
  - (a) the holder of the office of chief officer should be or continue to be the chairperson; or
  - (b) a person other than the holder of the office of chief officer should be appointed as chairperson.
- (2) Where the governing authority decides that the holder of the office of chief officer should be the chairperson then, subject to this section, the chief officer shall, *ex officio*, be the chairperson on and from the passing of the resolution to that effect.

- (3) Where the governing authority decides at a meeting that a person other than the chief officer should be the chairperson, it shall, as soon as practicable at that or a subsequent meeting, by a majority vote of not less than two-thirds of its members, appoint a person who is not an employee of the university or a member of the governing authority to be the chairperson.
- (4) Until a person is appointed under subsection (3), but subject to this section, the chief officer shall act as chairperson of all meetings of the governing authority.
- (5) Subject to this section, a chairperson appointed under subsection (3) shall hold office on such terms and conditions as the governing authority may, at the date of his or her appointment, determine.
- (6) A person holding office as chairperson of a governing authority in accordance with subsection (3) may, at any time for stated reasons, be removed from the office of chairperson by the governing authority and where a person is so removed from office, subsections (1), (2) and (3), with the necessary modifications, shall apply.
- (7) In the case of the governing authority of Trinity College or a constituent university, the person holding the office of chief officer (by whatever name known) on the commencement of this Part shall be the chairperson of the governing authority of that university under this Act until his or her term of office as chief officer expires, he or she is sooner removed from the office of chairperson in accordance with subsection (6), or the office otherwise becomes vacant.
- (8) Where immediately before the commencement of this Part the chief officer of a university was not the chairperson (by whatever name known) of the governing body (by whatever name known) of the university, then, except for the first meeting of a governing authority of the corresponding university under this Act or in the circumstances referred to in subsection (4), the chief officer shall not be eligible to be the chairperson of the governing authority.
- (9) An appointment under subsection (3) shall not be on a fulltime basis and the person appointed shall exercise no function in respect of the control and management of the university other than the functions of chairperson of the governing authority.”

#### Role of Chief Officer

1.3.2 The role of the Chief Officer<sup>9</sup> is governed particularly by Section 24 and by the Fourth Schedule of the Act as amended by Section 53 of the Institute of Technology Act 2006, which are reproduced below.

<sup>8</sup> The Chairperson “may be designated by such title as the Governing Authority determines.” [1997 Act, Third Schedule, Section 2 (1).] The titles “Chairperson”, “Chancellor” and “Cathaoirleach” are in use.

“24 - Chief officer

- (1) A governing authority shall, in accordance with procedures specified in a statute, appoint in a whole-time capacity a person to be chief officer of its university, who shall be called the President or Provost or by such other title as the governing authority determines, and the person so appointed shall be the accounting officer for the university.
- (2) For the purposes of section 19 of the Comptroller and Auditor General (Amendment) Act, 1993<sup>10</sup>, the expression “accounting officer” shall include a chief officer of a university to which this Act applies.
- (3) The Fourth Schedule shall apply to the chief officer.”

Fourth Schedule<sup>11</sup>

CHIEF OFFICER

1. The chief officer of a university shall, subject to this Act, manage and direct the university in its academic, administrative, financial, personnel and other activities and for those purposes has such powers as are necessary or expedient.
2. In performing his or her functions the chief officer shall be subject to such policies as may be determined from time to time by the governing authority and shall be answerable to the governing authority for the efficient and effective management of the university and for the due performance of his or her functions.
3. (1) A chief officer may delegate any of his or her functions to an employee of the university, including any functions delegated to the chief officer in accordance with section 25 (2), unless they are so delegated to the chief officer subject to the condition that they shall not be sub-delegated, and the employee shall be answerable to the chief officer for the performance of those functions.  
(2) Notwithstanding any such delegation, the chief officer shall at all times remain answerable to the governing authority in respect of the functions so delegated.
4. A chief officer shall not hold any other office or position without the consent of the governing authority.
5. A chief officer shall be entitled to be a member of and preside over any and every committee appointed by the governing authority.
6. A person who, immediately before the commencement of Part III, was employed as the President of a constituent college or as Master of the Recognised College of St. Patrick’s College, Maynooth shall, if he or she so consents, be appointed as the chief officer of the corresponding constituent university on that commencement.
7. Unless he or she otherwise resigns, retires or is removed from office, a chief officer shall hold office for a period of 10 years and, in the case of a chief officer to whom paragraph 6 applies, any period spent as President of a constituent college or as Master of the Recognised College of St. Patrick’s College, Maynooth before the commencement of Part III shall be reckoned as part of that 10 year period.
8. A Chief Officer shall, whenever required to do so by the Committee of Dail Eireann established under the Standing Orders of Dail Eireann to examine and report to Dail Eireann on the appropriation accounts and reports and reports of the Comptroller and Auditor General, give evidence to that Committee on-
  - (a) The regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the university is required by this Act to prepare,
  - (b) The economy and efficiency of the university in the use of its resources
  - (c) The systems, procedures and practices employed by the university for the purpose of evaluating the effectiveness of its operations, and
  - (d) Any matter affecting the university referred to in a special report of the Comptroller and Auditor General under Section 11(2) of the Comptroller and Auditor General Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in subparagraph (a), (b) or (c)) that is laid before Dail Eireann.
9. A Chief Officer, if required under paragraph 8 to give evidence, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.
10. From time to time and whenever so requested, a chief officer shall account for the performance of the university’s functions to a Committee of one or both Houses of the Oireachtas and shall have regard to any recommendations of such Committee relevant to these functions.”
  - 1.4 Policies on Quality Assurance and Equality
    - 1.4.1 Section 35 of the 1997 Act deals with Quality Assurance.
    - 1.4.2 Universities are required under Section 35 (1) of the 1997 Act to “...establish procedures for quality assurance

<sup>9</sup> The Chief Officer “shall be called the President or Provost or by such other title as the Governing Authority determines.” [1997 Act, Third Schedule, Section 2 (1).]

<sup>10</sup> Please see [http://www.irishstatutebook.ie/1993\\_8.html](http://www.irishstatutebook.ie/1993_8.html).

<sup>11</sup> As amended by the Institutes of Technology Act, 2006.

aimed at improving the quality of education and related services provided by the university.”

1.4.3 Section 35 (3) of the 1997 Act requires a governing authority to “...implement any findings arising out of an evaluation carried out in accordance with procedures established under this section ...”

1.4.4 Section 35 (4) of the 1997 Act requires a governing authority to “...arrange for a review of the effectiveness of the procedures provided for by this section and the implementation of the findings arising out of the application of those procedures.”

1.4.5 The full provisions of Section 35 of the 1997 Act are set out in Appendix 1A.

1.4.6 Section 36 of the 1997 Act deals with Equality policy and requires:

“...the chief officer to prepare a statement of the policies of the university in respect of—

- (a) access to the university and to university education by economically or socially disadvantaged people, by people who have a disability and by people from sections of society significantly under-represented in the student body; and
- (b) equality, including gender equality, in all activities of the university, and the chief officer, in preparing the statement, shall have regard to such policies on those matters as may from time to time be determined by the Minister.”

and to implement those policies in accordance with Section 36 (3) of the Act.

1.4.7 The full provisions of 36 of the 1997 Act are set out in Appendix 1A.

1.5 Disposal of Assets and Access to Assets by Third Parties

1.5.1 The disposal of university assets and access to university assets are governed by the 1997 Act, and in particular by Sections 13 and 42 of that Act. Section 13 (2) of the 1997 Act provides that universities “may purchase or otherwise acquire, hold and dispose of land or other property”.

1.5.2 Section 42 deals with the disposal of land or other property and is set out below:-

“42 – Disposal of Land, etc.

- (1) Subject to subsection (2), a university may sell or otherwise dispose of any land the property of the university.
- (2) Where the acquisition, development or refurbishment of land, the property of a university, was funded in whole or in

part out of moneys provided by the Oireachtas after the date of the passing of this Act, a sale or other disposal of that land shall be subject to such terms and conditions relating to a payment to the Minister in recompense for such moneys, as may be agreed between the Minister and the governing authority.

(3) If a university ceases to be funded substantially from moneys provided by the Oireachtas, then all moneys provided to the university by the Oireachtas after the date of the passing of this Act for the acquisition, development or refurbishment of land, or for the acquisition of any other assets which are the property of the university, shall be repayable to the Minister subject to such terms and conditions, including as to the amount to be so repaid, as may be agreed between the Minister and the governing authority.

(4) Where the Minister and a governing authority cannot agree on terms and conditions referred to in this section, the issues in dispute shall be determined by an arbitrator appointed by the President of the High Court and any arbitration shall be conducted in accordance with the Arbitration Acts, 1954 and 1980.”

1.6 Remuneration

1.6.1 Section 25 of the 1997 Act deals with remuneration of staff and provides for the payment to university employees of “such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister [for Education and Science] with the consent of the Minister for Finance” and further provides that “a university may depart from levels of remuneration, fees, allowances and expenses approved ...in accordance with a framework which shall be agreed between the universities and An tÚdarás [HEA]”. This framework is attached at Appendix 1B.

1.7 Reporting Arrangements

1.7.1 The reporting requirements of universities are set out in Sections 37, 39 & 41 of the 1997 Act.

1.7.2 Section 37 deals with university budgets and requires a governing authority to “..prepare and submit to An tÚdarás, in such form and manner as may from time to time be approved by An tÚdarás, a statement of the proposed expenditure and expected income of the university for the financial year.”

1.7.3 Section 39 deals with keeping of accounts and records and requires that accounts “...be submitted annually by a university to the Comptroller and Auditor General, for audit....and immediately after the audit, a copy of the accounts, together with a copy of the report of the

Comptroller and Auditor General on the accounts, shall be presented by the university to An tÚdarás and to the Minister.”

1.7.4 Section 41 requires the Chief Officer with the approval of the governing authority to “...prepare a report on the operations and the performance of the university...” and send this to the HEA and the Minister for Education and Science

## 1.8 Strategic Planning

1.8.1 Section 34 of the 1997 Act makes provisions in regard to strategic planning and evaluation in the universities.

1.8.2 The requirement to prepare “a plan which shall set out the aims of the Governing Authority for the operation and development of the university and its strategy for achieving those aims, and for carrying out the functions of the university, during the period, being not less than three years, to which the plan relates” is provided for in Section 34(1) of the 1997 Act.

1.8.3 In accordance with Section 34(3) a copy of the strategic development plan is provided to the Minister and to the HEA.

1.8.4 The full provisions of Section 34 of the 1997 Act are set out in Appendix 1A.

1.8.5 Under Section 41(1) of the 1997 Act, the Chief officer shall, with the approval of the governing authority and having regard to the strategic development plan under Section 34, as soon as practicable after the statutory interval (not exceeding three years), prepare a report on the operations and performance of the university during that period.

1.8.6 In accordance with Section 41(2) the governing authority shall publish the report at 1.8.5 in such form as it sees fit and provide the Minister with a copy. On receipt of the report the Minister will lay it before each House of the Oireachtas as soon as practicable.

1.8.7 The full provisions of Section 41 of the 1997 Act are set out in Appendix 1A.

## 1.9 Borrowing

1.9.1 Under Section 38 of the 1997 Act, universities must observe the provisions of any Framework for Borrowings and Loan Guarantees (as amended, adapted or extended from time to time) agreed between the universities and the HEA under Section 38(2) of the 1997 Act. The current framework is at Appendix 1C.

## Appendix 1A

### Full Relevant Extracts From 1997 Act

#### 18 – Functions of Governing Authority

(1) The functions of the governing authority of a university shall be, in pursuance of the objects of the university under section 12 but within the constraints of its budget under section 37-

( a ) to control and administer the land and other property of the university,

( b ) to appoint the chief officer and such other employees as it thinks necessary for the purposes of the university,

( c ) subject to this Act and its charter, if any, statutes and regulations, to determine the membership from time to time of the governing authority, and

( d ) to perform such other functions as are imposed on it by or under this or any other Act or by its charter, if any, statutes and regulations.

(2) For the purposes of the performance of its functions under subsection (1)(b), the governing authority shall develop such interview and other procedures as in its opinion will best ensure participation in the selection process by high quality candidates from both within and outside of the employees of the university and specify those procedures in a statute or regulation.

(3) A governing authority has, subject to this or any other Act or its charter, if any, such powers as are necessary for the purposes of performing its functions.

(4) A governing authority may, from time to time, appoint such and as many committees, consisting either wholly or partly of members of the governing authority, as it thinks necessary to assist it in the performance of its functions and may assign to those committees such of its functions as it thinks fit.

(5) A committee appointed under subsection (4) shall operate in such manner as the governing authority may direct and its acts shall be subject to confirmation by the governing authority unless the governing authority otherwise directs.

(6) In performing its functions a governing authority, or a committee where appropriate, shall—

( a ) have regard to the promotion and use of the Irish language as a language of general communication and promote the cultivation of the Irish language and its associated literary and cultural traditions;

( b ) have regard to the attainment of gender balance and equality of opportunity among the students and employees of the university and shall, in particular, promote access to

the university and to university education by economically or socially disadvantaged people and by people from sections of society significantly under-represented in the student body; and

( c ) ensure as far as it can that the university contributes to the promotion of the economic, cultural and social development of the State and to respect for the diversity of values, beliefs and traditions in Irish society.

#### 21 – Suspension of Governing Authority

- (1) Where the Minister, after considering the report of an inquiry by a Visitor made in pursuance of a request under section 20(1) , is of the opinion that the functions of a university or its governing authority are being performed in a manner which constitutes a breach of the laws, statutes or ordinances of or applicable to the university, the Minister shall so inform the chief officer and give to the chief officer a copy of the report of the Visitor.
- (2) ( a ) if the Minister is still of the opinion that the functions are being performed in a manner which constitutes a breach of the laws, statutes or ordinances of or applicable to the university; and  
( b ) is of the opinion that, because of the report, the governing authority should be suspended and the Visitor concurs, recommend to the Government the suspension of the governing authority and of the membership of its members.
- (3) On receiving the recommendation of the Minister the Government may, by order but subject to subsection (8), suspend the governing authority.
- (4) Where the Government makes an order under section (3), the Visitor to the university shall, following consultation with the Minister and such persons within the university as the Visitor considers appropriate, appoint such person or body of persons as the Visitor thinks fit to perform the functions of the governing authority and that person or body shall perform those functions until the commencement of the first meeting of the governing authority after the appointment of its members in pursuance of subsection (6).
- (5) The remuneration, if any, of a person or member of a body appointed under subsection (4) shall be paid out of moneys provided by the Oireachtas.
- (6) The Visitor shall, as soon as practicable, but in any case not later than 12 months, after the suspension of a governing authority, following consultation with such persons within the university as the Visitor considers appropriate, determine the composition of the new governing authority and, by notice in writing, inform the Minister of the composition as so determined.

- (7) On the Minister being informed as provided in subsection (6), the governing authority shall be so constituted as so determined, in accordance with Chapter II.
- (8) Where the Government proposes to make an order under subsection (3), it shall cause a draft of the proposed order to be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by both Houses.

#### 25 – Staff

- (1) Subject to subsection (2), a university may, in accordance with procedures specified in a statute or regulation, appoint such and so many persons to be its employees as it thinks appropriate, having regard to—
  - ( a ) the efficient use of its available resources, the requirements of accountability for the use of moneys provided to it by the Oireachtas and the policy relating to pay and conditions in the Public Service as determined from time to time by the Government,
  - ( b ) the implications of the appointments for its budget and for subsequent budgets, and
  - ( c ) the guidelines, if any, issued under section 50.
- (2) A governing authority may, subject to such conditions as it thinks fit, delegate to the chief officer any of the functions of the governing authority or the university relating to the appointment of employees of the university and the determination of selection procedures.
- (3) Except as otherwise provided by this section, the employees of a university shall be employed on such terms and conditions as the university from time to time determines.
- (4) Subject to subsection (5), there shall be paid by a university to the employees of that university, such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister with the consent of the Minister for Finance.
- (5) ( a ) A university may depart from levels of remuneration, fees, allowances and expenses approved under subsection (4) where the governing authority is satisfied that it is necessary to meet the objects of the university, but may do so only in accordance with a framework which shall be agreed between the universities and An tÚdarás.  
( b ) A corporation referred to in section 13(2)(c)<sup>13</sup> may pay to employees of a university remuneration, fees, allowances and expenses only in accordance with a framework which shall be agreed between the universities and An tÚdarás.
- (6) A university may suspend or dismiss any employee but only in accordance with procedures, and subject to any conditions, specified in a statute made following consultation through normal industrial relations

<sup>12</sup> Section 20(1) states, “Where the Minister is of the opinion that there are reasonable grounds for contending that the functions of a university are being performed in a manner which prima facie constitutes a breach of the laws, statutes or ordinances applicable to the university, the Minister may, after first advising the governing authority of his or her opinion and with the concurrence of the Government, request the Visitor to the university to inquire into any matter giving rise to the Minister’s opinion.”

structures operating in the university with recognised staff associations or trade unions, which procedures or conditions may provide for the delegation of powers relating to suspension or dismissal to the chief officer and shall provide for the tenure of officers.

- (7) A university or the National University of Ireland shall determine the terms and conditions of any superannuation scheme for its employees in accordance with the Fifth Schedule and that Schedule shall apply to an amendment to an existing scheme in the same way as it applies to a new scheme.

- (8) For the removal of doubt, it is hereby declared that—

(a) the rights and entitlement in respect of tenure, remuneration, fees, allowances, expenses and superannuation enjoyed on the commencement of this section by persons who are employees, and in the case of superannuation, former employees, of a university to which this Act applies shall not, by virtue of the operation of this Act, be any less beneficial than those rights and entitlements enjoyed by those persons as employees of the university or corresponding constituent college or Recognised College immediately before that commencement, and

(b) the conditions of service, restrictions and obligations to which such persons were subject immediately before the commencement of this Act shall, unless they are varied by agreement, continue to apply to such persons and shall be exercised or imposed by the university or the chief officer as may be appropriate, while such persons are employed by the university.

#### 34 - Strategic development plan

- (1) A governing authority shall, as soon as practicable after its appointment and at such other times as it thinks fit, require the chief officer to prepare a plan which shall set out the aims of the governing authority for the operation and development of the university and its strategy for achieving those aims, and for carrying out the functions of the university, during the period, being not less than three years, to which the plan relates.
- (2) A governing authority may, having regard to the resources available to the university, either approve a strategic development plan prepared under subsection (1) without modification or, after consultation with the chief officer, approve the plan with such modifications as it thinks fit.
- (3) As soon as practicable after it approves the strategic development plan under subsection (2), the governing authority shall provide a copy of the plan to An tÚdarás and to the Minister.

#### 35 - Quality assurance

- (1) A governing authority, in consultation with the academic council, shall, as soon as practicable after the governing authority is established under this Act and at such other times as it thinks fit, require the chief officer to establish procedures for quality assurance aimed at improving the quality of education and related services provided by the university.
- (2) The procedures shall include—
- (a) the evaluation, at regular intervals and in any case not less than once in every 10 years or such longer period as may be determined by the university in agreement with An tÚdarás, of each department and, where appropriate, faculty of the university and any service provided by the university, by employees of the university in the first instance and by persons, other than employees, who are competent to make national and international comparisons on the quality of teaching and research and the provision of other services at university level; and
- (b) assessment by those, including students, availing of the teaching, research and other services provided by the university, and shall provide for the publication in such form and manner as the governing authority thinks fit of findings arising out of the application of those procedures.
- (3) A governing authority shall implement any findings arising out of an evaluation carried out in accordance with procedures established under this section unless, having regard to the resources available to the university or for any other reason, it would, in the opinion of the governing authority, be impractical or unreasonable to do so.
- (4) A governing authority shall, from time to time, and in any case at least every 15 years, having regard to the resources available to the university and having consulted with An tÚdarás, arrange for a review of the effectiveness of the procedures provided for by this section and the implementation of the findings arising out of the application of those procedures.
- (5) A governing authority, in a report prepared in accordance with section 41, shall publish the results of a review conducted under subsection (4).

#### 36 - Equality policy

- (1) A governing authority shall, as soon as practicable but not later than 12 months after it is established under this Act and at such other times as it thinks fit, require the chief officer to prepare a statement of the policies of the university in respect of—
- (a) access to the university and to university education by economically or socially disadvantaged people, by people who have a disability and by people from sections of society significantly under-represented in the student body; and

<sup>13</sup> Section 13(2)(c) states that, "A University...may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the University."

- (b) equality, including gender equality, in all activities of the university, and the chief officer, in preparing the statement, shall have regard to such policies on those matters as may from time to time be determined by the Minister.
- (2) A governing authority may, having regard to the resources available to the university, either approve the statement prepared under subsection (1) without modification or, after consultation with the chief officer, approve the statement with such modifications as it thinks fit.
- (3) A university shall implement the policies set out in the statement as approved under subsection (2).

#### 41 - Report and information

- (1) The chief officer shall, with the approval of the governing authority and having regard to the strategic development plan under section 34, as soon as practicable after the end of each period, not exceeding three years commencing on the commencement of this Part or at the end of the previous such period, whichever is the later, as the governing authority thinks fit, prepare a report on the operations and the performance of the university during that period.
- (2) The governing authority shall publish the report in such form as it thinks fit and shall provide the Minister with a copy and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas as soon as practicable after it is received by him or her.

## Appendix 1B

### Agreed Framework between the Universities and the HEA for Departures from Approved Levels of Remuneration, Fees, Allowances and Expenses for University Employees

#### 1B.1 Introduction

1B.1.1 Section 25 (4) of the 1997 Act provides as follows:

“Subject to subsection (5), there shall be paid by a university to the employees of that university, such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister with the consent of the Minister for Finance.”

1B.1.2 Section 25 (5) (a) of the Act, allows for departures from levels of remuneration etc. as follows:

“A university may depart from levels of remuneration, fees, allowances and expenses approved under subsection (4) where the governing authority is satisfied that it is necessary to meet the objects of the university, but may do so only in accordance with a framework, which shall be

agreed between the universities and An tÚdarás”.

1B.1.3 For the purposes of the framework set out hereunder the term remuneration shall cover remuneration, fees, allowances and expenses.

#### 1B.2 Provisions of the Framework

##### 1B.2.1 General Provisions

1B.2.1.1 The universities and the HEA (the parties) agree that the purpose of the framework provided for in the Act is to lay down principles to which the parties subscribe regarding the exercise of discretion on the part of a university to depart from levels of remuneration etc. approved by the Minister. The purpose of Section 25 (5) (a) is to provide a discretion to a university where necessary to meet the objects of the university, in particular by enabling it to attract a person to its staff, who would, because of exceptional or scarce expertise and/or qualifications, command remuneration higher than the norm and who would not be prepared to work for the university unless so rewarded. The parties agree that the provisions of the framework will be used in exceptional circumstances only and that its application shall have regard to avoiding any damage to the morale of staff in the universities.

1B.2.1.2 It is agreed by the parties that the implementation of this framework by a university should not have any repercussive effects in the university sector or in the public service generally deriving for example, from pay relativities or linkages or other conditions of employment which could form a basis for comparative claims from other groups. The parties agree that any employee who is paid as a result of an agreement under this framework shall be red circled and that any claims from university employees for improved conditions which are based on, or refer to, agreements made under this framework shall be opposed on that ground (without prejudice to any other grounds the university may have).

1B.2.1.3 It is agreed by the partners that, subject to paragraph 2.2.1 (e) and 2.2.3 following, the provisions of the framework should not be used to provide additional remuneration to existing staff.

##### 1B.2.2 Specific provisions and criteria

1B.2.2.1 Subject to the general provisions set out above a departure as envisaged in Section 25(5)(a) of the 1997 Act shall take place only if:

- (a) The Chief Officer confirms that the Governing Authority is satisfied and so certifies, that there is clear and documented justification that the departure is necessary to meet the objects of the university and that, in so far as its best endeavours can ascertain, it will have no adverse

implications within the university sector or in the public sector generally;

- (b) Subject to paragraph 2.2.1 (e) it is limited to a contract appointment in accordance with the following principles:
- A separate individual contract must be drawn up, the terms of which must differ significantly from the terms of appointment of permanent staff;
  - It must be a specified purpose or fixed-term contract, not normally exceeding five years;
  - The post must bear a unique title, duties and responsibilities, which differentiates it from an established post or grade;
  - The contract should include stated performance objectives for the post holder, provisions for performance review in the light of these stated objectives, and for reduction in remuneration and/or for early termination of contract in the event of failure to meet the stated objectives;
- (c) It is used as a means of recruiting a new staff member (but see 2.2.1 (e) and 2.2.3 below);
- (d) Any costs arising are met within agreed budgets, in accordance with Section 37(2) of the Universities Act;
- (e) If the appointment is in accordance with the scheme for special professorships set out in the appendix to this Framework.
- 1B.2.2.2 Subject to the provisions of paragraph 2.2.1, where a departure involves an appointment to a non-academic post requiring professional or technical qualifications and experience, the conditions agreed shall be in line with those applying to positions with similar responsibilities and employment conditions in the broader public sector (including commercial semi-state bodies).
- 1B.2.2.3 The framework shall not, in line with the statement of general purpose in paragraph 2.1.1 (above), be used to change the conditions of existing permanent employees of the universities except in accordance with the provisions at 2.2.1 (e) above. However, the parties acknowledge that there may be a limited number of specific instances where a departure is required in order to retain key personnel because of their outstanding existing and potential contribution to the capacity of the university to meet its objects. In such cases a university may, with the prior agreement of the HEA, apply the provisions of the framework to existing staff. Any such appointments would be on a contract basis and would require the member of staff to resign from his or her existing position and would be subject to the conditions for the appointment being agreed by the university and the HEA.

- 1B.2.2.4 In the case of all departures under this framework (including appointments under the appendix to this Framework) the Chief Officer, as Accounting Officer, shall arrange for the documentation of all supporting considerations, including the conditions applying in appropriate comparable employments, and shall make such documentation available to the HEA in accordance with paragraph 2.2.5 (below).
- 1B.2.2.5 Each university shall provide to the HEA before end July and end January of each year details of, and justifications for, any departures made by it under this framework. The HEA shall, following consultation with the universities, specify the format in which such information shall be supplied.
- 1B.2.2.6 The framework shall not apply to the senior officer posts (above the grade of Professor) referred by the Minister for Finance to the New Review Body on Higher Remuneration in the Public Sector for the purpose of the review which commenced in January 2000.
- 1B.2.3 Duration and Review
- 1B.2.3.1 The framework shall have effect when it has been approved by the HEA and when the HEA has been notified by the Chief Officers that it has been approved by the universities.
- 1B.2.3.2 Subject to the provisions of paragraph 2.3.3 below, the framework shall remain in place for a period of two years from the date of its coming into effect. It may, with the agreement of both parties be renewed either indefinitely or for further specific periods.
- 1B.2.3.3 The framework shall cease to have effect with regard to any further appointments following notice in writing by either the HEA or by any of the universities that they no longer, for stated reasons, subscribe to the framework. Such a notice shall be preceded by consultations between the parties and shall not affect any agreements made with specific individuals during the period when the framework was in force.
- 1B.2.3.4 The application of the framework may be reviewed jointly from time to time by the parties.

#### Appendix to Framework

##### A Scheme for Special Professorships

- 1B.3.1 The Irish universities are committed to playing a leading role in the creation of an internationally competitive advanced knowledge society in Ireland. To this end they are agreeing with the HEA to the establishment of a new scheme of [Edmund Burke]<sup>14</sup> professorships.
- 1B.3.2 The objective of the new scheme is to enable

the universities to recruit and retain leading international scholars and researchers by offering them internationally competitive remuneration and conditions. The professorships will be open to scholars and researchers to all academic disciplines and will be made on a personal basis.

- 1B.3.3 The number of special professorships will be very small and will be limited to appointments of exceptionally talented individuals. The number will be reviewed every two years. There will not be individual institutional quotas.
- 1B.3.4 Appointment to the [Edmund Burke] professorships will be open to existing permanent and contract academic staff of the Irish universities and to individuals taking up appointments in the Irish universities.
- 1B.3.5 The proposal to make the appointment of a named individual as an [Edmund Burke] Professor will be made by the “host” university. The proposed appointment will be personal to the individual proposed by the university.
- 1B.3.6 Securing the funding of these individual appointments will be a responsibility of the university. The additional remuneration costs of the appointments over and above salary levels approved in accordance with Section 25(4) of the Universities Act 1997 will be funded by the university from private or from Exchequer resources other than university core funding (HEA block grant<sup>15</sup> plus income from tuition fees in respect of EU undergraduate students). In all cases the funding organization or the university will provide an undertaking to provide funds to meet the full additional remuneration costs of the new post for an initial specified period of the appointment which shall not be less than five years.
- 1B.3.7 The university will, with where appropriate the agreement of the relevant funding organization, set the remuneration and tenure arrangements and conditions for the individual appointment having regard to its assessment of all relevant factors.
- 1B.3.8 Appointments will be subject to demanding, internationally benchmarked and independent vetting procedures. These procedures will be put in place by the relevant State research funding organizations (SFI, EI, IRCHSS, IRCSET and HRB etc., as appropriate) or by the university itself.
- 1B.3.9 Confirmation of each proposed appointment will not be made until the outcome of the vetting and benchmarking process has been confirmed as satisfactory by an independent process review. This will be carried out by a standing Panel of five distinguished international institutional and academic

leaders appointed by the HEA in consultation with the universities. In order to avoid potential conflicts of interest, or perceptions of such conflicts, the panel members will not be based in Irish universities and will not have substantive links with individual Irish universities. The review criteria and benchmarks used by the Panel, and its information requirements, will be agreed between the universities, the HEA and the research funding organizations. Proposals will be referred to the Panel by the HEA. The Panel will give its decision on proposals no later than 10 working days from the date of receipt by its members of the proposal details and of the information required for making a decision. The Panel will operate with a quorum of three voting members and will conduct most of its business by email, or by video or audio conferencing supplemented, if necessary, by meetings in a single location. Where necessary, meetings of the panel will be chaired by a non-voting Irish chairperson agreed between the universities and the HEA. The secretariat will be provided by the HEA.

- 1B.3.10 Continuance of approval for each individual appointment (designation of the title and additional remuneration) will be subject to periodic reviews to confirm performance of the appointee in line with the demanding international criteria agreed at the time of appointment and will be subject to confirmation by the university of the availability of additional funding as described in paragraph 6 and by the independent process review described in paragraph 9. The interval between reviews shall be no greater than five years in the case of each appointment.
- 1B.3.11 The legal basis for this scheme will be provided by way of an agreed amendment to the Agreed Framework of 2 March 2000 between the universities and the HEA. The existing substantive provisions (including paragraphs 2.1.2 and 2.2.5) of the Agreed Framework will be retained.

## Appendix 1C

### Framework for Borrowing and Loan Guarantees

#### 1C.1 Provision in the Universities Act

- “38 (1) A university may borrow money by means of a bank overdraft or otherwise and may guarantee or underwrite a loan taken or borrowing undertaken by a person or body of persons.
- (2) Borrowing, guaranteeing and underwriting under

<sup>15</sup> Dedicated research and other special funding from the HEA can be used for funding these posts only with the agreement of the HEA

subsection (1) shall be in accordance with a framework which shall be agreed from time to time between the universities and An tÚdarás, following consultations by An tÚdarás with the Minister [for Education and Science] and the Minister for Finance”.

#### 1C.2 Purposes of Framework

As stated in the Department of Education letter dated 16th December, 1996 to Dr. Michael Mortell, Chairman, Conference of Heads of Irish Universities, the intent of the framework is

- That a university can engage in borrowing, underwriting and guaranteeing activities provided that they impose no threat to, and do not create any contingent liabilities for, the public purse;
- To ensure that the capacity of a university to function effectively is not endangered;
- That advanced approval by An tÚdarás or the ministers, of individual instances of borrowing, underwriting or guaranteeing by a university would not be required.

#### 1C.3 Understanding

The framework is set in the context of the current scheme operated by An tÚdarás for the funding of universities.

#### 1C.4 Budgetary Context

The wider budgetary arrangements which set the financial context for this framework are outlined in Section 37 of the 1997 Act. This section requires a university to operate within an annual budget agreed with the HEA and stipulates that where a university incurs expenditure in excess of its budget that excess shall be a first charge on the budget for next succeeding financial year.

#### 1C.5 Framework Criteria

A university shall not be required to obtain prior consent from An tÚdarás to engage in borrowing, underwriting, and guaranteeing activities if the exercise of its powers under Section 38 (1) of the 1997 Act involves either:

- (2) short-term activities by way of overdraft or otherwise within existing arrangements and practices established by the university; or
- (3) long-term activities for capital purposes only.

In either case the activities must comply with the following conditions:

- I the purpose of the transaction is in accordance with the objects and functions of the university;
- II any new capital investment is in accordance with the university’s strategic plan;
- III the university is able to demonstrate the benefit of the transaction, whether it be refinancing or new investments;

- IV the university is able to meet annual servicing costs without recourse to additional grants from An tÚdarás;
- V the university’s ability to maintain financial and academic viability and structural and general service is not impaired;
- VI the university has ensured that the servicing costs of the transaction represent value for money;
- VII the level of charge against the core teaching and research funds of the university in respect of the annual servicing cost of capital, defined as the cost of capital repayment and total interest costs spread evenly over the period of the borrowing, based on a ten year repayment period, shall not exceed 4% of the university’s annual income, as defined at paragraph 8 below;
- VIII borrowing to finance additional student capacity where such capacity gives rise to the need for additional exchequer funding may only take place with the prior approval An tÚdarás;
- IX borrowing arising from projects to which section 843 of the Taxes Consolidation Act, 1997 or section 50 of the Finance Act, 1999 apply, are not subject to the borrowing limit established under this framework and may take place provided the servicing of these borrowings has no impact on the annual income of the university, as defined in paragraph 8;
- X the borrowing capacity of an individual university under this framework may not be transferred to another university.

#### 1C.6 Reporting/Recording Requirements

Full details of borrowing, underwriting and guaranteeing arrangements (including repayment periods and interest rates) and implications for recurrent expenditure, as certified by the Accounting Officer for the university, must be submitted with the annual budget to An tÚdarás. Recording in the audited accounts should be in accordance with standard reporting practice and in accordance with the openness, transparency and accountability obligations of a publicly funded institution.

#### 1C.7 Review

The framework shall be reviewed by An tÚdarás and the universities every three years, or earlier as may be required by either side.

#### 1C.8 Annual Income

For the purpose of this Framework, a university’s annual income is defined as core teaching income – comprising recurrent State grant, student fees and sundry income – and research income as reported in the university’s audited statements. Income derived from self-funded ancillary operations are excluded from this definition of annual income.

## Part 2 Universities Code: Principles and Best Practice

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## 2.1 Code of Governance

2.1.1 In implementing this Code each university shall put in place a code of governance and in doing so shall have regard to the guidelines for governance set out at Part 3.1. These guidelines cover:

- The governing authority;
- Role of Chairperson and Chief Officer in relation to governing authority;
- Briefing for new governing authority members;
- Disclosure of interests by members of the governing authority;
- Risk management;
- Audit Committee;
- Sample terms of reference for Audit Committee;
- Sample charter for Internal Audit.

2.1.2 The role of university Secretary shall include the duty to keep governing authority members briefed in respect of all relevant developments in governance and accountability.

2.1.3 Universities, including their subsidiaries<sup>16</sup>, should adopt this Universities Code: Principles and Best Practice and, in accordance with paragraph 2.10.4, confirm to the HEA that this has been done.

2.1.4 It is not feasible to have a code of best practice which will specifically provide for all situations that may arise. Members of the governing authority and employees of universities and their subsidiaries should bear in mind, therefore, that it is primarily their responsibility to ensure that all of their activities, whether covered specifically or otherwise in this document, are governed by the ethical and other considerations implicit in the Code.

## 2.2 Code of Conduct for Members and Employees

2.2.1 It is strongly recommended that all universities have written codes of conduct for members of the governing authority and employees. The codes should be developed via a participative approach and should be approved by the governing authority taking into account the implications of all the relevant provisions of the 1997 Act as well as the Ethics in Public Office Act 1995 and Standards in Public Office Act 2001. Suggested

guidelines for such a code are contained in Part 3.2 of this document. The Code for employees, a copy of which should be made available to all employees, should embrace such matters as duty to the university, avoidance of conflict of interest, limits on outside activities, acceptance of gifts and honesty in dealings. The up-to-date codes of conduct should be available upon request with a copy of each such code being accessible through the university's website.

2.2.2 As part of the Annual Governance reporting requirements set out in paragraph 2.10.4 that are to be supplied to the HEA, the Chairperson and the Chief Officer should affirm to the HEA that codes of conduct for members of the governing authority and employees have been put in place.

2.2.3 In addition to complying with the requirements of universities' own governing legislation each member of the governing authority of a university and each person holding a designated position of employment with a university should ensure his/her compliance with relevant provisions of the Ethics in Public Office Act, 1995 and Standards in Public Office Act, 2001<sup>17</sup>.

2.2.4 Universities should promote the standards of service and the initiatives outlined in the "Principles of Quality Customer Service for Customers and Clients of the Public Service" which was originally launched in 1997 and was revised in 2000, having regard to the universities' own quality and appeal systems. Guidelines in relation to the Principles of such standards of service are included at Part 3.3.

2.2.5 The requirements specified in this Code should in general be applied in all operating subsidiaries of universities. Subsidiaries should formally report to the governing authority in accordance with the procedures determined by the governing authority and taking account of paragraph 2.1.3 above. This report should be received prior to the Chairperson of the governing authority of the university and Chief Officer reporting to the HEA.

## 2.3 Internal Control and Risk Management

2.3.1 A system of internal control has a key role in the management of risks that are significant to the fulfilment of institutional objectives. A sound system of internal control contributes to safeguarding the interests of all relevant parties and the university's assets. Internal

<sup>16</sup> The Companies Act (section 155) provides that a company is deemed to be the subsidiary of another if, but only if,

(a) that other—

(i) holds a majority of the shareholders' or members' voting rights in the undertaking, or

(ii) is a shareholder or member of it and controls the composition of its board of directors, or

(iii) is a shareholder or member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders' or members' voting rights; or

(b) that other has the right to exercise a dominant influence over it—

(i) by virtue of provisions contained in its memorandum or articles, or

(ii) by virtue of a control contract; or

(c) that other has the power to exercise, or actually exercises, dominant influence or control over it, or

(ca) that other and the subsidiary undertaking are managed on a unified basis, or

(d) the undertaking is a subsidiary of any undertaking which is that other's subsidiary undertaking.

control facilitates the effectiveness and efficiency of operations; helps ensure the reliability of internal and external reporting and assists compliance with laws and regulations.

2.3.2 Effective financial controls, including the maintenance of proper accounting records, are an important element of internal control. They help ensure that the university is not unnecessarily exposed to avoidable financial risks and that financial information used and published is reliable. They also contribute to the safeguarding of assets, including the prevention and detection of fraud.

2.3.3 A university's objectives, its internal organisation and the environment in which it operates are continually evolving and, as a result, the risks it faces are continually changing. A sound system of internal control therefore depends on a thorough and regular evaluation of the nature and extent of the risks to which the university is exposed. The purpose of internal control is to help manage and control risk appropriately rather than to eliminate it.

2.3.4 The governing authority is responsible for ensuring the university maintains a sound system of internal control, including risk management. A sound system of internal control reduces, but cannot eliminate, the possibility of poor judgement in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

2.3.5 A sound system of internal control therefore provides reasonable, but not absolute, assurance that the university will not be hindered in achieving its objectives, or in the orderly and legitimate conduct of its business, by circumstances which may reasonably be foreseen. A system of internal control cannot provide protection with certainty against failing to meet objectives or prevent all material failures, errors, losses, fraud, or breaches of laws or regulations.

2.3.6 Systematic assessment and management of risk is becoming an increasingly important part of internal control. Risk identification and management is seen as necessary to maximise the likelihood of achieving an institution's desired objectives and outcomes.

2.3.7 It is the responsibility of the governing authority to ensure that a robust system of risk management is in place in the university.

2.3.8 The governing authority should ensure that the risk assessment and management process is integrated

into existing management systems. It should be kept as simple as possible. Roles and responsibilities should be clearly assigned and a person at a senior level with overall responsibility for it nominated.

## 2.4 Audit Committee

2.4.1 There should be an Audit Committee established by the governing authority with written terms of reference which deal clearly with its authority and duties.

2.4.2 The constitution and terms of reference of the Audit Committee should be reviewed regularly by the governing authority and updated as appropriate.

2.4.3 Members of the governing authority who hold executive responsibility within the university should not be members of the Audit Committee. Neither the Chief Officer nor Chairperson should be a member of the Audit Committee.

2.4.4 The Committee should meet sufficiently regularly to enable it to fulfil its duties.

2.4.5 The Committee should report annually to the governing authority.

2.4.6 The Committee should have explicit authority to investigate any matters within its terms of reference and should be given the resources needed for this purpose including outside professional advice as necessary.

2.4.7 The Committee should keep under review and advise on the operation and effectiveness of the university's risk management systems and report annually thereon to the governing authority.

2.4.8 The Committee should advise on the selection and appointment of the external auditors engaged by the governing authority.

2.4.9 At least once a year the Committee will meet separately with each of the following: (a) the external auditors, (b) the Head of Internal Audit and (c) the Director of Risk Management, without members of management being present. The Committee will meet regularly with a representative of the Office of the Comptroller & Auditor General.

2.4.10 The Head of Internal Audit should have ongoing access to the Chairperson of the Audit Committee.

2.4.11 The Committee should meet with the nominated person with overall responsibility for Risk Management at least once a year.

## 2.5 Internal Audit Functions

<sup>17</sup> In brief, the Act requires inter alia that persons in public bodies who hold designated directorships and designated positions of employment must make an annual statement or declaration of those interests (as defined in the Act) which could materially influence them in the performance of their functions and refrain them from exercising such functions in accordance with the Act. The annual statement, which may be updated if interests change, must be made to a designated person within the Public body, in accordance with the provisions of the Act, and, in the case of those who hold designated directorships, to the Public Offices Commission established under the Act. The Commission will provide advice and publish mandatory procedures concerning steps to be taken by designated directors and holders of designated positions (among others) to ensure compliance with the Act. Where a person who holds a designated directorship or designated position of employment in a Public body is advised by the Commission, or it appears from guidelines published by the Commission that his/her interest or the interest of a connected person should be disclosed, that person must make an appropriate statement to the relevant authority in the Public body.

2.5.1 There should be a properly constituted and functioning internal audit service in each university, whether provided in-house or out-sourced.

2.5.2 The Internal Audit function should have a formal charter, including terms of reference, which should be approved by the governing authority.

2.5.3 The Head of Internal Audit shall have direct access to the Chief Officer, to the Chairperson of the Audit Committee and to the Chairperson of the governing authority.

2.5.4 The objective of Internal Audit should be to provide assurance that the university has a sound system of internal control.

2.5.5 The reporting structure for Internal Audit should be clear and formally recorded.

2.5.6 The Internal Audit function should be adequately resourced with the necessary skills including the ability to deal with non-financial aspects.

2.5.7 The Internal Audit function should liaise frequently with the external auditors engaged by the governing authority so that the potential for cooperation between the two is maximised. In planning, executing and reporting its work, the Internal Audit function should ensure that value-for-money auditing receives adequate attention.

2.5.8 As part of its work the Internal Audit function should review compliance with procurement and disposal procedures from time to time and report to the Audit Committee and the governing authority.

## 2.6 Remuneration

2.6.1 Governing authorities are required to implement Government pay policy (including procedures and systems in relation to Travel and Subsistence), as expressed from time to time. These arrangements cover total remuneration. Further pay policy as expressed from time to time in accordance with Frameworks agreed between the universities and the HEA under Section 25 (5) of the 1997 Act must also be implemented and adhered to. The Agreed Framework between the universities and the HEA for Departures from Approved Levels of Remuneration, Fees, Allowances and Expenses for University Employees is attached at Part 1B.

## 2.7 Procurement and Tax Clearance

2.7.1 Competitive tendering should be the normal procedure in the procurement process of universities subject to paragraph 2.7.2 below. The detailed procurement procedures, as set out in the "Public Procurement Guidelines – Competitive Process" (current edition issued in 2004), in respect of competitive tendering should be applied together with other relevant guidelines issued by

the Department of Finance. In addition to the national guidelines, the relevant EU Directives, which have the force of law in this and all Member States, apply. It is the responsibility of the governing authority and management to ensure that appropriate systems and procedures are implemented to address material risks of non-compliance. The Chairperson and the Chief Officer should, in their report to the HEA (see paragraph 2.10.4 below), affirm that such systems and procedures are in place and that to the best of their knowledge and belief the university has been compliant with the procurement procedures outlined above.

2.7.2 Contracts for supplying a research and development service and certain research and development supply contracts as specified in Article 31 (2) (a) of Directive 2004/18/EC may be exempt from the scope of Procurement Directives where their benefits are for the greater public good, not confined to the contracting authority, on condition that the service supplied is wholly paid for by the authority. In this context, where a university enters into research collaborations, joint ventures with industry or other external parties, or other arrangements where Intellectual Property may be brought to a university, and where a decision has been taken that competitive tendering is not required, such cases should be reported to the governing authority with evidence of a valid and informed basis for the decision and evidence that the principle of obtaining best value for public funding has been followed.

2.7.3 All universities must ensure that the Tax Clearance requirements set out in Department of Finance Circular of 30 July 1991 (F 49/13/87) (which deals with payment of grants, subsidies and similar type payments), and Department of Finance Circular 22/95, as regards Public Sector Contracts, are fully adhered to.

## 2.8 Disposal of Assets and Access to Assets by Third Parties

2.8.1 In addition to the relevant statutory provisions of the 1997 Act as set out in Part 1.5 of this document, universities should adhere to best practice for the disposal of assets or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties which should be by auction or competitive tendering process, other than in exceptional circumstances (such as a sale to a charitable body or in circumstances set out in paragraph 2.7.2 above). The method used should be both transparent and likely to achieve a fair market-related price. Suggested guidelines for best practice are outlined in Part 3.5 of this document.

2.8.2 Regard should also be had to the guidelines on Intellectual Property entitled "Funding Agency

<sup>18</sup> All seven universities have established such audit committees.

<sup>19</sup> While the 1997 Act provides that the Chief Officer is entitled to be chairperson of any committee appointed by the governing authority, it obviously would not be good governance practice for a Chief Officer or Chairperson to chair or to be a member of the Audit Committee.

Requirements & Guidelines for Managing Research Generated Intellectual Property”, a joint publication of Enterprise Ireland, Forfás, Health Research Board, HEA, Industrial Development Authority, IRCSET and Science Foundation Ireland, 2006. This document is available at:

<http://www.hrb.ie/storage/hrbresearch/Intellectual-Property-Guidelines.pdf>.

## 2.9 Investment Appraisal and Value for Money

2.9.1 “Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector” were issued by the Department of Finance in February 2005. These procedures outline best practice for the management of significant capital expenditure proposals in the public sector. The governing authority and the relevant management staff of the university should have regard to these guidelines in the planning, appraisal and management of significant expenditure projects. This document is available at:

<http://www.finance.gov.ie/documents/publications/other/capappguide05.pdf>.

2.9.2 The HEA’s letter of 4 May 2006 to the President of each university regarding Capital Appraisal Guidelines and other Value for Money measures refers. This requires confirmation that necessary arrangements have been made to ensure full compliance with these requirements. Details of these requirements can be found at:

<http://www.finance.gov.ie/viewdoc.asp?DocID=3561>

## 2.10 Reporting Arrangements

2.10.1 In addition to the reporting requirements set out in the relevant legislation universities shall meet the following additional requirements.

2.10.2 Included with the accounts, which are kept in accordance with Section 39 of the 1997 Act (see paragraph 1.7.3), there should be a statement on the system of internal control in the form set out in Part 3.4, which should be signed by the Chairperson and Chief Officer. This statement should be reviewed by the external auditors engaged by the governing authority to confirm that it reflects the audited university’s compliance with the requirements of paragraph 2.10.4 and they should consider if the statement is inconsistent with the information of which they are aware from their audit work on the financial statements. The external auditors should report their findings accordingly in the accounts to be submitted annually by a university to the Comptroller & Auditor General for audit, in accordance with Section 39 of the 1997 Act. The statement will be reviewed also by the Comptroller & Auditor General.

2.10.3 The annual financial statements of universities should

reflect all post-balance sheet events, in accordance with generally accepted accounting principles (GAAP).

2.10.4 In addition to these requirements, the following information should be included in an annual governance statement signed by the Chief Officer and Chairperson and submitted to the HEA:

- (i) A statement confirming that a code of Governance and a Code of Conduct for Members and Employees have been adopted;
- (ii) Financially significant developments affecting the university in the past year, including the establishment of subsidiaries or joint ventures and acquisitions, and major issues likely to arise in the short to medium term;
- (iii) A statement affirming that Government policy on pay is being complied with (see paragraph 2.6.1);
- (iv) A statement affirming that all appropriate procedures for financial reporting, internal audit, procurement and asset disposals are being carried out;
- (v) Confirmation that the Guidelines for the Appraisal and Management of Capital Proposals are being adhered to where appropriate;
- (vi) Confirmation that the Guidelines on Achieving Value for Money in Public Expenditure as set out in the address by the Minister for Finance of 20 October 2005 and communicated to the universities are being followed ;
- (vii) A statement affirming the university’s compliance with tax laws.

In the event that a university fails to comply with any of the above the university shall report such matters of non-compliance to the HEA providing an explanation for same and stating any corrective action taken or contemplated.

## 2.11 Tax Compliance

2.11.2 As major beneficiaries of State funding, universities should be exemplary in their compliance with taxation laws and should ensure that all tax liabilities are paid on or before the relevant due dates.

2.11.3 Universities, while availing of all legitimate taxation arrangements, should not engage in “offensive” tax avoidance transactions. In broad terms tax avoidance is “offensive” if it involves the use of the tax code for a purpose other than that intended by the Oireachtas (including an unintended use of a tax incentive) with a view to reducing the amount of tax to be paid by the university or some other party to a transaction in which the university participates. Where a doubt arises in a particular instance, the university concerned should consult the Revenue Commissioners.

## 2.12 Diversification and Establishment of Subsidiaries

2.12.2 As one of the functions of a university, section 13 (2) (c) of the 1997 Act provides that a university, "... may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the university."

2.12.3 Any proposals for the diversification of a university's activities, particularly in relation to diversification into areas outside the core functions of teaching and research, or for the establishment of new subsidiaries should require the approval of the governing authority, which should consider the full implications, including any financial or other risks, for the university.

### 2.13 Strategic Planning

2.13.2 In addition to the requirements of Section 34 of the 1997 Act (see paragraph 1.8.2), university strategic plans, approved by the governing authority, should set appropriate objectives, goals and relevant indicators and targets against which performance can be clearly measured.

2.13.3 In addition to the requirements of Section 41(1) of the 1997 Act (see paragraph 1.8.5), the report of the Chief Officer should normally refer to the specific aims and targets proposed by the university in its strategic plan, the expected outputs and outcomes and the key performance indicators by which the achievement of the aims and targets is assessed.

## Part 3 More Detailed Governance Guidelines

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### 3.1 Guidelines for Governance

#### 3.1.1 The Governing Authority

3.1.1.1 The procedural operation and functions of the governing authority of a university are governed by the 1997 Act. Section 18 of the 1997 Act (see Appendix 1A) sets out the functions of the governing authority. The Third Schedule of the Act (see paragraph 1.2.3) in particular governs the operation of the governing authority.

3.1.1.2 The governing authority should meet regularly, exercise effectively its strategic governance role and monitor the executive management and performance.

3.1.1.3 The governing authority should have a formal schedule of matters specifically reserved to it for decision to ensure the proper management and control of the university. This schedule should include the various statutory functions reserved to the governing authority as set out in the 1997 Act:

- Section 18 - Functions of a Governing Authority;
- Section 25 - Staff;
- Section 27 - Academic Council;
- Section 34 - Strategic Development Plan;
- Section 35 - Quality Assurance;
- Section 36 - Equality Policy.

In addition, the schedule could include the following:

- Significant acquisitions, disposals and retirement of assets of the university or its subsidiaries. The schedule should specify clear quantitative thresholds for contracts above which the approval of the governing authority is required;
- Major investments and capital projects, delegated authority levels, treasury policy and risk management policies;
- Approval of terms of major contracts.

3.1.1.4 The collective responsibility and authority of the governing authority should be safeguarded. Excessive influence on governing authority decision-making by individual members should be avoided, while allowing governing authority members the opportunity fully to contribute to governing authority deliberations.

3.1.1.5 All members of the governing authority should have independent access to the advice and services of the Secretary of the university who must ensure that governing authority members are fully aware of the

appropriate rules, regulations and procedures.

3.1.1.6 In the normal course outside legal or other advice required will be obtained by the Secretary on behalf of the governing authority in accordance with the collective nature of its responsibilities. Notwithstanding the foregoing, a governing authority should consider making provision for the seeking in exceptional circumstances of independent legal or other professional advice by an individual member of group of members at the reasonable expense of the university; the Secretary shall deal with the matter in accordance with procedures to be laid down by the governing authority.

3.1.1.7 Any business or other interests, which could affect a member's independence, should be dealt with as outlined in paragraph 3.1.4 below.

3.1.1.8 Non-executive members of the governing authority should also take care not to become involved in the day-to-day executive management of the institution. This also applies to the staff and student members of a governing authority, except that in the course of their employment or in their activities as students, they may have executive responsibilities within the institution.

3.1.1.9 It should be noted that the 1997 Act provides as follows, "A member of a governing authority of a university shall at all times act, as a member, in the best interests of the university and shall not act as a representative of any special interest provided that nothing in this paragraph shall restrict a member from representing at meetings of the governing authority the views of those by whom he or she has been elected or to restrict the freedom of expression of that member." (Third Schedule of 1997 Act, Section 8 (3)).

3.1.1.10 It is the governing authority's duty to ensure that a balanced and understandable assessment of the university's position is made in presenting its annual accounts to the Minister for Education and Science, and to the HEA.

3.1.1.11 The governing authority should state in the annual accounts that they are responsible for approving the accounts. There should also be a statement by the external auditors engaged by the governing authority about their reporting responsibilities.

3.1.1.12 The governing authority should ensure that the university has in place a sound system of internal management and control, including

- Managerial control systems, which may include defining policies, setting objectives and plans, setting Key

Performance Indicators and monitoring financial and other performance;

- Financial and operational control systems and procedures which may include the physical safeguards of assets, segregation of duties, authority and approval procedures and information systems.

3.1.1.13 The governing authority should review on a periodic basis the effectiveness of the university's system of internal controls, including financial, operational and compliance controls and risk management.

3.1.1.14 The governing authority should be supplied, in a timely fashion, with information which is of a suitable quality to enable governing authority members satisfactorily to discharge their duties.

3.1.1.15 The governing authority is responsible for ensuring compliance with all statutory obligations applicable to the university. Where individual governing authority members become aware of non-compliance with any such obligation, they should immediately bring this to the attention of their fellow governing authority members with a view to having the matter rectified subject to the provisions of the 1997 Act. However, if the matter cannot be rectified and/or constitutes a flagrant breach of the members' obligations, the Chairperson should advise the HEA accordingly.

3.1.1.16 The governing authority has a responsibility to establish procedures for maintaining an appropriate relationship with the external auditors engaged by the governing authority.

3.1.2. Role of Chairperson and Chief Officer in relation to Governing Authority

3.1.2.1 The roles of the Chairperson and Chief Officer are governed by the 1997 Act. The role of the Chairperson is governed in particular by Section 17 and by the Third Schedule of the Act. The role of the Chief Officer is governed particularly by Section 24 and by the Fourth Schedule of the Act as amended by Section 53 of the Institute of Technology Act 2006. These and other relevant sections of the Act are set out in Part 1.3.

Role of the Chairperson

3.1.2.2 The Chairperson is responsible for the leadership of the governing authority. As chairperson of its meetings he/she should promote its wellbeing and efficient operation, ensuring that its members work together effectively and have confidence in the procedures laid down for the conduct of business.

3.1.2.3 A Chairperson should take particular care that the

governing authority observes the principles of good governance, and that committees which play a central role in the proper conduct of the governing authority's business report back appropriately. The Chairperson should also ultimately be responsible for ensuring that the governing authority operates effectively, discusses those issues which it needs to discuss, and dispatches its responsibilities in a business-like way. The Chairperson should lead a periodic review by the governing authority of its own effectiveness.

3.1.2.4 Through leadership of the governing authority, the Chairperson plays a key role in the strategic direction of the institution, but is not to be drawn into the day-to-day executive management. For the governing authority to be effective, there must be a constructive and challenging working relationship between the Chairperson and the Chief Officer of the institution. This relationship will depend on the personalities involved, but it is desirable to emphasise the need for both sides to recognise that the roles are formally distinct. The relationship should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles each has within an institution's constitution.

Role of the Chief Officer

3.1.2.5 The Chief Officer is responsible for the executive management of the institution and its day-to-day direction. He or she must not seek to determine matters reserved for the governing authority.

3.1.2.6 The specific responsibilities of the Chief Officer in relation to governing authority business include:

- Implementing the decisions of the governing authority or ensuring that they are implemented through the relevant part of the institution's management structure;
- Initiating discussion and consultation including, where appropriate, consultation with the staff and the academic council/board on proposals concerning the institution's future development, and ensuring that such proposals are presented to the governing authority.

3.1.2.7 It is noted that the 1997 Act provides as follows: "Where the chief officer of a university is of the opinion that a proposed course of action of the governing authority will or is likely to result in expenditure in excess of the budget ... a 'material departure from the budget', the chief officer shall so inform the governing authority. Where a governing authority... decides to proceed with its course of action, the chief officer shall, unless satisfied that a material departure from the budget will not occur, as soon as practicable, inform

21 The Chairperson "may be designated by such title as the Governing Authority determines." [1997 Act, Third Schedule, Section 2 (1).] The titles "Chairperson", "Chancellor" and "Cathaoirleach" are in use.

22 The Chief Officer "shall be called the President or Provost or by such other title as the Governing Authority determines." [1997 Act, Third Schedule, Section 2 (1).]

An tÚdarás of the decision of the governing authority.”  
[Section 37(5) and 37(6).]

### 3.1.3. Briefing for new Governing Authority Members

3.1.3.1 Governing authority members of universities have duties under the 1997 Act and it is the responsibility of each governing authority member to act in conformity with the applicable provisions of this Act.

v 3.1.3.2 On appointment of new governing authority members, the Secretary should provide them with the following information in the form of a member’s handbook or guide:

- A formal schedule of matters reserved to the governing authority for decision;
- Procedures for obtaining information on relevant new laws and regulations;
- Procedures to be followed when, exceptionally, decisions are required between governing authority meetings;
- A schedule detailing the composition of all governing authority committees and their terms of reference;
- A statement explaining the governing authority members’ responsibilities in relation to the preparation/approval of the accounts, the university’s system of internal control and audit;
- A statement informing the governing authority members that they have access to the advice and services of the Secretary who is responsible to the governing authority for ensuring that governing authority procedures are followed and the applicable rules and regulations are complied with;
- Code of ethics/conduct for governing authority, including disclosure of governing authority members’ interests;
- Specific university information;
- A copy of the most up-to-date version of the “Governance of Irish Universities” together with any relevant circulars and/or guidance notes;
- Any arrangements laid down by the governing authority for seeking legal or other professional advice.

### 3.1.4. Disclosure of Interests by members of the Governing Authority

3.1.4.1 It is central to the conduct of the business of the governing authority that members should act, and be perceived to act, impartially and not to be influenced in their roles as members by business or social relationships.

3.1.4.2 The requirements of the Ethics in Public Office Act 1995, and the Standards in Public Office Act 2001

have been referred to at paragraph 2.2.3 of the Universities Code: Principles and Best Practice.

3.1.4.3 It should be noted that in relation to contracts the 1997 Act (Third Schedule, 8(1)) provides that, “A member of a governing authority who has an interest in (a) a company (other than a public company of which he or she is not a director or otherwise involved in its management) or concern with which the university proposes to make a contract, or (b) a contract which the university proposes to make, shall disclose to the governing authority the fact of the interest and its nature and shall take no part in any deliberations or decision of the governing authority relating to the contract, and the disclosure shall be recorded in the minutes of the governing authority”.

3.1.4.4 The provisions of 8(2) of the Third Schedule deal with the obligations of a member of a governing authority who is related to a candidate for appointment by the governing authority as an employee in the university, “A member of a governing authority of a university who is related to a person who is a candidate for appointment by the governing authority as an employee of the university, shall disclose to the governing authority the fact of the relationship and its nature and shall, if the governing authority so decides, take no part in any deliberation or decision of the governing authority relating to the appointment, and the disclosure and decision shall be recorded in the minutes of the governing authority.”

3.1.4.5 In addition to the statutory requirements, the governing authority should set down a broader code for the disclosure of all relevant interests (pecuniary, family, financial or other) by members of the governing authority, which pose a real or potential risk for conflict of interest or could materially influence the member in the performance of his or her functions as a member of the governing authority or damage public confidence in the university. The code should have regard, as appropriate, to the relevant disclosure provisions of the Code of Practice for State Bodies. A member for whom a relevant interest arises in relation to matters for decision by the governing authority should not take part in any deliberation or decision of the governing authority in relation to those matters.

3.1.4.6 Former members of a governing authority should treat commercial information received while acting in that capacity as confidential.

3.1.4.7 The procedures in this section should also be applied

<sup>23</sup> For this purpose, persons and bodies connected with a member should include:

- (a) a spouse, parent, brother, sister, child or step-child;
- (b) a body corporate with which the member is associated;
- (c) a person acting as the trustee of any trust, the beneficiaries of which include the member or the persons at (a) above or the body corporate at (b) above; and
- (d) a person acting as a partner of the member or of any person or body who, by virtue of (a) - (c) above, is connected with the member.

in subsidiaries of universities.

### 3.1.5. Risk Management

3.1.5.1 Systematic assessment and management of risk is becoming an increasingly important part of internal control. Risk identification and management is seen as necessary to maximise the likelihood of achieving an institution's desired objectives and outcomes.

3.1.5.2 Risks fall into a variety of categories, some of the most common being:

- Strategic risks;
- Operational risks;
- Financial risks;
- Reputation risks.

3.1.5.3 It is the responsibility of the governing authority to ensure that a robust system of risk management is in place in the university. This involves:

- The identification of risks that threaten the achievement of the university's objectives;
- The evaluation of the likelihood of occurrence and potential impact of the risks identified;
- The segregation of risks according to their gravity;
- An appraisal of the techniques employed to manage the major risks and identification of any further steps that should be taken;
- An appraisal of the levels of residual risk - after the application of mitigation techniques - and whether the residual risk is acceptable;
- Continuous monitoring of the effectiveness of controls and management techniques;
- Decision-making informed by the risk management process.

3.1.5.4 The governing authority should ensure that the risk assessment and management process is integrated into existing management systems. It should be kept as simple as possible. Roles and responsibilities should be clearly assigned and a person at a senior level with overall responsibility for it nominated.

### 3.1.6. Audit Committee

3.1.6.1 There should be an Audit Committee established by the governing authority of at least three members with written terms of reference which deal clearly with its authority and duties. In appointing members, consideration should be given to appointing

individuals external to the staff and members of the university.

3.1.6.2 The constitution and terms of reference of the Audit Committee should be reviewed regularly by the governing authority and updated as appropriate.

3.1.6.3 The Committee should meet at least four times each year.

3.1.6.4 The Committee should report annually to the governing authority.

3.1.6.5 The Committee should have explicit authority to investigate any matters within its terms of reference and should be given the resources needed for this purpose including outside professional advice as necessary.

3.1.6.6 The Committee should keep under review and advise on the operation and effectiveness of the university's risk management systems and report annually thereon to the governing authority.

3.1.6.7 The Committee should advise on the selection and appointment of the external auditors.

3.1.6.8 The Committee should meet the external auditors at least once a year in the absence of executive members of the governing authority and other executive management.

3.1.6.9 The Head of Internal Audit should have ongoing access to the Chairperson of the Audit Committee and the Committee should meet the Head of Internal Audit at least once a year.

3.1.6.10 The Committee should meet with the nominated person with overall responsibility for Risk Management at least once a year.

3.1.6.11 A sample overall Terms of Reference for the Audit Committee, which can be adapted to cater for individual circumstances, is given below.

### 3.1.7. Sample Terms of Reference for Audit Committee Constitution

3.1.7.1 The governing authority has established a committee of the governing authority known as the Audit Committee which shall have a major role in relation to assuring proper financial management, effectiveness of internal control and risk management systems and economy, efficiency and effectiveness of the university's activities.

### Membership

3.1.7.2 The membership of the committee shall be appointed

24 Reference may be made to "Risk Management Guidance for Government: Departments and Offices" issued by the Department of Finance in March 2004.

25 All seven universities have established such audit committees.

by the governing authority. The Committee shall consist of at least three members. In appointing members consideration should be given to the skills and independence of members and in particular it may be appropriate that at least two members be external members of the governing authority and that at least one of the members need not be a member of the governing authority but may be external to the university. At least one member should have recent and relevant financial experience. The Chief Officer and Chairperson of the governing authority should not be a member of the Committee. Members of the governing authority who hold responsibility within the university should not be members of the Committee.

3.1.7.3 The Chairperson of the Committee shall be appointed by the governing authority on the nomination of the Chief Officer of the university.

3.1.7.4 The Committee shall draw up its own working procedures.

Frequency of meetings

3.1.7.5 The Committee shall meet at least four times a year.

Attendance at Meetings

3.1.7.6 The Chief Financial Officer, Head of Internal Audit, Director of Risk Management, a representative of the external auditors engaged by the governing authority and any employee or external person relevant to the work of the Committee may attend for all or part of meetings at the invitation of the Committee.

3.1.7.7 At least once a year the Committee will meet separately with each of the following: (a) the external auditors, (b) the Head of Internal Audit and (c) the Director of Risk Management, without members of management being present. The Committee will meet regularly with a representative of the Office of the Comptroller & Auditor General.

Mandate

3.1.7.8 The Committee is authorised by the governing authority to investigate any activity within its terms of reference and to seek any information it may require on that activity from any employee of the university or its subsidiaries and all such employees are directed to co-operate with the Committee. The Committee shall be given the necessary resources for this purpose.

3.1.7.9 The Committee is authorised by the governing authority to obtain outside legal or other independent professional advice, if it considers this necessary.

Terms of Reference

3.1.7.10 The terms of reference of the Committee are as follows-

Financial Statements

- To review the draft annual financial statements of the university and consolidated statements, and their format, taking account of all relevant considerations and of accounting standards and legal requirements, before they are submitted to the governing authority;
- To recommend to the governing authority whether they should approve any accounts so reviewed by the Committee;
- To determine at least annually whether, in the Committee's opinion, the university has kept proper books of account.

External Audit

- To advise the governing authority on the appointment of the external auditors, the audit fee and any questions of resignation or dismissal of the external auditors;
- To discuss with the external auditor, before the audit commences, the nature and scope of the audit;
- To discuss problems and reservations arising from the audit and any other matters requested by the external auditors;
- To review the external auditor's Management Letter and all other audit letters from the external auditors and to consider management's response;
- To monitor the performance and quality of the external auditor's work and the auditor's independence from the university;
- To obtain from the external auditor up-to-date information to enable the Committee to monitor the university's relationship with the auditor, including but not limited to information relating to the auditor's affiliates;
- To recommend, taking account of the legal provisions, whether or not to award contracts to an auditor or an affiliate for non-audit or audit-related work.

Internal Controls and Risk Management

- To satisfy itself that the arrangements made for and resources available to Internal Audit are suitable, and to monitor performance of Internal Audit;
- To consider the system of internal financial controls and to satisfy itself that the control environment is adequate and that controls are operating effectively;

26 While the 1997 Act provides that the Chief Officer is entitled to be chairperson of any committee appointed by the governing authority, it obviously would not be good governance practice for a Chief Officer or Chairperson to chair or to be a member of the Audit Committee.

- To keep under review and advise on the operation and effectiveness of the university's risk management systems;
- To provide an opinion annually on the proposed statement of internal controls and on any legal compliance requirements;
- To consider the Internal Audit annual audit programme, to review reports of the Head of Internal Audit and to consider major findings and management's response.

#### Other

- To consider reports by the Comptroller and Auditor General and management's response;
- To satisfy itself that arrangements are in place to promote economy, efficiency and effectiveness;
- To consider other topics, as requested by the governing authority or initiated by the Committee;
- To promote co-ordination between the university's internal and external auditors.

#### Reporting Arrangements

- 3.1.7.11 The Committee shall make an annual written report on its activities to the governing authority within three months after the conclusion of the financial year. The report will include the Committee's opinion on the adequacy of the systems of internal controls and risk management. The Committee will report to meetings of the governing authority on such other occasions as requested.
- 3.1.7.12 Minutes or reports of meetings of the Committee shall be circulated to each member of the governing authority.

#### 3.1.8 Sample Charter for Internal Audit

##### Introduction

- 3.1.8.1 The Internal Audit service is responsible for conducting an independent appraisal of all of the university's activities, financial and otherwise. It should provide a service to the whole organisation, including the governing authority and all levels of management.
- 3.1.8.2 The Internal Audit service is responsible for assurance to the university's governing authority and Chief Officer on the entire system of controls. It assists management by evaluating and reporting to them on the effectiveness of the controls for which they are responsible. It remains the duty of the management, not the auditor, to operate an adequate system of internal control.

##### Mission of Internal Audit

- 3.1.8.3 The general aim is to help the university to accomplish its objectives by conducting a systematic and disciplined review of the effectiveness of risk management, control, governance processes and performance. As part of this it helps to ensure the reliability of internal and external reporting and assists compliance with laws and regulations. Each assignment undertaken by Internal Audit is intended to provide an independent, objective assurance as well as recommendations designed to add value and improve the operations of the university.

##### Scope

- 3.1.8.4 All the university's activities, funded from whatever source, fall within the remit of Internal Audit, which is not confined solely to financial matters. Internal Audit will consider the adequacy of controls necessary to secure propriety, economy, efficiency and effectiveness in all areas. It will seek to confirm that management have taken the necessary steps to achieve these objectives.
- 3.1.8.5 Internal Audit may also conduct any special reviews requested by the governing authority, Chief Officer or Audit Committee provided such reviews do not compromise its objectivity or independence or achievement of the approved audit plan.

##### Responsibilities

- 3.1.8.6 The Head of Internal Audit is required to give an annual opinion to the Audit Committee, on the adequacy and effectiveness of the whole system of internal controls within the university, and the extent to which the governing authority may rely on it.
- 3.1.8.7 To provide the required assurance the Internal Audit service will undertake medium-term and annual programmes of work. These will be drawn up by the Head of Internal Audit and then forwarded to the governing authority following the approval of the Audit Committee. The programmes will be designed to:
- Appraise progressively the soundness, adequacy and application of the entire control system;
  - Ascertain the extent to which the entire system of internal control ensures compliance with established policies and procedures;
  - Ascertain the extent to which the assets of the university are properly controlled and safeguarded from losses arising from fraud, irregularity or corruption;

- Ascertain that accounting and other information is reliable as a basis for producing accounts, and for financial, statistical and other returns;
- Confirm the reliability of management information;
- Confirm compliance with laws, regulations, Government Guidelines and EU requirements.

#### Standards and Approach

- 3.1.8.8 Internal Audit will, in general, and taking account of the control environment, adopt a systems-based approach to its audits supplemented, as appropriate, by the use of traditional transaction testing and verification methods on a sample basis.
- 3.1.8.9 The Internal Audit function should carry out its work professionally and ethically and having regard to the Standards for the Professional Practice of Internal Auditors, published by the Institute of Internal Auditors, and the Auditing Practices Board.
- 3.1.8.10 In order to demonstrate that due professional care has been taken in performing its work, it is necessary to have comprehensive records of activity showing that the work has been performed in accordance with accepted standards of best practice.

#### Authority and Access

- 3.1.8.11 The governing authority and the Chief Officer hereby authorise Internal Audit to act on their behalf in carrying out its work.
- 3.1.8.12 The Internal Audit service has rights of access to all of the university's records, information and assets which it considers necessary to fulfil its responsibilities. Rights of access to other bodies controlled or funded by the university should also be guaranteed.
- 3.1.8.13 The Head of Internal Audit shall have direct access to the Chairperson of the governing authority, the Chief Officer and to the Chairperson of the Audit Committee in the performance of his or her duties.

#### Independence

- 3.1.8.14 Internal Audit has no operating responsibilities, and will remain independent of, the activities being examined. However, if deemed appropriate by the Chief Officer, its remit may extend to systems being developed and it may provide advice on control and related matters arising without prejudicing its right to subsequently audit such systems.

#### Liaison

- 3.1.8.15 The Internal Audit service will liaise closely with the external auditors appointed by the governing

authority.

#### Follow- Up

- 3.1.8.16 On completion of an audit, findings will be relayed to the management and employees of the audited area for their views. These views will be considered and incorporated in the final report. Copies of the final report will go to the Chief Officer, the Audit Committee and the governing authority.
- 3.1.8.17 There will be periodic follow-up action by Internal Audit to ascertain if findings and recommendations have been acted upon by management.

#### Annual report

- 3.1.8.18 The Head of Internal Audit should provide an annual report on Internal Audit activities. This report shall be forwarded, within three months after the end of the financial year, to the Audit Committee, the Chief Officer and the governing authority. The report should comment, inter alia, on the adequacy of the resources available to it to carry out its approved programmes.

### 3.2 Code of Conduct Guidelines

#### Code of Conduct

- 3.2.1. These are suggested guidelines for a Code of Conduct for all members of the governing authority and employees. The Code should be prepared via a participative approach, and should be approved by the governing authority, taking into account the implications of the Ethics in Public Office Act, 1995 and the Standards in Public Office Act 2001 and the 1997 Act.

#### Introduction

- 3.2.2 [Name of university] has developed this Code of Conduct for members of the governing authority and employees. This Code of Conduct takes account of the implications of the Ethics of Public Office Acts, 1995 and the Standards in Public Office Act 2001 as well as the 1997 Act. A copy of the Code will be available upon request and be placed on the university's website.

#### Intent and scope

- 3.2.3 The purpose of the Code is to provide guidance to the Chairperson and members of the governing authority and employees of [name of university] in performing their duties as members of the governing authority and employees as set down in the relevant legislation (insert name of Act as appropriate) Copies of the Act have been provided to all members of the governing authority.

## Objectives

### 3.2.4 The objectives of the Code are

- To set out an agreed set of ethical principles;
- To promote and maintain confidence and trust in the governing authority and employees of [name of university];
- To prevent the development or acceptance of unethical practices;
- To promote the highest legal, management and ethical standards in all the activities of [name of university];
- To promote compliance with best current governance and management practices in all the activities of [name of university].

## General Principles

3.2.5 All members of the governing authority and employees are required to observe the following fundamental principles as set out in the guidelines for the Code of Conduct.

### Integrity

- Members of the governing authority are required to disclose outside employment/business interests which they consider may be in conflict or in potential conflict with the business of [name of university], or may be perceived as such - see Section 3.1.4.4 for further details of disclosure requirements;
- The governing authority will not allow management or employees to be involved in outside employment/business interests in conflict or in potential conflict with the business of [name of university]. It will put in place appropriate arrangements to give effect to this;
- Members of the governing authority will avoid giving or receiving gifts, hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgement on business transactions;
- Members of the governing authority must be committed to having [name of university] compete vigorously and energetically but also ethically and honestly with other educational institutions, commercial and other providers of research and advisory services;
- [Name of university] is committed to conducting its purchasing activities of goods/services in accordance with public policy and best business practice and its purchasing regulations reflect this;
- [Name of university] is also committed to ensuring that its engagement of consultancy and other services is in compliance with public policy guidelines;

- [Name of university] is committed to ensuring that the accounts/reports accurately reflect the operating performance of the university and are not misleading or designed to be misleading;
- Members of the governing authority and employees are required to avoid the use of [name of university] resources or time for personal gain, for the benefit of persons/organisations unconnected with the institutions or its activities or for the benefit of competitors; and
- [Name of university] is committed not to acquire information or business secrets by improper means.

### Information

- [Name of university] is committed to providing access to general information relating to its activities in a way that is open and enhances its accountability to the general public;
- Members of the governing authority are required to respect the confidentiality of sensitive information held by [name of university] This would constitute material such as:
  - personal information;
  - information received in confidence by [name of university];
  - any commercially sensitive information or other information sensitive to the reputation of [name of university].
- [Name of university] will observe appropriate prior consultation procedures with third parties where, exceptionally, it is proposed to release sensitive information in the public interest;
- [Name of university] will comply with all relevant statutory provisions (e.g. data protection legislation, the Freedom of Information Act, 1997);
- Members of the governing authority and staff will observe due confidentiality in relation to all discussions and decisions taken at meetings of the governing authority.

### Obligations

- [Name of university] will fulfil all regulatory and statutory obligations imposed on the [university] by (insert title of relevant Act);
- [Name of university] will comply with detailed tendering and purchasing procedures, as well as complying with prescribed levels of authority for sanctioning any relevant expenditure;
- [Name of university] has introduced measures to prevent fraud and to ensure compliance with the prescribed levels of authority for sanctioning any relevant expenditure;

- Members are required to use their reasonable endeavours to attend all governing authority meetings;
- It is acknowledged that the acceptance of positions following employment and/or engagement by a third level institution can give rise to the potential for conflicts of interest and to confidentiality concerns. The governing authority of [name of university] will consider any cases in which such conflicts of interest or confidentiality concerns may arise and will take appropriate steps to deal with such matters in an effective manner. The governing authority will also ensure that any procedures that it may put in place in this regard are monitored and enforced.

#### Loyalty

- The governing authority and employees of [name of university] acknowledge the responsibility to be loyal to [name of university] and to be fully committed to all its activities, with due respect to the tenets of academic freedom, while mindful that [name of university] itself must at all times take into account the interests of its students and providers of funds including taxpayers;
- The governing authority and employees of [name of university] acknowledge the duty of all to conform to highest standards of business ethics.

#### Fairness

- [Name of university] is committed to complying with employment equality and equal status legislation;
- [Name of university] is committed to fairness in all business dealings; and
- [Name of university] values its students, suppliers, employees and customers and treats all its students, suppliers, employees and customers equally.

#### Work/External Environment

- The governing authority and employees of [name of university] place the highest priority on promoting and preserving the health and safety of its employees and students;
- [Name of university] will ensure that community concerns are fully considered in its activities and operations;
- [Name of university] will minimise any detrimental impact of its operations on the environment.

#### Responsibility

- [Name of university] will circulate this Code of Conduct (and a policy document on disclosure of interests) to all members of the governing authority and employees for their retention;
- [Name of university] will ensure that all members of the governing authority and employees receive a copy of the

Code and understand its contents;

- [Name of university] will provide practical guidance and direction as required on such areas as gifts and entertainment and on other ethical considerations which arise routinely.

#### Review

- [Name of university] will review this Code of Conduct as appropriate.

#### 3.3 Guidelines in respect of Quality Customer Service for Customers and Clients of Universities

In their dealings with the public, universities shall have regard to the following:

##### Quality Service Standards

- 3.3.1 Publish a statement that outlines the nature and quality of service which customers can expect and, where appropriate, display it prominently at the point of service delivery.

##### Equality/Diversity

- 3.3.2 Ensure the rights to equal treatment, established by equality legislation, and accommodate diversity, so as to contribute to equality for the groups covered by the equality legislation (under the grounds of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveller Community).

Identify and work to eliminate barriers to access to services for people experiencing poverty and social exclusion, and for those facing geographic barriers to services.

##### Physical Access

- 3.3.3 Provide clean, accessible public offices that comply with occupational and safety standards and, as part of this, facilitate access for people with disabilities and others with specific needs.

##### Information

- 3.3.4 Take a proactive approach in providing information that is clear, timely and accurate, is available at all points of contact and meets the requirements of people with specific needs. Ensure that the potential offered by Information Technology is fully availed of, and that the information available on university web sites follows the guidelines on web publication.

Continue the drive for simplification of rules, regulations, forms, information leaflets and procedures.

##### Timeliness and Courtesy

3.3.5 Deliver quality services with courtesy, sensitivity and the minimum delay, fostering a climate of mutual respect between provider and customer.

Give contact names in all communications to ensure ease of ongoing transactions.

Complaints

3.3.6 Maintain a well-publicised, accessible, transparent and simple-to-use system of dealing with complaints about the quality of service provided.

Appeals

3.3.7 Similarly, maintain a formalised, well-publicised, accessible, transparent and simple-to-use system of appeal/review for customers who are dissatisfied with decisions in relation to services.

Consultation and Evaluation

3.3.8 Provide a structured approach to meaningful consultation with, and participation by, the customer in relation to the development, delivery and review of services. Ensure meaningful evaluation of service delivery.

Choice

3.3.9 Provide choice, where feasible, in service delivery including payment methods, location of contact points, opening hours and delivery times. Use available and emerging technologies to ensure maximum access and choice and quality of delivery.

Official Languages Equality

3.3.10 Provide quality services through Irish and/or bilingually and inform customers of their right to choose to be dealt with through one or other of the official languages.

Better Co-ordination

3.3.11 Foster a more co-ordinated and integrated approach to delivery of services.

Internal Customer

3.3.12 Ensure staff are recognised as internal customers and that they are properly supported and consulted with regard to service delivery issues.

3.4 Format of Statement of Internal Control

3.4.1 Acknowledgment by the Chairperson and Chief Officer that the governing authority is responsible for the body's system of internal control.

3.4.2 An explanation that such a system can provide only reasonable and not absolute assurance against material error.

3.4.3 Description of the key procedures, which have been put in place by the governing authority, designed to provide effective internal control including:

- i) The steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities and evidence of reaction to control failures);
- ii) Processes used to identify business risks and to evaluate their financial implications;
- iii) Details of the major information systems in place such as budgets, and means of comparing actual results with budgets during the year;
- iv) The procedures for addressing the financial implications of major business risks (such as financial instructions and notes of procedures, delegation practices such as authorisation limits, segregation of duties and methods of preventing and detecting fraud); and
- v) The procedures for monitoring the effectiveness of the internal control system which may include: audit committees, management reviews, consultancy, inspection and review studies, the work of internal audit, quality audit reviews and statements from the heads of internal audit.

3.4.4 Confirmation that there has been a review of the effectiveness of the system of internal control.

3.4.5 Information (if appropriate) about the weaknesses in internal control that have resulted in material losses, contingencies or uncertainties which require disclosure in the financial statements or the auditor's report on the financial statements.

3.4.6 information relating to weaknesses in internal control should be a description of the action taken, or intended to be taken, to correct the weaknesses, or an explanation of why no action is considered necessary.

Signed

\_\_\_\_\_

Chairperson      Chief Officer

3.5 Guidelines for Best Practice in Asset Disposal and Access to Assets by Third Parties

3.5.1 The disposal of university assets and access to university assets are governed by the 1997 Act, and in particular by Sections 13 and 42 of that Act.

3.5.2 Universities should adhere to best practice for

the disposal of assets or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties. It should be standard practice that the disposal of assets of universities or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties, with an anticipated value at or above a threshold level of €0,000, should be by auction or competitive tendering process, other than in exceptional circumstances. Such exceptional circumstances could include a sale to a charitable body or where universities believe that competitive tendering is not appropriate due to the sensitive nature of particular arrangements in respect of research collaborations, joint ventures with industry or other external parties or in respect of arrangements where Intellectual Property may be brought to a university. Where in such circumstances a decision has been taken that competitive tendering is not appropriate such cases should be reported to the governing authority. In all cases, the method used should be both transparent and likely to achieve a fair market-related price.

- 3.5.3 If an auction or competitive tendering process takes place and the highest bid is not accepted, it is desirable that specific governing authority approval be required before the disposal of the asset, or granting of access to property or infrastructure for commercial arrangements with third parties, can be completed. For reasons of transparency, such approval together with the reason why a lower bid was permitted to be accepted should be noted in the minutes of the governing authority.
- 3.5.4 If an auction or competitive tendering process does not take place, and the agreed price is €0,000 or more, then it is desirable that specific governing authority approval be required before negotiations start and also before the disposal of the asset or granting of access to property or infrastructure for commercial joint venture arrangements with third parties can be completed.
- 3.5.5 No disposal of an asset or grant of access to property or infrastructure for commercial arrangements with third parties should be completed until the officer authorising the disposal or grant of access has certified formally that (i) governing authority approval is not necessary, with the reasons therefor, or (ii) governing authority approval, where necessary, has been obtained.
- 3.5.6 In accordance with best practice, it is desirable

that disposal of assets to members of governing authorities, employees or their families or connected persons, should, as with all disposals, be by a transparent method and at a fair market-related price. A record of all such disposals to such persons (to include details of the asset disposed of, price paid and name of the buyer) should be noted in a register kept for this purpose (minor disposals below a threshold approved by the governing authority may be omitted from the register). This register should be available for inspection, if requested, by the governing authority or by any member of the governing authority. The governing authority may retain a requirement that any disposal above an approved threshold may not be made without having been formally endorsed by the governing authority which may impose specific restrictions with regard to any such disposal.

- 3.5.7 In accordance with best practice, details of all disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties (save for connected third parties which is dealt with in paragraph 3.5.2) without auction or competitive tendering process should be formally reported, with the price paid and the name of the buyer, to the governing authority on an annual basis.
- 3.5.8 The Chairperson and Chief Officer in their report to the HEA (see paragraph 2.10.4) should affirm that the disposal procedures, as outlined above, have been complied with.

