

**GENERAL SCHEME OF A
UNIVERSITIES (AMENDMENT) BILL 2012**

UNIVERSITIES (AMENDMENT) BILL 2012

ARRANGEMENT OF HEADS

Head

1. Amendment of Universities Act 1997.
2. Short title, collective citation and commencement.

UNIVERSITIES (AMENDMENT) BILL 2012

Acts Referred to

Universities Act

No. 24 of 1997

UNIVERSITIES (AMENDMENT) BILL 2012

Draft of

BILL

entitled

AN ACT TO PROVIDE FOR THE AMENDMENT OF THE UNIVERSITIES ACT 1997 AND TO
PROVIDE FOR RELATED MATTERS:

[_____, 2012.]

Amendment of Universities Act 1997.

1. The Universities Act 1997 is amended by the insertion of the following sections after section 20:

“Directions of Minister in relation to remuneration, numbers or agreements

20A. (1) The Minister may, in relation to the performance by a university of its functions, give a direction in writing to that university requiring it to comply with a—

- (a) policy decision made by the Government or the Minister in so far it relates to the remuneration or numbers of public servants employed in that university, or
- (b) collective agreement entered into by the Government or the Minister.

(2) A university shall comply with a direction under this section.

(3) For the purposes of this section and *sections 20B, 20C and 20D* ‘remuneration’ means consideration, whether in cash or in kind, which a worker receives from his or her employer in respect of his or her employment and includes fees, allowances, superannuation and payments connected with appointment or termination of employment.

Report on operation of a university.

20B. (1) The Minister may appoint a person or persons (in this Act referred to as an “investigator”) to carry out an investigation into the—

- (a) performance by a university of its functions in so far as they relate to the remuneration or numbers of public servants employed in that university, or

(b) implementation of a collective agreement entered into by the Government or the Minister.

(2) An investigator shall be entitled at all reasonable times to enter any premises occupied by the university and shall be afforded every facility and cooperation by the university, governing authority, chief officer and members of staff of the university, including access to all records, to perform his or her functions.

(3) An investigator shall, as soon as practicable after completion of his or her investigation, prepare a report and submit it to the Minister.

Directions following report on operation of a university.

20C. (1) Where, on consideration of a report submitted to him or her under *section 20B*, the Minister is of the opinion that it is appropriate to give a direction to the university concerned in relation to—

(a) performance by that university of its functions in so far as they relate to the remuneration or numbers of public servants employed in that university,

(b) implementation of a collective agreement entered into by the Government or the Minister

he or she shall give a direction in writing to the university concerned specifying the measures to be taken by the university in relation to the performance of any of its functions or implementation of such agreement and any other related requirements the Minister determines.

(2) A university and chief officer of the university shall comply with a direction given to the university under *subsection (1)*.

Transfer of certain functions of universities

20D. (1) Where the Minister considers that—

- (a) a university has failed—
 - (i) to comply with a policy decision made by the Government or the Minister in so far as it relates to the remuneration or numbers of public servants employed in that university, or
 - (ii) to implement a collective agreement entered into by the Government or the Minister, or
 - (iii) to comply with a direction given under *section 20C*, or
- (b) there are serious deficiencies in the carrying out of one or more of the functions of the university in so far as they relate to the remuneration or numbers of public servants employed in that university or the implementation of a collective agreement entered into by the Government or the Minister,

he or she may by order, following consultation with An tÚdarás, appoint a person to carry out such and so many of those functions of the university as the Minister may determine in so far as they relate to the remuneration or numbers of public servants employed in that university and/or the implementation of a collective agreement entered into by the Government or the Minister.

(2) Where the Minister proposes to make an order under *subsection (1)* he or she shall, by notice in writing—

(a) inform the university concerned that he or she so proposes and of the reasons therefor, and

(b) invite that university to make representations to him or her concerning the proposal, not later than 14 days from the service of the notice,

and the Minister shall, in deciding whether to make such order or not, take into consideration such representations.

(3) Where a function of a university stands transferred under this section that university shall not, during the period the function stands transferred, perform that function and the performance of that function shall not, during the period, be subject to its direction, control or supervision.

(4) A person appointed under *subsection (1)* shall have all such powers as are necessary or expedient for the purpose of carrying out the functions so vested and shall be appointed on such terms and for such period as the Minister decides, provided that in no case shall such functions be transferred for a period longer than 2 years.

(5) An order amending an order under *subsection (1)* (in this subsection referred to as the “first order”), shall not amend the first order in such a manner as would result in any function to which the first order relates standing transferred for a period exceeding 2 years.

(6) A person appointed under *subsection (1)* may consult with, and request information concerning the management of the affairs of the university from, the governing authority,

chairperson or chief officer and in any such case that authority or person shall provide such information that is requested.

(7) The Minister may remove a person appointed under *subsection (1)*.

(8) Where a person is removed from office under *subsection (7)* within the 2 year term referred to in *subsection (4)*, or where a member resigns or dies in office the Minister may appoint another person for the remainder of that term.

(9) Upon the termination of the appointment of a person appointed under *subsection (1)*, unless the Minister appoints another person and in any case at the end of 2 years from the date of first appointment, the functions vested in the person so appointed shall revert in the university, governing authority, chairperson or chief officer.

(10) At any time prior to the termination of the appointment of a person appointed under *subsection (1)*, the Minister may, by order, revert any of the functions to which an order under *subsection (1)* applies in the university, governing authority, chairperson or chief officer to which the order relates.

Explanatory note

The purpose of these provisions is to confer on the Minister certain powers in relation to the functions of universities as they relate to remuneration and numbers of public servants.

Section 20A gives the Minister power to make directions to a university requiring it to comply with Government or Ministerial policy on public sector remuneration and numbers, as well as any collective agreements entered into. This provision is modelled on section 14 of the Vocational Education (Amendment) Act 2001.

“Remuneration” is defined broadly in this context and may include once-off payments and superannuation.

Section 20B confers on the Minister power to appoint an investigator to examine the performance by a university of its remuneration or public service numbers functions or its implementation of a collective agreement. It is based, in part, on section 20 of the Regional Technical Colleges Act 1992 and section 19 of the Education Act 1998. An investigator is to be afforded every reasonable facility by the university in carrying out his or her investigation. He or she then prepares a report which is submitted to the Minister.

Section 20C permits the Minister to make directions on foot of an investigator’s report. The university in question is required to comply with such a direction.

Finally, section 20D confers a power on the Minister to transfer functions in relation to remuneration, numbers or implementation of a collective agreement from a university to another person. This may occur where a university has contravened a Government or Ministerial policy, a collective agreement, a direction made on foot of a report or where there are serious deficiencies in its functions that relate to those matters. The Minister must consult with the Higher Education Authority before making an order.

The university will have a right to make representations where it is proposed to transfer functions and the Minister will have consideration to these in making his or her final decision.

If a function is transferred, the university will be prohibited from attempting to exercise it. The transfer will be time-limited to 2 years.

The person to whom the functions are transferred is empowered to consult with, and request information, on the management of the affairs of the university from the relevant people.

The Minister will have power to remove a person to whom these functions are transferred and to appoint another person if necessary. When that person's appointment is terminated, or at the end of the 2 year period, the functions will be re-vested in the university. Prior to that, re-vesting of functions will be at the discretion of the Minister.

Short title, collective citation and commencement.

2. (1) This Act may be cited as the Universities (Amendment) Act 2012.

(2) The Universities Acts 1997 and 2006 and this Act may be cited together as the Universities Acts 1997 to 2012.

(3) This Act shall come into operation on such day or days as the Minister for Education and Skills may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or provisions.

Explanatory note

Head 2 sets out the short title of the Bill by which it will be known and the collective citing of it with the other Universities Act. Subhead (3) allows for a phased implementation by empowering the Minister to commence different provisions of the Bill at different times.