Employment Control Framework for the Higher Education Sector 2011 -2014

1. Scope of the Framework

Under the National Recovery Plan 2011-2014, and in accordance with the Programme of Financial Support for Ireland agreed with the EU/IMF, the Government is committed to reducing the cost of the public sector paybill by, inter alia, reducing public sector numbers to 294,700 by the end of 2014, equating to an average annual reduction of approximately 3,300 in the number of serving public servants over the next 4 years. In this context, provision must be made for the application of this policy to the Higher Education sector by means of an agreed Employment Control Framework.

This Employment Control Framework is for the period 2011 to 2014 and replaces all previous frameworks. Its implementation shall take account of the relevant statutory provisions governing public sector pay and numbers and the management of the Higher Education sector.

The framework encompasses three broad categories of post, defined according to their nature and their source of funding:

1.1 **Core-funded staff**, i.e. mainstream posts funded from the Core Grant, undergraduate tuition fees (including grant in lieu of fees), Student Services Charge and the new Student Contribution being introduced in 2011;

1.2 **Non core-funded Research** and related project posts, including commercialisation posts, funded from **Exchequer resources** external to the institution; and

1.3 **Other Research and/or Specialist** project-based posts funded from **non-Exchequer sources:** EU research and other grants, private sector income, international student income, postgraduate and part-time fees - but not including full-time EU undergraduate tuition fees/student contributions as non-Exchequer, non-core income.

In accordance with Government numbers policy, specific ceilings are required for the Higher Education Sector for core-funded staff. However, in addition, all staff howsoever funded but who are members of a public service pension scheme must also come within the scope of the framework for the purposes of reporting requirements and to address the matter of deferred liabilities arising from their public service pension entitlements.

Accordingly, the following position shall apply in respect of the different categories of post as defined above, in terms of the numbers employed in the sector in the years in question:

Category of Public Sector Numbers	2011	2012	2013	2014
Core-funded posts (ceiling)	18,249	18,240	18,232	18,223
Non core-funded Research & related posts funded from Exchequer resources external to the institution (envelope)	2900	3000	3080	3160

The annual employment ceilings applying to core-funded staff and the reduction in numbers required to comply with these ceilings are those obtaining on the publication of this framework and are without prejudice to any further decisions that may be taken by the Government on funding or staffing levels.

Specific ceilings for core-funded posts shall be set by the Higher Education Authority for each institution taking into account the student numbers, staffing levels and other relevant factors in each institution. Individual institutional targets will not be issued in respect of **Exchequer-funded research** posts and related project posts including commercialisation posts, as the requirements of individual institutions will be determined by the outcome of competitive awards programmes operated by research funding agencies. An overall envelope of additional research posts is identified to provide for anticipated approved growth in Exchequer-funded research activity over the period. The adequacy of this envelope will be kept under review.

In relation to **non-Exchequer funded posts**, on the basis that these posts do not represent a cost to the Exchequer in the short term, and in order to facilitate the maximum possible employment creation potential of the sector while also encouraging institutions to seek to diversify their sources of funding away from the Exchequer, **non-Exchequer funded specialist posts** will not be subject to any restriction in terms of the number of such posts that may be created, provided that these posts are funded on a full cost recovery basis, including the deferred pay cost associated with the future pension liabilities of the staff members, as outlined in section 4 below.

2. Filling of Vacancies under the Framework, and specific conditions applying

2.1 Core-Funded Posts

Institutions will be permitted to fill vacancies arising in core-funded posts up to the level of the ceiling for their specific institution subject to the following conditions:

a) The post must be required to deliver essential services. Essential services are those which are required to deliver academic programmes, services to students, essential governance and management of the institution, including financial administration, and to comply with regulatory requirements.

b) In making this assessment institutions must consider the following factors:

   - The service to be provided and the consequences for services of not filling the post;
   - The capacity for redeployment of staff from another area within the institution, or, failing that, for redeployment of surplus staff from other higher education institutions or other public service bodies, in accordance with the terms of the Public Service Agreement;
   - Whether all available lecturing and research capacity has been fully used.
   - The capacity to provide the service from non-Exchequer sources.

c) Details of these considerations must be formally recorded – see section 11.

d) In addition, the General Conditions specified in section 3 must also be complied with.

2.2 Non core-funded r<u>esearch</u> and related project posts, including commercialisation posts, funded from <u>Exchequer resources external to the institution</u>

Higher education institutions are involved in contracted research work under a range of programmes/schemes operated by state agencies such as Science Foundation Ireland, Enterprise Ireland, Health Research Board, IRCSET, IRCHSS, Environmental Protection Agency, Teagasc, etc.

Recruitment under these programmes/schemes will be permitted on the basis that the matter of the deferred liability for pensions is dealt with (see section 4) and according to the overall monitoring of employment levels under these programmes/schemes. This will be effected through the reporting arrangements put in place by the HEA.

Appointments in these instances must be on the basis of fixed term or fixed purpose contracts, whose term shall not exceed the scheme/award duration. Such contracts must also include a specific clause providing for early termination before the specified expiry date of the contract in the event of the envisaged funding stream being terminated or reduced by the funding agency. A specific reference to such a clause must be included in the acknowledgement of the terms and conditions attaching to the offer of the post to be signed by the potential employee.

The rates of pay for the posts must not be in breach of public sector pay policy.

Recruitment in these instances will also be subject to the General Conditions set out at section 3 below.

2.3 Other <u>Research and/or Specialist project-based posts</u> funded from <u>non-Exchequer</u> sources

In addition to state funded research, there are also a number of other positions in higher education institutions which are funded from non Exchequer sources in areas such as EU research, international education, industry research contracts, etc. These posts provide additional privately funded employment and financial returns to the Exchequer through tax remitted and the purchase of goods and services.

As indicated above, recruitment under these schemes will be permitted without any restriction on the number of such posts that may be created, on the basis that the matter of the deferred liability for pensions is dealt with (as outlined in section 4 below) and according to the overall monitoring of employment levels under these schemes which shall be undertaken via the reporting mechanisms put in place by the HEA.

Appointments in these instances must be on the basis of fixed term or fixed purpose contracts, whose term shall not exceed the duration of the projected revenue stream. Such contracts must also include a specific clause providing for early termination before the specified expiry date of the contract in the event of the envisaged funding stream being terminated or not being realised. A specific reference to such a clause must be included in the acknowledgement of the terms and conditions attaching to the offer of the post to be signed by the potential employee.

The rates of pay for these posts must not be in breach of public sector pay policy.

Recruitment in these instances will also be subject to the General Conditions set out at section 3 below.

3. General Conditions applying to the filling of all posts

The following general conditions shall apply in relation to the filling of all posts under the arrangements provided for above:

a) The filling of any posts under the terms of this Framework should, wherever possible, give priority to the employment of new or recently qualified staff over those who are retired.

b) Re-employment of retired staff should only occur in very limited exceptional circumstances and in these cases the salaries offered may not exceed 20% of the full-time salary an individual was in receipt of at the time of their retirement, adjusted to reflect the application of Government pay policy in the period since their date of retirement – including in particular the application of salary adjustments imposed under the Financial Emergency Measures in the Public Interest (No. 2) Act 2009. Any such proposed arrangements should be put in advance to the HEA.

c) As a matter of national policy, in light of the very challenging budgetary position and taking account of the drive for efficiency savings under the Public Service Agreement, it is expected that bodies will prioritise, reconfigure and reorganise their business. In this context, the reductions required in the number of core staff must be achieved in a balanced manner across the grading structure and should not be concentrated at the lower grade levels, i.e. the framework should not result in 'grade-drift' within institutions. Section 9 below sets out the requirements in relation to the distribution of posts within institutions, which must be complied with in this regard.

   The filling of any posts within an institution, to the extent that this Framework permits it, will be conditional on that institution operating strictly within a balanced budget and having an agreed plan in place with the HEA for the elimination of any accumulated deficits. In pursuing overall agreed strategic objectives, institutions will continue to respond positively to student participation demand, having regard to the maintenance of quality.

4. Deferred Pension Liability Provision

In the case of all posts not funded from core resources, a deferred liability exists where the employees in those posts are members of a public service pension scheme. In such cases, any such new posts created will be subject to an employer's pension contribution charge of 20% of gross pay, representing the estimated contribution required from the project funder, in addition to the employee's own personal pension contribution, to cover the deferred cost to the Exchequer associated with the future pension entitlements of the post holder.

The application of this measure will also apply to positions where project/contract renewal is involved, subject to the transitional arrangements set out below.

5. Transitional Arrangements for Research/specialist Projects

In order to avoid causing delays and/or financing difficulties for project proposals which were already well advanced when the new arrangements were introduced earlier this year, such projects may proceed on an exceptional basis under the "old" arrangements, i.e. those applying pre 10th March 2011. In other words, the requirement to include a 20% pension charge would not apply on this occasion in respect of individual appointments or re-appointments under these projects.

Specifically, these "transitional arrangements" will apply

- To projects that were already in train across the sector on 10 March 2011, for the remaining duration of the project/award as originally approved;
- Where formal calls for proposals had already issued by funders under the "old" arrangements and the closing date for applications was prior to 10 March 2011, applications received by that date may proceed under the "old" arrangements The transitional arrangements will apply in these cases for the duration of the projects as originally proposed and subsequently agreed, e.g. if vacancies arise which are required to be filled within the lifetime of such projects, such vacancies may be filled under the "old" arrangements up until the expiry of the term of the original project.
- In the case of project proposals being discussed with non-Exchequer funders but where no formal call for proposals procedure was involved, where such proposals had already been submitted and agreed with a non-Exchequer funder prior to 10 March 2011 but no formal announcement or award had been made, such projects may proceed under the "old" arrangements. The transitional arrangements will apply in these cases for the duration of the project as originally proposed/agreed, e.g. if vacancies arise which are required to be filled within the lifetime of such projects, such vacancies may be filled under the "old" arrangements up until the expiry of the term of the original project.
- In exceptional cases where agreement had been reached between HEIs on their individual contribution to proposed international collaborative research projects prior to 10 March 2011 (e.g. EU funded programmes where negotiation and agreement with partner HEIs is required prior to submission of the research proposal), provided that the final proposal is submitted to the relevant funding authority before end December 2011.

In all of the exceptional cases outlined above, detailed documentation must be maintained by institutions to justify the exemption of these projects from the requirement to fund the 20% employer pension contribution in respect of staff. This documentation must be available for inspection by the HEA on request.

Any doubt in relation to whether a project falls under the transitional arrangements should be referred to the HEA for clarification.

6. Accounting Arrangements for Pensions Purposes

The new employer's pension contribution charge to be collected in respect of all new externally funded posts, or renewals of such existing posts where relevant, together with all other employee and employer pension contributions must be paid into a Pensions Control Account, which account will be used exclusively for the purposes of paying pensions. (This arrangement will be subject to review when the new single pension scheme for all new entrants to the public sector is introduced).

In order to ensure full transparency for accounting purposes, all pensions related receipts and payments must be accounted for on a gross basis through the Pensions Control Account. Within this account, any pension contributions and payments relating to staff who were members of the former funded schemes which transferred to the NPRF under the Financial Measures (Miscellaneous Provisions) Act 2009 must continue to be identified and accounted for separately from all other pension contributions / payments. Similarly, any contributions arising from the new employer's pension contribution charge payable by third party funders must also be identified and accounted for separately within the Pensions Control Account and be open to audit.

Further instructions on the operation of these Pension Control Accounts will be issued by the HEA. Each institution's Pensions Control Account must be included as a disclosure note in its annual financial statements and accordingly will be subject to audit by its auditors and/or the C&AG.

7. Other Requests for Exceptions

In line with Government policy, any requests for exceptions to the Moratorium that are not covered by the delegated arrangements set out above must be agreed by the Department of Finance prior to the awarding or renewal of the employment contract.

8. Fixed Term Employees.

In the context of fixed term employees, contracts must be reviewed on a case by case basis. The Moratorium must not be used as a means of avoiding Contracts of Indefinite Duration (CIDs). Section 13(1)(d) of the Protection of Employees (Fixed Term Work) Act 2003 provides that an employer shall not penalize an employee by dismissing the employee from his/her employment if the dismissal is wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration. In making a decision as to whether to renew or not to renew a Fixed Term Contract, no regard should be had as to whether the renewal of a Fixed Term Contract would bring the employee over the four year threshold specified at Section 9(2) of the Act. Section 9(2) does not, however, prevent an employer from renewing a Fixed Term Contract if there are genuine objective grounds for so doing (Section 9(4) refers). Employers must ensure that they comply with the Protection of Employees (Fixed Term Work) Act 2003 and in particular Sections 8 and 9 thereof.

9. Promotions

Academic promotions under this framework will be permitted subject to compliance with the terms of the framework as set out above, and also subject to the maintenance of appropriate balance between grades. This is to ensure containment of pay and pensions liabilities.

In the case of **academic posts in universities**, at end December of each year the distribution of such posts across the sector, as between Lecturer grades and Professor grades, must not change from the position as applying on 31 December 2008.

In the case of **academic posts in Institutes of Technology**, at end December of each year, the distribution of such posts across the sector, as between the assistant lecturer / lecturer grades, on the one hand, and Senior Lecturer (SL1, SL2 and SL3) and other higher grades, must not change from the position as applying on 31 December 2008;

Administrative, Professional and Technical promotions will be permitted on the basis that, at end December of each year, the overall percentage of posts which have a pay scale which, at the maximum point, exceeds €70,000 must not increase above the percentage applying on 31 December 2008.

Restrictions will also apply to changes in the distribution of posts within the different groupings of grades. Detailed guidelines in relation to the operation of this measure will be issued by HEA.

10. Monitoring of Framework

This Framework shall be monitored by an Employment Control Framework Monitoring Committee comprised of the HEA, which shall chair the Committee, and representatives of the Departments of Education & Skills, and Public Expenditure & Reform. The Committee shall invite the IUA, IOTI, Department of Jobs, Enterprise & Innovation and others, as relevant, to meet with it from time to time to discuss operational matters of common concern. In this regard, and through the overarching STI governance structures, it will liaise with research funding agencies and Departments in monitoring the overall envelope of research posts provided to meet anticipated growth in Exchequer funded research activity.

11. Reporting and Records

Institutions shall maintain appropriate records in relation to their observance of these conditions and shall make these records available for inspection by the HEA and the Employment Control Framework Monitoring Committee, as required, from time to time.

Staff numbers shall continue to be reported on a quarterly basis. These returns shall include all staff employed in the institution (including all permanent staff, all contract staff and all staff on secondment from other bodies) who are members of public sector pension schemes, irrespective of whether the posts are funded (in whole or in part) by Exchequer funds or from non-Exchequer sources. (Staff on secondment to other bodies should not be included in an institution's returns, but will be returned where they are currently employed).

12. Review

The Framework will be reviewed in 2012.

June 2011.