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*Number 22 of 1971*

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**HIGHER EDUCATION  
AUTHORITY ACT 1971**

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*Number 24 of 1997*

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**UNIVERSITIES  
ACT 1997**

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*Number 30 of 2003*

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**INDUSTRIAL DEVELOPMENT (SCIENCE FOUNDATION IRELAND) ACT 2003**

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***TEXT OF THE ACTS***

***WITH AMENDMENTS TO DATE***

***AND WITH NOTES AND COMMENTARY***

***8<sup>th</sup> edition, 14 June 2016***

***by Steve Hedley, University College Cork***



# Irish University Legislation

This is the text of the **Higher Education Authority Act 1971**, the **Universities Act 1997** and the **Industrial Development (Science Foundation Ireland) Act 2003**, as amended at the time of writing. These Acts are the principal national legislation governing universities in Ireland.

There is little academic writing on the Acts or their implications. For a general review of the Universities Act, see my own “Managerialism in Irish Universities” (2010) 1 *Irish Journal of Legal Studies* 117 (at [www.ijls.ie](http://www.ijls.ie)). For the legislation’s background and history, see essays by John Walsh in A Loxley, A Seery and J Walsh (eds), *Higher Education in Ireland – Practices, Policies and Possibilities* (Palgrave Macmillan, 2014).

## Amendments

This text incorporates all amendments made to date. All are indicated in the text by [square brackets], and an explanation is in each instance made in footnotes. In summary:

The Higher Education Authority Act 1971 is amended, or its effect modified, by:

- Institutes of Technology Act 2006, s 52
- Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011), reg 3 and sch 1

The Universities Act 1997 is amended, or its effect modified, by:

- Institutes of Technology Act 2006, s 53
- Financial Measures (Miscellaneous Provisions) Act 2009, ss 9 and 13
- Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011), reg 3 and sch 1
- Ministers and Secretaries (Amendment) Act 2011, s 84
- Qualifications and Quality Assurance (Education and Training) Act 2012, sch 2-3
- Financial Emergency Measures in the Public Interest Act 2013, ss 2 and 5
- Local Government Reform Act 2014, sch 2 pt 6
- Education (Miscellaneous Provisions) Act 2015, s 6<sup>1</sup>

The Industrial Development (Science Foundation Ireland) Act 2003 is amended, or its effect modified, by:

- Industrial Development (Science Foundation Ireland) Act 2003 (Strategic Areas of Scientific Endeavour) Regulations 2008 (SI 134/2008)
- Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, ss 1(2), 97 and schedule, pt 1, item 36

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<sup>1</sup> In force 1 July 2015 (see SI 268/2015).

- Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011), reg 3 and sch 1
- Industrial Development (Science Foundation Ireland) (Amendment) Act 2013
- Industrial Development (Science Foundation Ireland) (Strategic Areas of Opportunity) Regulations 2013 (SI 476/2013)
- Industrial Development (Forfás Dissolution) Act 2014

## Constitution and statutes of each university

The legal constitution of each of the seven universities is unique, reflecting its institutional history. **Trinity College Dublin** was founded under a charter of 1592, which established “the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin” in the University of Dublin (the only such college). **University College Cork** and **NUI Galway** were statutory creations in 1845 (“Queen’s College Cork” and “Queen’s College Galway” respectively, as colleges within the new Queen’s University)<sup>2</sup>, though their statutory basis was transformed by the replacement of the Queen’s University with the Royal University in 1879<sup>3</sup>, and again when they became colleges within the National University of Ireland in 1908, along with **University College Dublin** (originally a private college, founded in 1854)<sup>4</sup>. Under the Universities Act 1997 these NUI colleges each received university status in their own right, while remaining part of the NUI (and being joined by **NUI Maynooth**, formerly part of St Patrick’s College, Maynooth). The **University of Limerick** and **Dublin City University**, which had originally been established by statute as NIHEs (National Institutes for Higher Education) in 1980<sup>5</sup>, were also confirmed in their status as universities by the 1997 Act.

Each university has legal rules peculiar to it, whether contained in general legislation, specific legislation, or its own statutes. Primary national legislation relating to particular universities, and still in force, is:

- Irish Universities Act 1908 (**UCC, UCD, NUIG**) (this pre-independence Act is still in force, though much amended)
- University College Galway Act 1929 (**NUIG**) (amended)
- University College Dublin Act 1934 (**UCD**) (amended)
- University College Dublin Act 1960 (**UCD**)
- Dublin City University Act 1989 (**DCU**) (amended)
- University of Limerick Act 1989 (**UL**) (amended)
- University of Limerick (Dissolution of Thomond College) Act 1991 (**UL**)
- Trinity College, Dublin (Charters and Letters Patent Amendment) Act 2000 (**TCD**)

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<sup>2</sup> Queen’s Colleges (Ireland) Act 1845.

<sup>3</sup> University Education (Ireland) Act 1879.

<sup>4</sup> Irish Universities Act 1908.

<sup>5</sup> National Institute For Higher Education, Limerick, Act 1980; National Institute For Higher Education, Dublin, Act 1980.

– University College Galway (Amendment) Act 2006 (**NUIG**)

Irish universities are not required by law to have their own comprehensive statutes, and the extent of coverage varies between them – as a generalisation, the older the institution, the more elaborate its statutes. On certain matters, however, the 1997 Act *requires* a university statute or similar formality: see ss 18(2) and 25(1) (employment of staff), s 24(1) (appointment of chief officer), s 25(6) (suspension or dismissal of staff), s 26 (dispute resolution procedures), s 28(1) (composition of academic council) and s 45(2) (elections to NUI Senate).

### Universities as public bodies

While universities and their staff are not formally part of the public service, nonetheless much public law applies to them. Particularly noteworthy is the legislation on control of public funds, on ethics in public office, and on official languages. University pension funds are under central government control and are no longer for the universities to administer<sup>6</sup>. Universities are public bodies within the protected disclosures legislation<sup>7</sup>, and (Trinity apart) are state authorities within some at least of the legislation relating to public finance<sup>8</sup>. Freedom of information legislation now covers the universities<sup>9</sup>. The Ombudsman’s jurisdiction has now been extended to include universities<sup>10</sup>. Some university decisions at least are subject to judicial review<sup>11</sup>, and some attract a right to natural justice<sup>12</sup>.

All seven universities (and a number of bodies within them) are already registered as charities under the informal scheme operated by the Revenue Commissioners, and so may be expected to be subject to the Charities Regulatory Authority<sup>13</sup>. This authority is to keep a register of charities, and will have powers to impose penalties for offences, though universities have exemption from the provisions on accounts<sup>14</sup>.

A case could be made that universities are “organs of the state” and so within the scope of the European Convention of Human Rights Act 2003, though litigation has yet to explore this. At all events, each university is obliged “in the performance of its functions, [to] have regard to the need to — (a) eliminate discrimination, (b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and (c) protect the human rights of its members, staff and the persons to

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<sup>6</sup> See Universities Act 1997, s 25(7).

<sup>7</sup> See Protected Disclosures Act 2014, s 3, definition of “public body”, (i).

<sup>8</sup> See State Authorities (Public Private Partnership Arrangements) Act 2002; National Development Finance Act 2002; Markets in Financial Instruments and Miscellaneous Provisions Act 2007; and National Treasury Management Agency (Amendment) Act 2014.

<sup>9</sup> See Freedom of Information Act, 1997 (Prescribed Bodies) (No 4) Regulations 2001, SI 475/2001.

<sup>10</sup> See Ombudsman (Amendment) Act 2012, which on this issue is in force from 30 April 2013 (see s 1(3)).

<sup>11</sup> See *Eogan v. University College Dublin* [1996] 1 IR 390.

<sup>12</sup> See *Flanagan v. University College Dublin* [1988] IR 724.

<sup>13</sup> Established under the Charities Act 2009 on 16 October 2014 (see SIs 456/2014 and 457/2014).

<sup>14</sup> See s 2 (definition of “education body”), s 48(6) and s 50(13).

whom it provides services”<sup>15</sup>. Convention provisions of particular relevance in a university context include the rights to privacy and family life (article 8), to freedom of thought conscience and religion (article 9), to freedom of expression (article 10), to freedom of association (article 11), and to freedom from discrimination (article 14)<sup>16</sup>.

The financial crisis has had an immense effect on universities, as on the entire country; however, the legal tools for managing it are anomalous. The Employment Control Framework, which seeks to reduce and restructure the public sector workforce, is of doubtful legality in relation to universities (see Universities Act 1997, s 50), though legal objections to the Framework seem unlikely to yield useful results. The collective agreements which are an important part of the government’s coping strategy (the “Croke Park Agreement” of 2010, the “Haddington Road Agreement” of 2013 and the “Lansdowne Road Agreement” of 2015) are primarily political instruments rather than legal ones; the Agreements do not appear to be legally enforceable<sup>17</sup>, and disputes over what they require have resisted legal solution<sup>18</sup>. The issue has been blurred further by the Financial Emergency Measures in the Public Interest Act 2013, under which a public service worker’s entitlements are made to depend in part on whether s/he is covered by a relevant collective agreement. Restoration of pay to pre-crisis levels is currently a matter of negotiation between the Government and public service unions.

### The 3<sup>rd</sup> Level system generally

This handbook concentrates on legislation regulating the seven universities and the state bodies most directly relevant to them. A complete picture of the Irish 3<sup>rd</sup> level sector would have to include these institutions in addition:

- The 13 Institutes of Technology, governed principally by the Regional Technical Colleges Act 1992 and the Institutes of Technology Act 2006.
- Dublin Institute of Technology, which for many purposes is treated alongside other Institutes of Technology, but nonetheless has a different (and longer) history, and is subject to different legislation, principally the Dublin Institute of Technology Act 1992, the Dublin Institute of Technology (Amendment) Act, 1994 and the Institutes of Technology Act 2006.
- Various independent colleges, often of a specialist nature, some of which are state-owned, some state-aided, and some entirely private. Recent government policy has favoured absorbing these colleges into universities – in particular, teacher training colleges have now all been so absorbed – but most remain independent.

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<sup>15</sup> Irish Human Rights and Equality Commission Act 2014, s 2(1) (definition of “public body”) and 42. In this respect the Act is in force on 1 November 2014 (SI 449/2014).

<sup>16</sup> For a review of these issues (from an English perspective) see Arthur, “The Human Rights Act and higher education” (2001) 13 *Education and the Law* 285.

<sup>17</sup> See eg *Holland v. Athlone IT* [2011] IEHC 414.

<sup>18</sup> See eg *Trinity College Dublin v. A Group of Workers*, Labour Court, 21 December 2012.

On the regulatory side, in principle the ultimate authority is the Department of Education and Skills, but in practice the Department only considers the most important and the most controversial of issues, delegating the rest to a variety of agencies. In this area, as in many areas of an extremely specialised and technical nature, government does not always wish to deal directly with those it regulates, but establishes buffer organisations or quangos to mediate relations with them. The Higher Education Authority (HEA) and Science Foundation Ireland (SFI) are perhaps the most important agencies, but mention should also be made of Quality and Qualifications Ireland (QQI), and the legislation on student grants (eg Student Grant Scheme 2015 (SI 155/2015)).

### **The Higher Education Authority**

From humble beginnings in 1968 as an expert body advising the Department of Education on university building costs, the HEA was first given a statutory basis in 1971. Limited powers to represent the sector, to require and to disseminate information, and to supervise institutional decisions have gradually been added.

A full modern statement of the HEA's remit for the third level sector would concentrate on the principal acts (the Higher Education Authority Act 1971, the Regional Technical Colleges Act 1992, the Dublin Institute of Technology Act 1992, the Universities Act 1997 and the Institutes of Technology Act 2006), but would also include:

- Finance Act 1997, s 25(1)
- Taxes Consolidation Act 1997, ss 485(2)(a)(iii) and 843(1)
- Finance Act 2000, s 50(h)
- Local Government (An Chomhairle Leabharlanna) (Amendment) Regulations, 2003 (SI 28/2003), r 5(f)
- Social Welfare Consolidation Act 2005, s 266(b)
- Medical Practitioners Act 2007, ss 17(1)(i) and 86(3)
- Financial Measures (Miscellaneous Provisions) Act 2009, s 11(2)(a)
- Nurses Rules 2010 (SI 689/2010), r 6(1)(b)
- Student Support Act 2011, s 7(2)
- Protected Disclosures Act 2014 (Section 7(2)) Order 2014 (SI 339/2014), sch, 30
- Education (Miscellaneous Provisions) Act 2015, ss 1-5<sup>19</sup>
- Environmental Protection Agency (Advisory Committee) Regulations 2015 (SI 613/2015), r 7(f)

While numerous, these provisions fall well short of comprehensive coverage either of university activities or of governmental oversight. While the role currently envisaged for the HEA is broad – considerably broader, in fact, than the legislation allows for – nonetheless the various departments of government still wish to retain a significant

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<sup>19</sup> These sections are not in force at the time of writing.

degree of oversight to themselves. And while the principle of institutional autonomy is recognised and sometimes acted upon, its relation to national strategies is obscure and changeable.

Legislation applicable to the HEA itself tends to treat it as a body distinct from, but nonetheless closely allied with, central government. It is explicitly mentioned in legislation concerned with ethics in public office<sup>20</sup>, claims management<sup>21</sup>, financial powers<sup>22</sup>, freedom of information<sup>23</sup>, tax<sup>24</sup>, and staff pension schemes<sup>25</sup>.

## Science Foundation Ireland

This Foundation, established in 2000 and given a statutory basis in 2003, is for the promotion and support of scientific research in Ireland. As is clear from its title, it does not attempt to cover the entire range of university disciplines. It is an organ of the Department of Jobs, Enterprise and Innovation, not the Department of Education and Skills. The precise focus of the Foundation on applied sciences, and the Research Prioritisation Exercise, are matters of controversy, the government maintaining that it is reasonable in current circumstances to concentrate on research with direct and relatively immediate economic benefits, while others maintain that this is short-sighted as a national strategy.

The SFI was initially an agency of Forfás, a national policy advisory board responsible to the Minister. Forfás has now been dissolved. Legislation applicable to the SFI itself tends to treat it as a body distinct from, but nonetheless closely allied with, central government. It is explicitly mentioned in legislation concerned with ethics in public office<sup>26</sup>, freedom of information<sup>27</sup>, official languages<sup>28</sup>, scholarships<sup>29</sup>, and tax<sup>30</sup>.

## Current proposals for legislation

The Government's current legislative priorities were announced on 8 June 2016. While there is some priority general legislation of interest to 3<sup>rd</sup> level (notably the Public

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<sup>20</sup> Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) Regulations 2015 (SI 36/2015), r 2(a)(91).

<sup>21</sup> National Treasury Management Agency (State Authority) (No 2) Order 2011 (SI 77/2011), sch; National Treasury Management Agency (Delegation of Claims Management Functions) Order 2014 (SI 182/2014) sch 2.

<sup>22</sup> General Government Secured Borrowings Order 2014 (SI 120/2014), sch (b)(i).

<sup>23</sup> Freedom of Information Act, 1997 (Prescribed Bodies) (No 4) Regulations 2001 (SI 475/2001), sch.

<sup>24</sup> Finance Act 1996, s 8(b)(81); Taxes Consolidation Act 1997, sch 4, 48.

<sup>25</sup> Public Service Pensions (Single Scheme and Other Provisions) Act 2012 (Relevant Authorities) Regulations 2012 (SI 581/2012), sch, 170; Occupational Pension Schemes (Funding Standard) (Amendment) Regulations 2014 (SI 268/2014).

<sup>26</sup> Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) Regulations 2015 (SI 36/2015), r 2(a)(145).

<sup>27</sup> Freedom of Information Act 1997 (Prescribed Bodies) Regulations 2006 (SI 297/2006), sch.

<sup>28</sup> Official Languages Act 2003 (Public Bodies) Regulations 2006 (SI 150/2006), sch 1.

<sup>29</sup> Student Grant Scheme 2011 (SI 305/2011) r 13(3)(g); Student Grant Scheme 2012 (SI 189/2012) r 14(3)(g).

<sup>30</sup> Finance Act 2013, s 36(2).

Sector Standards Bill 2015) the only directly relevant priority legislation is that relating to technological universities.

A process is being conducted under which various Institutes of Technology may be permitted to amalgamate and become “**Technological Universities**”, provided that they satisfy a rigorous set of criteria to establish both their fitness and their conformity with national educational policy. Four groupings have emerged:

1. A Dublin grouping (Dublin IT, IT Tallaght, and IT Blanchardstown)
2. A Munster grouping (Cork IT and IT Tralee)
3. A South-Eastern grouping (IT Carlow and Waterford IT)
4. A “BMW” grouping (Letterkenny IT, Galway-Mayo IT and IT Sligo)

The fourth grouping was initially refused permission to proceed past the initial “expression of interest” stage, though it has now renewed its application (as the “Connacht-Ulster Alliance”) and in October 2015 was granted leave to go further. The third has no prospect of meeting the fitness criteria for some years yet; whether those criteria are appropriate in their case, and in particular whether a merger is appropriate, is a matter of some local concern and has led to some public debate. The second grouping, while having initially made progress, has now encountered opposition, particularly from their own staff, who are unenthusiastic about a merger, and complain of poor consultation. The first grouping’s application is very well advanced, and (assuming that the necessary legislation is passed) might achieve Technological University status soon after enactment.

Apparently it is not the government’s intention to grant any successful applicants university status under Universities Act 1997, s 9 (indeed, despite various applications, that section has never been successfully invoked, and now seems a dead letter), but rather the plan is to draft new legislation. The general scheme of a **Technological Universities Bill** was published on 22 January 2014, and made considerable progress before the election. The election however strengthened the hand of various critics, including independent TDs in the relevant constituencies, and so while the Bill was now been restored to the order paper (on 1 June 2016) it is possible that there will be major changes to it before final enactment. The Bill in its latest published version does not amend the Universities Act 1997, and status as a technological university seems to be envisaged as entirely distinct from status as a university.

Three other relevant bills were mentioned in the legislative programme, though not as priority projects:

1. **Higher Education (Reform) Bill**, ‘to modernise the legislative framework underpinning the governance and functions of the Higher Education Authority and the governance structures of the universities’. Status: ‘Heads are currently being drafted’. This would presumably be intended to update the HEA Act 1971 and the Universities Act 1997. The 1971 Act sets out a far narrower role for the HEA than it has now assumed; the sorts of amendments envisaged are indicated in section 7.4 of the *National Strategy for Higher Education to 2030* (January 2011). The HEA has in recent

years exerted a much closer control of universities, acting within existing powers. No doubt university managements view changes to the primary legislation with some trepidation. It is less clear what is envisaged for the 1997 Act. One issue discussed is the composition of university governing authorities – current policy is to reduce their size, but the existing legislation is complicated (as each university is in very different local circumstances), and no detailed proposals have publicly emerged. Another issue is whether university management can be granted greater financial powers to reward particularly valuable staff (and perhaps to punish less valuable staff). University managers argue that these powers are an essential tool of their craft, but the Department is cautious, and mindful of (what it regards as) past abuses in this regard.

**2. Qualifications and Quality Assurance (Amendment) Bill**, ‘to amend the Qualifications and Quality Assurance (Education and Training) Act 2012 to address some issues that have arisen regarding the scope of QQI’s responsibilities in relation to recognition of awards and regulation of private and voluntary providers, to ensure adequate protection of enrolled learners where providers discontinue a programme, and to give greater authority to Institutes of Technology to award Level 9 qualifications’. Status: ‘Work is underway in Department’.

**3. Universities (Amendment) Bill**, ‘to ensure compliance with government guidelines on remuneration, allowances, pensions and staffing numbers in the University sector’. ‘Heads approved in October 2012. Drafting underway’. This last has been hanging around for some years now without being progressed; I remain of the view that its only function is as a scarecrow for universities tempted to breach financial guidelines, and that there is no serious plan to enact it.

An earlier proposal to broaden the electorate for the **university Seanad seats** under the power in the 7<sup>th</sup> Amendment to the Constitution, as part of a broader reform to Seanad elections, seems to have fallen by the wayside.

*Steve Hedley*  
*14 June 2016*



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*Number 22 of 1971*

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**HIGHER EDUCATION AUTHORITY ACT, 1971**

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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Establishment of An tÚdarás.
3. General functions.  
[3A. Directions of Minister.<sup>1</sup>]
4. General duty with respect to national aims.
5. [Designation of institutions of higher education.<sup>2</sup>]
6. Review of demand and need for higher education and recommendation of student places.
7. Statement of financial position by institution of higher education.
8. Request by institution of higher education for State subvention.
9. Financial planning.
10. Recommendation of State financial provision for higher education and research.
11. Supply of information.
12. Payments for institutions of higher education.

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<sup>1</sup> Added by the Institutes of Technology Act 2006 s 52(c).

<sup>2</sup> Substituted by the Institutes of Technology Act 2006 s 52(e).

[12A. Payments for persons providing support services.<sup>3</sup>]

13. Studies on problems of higher education and research.

14. Officers and servants.

15. Superannuation of officers and servants.

16. Advisory committees and persons.

17. Gifts.

18. Exemption from stamp duty.

19. Grants.

20. Laying of regulations before Houses of the Oireachtas.

21. Short title and commencement.

#### SCHEDULE

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<sup>3</sup> Inserted by the Institutes of Technology Act 2006 s 52(f).



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*Number 22 of 1971*

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**HIGHER EDUCATION AUTHORITY ACT, 1971**

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AN ACT TO ESTABLISH A BODY TO BE KNOWN AS AN tÚDARÁS UM ARD-OIDEACHAS, TO DEFINE ITS POWERS AND DUTIES AND TO PROVIDE FOR RELATED MATTERS. [27th July, 1971]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.— (1) In this Act—

Interpretation.

“academic member” means a member of An tÚdarás who, at the time of his appointment as such member, held an academic post;

“academic post” means a post in an institution of higher education (other than a post as chancellor or chief officer of a university or college thereof) all or part of the duties of the holder of which is to teach any students of the institution or to carry out research;

“functions” includes powers and duties;

[“institution of higher education” means any of the following:

- (a) a university,
- (b) a college of a university,
- (c) a college to which the Institutes of Technology Acts 1992 to 2006 apply,
- (d) Dublin Institute of Technology,
- (e) Royal College of Surgeons in Ireland,
- (f) National College of Art and Design,
- (g) Royal Irish Academy,

(h) such educational institutions as may be designated by order under section 5;<sup>4]</sup>

“the Minister” means the Minister for Education<sup>5</sup>;

“An tÚdarás” has the meaning specified in *section 2(1)*.

(2) A reference in this Act to performance of functions includes, with respect to powers, a reference to exercise of those powers.

Establishment of An tÚdarás.

**2.**—(1) There shall, by virtue of this section, be established a body to be known as An tÚdarás um Ard-Oideachas to perform the functions<sup>6</sup> given to it by this Act (in this Act referred to as An tÚdarás).

(2) The provisions of the Schedule to this Act shall apply to An tÚdarás.

General functions.

**3.**—An tÚdarás shall, in addition to the specific functions given to it by this Act, have the general functions of—

- (a) furthering the development of higher education,
- (b) assisting in the co-ordination of State investment in higher education and preparing proposals for such investment,
- (c) promoting an appreciation of the value of higher education and research,
- (d) promoting the attainment of equality of opportunity in higher education,
- (e) promoting the democratisation of the structure of higher education[,
- (f) promoting the attainment and maintenance of excellence in learning, teaching and research in higher education<sup>7</sup>].

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<sup>4</sup> Definition substituted by the Institutes of Technology Act 2006 s 52(a). Various institutions were designated as institutions of higher education under the original version of this definition (see SIs 58/1973, 208/1976, 295/1976, 287/1978 and 423/1979), but presumably those designations lapse except where the new definition covers them, which for the most part it does.

<sup>5</sup> The Minister was subsequently re-titled as the Minister for Education and Science (by SI 430/1997) and then as the Minister for Education and Skills (by SI 184/2010).

<sup>6</sup> “Functions” includes powers and duties; and references to performance of functions includes, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of “functions”) and 1(2).

<sup>7</sup> Paragraph added by the Institutes of Technology Act 2006 s 52(b).

**3A.**—(1) The Minister<sup>8</sup> may, from time to time, issue policy directions to An tÚdarás in relation to the performance of its functions<sup>9</sup> under this Act in respect of the Dublin Institute of Technology or a college to which the Institutes of Technology Acts 1992 to 2006 apply.

Directions of Minister.

(2) The Minister may by direction in writing amend or revoke a direction under this section (including a direction under this subsection).<sup>10]</sup>

**4.**—[In performing its functions<sup>11</sup>, An tÚdarás shall have regard to the national aims of maximising the contribution of higher education to social and economic progress, restoring the Irish language and preserving the national culture, and shall endeavour to promote the attainment of those aims.<sup>12]</sup>

General duty with respect to national aims.

**5.**—[(1) The Minister<sup>13</sup> may, at any time, appoint a body, the membership of which shall be recommended by An tÚdarás and shall include international experts and national experts, including employees of institutions of higher education<sup>14</sup> to which this Act applies, to advise An tÚdarás on whether, having regard to the objects and functions of institutions of higher education currently in being, an educational institution should be designated as an institution of higher education.

Designation of institutions of higher education.

(2) On the advice of the body and the recommendation of An tÚdarás, but subject to subsection (3), the Minister may, by order, provide that the institution shall be designated as an institution of higher education for the purposes of this Act and, on the making of the order, it shall be designated accordingly.

(3) The Minister shall not make an order under subsection (2) unless he or she has first caused to be laid before each House of the Oireachtas a draft of the proposed order and a resolution approving of the draft has been passed by both Houses.<sup>15]</sup>

**6.**—(1) An tÚdarás shall maintain a continuous review of the demand and need for higher education.

Review of demand and need for higher education and recommendation of student places.

(2) An tÚdarás shall recommend to the Minister<sup>16</sup> the overall provision of student places to be made within the higher education system having regard to

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<sup>8</sup> “The Minister” means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>9</sup> “Functions” includes powers and duties; and references to performance of functions includes, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of “functions”) and 1(2).

<sup>10</sup> Section added by the Institutes of Technology Act 2006 s 52(c).

<sup>11</sup> “Functions” includes powers and duties; and references to performance of functions includes, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of “functions”) and 1(2).

<sup>12</sup> Section substituted by the Institutes of Technology Act 2006 s 52(d).

<sup>13</sup> “The Minister” means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>14</sup> “Institutions of higher education” (essentially the universities, the ITs and other third-level institutes) is defined in s 1(1).

<sup>15</sup> Section substituted by the Institutes of Technology Act 2006 s 52(e).

<sup>16</sup> “The Minister” means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

the need to maintain a reasonable balance in the distribution of the total number of students between the institutions of higher education<sup>17</sup>.

Statement of financial position by institution of higher education. **7.**—An tÚdarás may, annually or at such other intervals as it may determine, require any institution of higher education<sup>18</sup> to submit a statement of its financial position to An tÚdarás and it shall be the duty of every institution of higher education to comply with any requirements which are imposed on it under this section.

Request by institution of higher education for State subvention. **8.**—(1) Any request by an institution of higher education<sup>19</sup> for State subvention shall be submitted by the institution to An tÚdarás in such manner as An tÚdarás may require.

(2) Requests submitted under this section shall be examined by An tÚdarás annually or at such other intervals as it may determine.

Financial planning. **9.**—An tÚdarás may relate annual or other financial requirements of institutions of higher education<sup>20</sup> to financial planning over such periods as it considers suitable.

Recommendation of State financial provision for higher education and research. **10.**—(1) An tÚdarás shall assess amounts of State financial provision, both current and capital, which it recommends for higher education and research or for any part thereof, either in relation to current or future periods<sup>21</sup>.

(2) In making assessments under this section in respect of institutions of higher education, An tÚdarás shall have regard to the accommodation capacity for students of each institution and to the maintenance of a reasonable balance in the distribution of the total number of students as between institutions.

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<sup>17</sup> “Institutions of higher education” (essentially the universities, the ITs and other third-level institutes) is defined in s 1(1).

<sup>18</sup> “Institutions of higher education” (essentially the universities, the ITs and other third-level institutes) is defined in s 1(1).

<sup>19</sup> “Institutions of higher education” (essentially the universities, the ITs and other third-level institutes) is defined in s 1(1).

<sup>20</sup> “Institutions of higher education” (essentially the universities, the ITs and other third-level institutes) is defined in s 1(1).

<sup>21</sup> In *Prendergast v. Higher Education Authority and others* [2008] IEHC 257, Charleton J held that the government had power to make compliance with national education policy in relation to universities a condition attaching to money granted to the Authority. “The full extent and the limit of those powers are not to be decided by me in this case. I am satisfied, however, on the authorities cited, that the government is entitled: to set a policy for the training of a specific number of medical graduates to meet the needs of the State; to decide what funds are appropriate to be disbursed in that regard; to decide that particular forms of education should be free, or should be contributed to by fees; and to decide that foreign students can take up spare places at an economic cost to the benefit of the economy” ([2008] IEHC 257 para 58). This is a surprising view, given the broad terms of ss 3-4, the fact that it was thought necessary to provide for ministerial directives in limited situations (s 3A), and the stress in the Universities Act 1997 on institutional autonomy (see especially ss 14(1) and 50(2)).

**11.**—An institution of higher education<sup>22</sup> shall supply to An tÚdarás all such information relative to the institution as An tÚdarás may require for the purpose of performing its functions<sup>23</sup>.

Supply of information.

**12.**—(1) There shall be paid to An tÚdarás, out of moneys provided by the Oireachtas, such amounts for institutions of higher education<sup>24</sup> as may be approved of by the Minister<sup>25</sup> with the consent of [the Minister for Public Expenditure and Reform<sup>26</sup>].

Payments for institutions of higher education.

(2) Any payment to an institution which An tÚdarás makes out of the amounts that it receives under the foregoing subsection shall be made in such manner and subject to such conditions<sup>27</sup> as An tÚdarás thinks fit<sup>28</sup>.

**[12A.]**— (1) An tÚdarás may make payments to a person providing support services for the purpose of enabling or assisting that person to provide such services.

Payments for persons providing support services.

(2) Any such payment shall be made in such manner and subject to such conditions as An tÚdarás thinks fit.

(3) For the purposes of this section ‘a person providing support services’ means a body whose objects include the promotion, development or support of

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<sup>22</sup> “Institutions of higher education” (essentially the universities, the ITs and other third-level institutes) is defined in s 1(1).

<sup>23</sup> “Functions” includes powers and duties; and references to performance of functions include, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of “functions”) and 1(2).

<sup>24</sup> “Institutions of higher education” (essentially the universities, the ITs and other third-level institutes) is defined in s 1(1).

<sup>25</sup> “The Minister” means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>26</sup> Function transferred by Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>27</sup> In *Prendergast v. Higher Education Authority and others* [2008] IEHC 257, Charleton J held that the “conditions” could include the imposition of an educational policy on universities, such as imposing a limit on the number of Irish students on certain programmes, so long as the policy was rational and in conformity with the Authority’s statutory remit. He envisaged that such policies could include discouragement of programmes which were “not conducive to promoting and developing the national culture or the national economy” ([2008] IEHC 257 paras 41-44). It now seems increasingly to be assumed that the “conditions” may be used as a punishment for past misbehaviour by the recipient institution, by requiring that a certain proportion of the money should be used only for student services (see “Universities lose €3.6m in funding as punishment for staff top-ups” *Independent* 17 December 2013; “College told to set aside €100k for student services after audiology course cancelled”, *Examiner* 25 March 2014).

<sup>28</sup> Various institutions were singled out by statute as possible recipients of payments under s 12(2), though all such provisions are now repealed. See National Council For Educational Awards Act 1979 s 16 (repealed by Qualifications (Education and Training) Act 1999 s 37); National Institute For Higher Education, Limerick, Act, 1980 s 13 (repealed by Universities Act 1997 sch 1); National Institute For Higher Education, Dublin, Act, 1980, s 13 (repealed by Universities Act 1997 sch 1); and Thomond College of Education, Limerick, Act, 1980, s 13 (repealed by University of Limerick (Dissolution of Thomond College) Act 1991 s 11).

higher education and which the Minister<sup>29</sup>, following consultation with An tÚdarás, designates as a body to whom this section applies.<sup>30]</sup>

Studies on problems of higher education and research.

**13.**—An tÚdarás may institute and conduct studies on such problems of higher education and research as it considers appropriate and may publish reports of such studies.

Officers and servants.

**14.**—(1) An tÚdarás may appoint such and so many persons to be its officers and servants as, subject to the approval of the Minister<sup>31</sup>, it from time to time thinks proper.

(2) An officer or servant of An tÚdarás shall hold his office or employment on such terms and conditions as An tÚdarás, subject to the approval of the Minister, from time to time determines.

(3) An tÚdarás may, with the consent of the Minister, remove any officer or servant of An tÚdarás from being its officer or servant.

(4) Subject to subsection (5) of this section, there shall be paid by An tÚdarás to its officers and servants such remuneration and allowances as, subject to the approval of the Minister given with the consent of the Minister for Finance, it determines from time to time.

(5) Where a person who is either an officer or servant in the employment of An tÚdarás becomes a member of either House of the Oireachtas—

(a) he shall, during the period commencing upon his becoming entitled under the Standing Orders of that House to sit therein and ending either when he ceases to be a member of that House or, if it should sooner happen, upon his resignation or retirement from such employment or upon the termination of such employment by An tÚdarás, stand seconded from such employment,

(b) he shall not be paid by, or entitled to receive from, An tÚdarás any remuneration or allowances in respect of that period,

(c) he shall not be entitled to reckon the whole or any part of that period for any benefits payable under any scheme under section 15 of this Act.

(6) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall, while so entitled, be disqualified from becoming an officer or servant of An tÚdarás.

Superannuation of officers and servants.

**15.**—(1) An tÚdarás shall prepare and submit to the Minister<sup>32</sup> a contributory scheme or schemes for the granting of pensions, gratuities and other allowances on retirement to or in respect of its permanent staff.

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<sup>29</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>30</sup> Section inserted by the Institutes of Technology Act 2006 s 52(f).

<sup>31</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

(2) Every such scheme shall fix the time and conditions of retirement for all persons to or in respect of whom pensions, gratuities or allowances on retirement are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.

(3) An tÚdarás may at any time prepare and submit to the Minister a scheme amending a scheme previously submitted and approved under this section.

(4) A scheme submitted to the Minister under this section shall, if approved of by the Minister with the concurrence of the Minister for Finance, be carried out by An tÚdarás in accordance with its terms.

(5) If any dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or allowance payable in pursuance of a scheme under this section, such dispute shall be submitted to the Minister who shall refer it to the Minister for Finance, whose decision shall be final.

(6) Every scheme submitted and approved of under this section shall be laid before each House of the Oireachtas as soon as may be after it is approved of and if either House, within the next twenty-one days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

**16.—**(1) An tÚdarás may appoint a committee or person to advise it on matters relating to its functions<sup>33</sup>.

Advisory committees and persons.

(2) A person appointed under this section to a committee or to advise may be either a member of An tÚdarás or not a member and An tÚdarás may, subject to the approval of the Minister<sup>34</sup> given with the consent of [the Minister for Public Expenditure and Reform<sup>35</sup>], pay him allowances for expenses and, if he is not a member of An tÚdarás, fees.

**17.—**(1) An tÚdarás may accept gifts of money, land or other property upon such trusts and conditions, if any, as may be specified by the donor.

Gifts.

(2) An tÚdarás shall not accept a gift if the conditions attached by the donor are inconsistent with the functions<sup>36</sup> of An tÚdarás.

**18.—**Stamp duty shall not be charged on any conveyance or other instrument executed for the purpose of vesting property or any interest in property in An tÚdarás.

Exemption from stamp duty.

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<sup>32</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>33</sup> "Functions" includes powers and duties; and references to performance of functions includes, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of "functions") and 1(2).

<sup>34</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>35</sup> Function transferred by the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>36</sup> "Functions" includes powers and duties: s 1(1) (definition of "functions").

Grants. **19.**—The Minister<sup>37</sup> may, out of moneys provided by the Oireachtas, from time to time make grants to An tÚdarás of such amounts as, with the concurrence of [the Minister for Public Expenditure and Reform<sup>38</sup>], he considers necessary to enable An tÚdarás to perform its functions<sup>39</sup>.

Laying of regulations before Houses of the Oireachtas. **20.**—Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and if either House, within the next twenty-one days on which that House has sat after the regulation is laid before it, passes a resolution annulling the regulation, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Short title and commencement. **21.**—(1) This Act may be cited as the Higher Education Authority Act, 1971<sup>40</sup>.

(2) This Act shall come into operation on such day as the Minister<sup>41</sup> appoints by order<sup>42</sup>.

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<sup>37</sup> “The Minister” means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>38</sup> Function transferred by the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>39</sup> “Functions” includes powers and duties; and references to performance of functions include, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of “functions”) and 1(2).

<sup>40</sup> Also, this Act and the Institutes of Technology Act 2006 s 52 may be cited together as the Higher Education Authority Acts 1971 and 2006: Institutes of Technology Act 2006 s 1(6).

<sup>41</sup> “The Minister” means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>42</sup> The Act was brought into force on 15 May 1972 by the Higher Education Authority Act, 1971 (Commencement) Order, 1972 (SI 116/1972).

SCHEDULE.

AN tÚDARÁS UM ARD-OIDEACHAS.

1. An tÚdarás shall be a body corporate with perpetual succession and power to sue and be sued in its corporate name and to acquire, hold and dispose of land.

2. The members of An tÚdarás shall be a chairman and not more than eighteen ordinary members of whom at least seven shall be academic members<sup>43</sup> and at least seven shall be other than academic members.

3. (1) The chairman of An tÚdarás shall be appointed by the Government on the recommendation of the Minister<sup>44</sup> and he may be removed from office by the Government.

(2) The chairman of An tÚdarás may resign his office as chairman by letter addressed to the Minister and the resignation shall take effect when the letter is received.

(3) Subject to the provisions of this Schedule, the chairman of An tÚdarás shall hold his office on such terms as the Government determines.

4. (1) An ordinary member of An tÚdarás shall be appointed by the Government on the recommendation of the Minister<sup>45</sup> and, before making a recommendation, the Minister shall consult thereon with the chairman of An tÚdarás.

(2) [An ordinary member of An tÚdarás shall be appointed for a term not exceeding 5 years and his appointment may be renewed for a further term not exceeding 5 years, but after 2 consecutive terms in office, of whatever length, he shall not be eligible for further appointment until a period of 2 years has elapsed.<sup>46</sup>]

5. An tÚdarás shall appoint one of its ordinary members to be deputy chairman. The term of the appointment shall not exceed two years and the appointment shall not be renewable. If, at any time during that term, the person appointed ceases to be a member of An tÚdarás, he shall also cease at that time to be deputy chairman.

6. (1) The Government, after consultation with the chairman of An tÚdarás, may remove an ordinary member of An tÚdarás from office.

(2) An ordinary member of An tÚdarás may resign his office as a member by letter addressed to the Minister<sup>47</sup> and the resignation shall take effect when the letter is received.

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<sup>43</sup> An "academic member" means "a member of An tÚdarás who, at the time of his appointment as such member, held an academic post"; "academic post" means "a post in an institution of higher education (other than a post as chancellor or chief officer of a university or college thereof) all or part of the duties of the holder of which is to teach any students of the institution or to carry out research": s 1(1), definitions of "academic member" and "academic post"; the subsection also defines "institution of higher education".

<sup>44</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>45</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>46</sup> Sub-paragraph substituted by the Institutes of Technology Act 2006 s 52(g).

<sup>47</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

7. Where a member of An tÚdarás is nominated for election to either House of the Oireachtas or as a member of Seanad Éireann, he shall thereupon cease to be a member of An tÚdarás.

8. A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein shall be disqualified from being a member of An tÚdarás.

9. A member of An tÚdarás shall be disqualified from holding and shall cease to hold office if he is adjudged bankrupt or makes a composition or arrangement with creditors, or is sentenced by a court of competent jurisdiction to suffer imprisonment or penal servitude or ceases to be ordinarily resident in the State.

10. ...<sup>48</sup>

11. A member of An tÚdarás shall be paid by An tÚdarás—

(a) such allowances as the Minister<sup>49</sup>, with the consent of [the Minister for Public Expenditure and Reform<sup>50</sup>] determines,

(b) such amounts in respect of expenses as An tÚdarás considers reasonable.

12. The chairman of An tÚdarás and each ordinary member of An tÚdarás at a meeting thereof shall have a vote.

13. (1) An tÚdarás shall hold such and so many meetings as may be necessary for the performance of its functions<sup>51</sup>.

(2) The Minister<sup>52</sup> shall fix the date, time and place of the first meeting of An tÚdarás.

14. The quorum for a meeting of An tÚdarás shall be six members.

15. At a meeting of An tÚdarás—

(a) the chairman of An tÚdarás shall, if he is present, be chairman of the meeting,

(b) if and so long as the chairman of An tÚdarás is not present or the office of chairman is vacant, the deputy chairman shall, if he is present, be chairman of the meeting,

(c) if and so long as the chairman of An tÚdarás is not present or the office of chairman is vacant and the deputy chairman of An tÚdarás is not present or the office of deputy chairman is vacant, the members of An tÚdarás who are present shall choose one of their number to be chairman of the meeting.

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<sup>48</sup> This paragraph, which specified a mandatory retirement age for members of An tÚdarás, was repealed by Qualifications and Quality Assurance (Education and Training) Act 2012 s 86 and sch 3.

<sup>49</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>50</sup> Function transferred by the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>51</sup> "Functions" includes powers and duties; and references to performance of functions includes, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of "functions") and 1(2).

<sup>52</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

16. Every question at a meeting of An tÚdarás on which there is disagreement among the members present shall be determined by a majority of the votes of the members present and voting on the question and, in the case of an equal division of votes, the chairman of the meeting shall have a second or casting vote.

17. An tÚdarás may act notwithstanding one or more than one vacancy among its members.

18. Subject to the provisions of this Schedule, An tÚdarás shall regulate, by standing orders or otherwise, its procedure and business.

19. (1) An tÚdarás shall, as soon as may be after its establishment, provide itself with a seal.

(2) The seal of An tÚdarás shall be authenticated by the signature of a member of An tÚdarás authorised by An tÚdarás to act in that behalf and the signature of an officer of An tÚdarás authorised by An tÚdarás to act in that behalf.

(3) Judicial notice shall be taken of the seal of An tÚdarás and every document purporting to be an instrument made by An tÚdarás, and to be sealed with the seal (purporting to be authenticated in accordance with this Schedule) of An tÚdarás shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

20. (1) An tÚdarás shall keep, in such form as may be approved of by the Minister<sup>53</sup>, with the concurrence of [the Minister for Public Expenditure and Reform<sup>54</sup>], all proper and usual accounts of all moneys received or expended by it, including an income and expenditure account and a balance sheet, and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister, on his own motion, or at the request of [the Minister for Public Expenditure and Reform<sup>55</sup>], may from time to time direct.

(2) Accounts kept in pursuance of this paragraph shall be submitted annually by An tÚdarás to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the income and expenditure account and of the balance sheet and of such other (if any) of the accounts as the Minister, after consultation with [the Minister for Public Expenditure and Reform<sup>56</sup>], may direct and a copy of the Comptroller and Auditor General's report on the accounts shall be presented to the Minister who shall cause copies thereof to be laid before each House of the Oireachtas.

21. (1) An tÚdarás shall, at the end of each quinquennium or at such other time or times as the Minister<sup>57</sup> may direct, make a report to the Minister of its proceedings under this Act during the preceding quinquennium or during whatever other period the Minister may appoint.

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<sup>53</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>54</sup> Function transferred by the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>55</sup> Function transferred by the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>56</sup> Function transferred by the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>57</sup> "The Minister" means the Minister for Education (s 1(1)) – now re-titled as the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

(2) The Minister shall cause copies of any such report to be laid before each House of the Oireachtas.

(3) An tÚdarás shall supply the Minister with such information regarding the performance of its functions<sup>58</sup> as he may from time to time require.

22. An tÚdarás shall appoint one of its officers to be Secretary of An tÚdarás.

23. An tÚdarás may perform such of its functions<sup>59</sup> as it may deem proper through or by any of its officers or servants duly authorised in that behalf.

[24. The ordinary members of An tÚdarás who held office immediately before the commencement<sup>60</sup> of this paragraph shall cease to hold office upon such commencement, but any such member shall, notwithstanding anything contained in paragraph 4(2) (as substituted by the *Institutes of Technology Act 2006*), be eligible to be reappointed for a term not exceeding 5 years as a member of An tÚdarás.<sup>61</sup>]

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<sup>58</sup> "Functions" includes powers and duties; and references to performance of functions includes, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of "functions") and 1(2).

<sup>59</sup> "Functions" includes powers and duties; and references to performance of functions includes, with respect to powers, a reference to exercise of those powers: s 1(1) (definition of "functions") and 1(2).

<sup>60</sup> Date of commencement was 1 February 2007: *Institutes of Technology Act 2006* (Commencement) Order 2007 (SI 36/2007).

<sup>61</sup> Paragraph inserted by the *Institutes of Technology Act 2006* s 52(g).



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*Number 24 of 1997*

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**UNIVERSITIES ACT, 1997**

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<sup>1</sup> This section is repealed by the Qualifications and Quality Assurance (Education and Training) Act 2012, s 6 and sch 2, in force 5 November 2012 (SI 421/2012).

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<sup>2</sup> Inserted by the Qualifications and Quality Assurance (Education and Training) Act 2012, in force 5 November 2012 (SI 421/2012).




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*Number 24 of 1997*

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**UNIVERSITIES ACT, 1997**

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AN ACT TO CONSTITUTE OR ESTABLISH CERTAIN COLLEGES AND UNIVERSITIES AS UNIVERSITIES UNDER THIS ACT, TO ALLOW FOR THE INCORPORATION OF EDUCATIONAL INSTITUTIONS AS PARTS OF UNIVERSITIES OR AS UNIVERSITIES IN THEIR OWN RIGHT, TO PROVIDE FOR THE GOVERNANCE OF UNIVERSITIES WHICH ARE IN RECEIPT OF MONEYS PROVIDED BY AN tÚDARÁS BY THE CONSTITUTING OF GOVERNING AUTHORITIES AND ACADEMIC COUNCILS AND PROVIDING FOR THEIR POWERS AND FUNCTIONS, TO MAKE CERTAIN PROVISIONS RELATING TO STAFF, PLANNING AND FINANCIAL SCRUTINY AND REPORTING OF UNIVERSITIES, TO AMEND OR PROVIDE FOR THE CONTINUATION AND AMENDING OF CERTAIN UNIVERSITY CHARTERS AND THE CONTINUATION OF STATUTES, TO REPEAL THE NATIONAL INSTITUTE FOR HIGHER EDUCATION, LIMERICK, ACT, 1980, THE NATIONAL INSTITUTE FOR HIGHER EDUCATION, DUBLIN, ACT, 1980, AND CERTAIN PROVISIONS OF OTHER ACTS, TO AMEND CERTAIN OTHER ACTS, AND FOR CONNECTED PURPOSES. [14th May, 1997]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Universities Act, 1997<sup>3</sup>.

Short title.

2.—This Act shall come into operation on such day or days as may be fixed therefor by order or orders made by the Minister under this section, either

Commencement.

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<sup>3</sup> This Act and the Institutes of Technology Act, 2006, s 53 may be cited together as the Universities Acts 1997 and 2006 (Institutes of Technology Act, 2006, s 1(7)). Further, those provisions and the Education (Miscellaneous Provisions) Act 2015, s 6 (in force 1 July 2015, see SI 268/2015) may together be referred to as the Universities Acts 1997 to 2015 (Education (Miscellaneous Provisions) Act 2015, s 11(2)).

generally or with reference to any particular purpose or provision, and different days may be so fixed for different purposes and different provisions of this Act<sup>4</sup>.

## Interpretation.

3.—(1) In this Act, unless the context otherwise requires—

“An tÚdarás” means the body established by section 2 of the Higher Education Authority Act, 1971;

“chairperson”, in relation to a governing authority, includes the chief officer, a deputy-chairperson and a person presiding at a meeting of the authority, while he or she is acting as the chairperson or so presiding;

“chief officer” means—

(a) a person appointed under *section 24* as the chief officer of a university, or

(b) the chief officer of a university, constituent college<sup>5</sup>, Recognised College<sup>6</sup> or educational institution, by whatever name known, continued in office for the purposes of this Act,

and includes a person acting in the office or performing the duties of a chief officer;

“commission” means a commission appointed under *section 23(1)*;

“constituent college” means a university college specified in *column 1* of the *Second Schedule*;

“constituent university” means a university specified in *column 2* of the *Second Schedule* or the National University of Ireland, Maynooth;

“Dublin City University” means the university established by section 2 of the Dublin City University Act, 1989;

“employee”, in relation to a university, means a person employed by the university in any capacity, and includes an officer of the university;

“financial year” means a period of 12 months commencing on the 1st day of January in each year;

“first governing authority” means a governing authority of a university as that governing authority is first constituted after the commencement of *Part III* or, in the case of an additional university established under *section 9*, as first constituted after that university is established;

“functions” includes powers and duties;

“governing authority” includes—

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<sup>4</sup> The Act came into operation, for all purposes, on 16 June 1997: see Universities Act, 1997 (Commencement) Order, 1997 (SI 254/1997).

<sup>5</sup> “[C]onstituent college” means University College Cork, University College Dublin or University College Galway: s 3, definition of “constituent college”.

<sup>6</sup> “Recognised College” means a recognised college of the National University of Ireland”: s 3, definition of “Recognised College”.

- (a) a person or body appointed under *section 21(4)* to perform the functions<sup>7</sup> of a governing authority,
- (b) in relation to the appointment of a new governing authority after the suspension of a governing authority of a university under *section 21(4)*, the Visitor of that university,
- (c) in relation to the appointment of the first governing authority<sup>8</sup> of a university, the commission<sup>9</sup> for that university, and
- (d) except to the extent that its functions are limited under *section 22*, a governing body continued in existence by that section;

“the Minister” means the Minister for Education<sup>10</sup>;

“the National University of Ireland” means the university by that name in Dublin, constituted and founded by charter in pursuance of the Irish Universities Act, 1908;

“officer”, in relation to a university, includes—

- (a) a permanent, full-time member of the academic staff of the university,
- (b) the chief officer<sup>11</sup>,
- (c) a person who immediately before the commencement of this Part is an officer of a university, constituent college<sup>12</sup> or recognised college<sup>13</sup>, and
- (d) such other employees as the governing authority may from time to time determine;

“Recognised College” means a recognised college of the National University of Ireland;

“the Senate” means the Senate of the National University of Ireland;

“statutes” means the statutes made under *section 33(1)* by a governing authority, and includes statutes continued in force by *section 33(3)*;

“student”, in relation to a university, means a person registered as a student by the university or a full-time officer of the Students Union or other student representative body in the university recognised by the governing authority who was first elected or appointed to his or her office while he or she was a registered student of the university;

<sup>7</sup> “[F]unctions’ includes powers and duties”: s 3, definition of “functions”.

<sup>8</sup> “[F]irst governing authority’ means a governing authority of a university as that governing authority is first constituted after the commencement of Part III or, in the case of an additional university established under section 9, as first constituted after that university is established”: s 3, definition of “first governing authority”.

<sup>9</sup> “[C]ommission’ means a commission appointed under section 23(1)”: s 3, definition of “commission”.

<sup>10</sup> The Minister was subsequently re-titled as the Minister for Education and Science (by SI 430/1997) and then as the Minister for Education and Skills (by SI 184/2010).

<sup>11</sup> “[C]hief officer” “includes a person acting in the office or performing the duties of a chief officer”: s 3, definition of “chief officer”.

<sup>12</sup> “[C]onstituent college” means University College Cork, University College Dublin or University College Galway: s 3, definition of “constituent college”.

<sup>13</sup> “[C]onstituent college’ means a recognised college of the National University of Ireland”: s 3, definition of “Recognised College”.

“Student Union” means a body established to promote the general interests of students of a university and which represents students, both individually and collectively, in respect of academic, disciplinary and other matters arising within the university;

“Trinity College” means the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin established by charter dated the 3rd day of March, 1592, and shall be held to include the University of Dublin save where the context otherwise requires in accordance with the charters and letters patent relating to Trinity College;

“the University of Dublin” means the university established by the charters and letters patent incorporating Trinity College and which said university is further provided for by the letters patent of the 24th day of July, 1857;

“the University of Limerick” means the university established by section 2 of the University of Limerick Act, 1989;

“Visitor” means the Visitor or Visitors to a university or a person appointed under *section 19* to be a Visitor for any purpose under this Act.

(2) In this Act, including a Schedule to this Act—

(a) a reference to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act,

(b) a reference to a section, Chapter or Part is a reference to a section, Chapter or Part of this Act, unless it is indicated that reference to some other enactment is intended,

(c) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended, and

(d) a reference to a Schedule is a reference to a Schedule to this Act.

(3) A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties.

Application.

**4.**—(1) Without limiting its general application, but subject to *subsection (2)*, this Act shall apply to—

(a) the constituent universities<sup>14</sup>,

(b) Dublin City University,

(c) Trinity College,

(d) the University of Limerick, and

(e) such universities, if any, as are established under *section 9*,

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<sup>14</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

as constituted from time to time, while they are institutions of higher education in receipt of moneys in accordance with the Higher Education Authority Act, 1971.

(2) Sections 16(1) to (7), 21(6), 22, 23, 32 and 33 shall not apply to or in relation to Trinity College unless the Minister<sup>15</sup>, by order made not earlier than three years after the commencement of *Part III*, declares that those provisions apply, in which case they shall apply as if a reference to the commencement of *Part III* were a reference to the date on which the order came into operation.

(3) The Minister shall not make an order under *subsection (2)* if, within the period of three years referred to in that subsection a Private Act is passed by the Oireachtas amending, in a manner consistent with the purpose and substance of the sections mentioned in that subsection, the charters and letters patent under which Trinity College and the University of Dublin are incorporated.

(4) An order made under *subsection (2)* may amend the charters and letters patent referred to in *subsection (3)* in such manner consistent with the sections mentioned in *subsection (2)* as is provided in the order.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Expenses.

6.—(1) The enactments mentioned in *Part I* of the *First Schedule* are hereby repealed.

Repeals and savings.

(2) The enactments mentioned in *column 2* of *Part II* of the *First Schedule* are hereby repealed to the extent mentioned in *column 3* of that Schedule opposite to those enactments mentioned in *column 1*.

## PART II

### ESTABLISHMENT AND IDENTITY OF UNIVERSITIES

7.—(1) The constituent colleges<sup>16</sup> shall, by virtue of this section, become and be universities, and each college named in *column 1* of the *Second Schedule* shall be known by the corresponding name in the English language or in the Irish language in *column 2* of that Schedule opposite to the name mentioned in *column 1*.

Reconstitution of constituent colleges.

(2) The universities as constituted by *subsection (1)* shall be constituent universities of the National University of Ireland and references to “college” or “constituent college” in the Irish Universities Act, 1908 or in the charter of the National University of Ireland, or in the charters of those constituent colleges, shall be construed as references to those constituent universities as constituted from time to time.

<sup>15</sup> “[T]he Minister” means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>16</sup> “[C]onstituent college” means University College Cork, University College Dublin or University College Galway: s 3, definition of “constituent college”.

(3) A reference to a constituent college in any other Act or in a statutory instrument made under an Act, or in the memorandum or articles of association of any company or any other legal document, shall be construed as a reference to the corresponding constituent university referred to in *subsection (1)* as constituted from time to time.

(4) Where immediately before the commencement of this Part any legal proceedings in relation to a constituent college were pending to which the constituent college was party, the name of the corresponding constituent university shall on that commencement be substituted in the proceedings for the name of the constituent college, and the proceedings shall not abate by reason of the substitution.

Incorporation of educational institutions with existing universities.

**8.**—(1) If An tÚdarás<sup>17</sup> considers that an educational institution or part of an educational institution should form part of a university, the Minister<sup>18</sup> may by order made with the consent of [the Minister for Public Expenditure and Reform<sup>19</sup>], the institution concerned and the governing authority of the university, provide that the institution or part shall become and form part of the university, and on the making of the order it shall be so incorporated.

(2) The Minister shall not make an order under *subsection (1)* unless the Minister has first caused to be laid before each House of the Oireachtas a draft of the proposed order and a resolution approving of the draft has been passed by both Houses.

(3) *Subsections (3) to (6) of section 44* shall apply to the staff of an institution who immediately before the incorporation provided for in *subsection (1)* were employees of the institution and who become employees of the university on such incorporation, in the same way as they apply to persons employed by St. Patrick's College, Maynooth.

Establishment of additional universities.

**9.**—(1) The Government may, at any time, appoint a body, the membership of which shall be recommended by An tÚdarás<sup>20</sup> and shall include international experts and national experts, including employees of universities to which this Act applies, to advise An tÚdarás on whether, having regard to the objects and functions<sup>21</sup> of a university under *sections 12 and 13*, an educational institution should be established as a university<sup>22</sup>.

<sup>17</sup> "An tÚdarás" is the Higher Education Authority (HEA) – see s 3, definition of "An tÚdarás".

<sup>18</sup> "[T]he Minister" means the Minister for Education: s 3, definition of "the Minister" – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>19</sup> This function was transferred from the Minister for Finance to the Minister for Public Expenditure and Reform under the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011).

<sup>20</sup> "An tÚdarás" is the Higher Education Authority (HEA) – see s 3, definition of "An tÚdarás".

<sup>21</sup> "[F]unctions" includes powers and duties: s 3, definition of "functions".

<sup>22</sup> Applications to invoke this power have been made at different points by the Dublin and Waterford Institutes of Technology. For discussion see Colm Garvey, *The Dublin Institute of Technology and University Status: A case study of the application by DIT for designation as a university (1996-99)* (EdD thesis 2008, University of Sheffield), available online at <http://etheses.whiterose.ac.uk/105/>. Neither application was successful, and the current government policy is that university status will only be granted after appropriate mergers and restructurings, and then only so as to create "technological universities" (for which fresh legislation will be needed).

(2) On the advice of the body and the recommendation of An tÚdarás, but subject to *subsection (3)*, the Government may, by order, provide that the institution shall be a university for the purposes of this Act and, on the making of the order, it shall be established accordingly.

(3) The Government shall not make an order under *subsection (2)* unless it has first caused to be laid before each House of the Oireachtas a draft of the proposed order and a resolution approving of the draft has been passed by both Houses.

(4) A university established under *subsection (2)* shall be a body corporate with perpetual succession and an official seal and have power to sue and may be sued in its corporate name and to acquire, hold and dispose of land or any other property<sup>23</sup>.

[(5) In determining the amount of money to be allocated for the financial year to a university established under *subsection (2)* from moneys provided to An tÚdarás pursuant to section 12 of the Higher Education Authority Act 1971 and section 37(2), an tÚdarás shall ensure that the range and levels of programmes of education and training in that university and the number of enrolled learners (within the meaning of the *Qualifications and Quality Assurance (Education and Training) Act 2012*) participating in those programmes are in accordance with such policies as may be determined from time to time by the Minister<sup>24</sup>.

(6) An tÚdarás may give directions to a university for the purposes of *subsection (5)*.

(7) A university established under *subsection (2)* shall act in accordance with such directions as may be given from time to time by An tÚdarás to the university under *subsection (6)*.<sup>25]</sup>

**10.—(1)** The Minister<sup>26</sup> may, at the request of the governing authority of a university, and in the case of a constituent university<sup>27</sup> with the consent of the Senate<sup>28</sup>, by order, change the name of the university<sup>29</sup>.

Change of name of university.

(2) A reference in any Act, statutory instrument made under an Act or legal or other document to a university by its name applying before it was changed under *subsection (1)* shall be construed as a reference to that university as so renamed.

<sup>23</sup> A new university under this section would require a commission under s 23. The supervisory regime for these “s 9 universities” (if any are created) was altered somewhat by the Qualifications (Education and Training) Act, 1999, ss 41-42, but that Act is now abolished by the Qualifications and Quality Assurance (Education and Training) Act 2012 (in force 5 November 2012 (SI 421/2012)).

<sup>24</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>25</sup> New subsections (5)-(7) inserted by the Qualifications and Quality Assurance (Education and Training) Act 2012, in force 5 November 2012 (SI 421/2012).

<sup>26</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>27</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

<sup>28</sup> “[T]he Senate’ means the Senate of the National University of Ireland”: s 3, definition of “the Senate”.

<sup>29</sup> In recent years various universities have considered using a different name for marketing purposes, and in 2014 NUI Maynooth actually re-branded itself in this way (now describing itself as “Maynooth University”) – however, no formal changes of name have been made.

(3) Notwithstanding *subsection (1)* and *section 7(1)*, a constituent university may extend its name in such manner as it considers appropriate to indicate that it is the successor to its corresponding constituent college<sup>30</sup>.

Amendment of  
Dublin City  
University Act,  
1989, and  
University of  
Limerick Act, 1989.

**11.**—(1) Section 2 of the Dublin City University Act, 1989, is hereby amended—

(a) in subsection (1), by the deletion of “and shall perform the functions assigned to it by the Act of 1980 as amended by this Act”; and

(b) by the insertion of the following after subsection (1):

“(1A) The University is and shall continue to be the body corporate of that name in existence immediately before the commencement of *section 6* of the *Universities Act, 1997*, with the same perpetual succession, power to sue and be sued in its corporate name and to acquire, hold and dispose of land and any other property, as it then had.”.

(2) Section 2 of the University of Limerick Act, 1989, is hereby amended—

(a) in subsection (1), by the deletion of “and shall perform the functions assigned to it by the Act of 1980 as amended by this Act”, and

(b) by the insertion of the following after subsection (1):

“(1A) The University is and shall continue to be the body corporate of that name in existence immediately before the commencement of *section 6* of the *Universities Act, 1997*, with the same perpetual succession, power to sue and be sued in its corporate name and to acquire, hold and dispose of land and any other property, as it then had.”.

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<sup>30</sup> Two orders have to date been made under this provision: see National University of Ireland, Cork (Change of Name of University) Order, 1998 (SI 446/1998) and National University of Ireland, Dublin (Change of Name of University) Order, 1998 (SI 447/1998).

## PART III

## UNIVERSITIES GENERALLY

## CHAPTER I

*Objects and functions*

**12.**—The objects<sup>31</sup> of a university shall include—

Objects of university.

- (a) to advance knowledge through teaching, scholarly research and scientific investigation,
- (b) to promote learning in its student body and in society generally,
- (c) to promote the cultural and social life of society, while fostering and respecting the diversity of the university's traditions,
- (d) to foster a capacity for independent critical thinking amongst its students,
- (e) to promote the official languages of the State, with special regard to the preservation, promotion and use of the Irish language and the preservation and promotion of the distinctive cultures of Ireland,
- (f) to support and contribute to the realisation of national economic and social development,
- (g) to educate, train and retrain higher level professional, technical and managerial personnel,
- (h) to promote the highest standards in, and quality of, teaching and research,
- (i) to disseminate the outcomes of its research in the general community,
- (j) to facilitate lifelong learning through the provision of adult and continuing education, and
- (k) to promote gender balance and equality of opportunity among students<sup>32</sup> and employees<sup>33</sup> of the university.

**13.**—(1) The functions<sup>34</sup> of a university are to do all things necessary or expedient in accordance with this Act and its charter, if any, to further the objects and development of the university.

Functions of university.

(2) Without limiting the generality of *subsection (1)*, a university—

<sup>31</sup> Some modifications to university objects were implied by the Qualifications (Education and Training) Act, 1999, s 40, but that Act is now abolished by the Qualifications and Quality Assurance (Education and Training) Act 2012, in force 5 November 2012 (SI 421/2012).

<sup>32</sup> “[S]tudent”, in relation to a university, means a person registered as a student by the university or a full-time officer of the Students Union or other student representative body in the university recognised by the governing authority who was first elected or appointed to his or her office while he or she was a registered student of the university”: s 3, definition of “student”.

<sup>33</sup> “[E]mployee”, in relation to a university “includes an officer of the university”: s 3, definition of “employee”.

<sup>34</sup> “[F]unctions’ includes powers and duties”: s 3, definition of “functions”.

- (a) shall provide courses of study, conduct examinations and award degrees and other qualifications,
- (b) shall promote and facilitate research,
- (c) may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations<sup>35</sup> as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the university<sup>36</sup>,
- (d) may collaborate with educational, business, professional, trade union, Irish language, cultural, artistic, community and other interests, both inside and outside the State, to further the objects of the university,
- (e) shall maintain, manage and administer, and may dispose of and invest, the property, money, assets and rights of the university,
- (f) may collaborate with graduates, convocations of graduates and with associations representing graduates of the university both inside and outside the State,
- (g) may purchase or otherwise acquire, hold and dispose of land or other property, and
- (h) may accept gifts of money, land or other property on the trusts and conditions, if any, not in conflict with this Act, specified by the donor.

Academic freedom.

**14.**—(1) A university, in performing its functions shall—

- (a) have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs, and
- (b) be entitled to regulate its affairs in accordance with its independent ethos and traditions and the traditional principles of academic freedom, and in doing so it shall have regard to—
  - (i) the promotion and preservation of equality of opportunity and access,
  - (ii) the effective and efficient use of resources, and
  - (iii) its obligations as to public accountability,

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<sup>35</sup> The government view is that “Such corporations are independent corporate bodies which set the terms and conditions and rates of salary applicable to their own employees. However, such corporations may only make payments to staff who are employees of a university or IoT working in the corporations which exceed the authorised rates of pay for such public sector employees, if there is a Framework in place which has been approved by the HEA to permit this. There is no such Framework currently in place that would permit such payments to be made”: Ruairí Quinn, *Higher Education Institutions Issues*, Dáil Éireann written answers, 9 October 2012. See s 25(5)(b) and note 88 below.

<sup>36</sup> *Central Applications Office v. Minister for Community Rural and Gaeltacht Affairs and others* [2010] IESC 32 (13 May 2010) concerned whether the CAO is a “public body” within the meaning of the Official Languages Act 2003 sch 1, as each of the universities themselves is. In ruling that it is not, Fennelly J noted that the establishment of the CAO cannot have been an exercise of the power in s 13(2)(c), both because it occurred over 20 years before the Act was in force, and because the activities of the CAO cannot be regarded as a “function” of the third-level institutions it acts for.

and if, in the interpretation of this Act, there is a doubt regarding the meaning of any provision, a construction that would promote that ethos and those traditions and principles shall be preferred to a construction that would not so promote.

(2) A member of the academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom.

## CHAPTER II

### *Governance*

**15.**—(1) Subject to *section 21*, each university shall have a governing authority established in accordance with this Act which shall be known by whatever name the governing authority decides. Governing authority.

(2) Subject to this Act, the functions of a university shall be performed<sup>37</sup> by or on the directions of its governing authority.

(3) All acts and things done by a governing authority<sup>38</sup>, 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.

**16.**<sup>39</sup>—(1) Subject to this Part, a governing authority shall consist of such members, being not less than 20 or more than 40, as determined in accordance with this Chapter<sup>40</sup>. Composition of governing authority.

(2) The members of the governing authority shall include—

(a) the chief officer<sup>41</sup>,

(b) a person appointed under *section 17(3)* as the chairperson (if so appointed),

<sup>37</sup> By s 3(3), “A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties”.

<sup>38</sup> “[G]overning authority’ includes— (a) a person or body appointed under section 21(4) to perform the functions of a governing authority, (b) in relation to the appointment of a new governing authority after the suspension of a governing authority of a university under section 21(4), the Visitor of that university, (c) in relation to the appointment of the first governing authority of a university, the commission for that university, and (d) except to the extent that its functions are limited under section 22, a governing body continued in existence by that section”: s 3, definition of “governing authority”.

<sup>39</sup> The application of this section to Trinity College Dublin is limited by s 4(2)-(4).

<sup>40</sup> This detailed provision (which makes a different rule for each university) allows for considerable flexibility. Current government policy is to encourage smaller rather than larger governing authorities.

<sup>41</sup> “[C]hief officer” “includes a person acting in the office or performing the duties of a chief officer”: s 3, definition of “chief officer”.

- (c) at least one but not more than two senior officers<sup>42</sup> of the university having responsibility to the chief officer for academic, financial or administrative affairs, appointed by the governing authority, one of whom shall be the senior officer having responsibility for academic affairs, and
- (d) the following members elected in accordance with regulations made under *subsection (11)*:
- (i) not less than two or more than six members of the academic staff of the university who are Professors or Associate Professors, elected by such staff;
  - (ii) not less than three or more than five permanent or full-time members of the other academic staff of the university elected by such staff;
  - (iii) at least one but not more than three permanent or full-time employees who are not members of the academic staff of the university elected by the nonacademic staff;
  - (iv) not less than two or more than three students of the university who are elected officers of the Students Union or other student representative body in the university recognised by the governing authority, and
  - (v) one post-graduate student elected by the post-graduate students.

(3) Subject to *subsection (7)*, in addition to the persons chosen and appointed pursuant to *subsection (2)*, but included in the maximum number of members specified in *subsection (1)*, there shall be—

- (a) at least one but not more than four persons, chosen by a committee of the governing authority comprising the chief officer and two other members, from among nominations made by such organisations as are representative of employers, trade unions, agriculture, fisheries, community organisations, Irish language and Gaeltacht organisations, the professions, business and industry as the governing authority considers appropriate, of whom at least one shall be chosen from those nominated by organisations representative of business or industry,
- (b) where by or under an Act there is established a body for a region in which the university is located a function of which is to advise the Minister<sup>43</sup> in relation to the planning and co-ordination of education services at primary and post-primary levels, at least one but not more than two persons who are not members of the governing authority or employees of any other university, the Dublin Institute of Technology established by section 3 of the Dublin Institute of Technology Act, 1992, or a regional technical college established by or in accordance with section 3 of the Regional Technical Colleges Act, 1992,

chosen by a committee of the governing authority constituted as provided in *paragraph (a)*, from among persons nominated by that regional body, and

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<sup>42</sup> “[O]fficer”, in relation to a university, includes— (a) a permanent, full-time member of the academic staff of the university, (b) the chief officer, (c) a person who immediately before the commencement of this Part is an officer of a university, constituent college or recognised college, and (d) such other employees as the governing authority may from time to time determine”: s 3, definition of “officer”.

<sup>43</sup> “[T]he Minister” means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

(c) subject to *subsections (8) and (9)*, the same number of persons as chosen in accordance with *paragraph (a)*, who shall be appointed by the governing authority on the nomination of the Minister<sup>44</sup>, after consultation by the Minister with the chief officer<sup>45</sup>.

(4) In addition to the members chosen and appointed pursuant to *subsections (2) and (3)*, but included in the maximum number of members specified in *subsection (1)*, a governing authority may have as members not more than—

(a) four persons appointed having particular regard to the extent to which artistic and cultural interests are represented among the members, and

(b) four graduates of the university, elected by such graduates and, in the case of a constituent university<sup>46</sup>, graduates for the purposes of this subsection includes persons on whom a degree of the National University of Ireland was conferred as a result of their studies at the corresponding constituent college or Recognised College,

who, subject to *subsection (7)*, shall be chosen and appointed as determined by the governing authority.

(5) In addition to the members chosen and appointed pursuant to *subsections (2), (3) and (4)*, but included in the maximum number of members specified in *subsection (1)*, the governing authorities shall appoint as members—

(a) in the case of Dublin City University—

(i) one person chosen by a committee of the governing authority comprising the chief officer and two other members, from among persons nominated for that purpose by the councils of the administrative counties of Fingal, South Dublin and Dún Laoghaire-Rathdown and [by Dublin City Council<sup>47</sup>], and

(ii) at least one but not more than three persons chosen by a committee of the governing authority comprising the chief officer and two other members, from among persons nominated for that purpose by the Dublin City University Educational Trust or its successor body,

(b) in the case of the National University of Ireland, Cork—

(i) the Lord Mayor of Cork,

(ii) [the person holding the office of Cathaoirleach of a municipal district which contains the administrative area of the former Waterford City Council<sup>48</sup>],

(iii) two persons nominated by the National University of Ireland, and

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<sup>44</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>45</sup> “[C]hief officer” “includes a person acting in the office or performing the duties of a chief officer”: s 3, definition of “chief officer”.

<sup>46</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

<sup>47</sup> Wording substituted by Local Government Reform Act 2014 sch 2 part 6, in force 1 June 2014 (by SI 214/2014).

<sup>48</sup> Wording substituted by Local Government Reform Act 2014 sch 2 part 6, in force 1 June 2014 (by SI 214/2014).

- (iv) [five persons elected by Cork County Council, Kerry County Council, Limerick City and County Council, Tipperary County Council and Waterford City and County Council<sup>49</sup>],
- (c) in the case of the National University of Ireland, Dublin—
- (i) the Lord Mayor of Dublin,
  - (ii) two persons nominated by the National University of Ireland, and
  - (iii) eight persons elected by the members of the General Council of County Councils,
- (d) in the case of the National University of Ireland, Galway—
- (i) two persons nominated by the National University of Ireland, and
  - (ii) seven persons elected by the members of the [Galway City Council<sup>50</sup>] and the councils of the administrative Counties of Galway, Mayo, Sligo, Clare, Leitrim and Roscommon,
- (e) in the case of the National University of Ireland, Maynooth—
- (i) two persons nominated by the National University of Ireland, and
  - (ii) three persons chosen by the chief officer from among persons nominated for that purpose by the Trustees for the time being of St. Patrick's College, Maynooth,
- (f) in the case of Trinity College, not less than three or more than six fellows of Trinity College chosen as determined by the governing authority,
- (g) in the case of the University of Limerick—
- (i) [the person holding the office of Cathaoirleach of Limerick City and County Council or a person nominated by him or her<sup>51</sup>],
  - (ii) [the person holding the office of Cathaoirleach of a municipal district which contains the administrative area of the former Limerick City Council<sup>52</sup>], and
  - (iii) at least one but not more than three persons chosen by a committee of the governing authority comprising the chief officer and two other members, from among persons nominated for that purpose by the University of Limerick Foundation or its successor body.

(6) Where an educational institution is associated with a university in accordance with an agreement between that institution and the university and that agreement provides that the governing authority of the university shall have as members employees or students of the institution then, in addition to the members chosen and appointed pursuant to *subsections (2) to (5)*, but included in

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<sup>49</sup> Wording substituted by Local Government Reform Act 2014 sch 2 part 6, in force 1 June 2014 (by SI 214/2014).

<sup>50</sup> Wording substituted by Local Government Reform Act 2014 sch 2 part 6, in force 1 June 2014 (by SI 214/2014).

<sup>51</sup> Wording substituted by Local Government Reform Act 2014 sch 2 part 6, in force 1 June 2014 (by SI 214/2014).

<sup>52</sup> Wording substituted by Local Government Reform Act 2014 sch 2 part 6, in force 1 June 2014 (by SI 214/2014).

the maximum number of members specified in *subsection (1)*, the governing authority shall include such members as are so provided for.

(7) Except in the case of a person appointed under *subsection (4)* where the governing authority has waived the restriction otherwise imposed by this subsection, a member referred to in *subsection (3)* or *(4)* shall not be an employee or a student of the university.

(8) Where immediately before the commencement of this Part a governing body (by whatever name known) of a university or constituent college contained members appointed by the Minister<sup>53</sup> or the Government, the number of members of the governing authority to be appointed on the nomination of the Minister in accordance with *subsection (3)(c)* shall be not less than the number of persons so appointed and holding office immediately before the commencement of this Part, or three persons, whichever is the lesser number.

(9) In nominating persons for the purposes of *subsection (3)(c)*, the Minister<sup>54</sup> shall ensure that there are at least two members of the governing authority chosen or to be appointed under *subsection (3) (a)* or *(c)* who are nominated by organisations representative of business or industry or who, in the opinion of the Minister, are representative of business or industry.

(10) In performing its functions<sup>55</sup> under this section a governing authority shall ensure that each sex is represented on the governing authority in accordance with such gender balance as may from time to time be determined or approved by the Minister<sup>56</sup>.

(11) A governing authority may make such regulations relating to the selection, election, nomination or appointment of members of the governing authority as it thinks fit, and their selection, election, nomination or appointment shall be carried out in accordance with those regulations.

**17.—(1)** The first meeting of a governing authority of a university shall be chaired by the chief officer<sup>57</sup> and, subject to this section, at that meeting and from time to time as the governing authority determines, the governing authority shall decide whether—

Chairperson of governing authority.

(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<sup>58</sup>.

<sup>53</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>54</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>55</sup> By s 3(3), “A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties”.

<sup>56</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>57</sup> “[C]hief officer” “includes a person acting in the office or performing the duties of a chief officer”: s 3, definition of “chief officer”.

<sup>58</sup> Note the reporting requirement here, in s 33(2).

(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<sup>59</sup>, 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.

Functions of governing authority.

**18.—**(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<sup>60</sup> and regulations, to determine the membership from time to time of the governing authority, and

<sup>59</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

<sup>60</sup> “[S]tatutes” means the statutes made under section 33(1) by a governing authority, and includes statutes continued in force by section 33(3): s 3, definition of “statutes”.

(d) to perform such other functions<sup>61</sup> 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<sup>62</sup> 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.

**19.—(1)** Where a university does not have a Visitor, the Government shall from time to time as the occasion requires, following consultation with the President of the High Court, appoint a Judge of the High Court, or a retired Judge of the High Court or the Supreme Court, to be the Visitor for the purposes of this Act.

Visitor.

(2) Where a Visitor appointed under *subsection (1)* resigns or otherwise becomes incapable of performing his or her functions the Government may appoint another such person to replace that Visitor.

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<sup>61</sup> By s 3(3), “A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties”.

<sup>62</sup> “[E]mployee”, in relation to a university “includes an officer of the university”: s 3, definition of “employee”.

Visitation.

**20.**—(1) Where the Minister<sup>63</sup> 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<sup>64</sup> or ordinances applicable to the university, the Minister may, after first advising the governing authority of his or her opinion and considering any explanation given in response, 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<sup>65</sup>.

(2) If the Visitor is satisfied that there are reasonable grounds for the Minister's opinion, the Visitor shall inquire into the matters giving rise to that opinion and any related matter and report to the Minister on the results of the inquiry.

(3) A Visitor shall, for the purposes of this section, be entitled at all reasonable times to enter a university to inquire into the academic or other affairs of the university or to conduct an inspection of the university and its buildings, equipment and records where the inspection is, in the opinion of the Visitor, relevant to his or her inquiries.

(4) A Visitor shall be afforded all reasonable co-operation and facility by the university, its employees<sup>66</sup> and its governing authority, including access to such buildings, equipment and records as the Visitor may require, to enable the Visitor to perform his or her functions under this section<sup>67</sup>.

Suspension of governing authority.

**21.**—(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<sup>68</sup> are being performed in a manner which constitutes a breach of the laws, statutes<sup>69</sup> or ordinances of or applicable to the university, the Minister shall so inform the chief officer<sup>70</sup> and give to the chief officer a copy of the report of the Visitor.

(2) The Minister may, after a period of 14 days commencing on the day on which he or she gave to the chief officer the report of the Visitor and after

<sup>63</sup> "[T]he Minister" means the Minister for Education": s 3, definition of "the Minister" – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>64</sup> "[S]tatutes" means the statutes made under section 33(1) by a governing authority, and includes statutes continued in force by section 33(3): s 3, definition of "statutes".

<sup>65</sup> TDs occasionally invoke this subsection, without much success, in an attempt to challenge university decisions on specific issues – see eg *Dáil Debates*, 27 June 2013, written answer 132 on "University Libraries" (the precise issue appears to have been on public access to UCD's library).

<sup>66</sup> "[E]mployee", in relation to a university "includes an officer of the university": s 3, definition of "employee".

<sup>67</sup> By s 3(3), "A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties".

<sup>68</sup> "[G]overning authority" includes — (a) a person or body appointed under section 21(4) to perform the functions of a governing authority, (b) in relation to the appointment of a new governing authority after the suspension of a governing authority of a university under section 21(4), the Visitor of that university, (c) in relation to the appointment of the first governing authority of a university, the commission for that university, and (d) except to the extent that its functions are limited under section 22, a governing body continued in existence by that section": s 3, definition of "governing authority".

<sup>69</sup> "[S]tatutes" means the statutes made under section 33(1) by a governing authority, and includes statutes continued in force by section 33(3): s 3, definition of "statutes".

<sup>70</sup> "[C]hief officer" "includes a person acting in the office or performing the duties of a chief officer": s 3, definition of "chief officer".

considering the observations, if any, of the governing authority or the chief officer on the report—

- (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 the termination 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 *subsection (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)<sup>71</sup> 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.

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<sup>71</sup> The application of this subsection to Trinity College Dublin is limited by s 4(2)-(4).

## CHAPTER III

*Interim Arrangements*

Governing bodies of existing colleges, etc., to continue in office until first governing authorities constituted.

22.<sup>72</sup>—A governing body (by whatever name known) of—

- (a) a constituent college or a university to which this Act applies and holding office on the commencement of this Part, or
- (b) an educational institution established under *section 9* as an additional university and holding office immediately before its establishment as a university,

shall continue in existence after that commencement or the establishment of the institution as a university, as the case may be, notwithstanding the repeal of any provision of an enactment by or under which that governing body was constituted and, except in relation to the appointment of the first governing authority<sup>73</sup> of the university, shall have the functions of a governing authority under this Act until the first governing authority is duly constituted under this Act.

Determination of composition of first governing authority.

23.<sup>74</sup>—(1) Subject to *section 16*, the Minister shall, as soon as practicable after the commencement of this Part, in respect of each university to which this Act applies, and after the establishment under *section 9* of any additional university in respect of that university, appoint a commission for the university.

(2) The members of a commission shall, subject to *subsection (3)*, be—

(a) in the case of a constituent university<sup>75</sup>—

- (i) the chief officer,
- (ii) the Registrar of the university,
- (iii) two members of the governing body (by whatever name known) of its corresponding constituent college holding office immediately before the commencement of this Part, at least one of whom shall be a member of the academic staff of the university, nominated by that governing body,
- (iv) the Chancellor of the National University of Ireland or a person nominated by the Chancellor, and
- (v) the Chairman of An tÚdarás<sup>76</sup> or a person nominated by the Chairman,

<sup>72</sup> The application of this section to Trinity College Dublin is limited by s 4(2)-(4).

<sup>73</sup> “[F]irst governing authority” means a governing authority of a university as that governing authority is first constituted after the commencement of Part III or, in the case of an additional university established under section 9, as first constituted after that university is established”: s 3, definition of “first governing authority”.

<sup>74</sup> The application of this section to Trinity College Dublin is limited by s 4(2)-(4).

<sup>75</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

<sup>76</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

(b) in the case of Dublin City University or the University of Limerick—

- (i) the chief officer,
- (ii) the Registrar of the university,
- (iii) two members of the Governing Body of the university holding office immediately before the commencement of this Part, at least one of whom shall be a member of the academic staff of the university, nominated by that Governing Body, and
- (iv) the Chairman of An tÚdarás<sup>77</sup> or a person nominated by the Chairman,

(c) in the case of Trinity College—

- (i) the Provost and the vice-Provost,
- (ii) the Chancellor of the University of Dublin, or a nominee of the Chancellor,
- (iii) two members of the Board of the College holding office immediately before the commencement of this Part, nominated by that Board, and
- (iv) the Chairman of An tÚdarás<sup>78</sup> or a person nominated by the Chairman, and

(d) in the case of an educational institution established under *section 9* as a university—

- (i) the chief officer (by whatever name known) of the institution holding office immediately before its establishment as a university,
- (ii) the senior officer<sup>79</sup> of the institution having responsibility to the chief officer for academic affairs, holding office immediately before its establishment as a university,
- (iii) such members of the governing body (by whatever name known) of the institution holding office immediately before its establishment as a university as the Minister determines after consultation with that governing body, and
- (iv) the Chairman of An tÚdarás<sup>80</sup> or a person nominated by the Chairman.

(3) If a person specified as a member of a commission in, or nominated as such under, *subsection (2)* is unable or unwilling to act as a member, the remaining members shall nominate a person to replace that person as a member, and the Minister shall appoint the nominated person accordingly.

<sup>77</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

<sup>78</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

<sup>79</sup> “[O]fficer”, in relation to a university, includes— (a) a permanent, full-time member of the academic staff of the university, (b) the chief officer, (c) a person who immediately before the commencement of this Part is an officer of a university, constituent college or recognised college, and (d) such other employees as the governing authority may from time to time determine”: s 3, definition of “officer”.

<sup>80</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

(4) The first meeting of a commission shall be convened by the chief officer and at the meeting the members shall appoint one of their number to act as chairperson of the commission.

(5) A commission shall, as soon as practicable after the date of the appointment of its members and in any case not later than three months from that date, in accordance with *section 16*, determine the composition of the governing authority of its university and, by notice in writing, inform the Minister of the composition as so determined.

(6) If a commission fails to determine the composition of a governing authority as required by *subsection (5)*, the Visitor shall appoint such person or body of persons as the Visitor thinks fit to carry out the functions of the commission.

(7) A commission, or person or body appointed under *subsection (6)*, shall remain in office until the first meeting of the relevant governing authority constituted in accordance with this Act and at the commencement of that meeting the commission or body is, by virtue of this section, dissolved.

#### CHAPTER IV

##### *Staff of University*

Chief officer.

**24.—**(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 ...<sup>81</sup>

(2) ...<sup>82</sup>

(3) The *Fourth Schedule* shall apply to the chief officer.

Staff.

**25.—**(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

<sup>81</sup> Final words deleted by the Institutes of Technology Act 2006, s 53(a)(i). Note the reporting requirement here, in s 33(2).

<sup>82</sup> Entire subsection deleted by the Institutes of Technology Act 2006, s 53(a)(ii).

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<sup>83</sup> of that university, such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister<sup>84</sup> with the consent of [the Minister for Public Expenditure and Reform<sup>85</sup>]<sup>86</sup>.

(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<sup>87</sup>.

(b) A corporation referred to in *section 13(2)(c)* 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<sup>88</sup>.

(6) A university may suspend or dismiss any employee but only in accordance with procedures<sup>89</sup>, and subject to any conditions, specified in a

<sup>83</sup> “[E]mployee”, in relation to a university “includes an officer of the university”: s 3, definition of “employee”.

<sup>84</sup> “[T]he Minister” means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010). Public Service pay has recently been subject to a number of statutory reductions: see especially Financial Emergency Measures in the Public Interest (No 2) Act, 2009, s 2, as amended by Financial Emergency Measures in the Public Interest Act 2013, s 2 (which is stated by subsection (6) to have effect notwithstanding “any other Act”, “any statute or other document to like effect of a university or other third level institution”, “any written agreement or contractual arrangement”, or “any verbal agreement, arrangement or understanding or any expectation”). See also Financial Emergency Measures in the Public Interest Act 2015.

<sup>85</sup> This function was transferred from the Minister for Finance to the Minister for Public Expenditure and Reform under the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011).

<sup>86</sup> This provision was the backdrop to a major row, when it became clear that a number of university salaries had been paid in apparent breach of guidelines. After a huge amount of bad publicity and an extremely bad-tempered Oireachtas hearing, the issue was settled in June 2012, it being agreed that the universities need not repay the money but must direct equivalent amounts to specific improvements in student services. The key legal issues were never clarified – it remains unclear whether the payments were unlawful, whether they could in principle be recovered from the universities if so, and what was the position of individuals to whom payments had been made. One case at least suggests that an employment contract entered into in breach of this provision can nonetheless be relied upon by the employee if it is otherwise binding: *University College Dublin v. Irish Federation of University Teachers* (16 August 2010, Labour Court).

<sup>87</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

<sup>88</sup> In *Tyndall Institute (University College Cork) v. SIPTU* (Labour Court, 1 August 2013), a number of workers employed at the Tyndall Institute claimed that they should be paid at the (higher) rate paid to comparable workers within the “parent” institution, namely UCC. The Court recommended that the higher rate should be paid, dismissing UCC’s argument that this was a pay increase inconsistent with the Public Service Agreement. See note 35 above.

<sup>89</sup> Various issues in relation to this provision arose in *Cahill v. Dublin City University* [2007] IEHC 20 (9 February 2007), [2009] IESC 80 (9 December 2009). Clarke J in the High

statute made following consultation through normal industrial relations 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<sup>90</sup> of officers<sup>91</sup>.

(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*<sup>92</sup> and that Schedule shall apply to an amendment to an existing scheme in the same way as it applies to a new scheme<sup>93</sup>.

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

(a) the rights and entitlement in respect of tenure<sup>94</sup>, remuneration, fees, allowances, expenses and superannuation<sup>95</sup> 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

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Court held that procedures not contained in a university statute are invalid, and that a simple statutory provision for dismissal when the university (or its President) thought fit could not be regarded as a “procedure” within the meaning of the statute. The Supreme Court however decided the case on the simpler ground that the university had not followed *fair* procedures.

<sup>90</sup> The first-instance judgment in *Cahill v. Dublin City University* [2007] IEHC 20 (9 February 2007) includes some discussion of “tenure”, though the case did not ultimately turn on that point. Interestingly, Clarke J thought that “tenure” implied some substantial rights, though he did not think that the Act rules out an appropriately-worded statute under which “established offices might have to be extinguished, amalgamated, or otherwise dealt with in a way which could affect the holders of those offices”.

<sup>91</sup> “[O]fficer’, in relation to a university, includes — (a) a permanent, full-time member of the academic staff of the university, (b) the chief officer, (c) a person who immediately before the commencement of this Part is an officer of a university, constituent college or recognised college, and (d) such other employees as the governing authority may from time to time determine”: s 3, definition of “officer”.

<sup>92</sup> This subsection and schedule continue to apply after the transfer of pension funds, but changes require ministerial consent: Financial Measures (Miscellaneous Provisions) Act 2009, s 13.

<sup>93</sup> Various schemes have now been made under this subsection: University of Dublin Trinity College (Closed) Pension Scheme 2009 (SI 493/2009); National University of Ireland, Maynooth (Closed) Pension Scheme 2009 (SI 494/2009); University College Dublin, National University of Ireland, Dublin (Closed) Pension Scheme 2010 (SI 96/2010); University College Cork - National University of Ireland, Cork (Closed) Pension Scheme 2010 (SI 97/2010); National University of Ireland, Galway Ollscoil na hÉireann, Gaillimh (Closed) Pension Scheme 2010 (SI 98/2010); and National University of Ireland (Closed) Pension Scheme 2010 (SI 283/2010). On the closure, see also *University of Dublin (Trinity College) v. A worker* (Labour Court, 23 August 2013); and for subsequent litigation see *Department of Public Expenditure and Reform v. Pensions Ombudsman* [2015] IEHC 792 (27 November 2015). Public service pensions are reduced by Financial Emergency Measures in the Public Interest Act 2013, s 5, which is stated by subsection (7) to apply notwithstanding “any other enactment”, “any statute or other document to like effect of a university or other third level institution”, or any agreement. See also Financial Emergency Measures in the Public Interest Act 2015.

<sup>94</sup> The main issue in *Fanning v. University College Cork* [2005] IEHC 264 (24 June 2005), [2008] IESC 59 (28 October 2008) was whether this provision entitled a pre-1997 professor to insist on pre-1997 procedures, when disciplined for post-1997 behaviour. The Supreme Court held that it did, but declined to comment on the numerous issues of procedure which had been considered in the High Court.

<sup>95</sup> The effect of this sub-section is preserved in relation to superannuation despite the transfer of university pension funds: Financial Measures (Miscellaneous Provisions) Act 2009, s 9(4).

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.

**26.—**(1) A governing authority shall establish procedures for the resolution of disputes which arise in the university, other than disputes to be dealt with through normal industrial relations structures operating in the university or appeals conducted in accordance with *section 27(2)(e)*.

Dispute  
resolution.

(2) Procedures established under *subsection (1)* shall—

- (a) be specified in a statute,
- (b) be established following consultation with trade unions and staff associations representing employees of the university and with the students union or other student representative body, and
- (c) provide for consideration of issues in dispute by an independent person or persons, as appropriate, one of whom, in the case of a constituent university<sup>96</sup>, shall be a nominee of the Chancellor of the National University of Ireland.

(3) *Subsections (1) and (2)* shall not apply to Trinity College.

## CHAPTER V

### *Academic Council*

**27.—**(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.

Academic  
council.

(2) Without limiting the generality of *subsection (1)*, the functions of the academic council shall include, within those constraints and consistent with the functions of the university and those applying to its academic council immediately before the commencement of this Part—

- (a) to design and develop programmes of study,
- (b) to establish structures to implement those programmes,
- (c) to make recommendations on programmes for the development of research,

<sup>96</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

- (d) to make recommendations relating to the selection, admission, retention and exclusion of students generally,
- (e) to propose the form and contents of statutes to be made relating to the academic affairs of the university, including the conduct of examinations, the determination of examination results, the procedures for appeals by students relating to the results of such examinations and the evaluation of academic progress,
- (f) to make recommendations for the awarding of fellowships, scholarships, bursaries, prizes or other awards,
- (g) to make general arrangements for tutorial or other academic counselling,
- (h) to perform any other functions, not in conflict with this Act, which may be delegated to it by the governing authority, and
- (i) to implement any statutes and regulations made by the governing authority relating to any of the matters referred to in this subsection.

Composition of  
academic council.

**28.**—(1) The majority of members of the academic council shall be members of the academic staff of the university and, subject to *subsection (2)*, the numbers, composition, selection, appointment and terms of office of members shall be provided for in a statute, which statute shall contain provisions for the inclusion on the academic council of—

- (a) the senior member of staff having responsibility to the chief officer for each academic discipline, school or department as the governing authority determines, or, in the case of Trinity College, the senior member of staff having responsibility to the chief officer for each faculty,
- (b) members from what, in the opinion of the governing authority, is an appropriate range of levels of other academic staff from an appropriate range of academic disciplines, and
- (c) an appropriate number of students.

(2) The composition and terms of office of members of an academic council to be first appointed under this Act shall be determined in consultation with the members of the academic council of the relevant university, constituent college or Recognised College holding office immediately before the commencement of this Part or, in the case of an educational institution established under *section 9* as a university after that commencement, with the members of the academic council (by whatever name known) of that institution holding office immediately before the date on which the educational institution was so established as a university.

(3) The chief officer and the senior officer of the university responsible to the chief officer for academic affairs shall be, *ex officio*, members of the academic council.

Business of  
academic council.

**29.**—(1) Subject to this Act and any directions of the governing authority, an academic council shall hold such meetings as it thinks necessary to perform its functions and may regulate its own procedure.

(2) The chief officer shall be entitled to preside at all meetings of the academic council or a committee of the council at which he or she is present, but if the chief officer at any time chooses not to so preside, he or she shall nominate a person to preside in his or her place.

(3) An academic council may establish such and so many committees as it thinks necessary to assist it in the performance of its functions.

(4) A committee may consist either wholly of members of the academic council or such combination of members and non-members as the academic council thinks fit.

**30.—**(1) An academic council (by whatever name known) of a university, constituent college or Recognised College holding office immediately before the commencement of this Part shall, after that commencement and notwithstanding the repeal of any provision of an enactment under which it was constituted, continue to exist as if that provision had never been repealed.

Continuation of existing academic councils.

(2) An academic council continued in existence under *subsection (1)* shall be the academic council for the university, with all the powers of an academic council under this Act, until an academic council for the university is established in accordance with this Chapter or the day which is one year from the date of commencement of this Part, whichever is earlier.

## CHAPTER VI

### *Charters and Statutes*

**31.—**(1) A university may have a charter, not in conflict with this Act, setting out all or any of the following:

Charters and supplementary charters.

- (a) its objects and functions in respect of its academic and administrative affairs;
- (b) the arrangements it has for the promotion and use of the Irish language and the promotion of Irish cultures;
- (c) the composition of the governing authority and its functions;
- (d) the rights of its employees and students and their responsibility towards the university and the responsibility of the university towards them;
- (e) the arrangements for review of, or appeals against, decisions of the governing authority or the academic council which affect employees or students;
- (f) its policy in respect of the promotion of equality of opportunity among students and employees;
- (g) its policy in respect of adult and continuing education and the arrangements in place for the provision of that education, including part-time and evening courses; and
- (h) any other matters the governing authority may consider relevant.

(2) In preparing a charter, the governing authority shall consult, in such manner as it thinks appropriate, with the academic staff and other employees of the university, any recognised trade union or staff association, any recognised student union or other student representative body, or with any other person or group, both within and outside of the university, it considers should be consulted.

(3) A charter made under this section by a governing authority of a constituent university<sup>97</sup> or Trinity College shall be supplemental to the charter of that university in force at the commencement of this Part.

(4) A draft of a proposed charter under this section may be submitted by the governing authority to the Government with a request that it be recognised, and the Government shall, by order, recognise the charter as so drafted.

(5) An order under *subsection (4)* shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done under the order or the charter which the order recognised.

Preservation of  
charters.

**32.**<sup>98</sup>—(1) A reference to the Irish Universities Act, 1908, in Clauses I, III and VIII of the charters of the constituent colleges and in Clause I of the charter of the National University of Ireland shall be construed as a reference to that Act and the *Universities Act, 1997*.

(2) The Government may, by order made on the application of a university, amend the charter of the university in a manner agreed to by the university.

(3) Where a university considers that its charter, as amended by or under this Act, should be consolidated into a single instrument, it may submit to the Government a copy of the consolidated charter and the Government, if it agrees, may by order recognise the charter as so consolidated.

(4) An order under this section shall be laid before each House of the Oireachtas as soon as practicable after it is made and, if a resolution annulling the order is passed by either House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done under the order or the consolidated charter which the order recognised.

Statutes.

**33.**<sup>99</sup>—(1) Subject to this Act and to the charter, if any, of the university, a governing authority of a university or the Senate<sup>100</sup> may, and where required by this Act to do so shall, make such and so many statutes and regulations as it considers appropriate to regulate the affairs of the university.

<sup>97</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

<sup>98</sup> The application of this section to Trinity College Dublin is limited by s 4(2)-(4).

<sup>99</sup> The application of this section to Trinity College Dublin is limited by s 4(2)-(4).

<sup>100</sup> “[T]he Senate” means the Senate of the National University of Ireland”: s 3, definition of “the Senate”.

(2) A governing authority shall, as soon as practicable after the making of a statute or a regulation under *section 17(2)* or *24(1)*, inform An tÚdarás<sup>101</sup> and the Minister of the making of the statute and shall arrange for its publication in the *Iris Oifigiúil*.

(3) The statutes in force immediately before the commencement of this Part in a university to which this Act applies or its corresponding constituent college or Recognised College shall, so far as they are consistent with this Act, continue in force as statutes of the university or the corresponding constituent university<sup>102</sup> on and after that commencement but may be repealed or amended by a statute made under *subsection (1)*.

(4) Section 5 of the Irish Universities Act, 1908, is hereby repealed<sup>103</sup>.

## CHAPTER VII

### *Planning and Evaluation*

**34.—(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<sup>104</sup>, during the period, being not less than three years, to which the plan relates.<sup>105</sup>

Strategic  
development  
plan.

(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<sup>106</sup> and to the Minister<sup>107</sup>.

<sup>101</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

<sup>102</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

<sup>103</sup> This means that the old requirement to lay draft statutes before the Oireachtas has gone – statutes do not now, as a rule, require government approval, though on the special case of pension statutes see sch 5.

<sup>104</sup> Any university “shall, having regard to the functions and purpose of the body and to its size and the resources available to it – (a) set out in a manner that is accessible to the public in its strategic plan (howsoever described) an assessment of the human rights and equality issues it believes to be relevant to the functions and purpose of the body and the policies, plans and actions in place or proposed to be put in place to address those issues, and (b) report in a manner that is accessible to the public on developments and achievements in that regard in its annual report (howsoever described)” (Irish Human Rights and Equality Commission Act 2014, s 42(2)). By s 42(1), the university must “in the performance of its functions, have regard to the need to – (a) eliminate discrimination, (b) promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and (c) protect the human rights of its members, staff and the persons to whom it provides services”.

<sup>105</sup> Note that the statutory obligation is to bring a plan into existence and to tell certain bodies about it, but here is no express duty to follow it or to explain deviations from it – though note s 40(1) below.

<sup>106</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

[(4)<sup>108</sup> Where the governing authority of a university established under *section 9(2)* approves a strategic development plan under this section it shall—

- (a) ensure that the plan provides the means by which that university shall comply with any requirements imposed on the university under the *Qualifications and Quality Assurance (Education and Training) Act 2012*, and
- (b) provide a copy of that plan to the Qualifications and Quality Assurance Authority of Ireland.

(5) Where the chief officer of a university established under *section 9(2)* prepares a report on the operations and the performance of that university under *section 41*, he or she shall have regard to the part or parts of the strategic development plan under this section relevant to any requirements imposed on that university under the *Qualifications and Quality Assurance (Education and Training) Act 2012*.

(6) An tÚdarás shall consult with the Qualifications and Quality Assurance Authority of Ireland with regard to the means by which a university established under *section 9(2)* shall comply with any requirements imposed on the university under the *Qualifications and Quality Assurance (Education and Training) Act 2012* when reviewing a strategic development plan prepared by the university in accordance with this section.]

Quality assurance. **35.** ...<sup>109</sup>

Equality policy. **36.**—(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
- (b) equality, including gender equality, in all activities of the university<sup>110</sup>,

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<sup>111</sup>.

<sup>107</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>108</sup> New subsections (4)-(6) inserted by the Qualifications and Quality Assurance (Education and Training) Act 2012, in force 5 November 2012 (SI 421/2012).

<sup>109</sup> This section is now repealed by the Qualifications and Quality Assurance (Education and Training) Act 2012, s 6 and sch 2, in force 5 November 2012 (SI 421/2012). The new (and much more elaborate) quality assurance regime is set out in the 2012 Act ss 27-42. For the continuing validity of pre-1992 procedures and reviews see the 2012 Act s 84(2) and (3).

<sup>110</sup> On the universities’ duties in respect of equality and related matters see also Irish Human Rights and Equality Commission Act 2014, s 42(1), discussed in note 104 above.

<sup>111</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

(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)*<sup>112</sup>.

## CHAPTER VIII

### *Finance, Property and Reporting*

**37.—**(1) A governing authority shall, on or before the 1st day of March in each financial year<sup>113</sup> or such other date as An tÚdarás<sup>114</sup> may approve (which may be a date before the commencement of the financial year to which the statement relates), 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.

Budgets.

(2) An tÚdarás shall, having regard to the statement and after consultation with the governing authority of a university, determine the amount of money to be allocated to the university for the financial year from moneys provided to An tÚdarás pursuant to section 12 of the Higher Education Authority Act, 1971, and the amount so allocated, together with the other expected income of the university as agreed with An tÚdarás, shall be the budget of the university for the financial year.

(3) When the budget of a university has been determined, it shall be a function of the chief officer, acting on the authority of the governing authority, to carry it into effect.

(4) An tÚdarás may at any time, on application made to it by the governing authority of a university, increase the amount of money to be allocated to the university from moneys provided to An tÚdarás.

(5) 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 which has not been increased in accordance with *subsection (4)*, (in this section referred to as a “material departure from the budget”) the chief officer shall so inform the governing authority.

(6) Where a governing authority, despite being informed as required by *subsection (5)*, 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 An tÚdarás of the decision of the governing authority.

<sup>112</sup> Note also the university’s duty to “have regard to the need to .. promote equality of opportunity and treatment of its staff and the persons to whom it provides services, and [to] protect the human rights of its members, staff and the persons to whom it provides services” (Irish Human Rights and Equality Commission Act 2014, s 42(1)).

<sup>113</sup> “[F]inancial year” means a period of 12 months commencing on the 1st day of January in each year”: s 3, definition of “financial year”.

<sup>114</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

(7) Where, notwithstanding this section, a university incurs expenditure in excess of its budget which is not met from the income of the university other than the money allocated to it by An tÚdarás, that excess shall be a first charge on the budget for the next succeeding financial year.

Borrowing and  
loan guarantees.

**38.**—(1) A university may borrow money by means of bank overdraft or otherwise and may guarantee or underwrite a loan taken or borrowing undertaken by a person or a body of persons.

(2) Borrowing, guaranteeing and underwriting under *subsection (1)* shall be in accordance with a framework which shall be agreed from time to time between the universities and An tÚdarás<sup>115</sup>, following consultation by An tÚdarás with the Minister<sup>116</sup>[, the Minister for Public Expenditure and Reform<sup>117</sup>] and the Minister for Finance.

Keeping of  
accounts  
and records.

**39.**—(1) A university shall keep, in such form as may be approved by An tÚdarás<sup>118</sup>, all proper and usual accounts and records of all income received or expenditure incurred by it.

(2) Accounts kept in pursuance of *subsection (1)* shall, to the extent directed by the Comptroller and Auditor General, be submitted annually by a university to the Comptroller and Auditor General, for audit, by such date as the Comptroller and Auditor General may from time to time determine 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.

(3) The Minister shall cause copies of the accounts presented under this section to the Minister, together with copies of the report of the Comptroller and Auditor General on those accounts, to be laid before each House of the Oireachtas.

Fees.

**40.**—(1) A university may determine and charge fees of such amounts for student registration, courses, lectures, examinations, exhibitions or any other event, service or publication held or provided at or by, or produced by, the university.

(2) An tÚdarás<sup>119</sup> may review with the universities the fees charged or proposed to be charged by the universities for student registration and courses, and for lectures and examinations relating to those courses.

(3) Arising from a review under *subsection (2)*, An tÚdarás may, without prejudice to *subsection (1)* and after consultation with the Minister, advise the universities on the fees which in its opinion should be charged.

<sup>115</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

<sup>116</sup> “[T]he Minister” means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>117</sup> Words added by the Ministers and Secretaries (Amendment) Act 2011, s 84.

<sup>118</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

<sup>119</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

41.—(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.

Report and information.

(2) The governing authority shall publish the report in such form as it thinks fit and shall provide the Minister<sup>120</sup> 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<sup>121</sup>.

42.—(1) Subject to *subsection (2)*, a university may sell or otherwise dispose of any land the property of the university.

Disposal of land, etc.

(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.

## CHAPTER IX

### *The National University of Ireland, Maynooth*

43.—(1) The Recognised College of St. Patrick's College, Maynooth is hereby established as a constituent university of the National University of Ireland and shall bear, and be known by, the name National University of Ireland, Maynooth, or in the Irish language, Ollscoil na hÉireann, Má Nuad.

Establishment of National University of Ireland, Maynooth.

(2) The National University of Ireland, Maynooth shall be a body corporate with perpetual succession and an official seal and have power to sue and may be

<sup>120</sup> “[T]he Minister” means the Minister for Education: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>121</sup> For another reporting obligation on universities, relating to registered students, see Social Welfare (Consolidated Claims, Payments and Control) Regulations 2007 (SI 142/2007) reg 238.

sued in its corporate name and to acquire, hold and dispose of land or any other property.

Transfer of  
existing  
staff.

**44.**—(1) Every person who, immediately before the commencement of this Part, was employed by St. Patrick’s College, Maynooth and who was paid, in respect of that employment, exclusively from moneys provided by the Oireachtas shall, on the commencement of this Part, become and be an employee of the National University of Ireland, Maynooth.

(2) Every person who, immediately before the commencement of this Part, was employed by St. Patrick’s College, Maynooth and who was paid, in respect of that employment, partly by St. Patrick’s College and partly from moneys provided by the Oireachtas shall, on the commencement of this Part, remain as an employee of St. Patrick’s College on the date of commencement of this Part but may thereafter, with the agreement of St. Patrick’s College and the governing authority of the university, become and be an employee of the National University of Ireland, Maynooth.

(3) A person to whom *subsection (1)* applies or who by virtue of *subsection (2)* becomes an employee of the National University of Ireland, Maynooth shall not, while in the service of the university, receive less remuneration or be subject to less beneficial conditions of service than the remuneration at the level to which he or she was entitled, and conditions of service to which he or she was subject, immediately before the commencement of this Part.

(4) The conditions of service, restrictions, requirements and obligations to which a person to whom *subsection (3)* applies was subject immediately before the commencement of this Part shall, unless they are varied by agreement, continue to apply to the person, and shall be exercised or imposed by the university or the chief officer as may be appropriate, while that person is in the service of the university.

(5) The university may, following consultation through normal industrial relations structures operating in the university with any recognised staff associations or trade unions concerned, redistribute or rearrange the duties to be performed by employees to whom *subsection (3)* applies and those employees shall be bound to perform the duties allocated in any such redistribution or rearrangement.

(6) A redistribution or rearrangement referred to in *subsection (5)* shall not be taken to be removal from or abolition of office for the purpose of any scheme or enactment relating to superannuation or compensation for loss of office.

#### PART IV

##### NATIONAL UNIVERSITY OF IRELAND

Amendment of  
Charter of National  
University of  
Ireland.

**45.**—(1) Clause VI of the Charter of the National University of Ireland is hereby amended by the deletion of “the General Board of Studies,”.

(2) Clause X of the Charter of the National University of Ireland is hereby amended by—

(a) the repeal of sub-clauses (2), (3) and (4), and

(b) the substitution of the following for sub-clause (5):

“(5)(i) The Senate shall be constituted by—

(a) the Chancellor and the Registrar of the University and the chief officers of the constituent universities,

(b) four persons nominated by the Government, two of whom shall be women and two men,

(c) four persons elected by each of—

(i) the National University of Ireland, Dublin,

(ii) the National University of Ireland, Cork,

(iii) the National University of Ireland, Galway, and

(iv) the National University of Ireland, Maynooth,

(d) eight members of Convocation elected by Convocation of the University, four of whom shall be women and four men,

(e) not more than four persons co-opted to be members of the Senate by the Senate as constituted by the members appointed as referred to in paragraphs (a), (b), (c) and (d).

(ii) The governing authorities of the constituent universities shall determine the procedures for electing persons to the Senate, as provided for in paragraph (i), and those procedures shall ensure an appropriate gender balance, as determined or approved from time to time by the Minister, among the persons so elected and shall be set out in a statute of each university.

(iii) The members, other than *ex officio* members, shall hold office for a period not exceeding five years for which they are elected or nominated and a member whose term of office expires by effluxion of time shall be eligible to again be a member.

(iv) The Statutes shall prescribe, so far as may be necessary, the time at which and the manner in which a person may become a member of the Senate.”.

(3) The Charter of the National University of Ireland is hereby amended by the deletion of subclauses (1) and (4) of Clause XIV.

(4) Clause XIX of the Charter of the National University of Ireland is hereby amended by the deletion of “the General Board of Studies,”.

**46.**—The Irish Universities Act, 1908, is hereby amended—

(a) in section 1(2), by the deletion of “, and after the expiration of that time be constituted in manner provided by the First Schedule to this Act”,

(b) by the deletion of section 3(2) and (3),

(c) in section 4(3), by the deletion of “or college”, wherever occurring,

Amendment of  
Irish Universities  
Act, 1908.

- (d) in section 7(4), by the deletion of all words after “religious worship or observance”,
- (e) in section 7(6), by the deletion of “and the governing bodies of the constituent colleges of the new university having its seat at Dublin respectively”, and
- (f) by the deletion of the First Schedule thereto.

Relationship of constituent universities to National University of Ireland.

**47.**—(1) The Senate of the National University of Ireland shall determine the basic matriculation requirements for the constituent universities but each university may prescribe additional requirements generally or in respect of particular faculties of the university.

(2) Each constituent university shall inform the Senate of the courses established from time to time by that university and the Senate may establish a committee for the purpose of reviewing the content and teaching of the courses and may appoint external examiners to assist in any review.

(3) The results of a review conducted by a committee shall be communicated by the Senate to the university concerned.

(4) The Senate shall appoint such and so many external examiners to a constituent university, including examiners appointed for the purpose of *subsection (2)*, as that university shall from time to time recommend and the functions of those external examiners shall be determined by the Senate, with the concurrence of the university.

(5) The degrees and other qualifications awarded by a constituent university shall be degrees and qualifications of the National University of Ireland and shall be so designated.

(6) Where the President or any other employee of a constituent college was appointed by the National University of Ireland, the powers and functions of that University in respect of his or her removal from office shall, notwithstanding anything in this Act, remain in force in relation to that person.

Degrees and qualifications of Royal College of Surgeons in Ireland.

**[47A.]**<sup>122</sup>—(1) Where—

- (a) degrees and qualifications awarded by the Royal College of Surgeons in Ireland are approved by the National University of Ireland, and
- (b) the Royal College of Surgeons in Ireland is a Recognised College of the National University of Ireland,

those degrees and qualifications shall be degrees and qualifications of the National University of Ireland and shall be so designated.

(2) If at any time the Royal College of Surgeons in Ireland ceases to be a Recognised College of the National University of Ireland, a degree or qualification referred to in *subsection (1)* awarded at any time prior to the Royal College of Surgeons in Ireland ceasing to be a Recognised College of the National University of Ireland—

<sup>122</sup> Entire new section added by the Qualifications and Quality Assurance (Education and Training) Act 2012, in force 5 November 2012 (SI 421/2012). See also the Royal College of Surgeons in Ireland (Charters Amendment) Act 2003.

- (a) remains a degree or qualification, as the case may be, of the National University of Ireland, and
- (b) shall be so designated,

notwithstanding that the Royal College of Surgeons in Ireland has ceased to be a Recognised College of the National University of Ireland.]

**48.**—(1) The members of each constituent university<sup>123</sup> shall be—

- (a) the members of its governing authority,
- (b) the members of its academic council,
- (c) its employees<sup>124</sup>,
- (d) its students<sup>125</sup>,
- (e) its graduates, and
- (f) such other persons as its governing authority may appoint to be members.

Membership of  
constituent  
universities.

(2) All students of a constituent college or the Recognised College of St. Patrick's College, Maynooth on whom a degree of the National University of Ireland was conferred as a result of their studies at the college before the commencement of *Part III* shall be regarded as graduates of the corresponding constituent university for the purposes of *subsection (1)(e)*.

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<sup>123</sup> “[C]onstituent university” means University College Cork, University College Dublin, NUI Galway or NUI Maynooth: s 3, definition of “constituent university”.

<sup>124</sup> “[E]mployee”, in relation to a university “includes an officer of the university”: s 3, definition of “employee”.

<sup>125</sup> “[S]tudent”, in relation to a university, means a person registered as a student by the university or a full-time officer of the Students Union or other student representative body in the university recognised by the governing authority who was first elected or appointed to his or her office while he or she was a registered student of the university”: s 3, definition of “student”.

## PART V

AN tÚDARÁS<sup>126</sup>

**49.**—An tÚdarás, in furtherance of its general functions under section 3 of the Higher Education Authority Act, 1971, shall assist the universities in achieving the objectives of *Chapters IV, VII and VIII of Part III* and may review—

Reviews.

- (a) strategic development plans prepared in accordance with *section 34*,
- (b) the procedures established in accordance with *section 35*<sup>127</sup>,
- (c) the policies set out in the statement provided for in *section 36* and their implementation, and
- (d) the matters referred to in *section 50*, having regard to any guidelines issued in accordance with that section and information provided in accordance with *section 51*,

and may, following consultation with the universities, publish a report, in such form and manner as it thinks fit, on the outcome of any such review.

Guidelines.

**50.**—(1) An tÚdarás may, following consultation with all or any of the chief officers, issue guidelines on—

- (a) the numbers or grades of employees of the university, or
- (b) the proportion of the budget of the university to be applied to the different activities of the university.

(2) Guidelines issued under *subsection (1)* shall not be binding on a university, and if a university departs from those guidelines An tÚdarás shall not, as a result of such departure, impose restrictions or conditions on the use of moneys paid to the university by An tÚdarás or otherwise limit moneys payable to the university by An tÚdarás<sup>128</sup>.

Information on staffing.

**51.**—A university shall provide tÚdarás with such information as tÚdarás may from time to time request relating to the number of employees employed by the university, their composition by grade, their terms and conditions of employment (including their remuneration, fees, allowances, expenses and superannuation) and any other related matters.

<sup>126</sup> “An tÚdarás” is the Higher Education Authority (HEA) – see s 3, definition of “An tÚdarás”.

<sup>127</sup> This section is abolished by the Qualifications and Quality Assurance (Education and Training) Act 2012, in force 5 November 2012 (SI 421/2012).

<sup>128</sup> A strong case could be made that the Employment Control Framework, which considerably restricts university appointments, is illegal under this subsection. However, in current circumstances, a vigorous complaint about the legality of the Framework seems unlikely to lead to its revocation, and highly likely to lead to the abolition of s 50(2).

## PART VI

## MISCELLANEOUS

Educational institution not to be described as university.

**52.—**(1) [Subject to *section 2* of the *Education (Miscellaneous Provisions) Act 2015*<sup>129</sup> or except<sup>130</sup>] in relation to an educational institution or facility established and described as such before the 30th day of July, 1996, (in which case it may continue to be so described<sup>131</sup>), a person shall not, without the approval of the Minister<sup>132</sup>, use the word “university” to describe an educational establishment or facility.

(2) The Minister may apply to the High Court for an injunction to restrain any person from using the word “university” in contravention of *subsection (1)*<sup>133</sup>.

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<sup>129</sup> That section (in force 1 July 2015, see SI 268/2015) allows a qualifying educational provider to apply to the Minister for Education and Skills for an authorisation, the effect of which is to permit the provider to describe itself, outside Ireland, as a “university” for the purposes of marketing and collaborative projects relating to education, training or research. The authorisation may be made subject to conditions, and is subject to subsequent review and possible withdrawal. While entitlement to apply for authorisation is stated in quite general terms, at present only one institution qualifies, and that is the RCSI.

<sup>130</sup> Words added by the Education (Miscellaneous Provisions) Act 2015, s 6 (in force 1 July 2015, see SI 268/2015).

<sup>131</sup> Possible beneficiaries of this exemption are the National University of Ireland, St Patrick’s College Maynooth (a Pontifical University) and the Open University in Ireland.

<sup>132</sup> “[T]he Minister” means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>133</sup> See to similar effect the Education (Miscellaneous Provisions) Act 2015 s 2(12) and (13) (in force 1 July 2015, see SI 268/2015).

## FIRST SCHEDULE

Section 6.

## ENACTMENTS REPEALED

## PART I

No. and Year	Short Title
No. 25 of 1980	National Institute for Higher Education, Limerick, Act, 1980
No. 30 of 1980	National Institute for Higher Education, Dublin, Act, 1980

## PART II

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 14 of 1989	University of Limerick Act, 1989	Sections 3, 4 and 5
No. 15 of 1989	Dublin City University Act, 1989	Sections 3, 4 and 5

## SECOND SCHEDULE

Section 7 (1).

## TABLE

Constituent College (1)	Name of Constituent University (2)
University College, Cork	National University of Ireland, Cork Ollscoil na hÉireann, Corcaigh
University College, Dublin	National University of Ireland, Dublin Ollscoil na hÉireann, Baile Átha Cliath
University College, Galway	National University of Ireland, Galway Ollscoil na hÉireann, Gaillimh

## 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.

*Section 15 (4).*

(2) The seal of a university shall be authenticated by the signature of the chairperson<sup>134</sup> 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*, 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*, 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.

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<sup>134</sup> “[C]hairperson’, in relation to a governing authority, includes the chief officer, a deputy-chairperson and a person presiding at a meeting of the authority, while he or she is acting as the chairperson or so presiding”: s 3, definition of “chairperson”.

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<sup>135</sup> 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<sup>136</sup>, with the approval of [the Minister for Public Expenditure and Reform<sup>137</sup>], 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

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<sup>135</sup> “[C]hairperson’, in relation to a governing authority, includes the chief officer, a deputy-chairperson and a person presiding at a meeting of the authority, while he or she is acting as the chairperson or so presiding”: s 3, definition of “chairperson”.

<sup>136</sup> “[T]he Minister’ means the Minister for Education”: s 3, definition of “the Minister” – now the Minister for Education and Skills (by SI 430/1997 and SI 184/2010).

<sup>137</sup> This function was transferred from the Minister for Finance to the Minister for Public Expenditure and Reform under the Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011).

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.

#### FOURTH SCHEDULE

##### CHIEF OFFICER

*Section 15 (4).*

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<sup>138</sup>.

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.

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<sup>138</sup> By s 3(3), "A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties".

[8.<sup>139</sup> A chief officer shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts 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 (Amendment) 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 Dáil Éireann.

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<sup>140</sup>.

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.]

## FIFTH SCHEDULE<sup>141</sup>

### SUPERANNUATION

1. As soon as practicable after the commencement of *Part III* a university shall, subject to *section 25*, prepare and submit to An tÚdarás<sup>142</sup> a scheme or schemes for the granting of pensions, gratuities and other allowances to or in respect of each of its employees (including the chief officer) as it thinks fit consequent on their retirement or death as the case may be.

*Section 25 (7).*

2. Every scheme shall fix the time and conditions of retirement of all persons to or in respect of whom pensions, gratuities or allowances are payable under the scheme and different times and conditions may be fixed in respect of different classes or persons.

3. A university may at any time prepare and submit to An tÚdarás a scheme amending a scheme previously submitted and approved under this Schedule.

<sup>139</sup> New paragraphs 8, 9 and 10 added by Institutes of Technology Act 2006, s 53(b).

<sup>140</sup> Doubts have been expressed over the constitutionality of this paragraph, on both free speech and separation-of-powers grounds.

<sup>141</sup> This schedule continues to apply after the transfer of pension funds, but changes require ministerial consent: Financial Measures (Miscellaneous Provisions) Act 2009, s 13.

<sup>142</sup> "An tÚdarás" is the Higher Education Authority (HEA) – see s 3, definition of "An tÚdarás".

4. A scheme or amended scheme submitted to An tÚdarás under this Schedule shall, if approved by An tÚdarás with the consent of the Minister and the Minister for Finance, be carried out by the university in accordance with its terms.

5. If a dispute arises as to the claim of any person to, or the amount of, any pension, gratuity or allowance payable in pursuance of a scheme under this Schedule, it shall be submitted to An tÚdarás for determination by An tÚdarás subject to the agreement of the Minister and the Minister for Finance.

6. No pension, gratuity, allowance or other payment shall be granted by a university nor shall any other arrangements be entered into by the university for the provision of a pension, gratuity, allowance or other payment to or in respect of an employee (including the chief officer) otherwise than in accordance with a scheme under this Schedule, or with the approval of An tÚdarás, given with the consent of the Minister and the Minister for Finance.

7. The Minister shall cause every scheme submitted and approved under this Schedule to be laid before each House of the Oireachtas as soon as practicable after it is so approved and if either House, within the next 21 days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done under the scheme.



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*Number 30 of 2003*

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**INDUSTRIAL DEVELOPMENT  
(SCIENCE FOUNDATION IRELAND) ACT 2003**

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ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation and commencement.
2. Interpretation.
3. Establishment day.
4. Expenses.
5. Regulations.

PART 2

SCIENCE FOUNDATION IRELAND

6. Establishment of Foundation.
7. Functions of Foundation.  
[7A. Disbursement of certain funds<sup>1</sup>]  
[7B. International cooperation<sup>2</sup>]
8. Board of Foundation.

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<sup>1</sup> Inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 5, in force 27 November 2013 (SI 448/2013).

<sup>2</sup> Inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 5, in force 27 November 2013 (SI 448/2013).

9. Membership of Board.
10. Chairperson of Board.
11. Meetings of Board.
12. Membership of either House of Oireachtas, European Parliament or local authority.
13. Director General.
14. Attendance by Director General at Dáil Éireann committee.
15. Committees.
16. Disclosure of interests.
17. Disclosure of information.
18. Seal of Foundation.
19. ...<sup>3</sup>
20. ...<sup>4</sup>
21. ...<sup>5</sup>
22. Consultants and advisers.
23. Strategic plans and work programmes.
24. Annual reports and accounts.
25. Information to Minister and Forfás.
26. Premises of Foundation.
27. Transfer of rights and liabilities to Foundation.

### PART 3

#### AMENDMENT OF INDUSTRIAL DEVELOPMENT ACTS 1986 TO 1998 AND SHANNON FREE AIRPORT DEVELOPMENT COMPANY ACTS 1959 TO 1998

28. Amendment of section 21 of Act of 1986.
29. Amendment of section 25 of Act of 1986.
30. Amendment of section 28 of Act of 1986.
31. Amendment of section 29 of Act of 1986.

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<sup>3</sup> This section, which was never brought into force, was deleted by Industrial Development (Forfás Dissolution) Act 2014, s 11, in force 16 July 2014 (SI 304/2014).

<sup>4</sup> This section, which was never brought into force, was deleted by Industrial Development (Forfás Dissolution) Act 2014, s 12, in force 16 July 2014 (SI 304/2014).

<sup>5</sup> This section, which was never brought into force, was deleted by Industrial Development (Forfás Dissolution) Act 2014, s 13, in force 16 July 2014 (SI 304/2014).

32. Amendment of section 31 of Act of 1986.
33. Amendment of section 34 of Act of 1986.
34. Amendment of Shannon Free Airport Development Company  
(Amendment) Act 1986.
35. Amendment of Act of 1993.
36. Amendment of section 10 of Act of 1995.
37. Amendment of Act of 1998.



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*Number 30 of 2003*

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**INDUSTRIAL DEVELOPMENT (SCIENCE FOUNDATION IRELAND)  
ACT 2003**

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AN ACT TO MAKE FURTHER PROVISION FOR THE DEVELOPMENT OF INDUSTRY, TRADE AND ENTERPRISE AND FOR THAT PURPOSE TO ESTABLISH A BODY TO BE KNOWN AS SCIENCE FOUNDATION IRELAND OR, IN THE IRISH LANGUAGE AS FONDÚIREACHT EOLAÍOCHTA ÉIREANN, TO DESIGNATE FUNCTIONS, TO AMEND THE INDUSTRIAL DEVELOPMENT ACTS 1986 TO 1998, THE SHANNON FREE AIRPORT DEVELOPMENT COMPANY (AMENDMENT) ACT 1986 AND TO PROVIDE FOR RELATED MATTERS. [14th July, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title,  
collective citation  
and commencement.

**1.**— (1) This Act may be cited as the Industrial Development (Science Foundation Ireland) Act 2003.

(2) The Industrial Development Acts 1986 to 1998 and this Act may be cited together as the Industrial Development Acts 1986 to 2003.

(3) The Shannon Free Airport Development Limited Acts 1959 to 1998 and *section 34* of this Act may be cited together as the Shannon Free Airport Development Limited Acts 1959 to 2003.

(4) This Act shall come into operation on such day or days as the Minister 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 different provisions<sup>6</sup>.

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<sup>6</sup> The entire Act was brought into force (with the exception of ss 19-21) on 25 July 2003 (SI 325/2003). Ss 19-21 were never in force, and have now been deleted by Industrial Development (Forfás Dissolution) Act 2014, ss 11-13, in force 16 July 2014 (SI 304/2014).

2.—(1) In this Act, unless the context otherwise requires—

“Act of 1986” means the Industrial Development Act 1986;

“Act of 1993” means the Industrial Development Act 1993;

“Act of 1995” means the Industrial Development Act 1995;

“Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998;

[“applied research” means original investigation undertaken in order to acquire new knowledge directed primarily towards a specific practical aim or objective;<sup>7</sup>]

“Board” means the Board of the Foundation referred to in *section 8*;

“Director General” means the chief officer of the Foundation appointed under *section 13*;

“establishment day” means the day appointed by the Minister under *section 3* to be the establishment day<sup>8</sup>;

“Forfás” has the meaning assigned to it by *section 5* of the Act of 1993<sup>9</sup>;

“Foundation” has the meaning assigned to it by *section 6*;

“functions” includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties;

“institution” means any institute, university, college, laboratory, office or service (whether under the control of a Minister or otherwise) which is wholly or partly engaged in research and development or any other activity related to science or technology;

“Minister” means the Minister for Enterprise, Trade and Employment<sup>10</sup>;

“oriented basic research” means research that is carried out with the expectation that it will produce a broad base of knowledge that is likely to form the background to the solution of recognised or expected current or future problems or possibilities;

“prescribed” means prescribed by regulations made by the Minister;

“remuneration” includes allowances for expenses, benefits-in-kind and superannuation;

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<sup>7</sup> Definition inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3, in force 27 November 2013 (SI 448/2013).

<sup>8</sup> Establishment day is 25 July 2003 (SI 326/2003).

<sup>9</sup> That is, the Industrial Development Act 1993 (see earlier in the subsection, “Act of 1993”). But Forfás is now dissolved, as of 1 August 2014 (SI 341/2014).

<sup>10</sup> The Minister has subsequently been re-titled, first as the Minister for Enterprise, Trade and Innovation (by SI 185/2010) and then as the Minister for Jobs, Enterprise and Innovation (by SI 245/2011). The Minister’s powers (except with regard to prosecution) and duties have on a number of occasions been delegated to specific named Ministers of State: see SI 288/2008, SI 250/2009, SI 332/2010, SI 61/2011, SI 241/2011 and SI 547/2014.

[“strategic areas of opportunity for the State” shall be construed in accordance with section 7(6);<sup>11</sup>]

“superannuation benefits” means pensions, gratuities and other allowances payable on resignation, retirement or death.

(2) In this Act—

(a) a reference to a section or Part is a reference to a section or a Part of this Act unless it is indicated that reference to some other enactment is intended,

(b) a reference to a subsection or paragraph is to a subsection or paragraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

(c) a reference to an enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment including this Act.

Establishment day.      3.— The Minister<sup>12</sup> shall by order appoint a day<sup>13</sup> to be the establishment day for the purposes of this Act.

Expenses.                4.— The expenses incurred by the Minister<sup>14</sup> in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas<sup>15</sup>.

Regulations.            5.—(1) The Minister<sup>16</sup> may by regulations, provide for any matter referred to in this Act as prescribed or to be prescribed<sup>17</sup>, and make regulations generally for the purpose of giving effect to this Act.

(2) Regulations under this Act may contain such consequential, supplementary and ancillary provisions as the Minister considers to be necessary or expedient.

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<sup>11</sup> Definition inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3, in force 27 November 2013 (SI 448/2013).

<sup>12</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>13</sup> 25 July 2003 (see SI 326/2003).

<sup>14</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>15</sup> Note also Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 2 (in force 27 November 2013 (SI 448/2013)), on expenses incurred under that Act.

<sup>16</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>17</sup> “[P]rescribed’ means prescribed by regulations made by the Minister (s 2(1), “prescribed”).

(3) Every regulation made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

## PART 2

### SCIENCE FOUNDATION IRELAND

6.—(1) There shall stand established on the establishment day<sup>18</sup> [..<sup>19</sup>] Science Foundation Ireland or, in the Irish language, *Fondúireacht Eolaíochta Éireann* to perform the functions<sup>20</sup> assigned to it by this Act and is referred to in this Act as the “Foundation”.

Establishment of  
Foundation.

(2) The Foundation shall be a body corporate with perpetual succession and an official seal.

(3) The Foundation shall have the power to sue and be sued in its own name.

(4) The Foundation shall have the power to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property.

7.—(1) The Foundation, in promoting and assisting the development and competitiveness of industry, enterprise and employment in the State, shall—

Functions of  
Foundation.

(a) promote, develop and assist the carrying out of oriented basic research<sup>21</sup> and applied research<sup>22</sup> in strategic areas of opportunity for the State<sup>23</sup>,

(b) develop and extend the capability for the carrying out of oriented basic research<sup>24</sup> and applied research<sup>25</sup> in institutions<sup>26</sup>,

<sup>18</sup> 25 July 2003 (see s 3 and SI 326/2003).

<sup>19</sup> Reference to SFI’s being an agency of Forfás was deleted by Industrial Development (Forfás Dissolution) Act 2014, s 17, in force 16 July 2014 (SI 304/2014).

<sup>20</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>21</sup> “[O]riented basic research’ means research that is carried out with the expectation that it will produce a broad base of knowledge that is likely to form the background to the solution of recognised or expected current or future problems or possibilities” (s 2(1), “oriented basic research”).

<sup>22</sup> “[A]ppplied research’ means original investigation undertaken in order to acquire new knowledge directed primarily towards a specific practical aim or objective”; definition inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3, in force 27 November 2013 (SI 448/2013).

<sup>23</sup> “[S]trategic area of opportunity for the State” means an area defined under s 7(6) (see Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3, in force 27 November 2013 (SI 448/2013)).

<sup>24</sup> “[O]riented basic research’ means research that is carried out with the expectation that it will produce a broad base of knowledge that is likely to form the background to the solution of recognised or expected current or future problems or possibilities” (s 2(1), “oriented basic research”).

<sup>25</sup> “[A]ppplied research’ means original investigation undertaken in order to acquire new knowledge directed primarily towards a specific practical aim or objective”; definition

- (c) endeavour to ensure that—
  - (i) a standard of excellence is consistently adhered to at the highest level in research referred to in *paragraph (a)*,
  - (ii) the standard referred to in *subparagraph (i)* is measured by competitive peer review on an international basis or by any other review process equivalent to relevant international best practice,
- (d) promote the attracting to the State of research teams, and individuals with an interest in research, of a world class standard with a view to their carrying out oriented basic research<sup>27</sup> or applied research<sup>28</sup> in strategic areas of opportunity for the State<sup>29</sup>,
- (e) cooperate and collaborate with other statutory bodies in the State in the promotion and encouragement of oriented basic research<sup>30</sup> and applied research<sup>31</sup>,
- (f) devise, administer, allocate, monitor and evaluate schemes, grants, and other financial facilities for the disbursement of any funds authorised by the Minister<sup>32</sup> from time to time with the agreement of the Minister for Public Expenditure and Reform,
- (g) support—
  - (i) the development and publication of research to assess the impact of research activities funded wholly or partly by the Foundation,

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inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3, in force 27 November 2013 (SI 448/2013).

<sup>26</sup> “[I]nstitution’ means any institute, university, college, laboratory, office or service (whether under the control of a Minister or otherwise) which is wholly or partly engaged in research and development or any other activity related to science or technology” (s 2(1), “institution”).

<sup>27</sup> “[O]riented basic research’ means research that is carried out with the expectation that it will produce a broad base of knowledge that is likely to form the background to the solution of recognised or expected current or future problems or possibilities” (s 2(1), “oriented basic research”).

<sup>28</sup> “[A]ppplied research’ means original investigation undertaken in order to acquire new knowledge directed primarily towards a specific practical aim or objective”; definition inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3, in force 27 November 2013 (SI 448/2013).

<sup>29</sup> “[S]trategic area of opportunity for the State” means an area defined under s 7(6) (see Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3), in force 27 November 2013 (SI 448/2013).

<sup>30</sup> “[O]riented basic research’ means research that is carried out with the expectation that it will produce a broad base of knowledge that is likely to form the background to the solution of recognised or expected current or future problems or possibilities” (s 2(1), “oriented basic research”).

<sup>31</sup> “[A]ppplied research’ means original investigation undertaken in order to acquire new knowledge directed primarily towards a specific practical aim or objective”; definition inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3, in force 27 November 2013 (SI 448/2013).

<sup>32</sup> The Minister for Jobs, Enterprise and Innovation: see Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 1, in force 27 November 2013 (SI 448/2013).

(ii) the assessment and publication of research activities funded wholly or partly by the Foundation,

(h) promote and support—

(i) the study of, education in and engagement with, science, technology, engineering and mathematics, in consultation with the Minister for Education and Skills, where appropriate,

(ii) an awareness and understanding of the value of science, technology, engineering and mathematics to society and in particular to the growth of the economy,

and

(i) carry out such other functions<sup>33</sup> related to science or technology which may, from time to time, be assigned to the Foundation by [<sup>34</sup>] the Minister<sup>35</sup>.

(2) The Foundation shall have all such powers as are necessary or expedient for the performance of its functions<sup>36</sup>.

(3) The Minister<sup>37</sup> may give directions relating to policy to be followed by the Foundation in the exercise of its functions<sup>38</sup>.

(4) The Foundation shall comply with any direction referred to in subsection (3).

(5) The Foundation shall manage the disbursement of research funds provided to the Foundation by a Minister of the Government, other than the Minister<sup>39</sup>, where requested to do so by the Minister of the Government with the consent of the Minister, in accordance with the terms and conditions specified by the Minister of the Government making the request.

(6) The Minister<sup>40</sup> may prescribe<sup>41</sup> from time to time an area of opportunity related to science or technology<sup>42</sup> having regard to—

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<sup>33</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>34</sup> Role of Forfás deleted by Industrial Development (Forfás Dissolution) Act 2014, s 42(a), in force 31 July 2014 (SI 304/2014).

<sup>35</sup> The Minister for Jobs, Enterprise and Innovation: see Industrial Development (Forfás Dissolution) Act 2014, s 2, “Minister”.

<sup>36</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>37</sup> The Minister for Jobs, Enterprise and Innovation: see Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 1, in force 27 November 2013 (SI 448/2013).

<sup>38</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>39</sup> The Minister for Jobs, Enterprise and Innovation: see Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 1, in force 27 November 2013 (SI 448/2013).

<sup>40</sup> The Minister for Jobs, Enterprise and Innovation: see Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 1, in force 27 November 2013 (SI 448/2013).

- (a) economic and social benefit,
- (b) long term industrial competitiveness, or
- (c) environmentally sustainable development,

and such an area when so prescribed shall be a strategic area of opportunity.<sup>43]</sup>

Disbursement of  
certain funds.

**[7A.—**(1) The Foundation may disburse funds to an institution<sup>44</sup> in Northern Ireland—

- (a) under the scheme administered by the Foundation on behalf of the Minister<sup>45</sup> prior to the coming into operation of this section and known as the Charles Parsons Energy Research Awards Scheme, or
- (b) subject to subsection (2), under any scheme referred to in section 7(1)(f).

(2) The Foundation may disburse funds to which subsection (1)(b) applies—

- (a) through an institution<sup>46</sup> in the State in receipt of funds from the Foundation where the institution in Northern Ireland is a partner of the institution in the State or of a company carrying on business in the State for the purposes of carrying out a research project, or
- (b) directly to the institution in Northern Ireland where the Foundation is satisfied that an institution in the State or a company carrying on business in the State is a partner of the institution in Northern Ireland for the purposes of carrying out a research project.<sup>47]</sup>

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<sup>41</sup> “[P]rescribed” means prescribed by regulations made by the Minister (s 2(1), “prescribed”). SI 134/2008 prescribed sustainable energy and energy-efficient technologies for the purposes of the original s 7.

<sup>42</sup> A number of areas are so prescribed in the Industrial Development (Science Foundation Ireland) (Strategic Areas of Opportunity) Regulations 2013 (SI 476/2013).

<sup>43</sup> New version of this section was substituted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 4, in force 27 November 2013 (SI 448/2013).

<sup>44</sup> “[I]nstitution’ means any institute, university, college, laboratory, office or service (whether under the control of a Minister or otherwise) which is wholly or partly engaged in research and development or any other activity related to science or technology” (s 2(1), “institution”).

<sup>45</sup> The Minister for Jobs, Enterprise and Innovation: see Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 1, in force 27 November 2013 (SI 448/2013).

<sup>46</sup> “[I]nstitution’ means any institute, university, college, laboratory, office or service (whether under the control of a Minister or otherwise) which is wholly or partly engaged in research and development or any other activity related to science or technology” (s 2(1), “institution”).

<sup>47</sup> New section inserted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 5, in force 27 November 2013 (SI 448/2013).

**[7B.]**—The Foundation, subject to the consent of the Minister<sup>48</sup>, may—

International  
cooperation.

(a) participate in, and contribute to the funding of, international collaborative projects relating to strategic areas of opportunity for the State<sup>49</sup>, and

(b) enter into an agreement with any person having a function relating to science or technology outside the State for the purposes of paragraph (a).<sup>50]</sup>

**8.**—(1) The members of the Foundation shall constitute its Board.

Board of  
Foundation.

(2) The Board shall consist of 12 members.

(3) The Board shall include the Director General.

(4) The members of the Board (other than the Director General) shall, as soon as may be after the establishment day<sup>51</sup>, be appointed by the Minister<sup>52</sup>, with the consent of the Minister for Finance following consultation with the Minister for Education and Science<sup>53</sup>.

(5) The Minister for Education and Science<sup>54</sup> shall nominate a person for appointment to the Board.

(6) The Minister shall designate one member of the Board as the chairperson.

(7) The Minister shall designate one member of the Board as deputy chairperson who shall, in the absence of the chairperson, act as the chairperson.

**9.**—(1) There shall be paid to the members of the Board such remuneration<sup>55</sup> (if any) and such allowances for expenses incurred by them as the Minister<sup>56</sup>, with the consent of the Minister for Finance, may from time to time determine.

Membership of  
Board.

(2) Each member of the Board shall hold office on such terms (other than the payment of remuneration<sup>57</sup> and allowances for expenses) as the Minister determines at the time of his or her appointment.

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<sup>48</sup> The Minister for Jobs, Enterprise and Innovation: see *Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 1*, in force 27 November 2013 (SI 448/2013).

<sup>49</sup> “[S]trategic area of opportunity for the State” means an area defined under s 7(6) (see *Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 3*, in force 27 November 2013 (SI 448/2013)).

<sup>50</sup> New section inserted by *Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 5*, in force 27 November 2013 (SI 448/2013).

<sup>51</sup> 25 July 2003 (see s 3 and SI 326/2003).

<sup>52</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>53</sup> Nowadays re-titled as the Minister for Education and Skills (by SI 184/2010).

<sup>54</sup> Nowadays re-titled as the Minister for Education and Skills (by SI 184/2010).

<sup>55</sup> “[R]emuneration’ includes allowances for expenses, benefits-in-kind and superannuation” (s 2(1), “remuneration”).

<sup>56</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

(3) On the first anniversary of the establishment day<sup>58</sup> and thereafter on each anniversary of the establishment day 2 of the members of the Board (other than the chairperson and the Director General) shall retire from office.

(4) The members who are required under *subsection (3)* to retire in any year shall be those who have been longest in office since their last appointment, and where there are members whose appointment was made on the same day and who are obliged to retire under *subsection (3)*, the members to retire shall, unless such members otherwise agree, be determined by lot.

(5) A member of the Board (other than the Director General) shall not serve for more than 10 consecutive years.

(6) A member of the Board shall be disqualified from being such a member where he or she—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is convicted of an indictable offence in relation to a company,
- (d) is convicted of an offence involving fraud or dishonesty, or
- (e) is disqualified or restricted from being a director of any company (within the meaning of the Companies Acts 1963 to 2001).

(7) A member of the Board may, at any time, resign his or her membership by letter addressed to the Minister<sup>59</sup> and the resignation shall take effect from the date specified in that letter or on receipt of that letter by the Minister, whichever is the later.

(8) A member of the Board may at any time for stated reasons be removed from membership of the Board by the Minister if, in the opinion of the Minister, the member has become incapable through ill-health of performing his or her functions<sup>60</sup>, or has committed stated misbehaviour, or his or her removal appears to the Minister to be necessary for the effective performance by the Foundation of its functions<sup>61</sup>.

(9) If a member of the Board dies, resigns, retires, becomes disqualified or is removed from office, the Minister<sup>62</sup> may appoint a person to be a member of the Board to fill the casual vacancy so occasioned and the person so appointed shall be appointed in the same manner as the member of the Board who occasioned the casual vacancy.

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<sup>57</sup> “[R]emuneration’ includes allowances for expenses, benefits-in-kind and super-annuation” (s 2(1), “remuneration”).

<sup>58</sup> Establishment day is 25 July 2003 (see s 3 and SI 326/2003).

<sup>59</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>60</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>61</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>62</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

(10) A member of the Board whose period of membership expires by the effluxion of time may, subject to *subsection (5)*, be eligible for re-appointment as a member of the Board.

Chairperson  
of Board.

(11) The Minister shall, in so far as is practicable and having regard to relevant experience, ensure an equitable balance between men and women in the composition of the Board.

**10.—**(1) The term of office of the chairperson of the Board shall be 5 years.

(2) Where the chairperson of the Board ceases to be a member of the Board he or she shall also thereupon cease to be chairperson of the Board.

(3) The chairperson of the Board may at any time resign his or her office as chairperson by letter sent to the Minister<sup>63</sup> and the resignation shall, unless previously withdrawn in writing, take effect at the commencement of the meeting of the Board held next after the Board has been informed by the Minister of the resignation.

(4) The chairperson of the Board shall, unless he or she sooner dies or otherwise ceases to be chairperson by virtue of *subsection (2)* or *(3)*, hold office until the expiration of his or her period of membership of the Board and, if he or she is re-appointed as a member of the Board, he or she shall be eligible for re-appointment as chairperson of the Board.

**11.—**(1) The Board shall hold such and as many meetings as may be necessary for the performance of its functions<sup>64</sup>.

Meetings of  
Board.

(2) The Minister<sup>65</sup>, in consultation with the chairperson of the Board, shall fix the time of the first meeting of the Board.

(3) The quorum for a meeting of the Board shall be 5.

(4) At a meeting of the Board—

(a) the chairperson of the Board shall, if present, be the chairperson of the meeting,

(b) if and so long as the chairperson of the Board is not present or if the office of the chairperson is vacant, the deputy chairperson shall be the chairperson of the meeting, and

(c) if the chairperson is not present and the deputy chairperson is not present or the office of the deputy chairperson is vacant, the

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<sup>63</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>64</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>65</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

members of the Board who are present shall choose one of their members to be chairperson of the meeting.

(5) At a meeting of the Board, each member of the Board present, including the chairperson, shall, subject to *section 16*, have a vote and any question on which a vote is required in order to establish the view of the Board on the matter shall be determined by a majority of votes of the members of the Board present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second and casting vote.

(6) The Board may act notwithstanding one or more vacancies among its members.

(7) Subject to this Act, the Board shall regulate, by standing orders or otherwise, the procedure and business of the Board.

Membership of either House of Oireachtas, European Parliament or local authority.

**12.**—(1) Where a member of the Board—

(a) is nominated as a member of Seanad Éireann,

(b) is elected as a member of either House of the Oireachtas or as a representative in the European Parliament,

(c) is regarded pursuant to section 19 of the European Parliament Elections Act 1997 as having been elected to the European Parliament to fill a vacancy, or

(d) becomes a member of a local authority,

he or she shall thereupon cease to be a member of the Board.

(2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament shall, while he or she is so entitled or is such a representative, be disqualified from becoming a member of the Board.

(3) A person who is a member of a local authority shall be disqualified from becoming a member of the Board.

Director General.

**13.**—There shall be a chief officer of the Foundation who shall be known, and is referred to in this Act, as the Director General.

(2) Subject to *subsection (9)*, the Director General shall be appointed by the Board.

(3) The Director General shall hold office for such term being not more than a period of 5 years and upon and subject to such terms and conditions (including remuneration<sup>66</sup>) as the Board, with the consent of the Minister<sup>67</sup> and the Minister for Finance, may determine.

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<sup>66</sup> “[R]emuneration’ includes allowances for expenses, benefits-in-kind and superannuation” (s 2(1), “remuneration”).

<sup>67</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

(4) The Director General may be re-appointed for a second term.

(5) The Director General shall, for the duration of his or her appointment, become an *ex officio* member of the Board and the board of Forfás<sup>68</sup>.

(6) The Director General shall carry on and manage and control generally the administration and business of the Foundation and shall perform such other functions<sup>69</sup> as may be determined by the Board.

(7) The Director General shall not hold any other office or position or carry on any business without the consent of the Board.

(8) For the purposes of appointing the person to be the Director General appointed immediately after the establishment day<sup>70</sup>, the Minister<sup>71</sup> may, before the establishment day, designate a person to be appointed under this section immediately after the establishment day.

(9) If a person has been designated in accordance with *subsection (8)* the Board shall, for the purposes of appointing the first person to be the Director General immediately after the establishment day, appoint that person to be the Director General.

**14.—(1)** The Director General shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to the Committee on—

Attendance by  
Director General at  
Dáil Éireann  
committee.

(a) the regularity and propriety of the transaction recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Foundation is required by or under this Act to prepare,

(b) the economy and efficiency of the Foundation in the case of its resources,

(c) the systems, procedures and practices employed by the Foundation in the purpose of evaluating the effectiveness of its operations, and

(d) any matter affecting the Foundation referred to in a special report of the Comptroller and Auditor General under section 11 (2) of the Comptroller and Auditor General (Amendment) Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

(2) In the performance of his or her duties under this section the Director General shall not question or express an opinion on the merits of any policy of

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<sup>68</sup> “‘Forfás’ has the meaning assigned to it by section 5 of the [Industrial Development Act 1993]” (s 2(1), “Act of 1993” and “Forfás”). But Forfás is now dissolved, as of 1 August 2014 (SI 341/2014).

<sup>69</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>70</sup> 25 July 2003 (see s 3 and SI 326/2003).

<sup>71</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

the Government or a Minister of the Government or on the merits of the objectives of such a policy.

(3) From time to time, and whenever so requested, the Director General shall account for the performance by the Foundation of its functions<sup>72</sup> to a committee of one or both Houses of the Oireachtas and the Foundation shall have regard to any recommendations of such committee where the recommendations concern the functions of the Foundation.

Committees.

**15.—**(1) The Board may establish committees to assist and advise it in relation to the performance of any of its functions<sup>73</sup>.

(2) The Board may delegate to a committee any of its functions<sup>74</sup> which, in its opinion, can be better or more conveniently exercised or performed by a committee.

(3) The Board shall decide the terms of reference for any committee and may regulate the procedure of any such committee.

(4) The members of a committee shall be appointed by the Board.

(5) A committee shall consist of such number of members as the Board thinks proper.

(6) A committee may include persons who are not members of the Board or staff of the Foundation.

(7) A member of a committee who fails to perform his or her functions<sup>75</sup> may be removed at any time for stated reasons by the Board.

(8) The Board may at any time dissolve a committee.

(9) The Board may appoint a person to be chairperson of a committee.

(10) The acts of a committee shall be subject to confirmation by the Board save where the Board dispenses with the necessity for such confirmation.

(11) There shall be paid out of the income of the Foundation to members of a committee such allowances for expenses incurred by them in the discharge of their functions<sup>76</sup> as the Board may determine with the consent of the Minister<sup>77</sup> and the Minister for [Public Expenditure and Reform<sup>78</sup>].

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<sup>72</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>73</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>74</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>75</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>76</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

(12) In this section “a committee” means a committee of the Foundation established under this section.

**16.—**(1) Where the Director General, a member of the Board, a member of the staff of the Foundation, a member of a committee established under *section 15*, or a consultant, adviser or other person engaged by the Foundation, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by the Board, or a committee established under this Act, he or she shall—

Disclosure of interests.

- (a) disclose to the Board or committee, as the case may be, the nature of his or her interest in advance of any consideration of the matter,
- (b) neither influence nor seek to influence a decision in relation to the matter,
- (c) take no part in any consideration of the matter,
- (d) if he or she is the Director General, a member of the Board, the staff of the Foundation or a member of a committee established under *section 15*, withdraw from the meeting for so long as the matter is being discussed or considered and shall not vote or otherwise act as such Director General or member in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or she or any connected relative [or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*<sup>79</sup>] or nominee of his or hers or any connected relative [or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*<sup>80</sup>] is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or she or any connected relative [or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*<sup>81</sup>] is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any connected relative [or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*<sup>82</sup>] is a party to any arrangement or agreement

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<sup>77</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>78</sup> Function transferred by Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>79</sup> Inserted by Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, ss 1(2), 97 and schedule, pt 1, item 36.

<sup>80</sup> Inserted by Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, ss 1(2), 97 and schedule, pt 1, item 36.

<sup>81</sup> Inserted by Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, ss 1(2), 97 and schedule, pt 1, item 36.

<sup>82</sup> Inserted by Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, ss 1(2), 97 and schedule, pt 1, item 36.

(whether or not enforceable) concerning land to which such a matter relates, or

(d) any connected relative [or civil partner within the meaning of the *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010*<sup>83</sup>] has a beneficial interest in, or material to, such a matter.

(3) For the purposes of this section a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of that person or of any company or body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence that person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person to whom this section applies, would be a failure by him or her to comply with the requirements of *subsection (1)*, that question shall be determined by the Board and particulars of the determination by the Board shall be recorded in the minutes of the meeting concerned.

(5) Where a disclosure is made to the Board or a committee pursuant to *subsection (1)*, particulars of the disclosure shall be recorded in the minutes of the meeting concerned, and for so long as the matter to which the disclosure relates is being dealt with by the meeting, the person by whom the disclosure is made shall not be counted in the quorum for the meeting.

(6) Where a person referred to in this section fails to make a disclosure in accordance with this section, the Board shall decide the appropriate action (including removal from office or termination of contract) to be taken.

(7) In this section “connected relative” means, in relation to a person to whom this section applies, the parent, spouse, partner, brother, sister or child of that person.

Disclosure of information.

**17.**—(1) Save as otherwise provided by law and *subsection (3)*, a person shall not, without the consent of the Board, disclose any confidential information obtained by him or her while performing (or as a result of having performed) duties as—

(a) a member of the Board,

(b) the Director General,

(c) a member of the staff of the Foundation,

(d) a member of a committee established under *section 15*, or

(e) an adviser or consultant to the Foundation or an employee of such person whilst performing duties relating to such advice or consultation.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €2,000.

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<sup>83</sup> Inserted by Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, ss 1(2), 97 and schedule, pt 1, item 36.

[(2A) Proceedings in relation to a summary offence under this section may be brought and prosecuted by the Foundation.<sup>84</sup>]

(3) Nothing in *subsection (1)* shall prevent disclosure of information in a report made to the Foundation or on behalf of the Foundation to the Minister<sup>85</sup>.

(4) In this section “confidential information” includes information that is expressed by the Foundation or a committee to be confidential either as regard particular information or as regards information of a particular class or description.

**18.—(1)** The Foundation shall, as soon as may be after its establishment, provide itself with a seal.

Seal of Foundation.

(2) The seal of the Foundation shall be authenticated by the signature of—

(a) the Chairperson of the Board, or

(b) (i) a member of the Board, or

(ii) an officer of the Foundation,

authorised by the Board to act in that behalf.

(3) Judicial notice shall be taken of the seal of the Foundation and every document purporting to be an instrument made by the Foundation and to be sealed with the seal of the Foundation (purporting to be authenticated in accordance with *subsection (2)*) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

(4) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Foundation by a member of the staff of the Foundation or a person generally or specially authorised by the Board for that purpose.

**19. ...**<sup>86</sup>

Staff of Foundation.

**20. ...**<sup>87</sup>

Secondment of staff of Forfás.

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<sup>84</sup> New subsection inserted by Industrial Development (Forfás Dissolution) Act 2014, s 42(b), in force 31 July 2014 (SI 304/2014).

<sup>85</sup> “Minister” means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>86</sup> This section, which was never brought into force, was deleted by Industrial Development (Forfás Dissolution) Act 2014, s 11, in force 16 July 2014 (SI 304/2014). That section makes fresh provision in relation to the staff of SFI.

<sup>87</sup> This section, which was never brought into force, was deleted by Industrial Development (Forfás Dissolution) Act 2014, s 12, in force 16 July 2014 (SI 304/2014). That section makes fresh provision in relation to seconded staff.

Superannuation.

**21.** ...<sup>88</sup>

Consultants and advisers.

**22.**—The Foundation may from time to time engage such consultants or advisers as it considers necessary for the performance of its functions<sup>89</sup> and any fees payable by the Foundation to a consultant or adviser engaged under this section shall be paid by the Foundation out of moneys at its disposal.

Strategic plans and work programmes.

**23.**—(1) As soon as practicable and after the establishment day<sup>90</sup>, and thereafter within 6 months before each fifth anniversary of the establishment day, the Foundation shall prepare and submit to the Minister<sup>91</sup> a plan (in this section referred to as a “strategic plan”) for the ensuing 5 year period.

(2) A strategic plan shall—

- (a) comprise the key objectives, outputs and related strategies, including use of resources, of the Foundation,
- (b) be prepared in a form and manner in accordance with any directions issued from time to time by the Minister, and
- (c) have regard to the need to ensure the most beneficial, effective and efficient use of resources of the Foundation.

(3) The Minister shall, as soon as practicable after a strategic plan has been submitted to him or her under *subsection (1)*, cause a copy of it to be laid before each House of the Oireachtas.

(4) The Foundation shall prepare and submit to the Minister by the end of each year a programme of the activities it proposes to carry out in the following year.

Annual reports and accounts.

**24.**—(1) The Foundation shall submit, in such form as the Minister<sup>92</sup> may direct, an annual report of its activities after the end of the financial year to which it refers and the Minister shall cause copies of the report to be laid before each House of the Oireachtas not later than 6 months after the end of that financial year and the Foundation shall specifically comment in every such

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<sup>88</sup> This section, which was never brought into force, was deleted by Industrial Development (Forfás Dissolution) Act 2014, s 13, in force 16 July 2014 (SI 304/2014). That section makes fresh provision in relation to the superannuation scheme.

<sup>89</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>90</sup> 25 July 2003 (see s 3 and SI 326/2003).

<sup>91</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>92</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

annual report on the [..<sup>93</sup>] research being supported by the Foundation and how such research relates to its functions<sup>94</sup>.

(2) The Foundation shall keep, in such form as may be approved of by the Minister, with the consent of the Minister for [Public Expenditure and Reform<sup>95</sup>], all proper and usual accounts of money received and expended by it and, in particular, shall keep in such form as aforesaid all special accounts as the Minister may from time to time direct.

(3) The accounts of the Foundation for each financial year shall be prepared by the Director General, approved by the Board and submitted to the Comptroller and Auditor General for audit as soon as practicable, but not later than 4 months after the end of the financial year to which they relate.

(4) A copy of the accounts referred to in *subsection (3)* and the report of the Comptroller and Auditor General on those accounts shall, as soon as is practicable, be presented to the Minister who shall cause copies of the accounts and the report to be laid before each House of the Oireachtas.

**25.—**(1) The Foundation shall supply the Minister<sup>96</sup> with such information regarding its activities as the Minister may, from time to time, require.

Information to  
Minister and  
Forfás.

(2) [A committee established under section 15 shall provide the Foundation with such information as the Foundation may, from time to time, require for the purposes of its functions<sup>97, 98</sup>]

**26.—**(1) The Foundation may for the purposes of providing premises necessary for the due performance of its objectives and functions<sup>99</sup>—

Premises of  
Foundation.

(a) purchase or take on lease any land, offices, laboratories or premises,  
and

(b) build, equip and maintain offices, laboratories and premises.

(2) The Foundation may sell or lease any land, offices, laboratories or premises held by it which are no longer required for the due performance of its functions<sup>100</sup>.

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<sup>93</sup> The words “oriented basic” were deleted by Industrial Development (Science Foundation Ireland) (Amendment) Act 2013, s 6, in force 27 November 2013 (SI 448/2013).

<sup>94</sup> “[F]unctions’ includes powers and duties” (s 2(1), “functions”).

<sup>95</sup> Function transferred by Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011 (SI 418/2011) reg 3 and sch 1.

<sup>96</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>97</sup> “[F]unctions’ includes powers and duties” (s 2(1), “functions”).

<sup>98</sup> New version of this subsection inserted, removing reference to Forfás, by Industrial Development (Forfás Dissolution) Act 2014, s 42(c), in force 31 July 2014 (SI 304/2014).

<sup>99</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>100</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

(3) Where the Foundation is of the opinion that it is necessary to establish a research laboratory that is independent of any institute, college or university for the purposes of carrying out its functions<sup>101</sup> under this Act the Foundation shall notify the Minister<sup>102</sup> as soon as practicable and the Minister shall as soon as practicable consult with the Government in respect of the opinion of the Foundation.

Transfer of rights  
and liabilities to  
Foundation.

27.—(1) The following shall be and are transferred to the Foundation on the establishment day<sup>103</sup>—

(a) all property and rights held or enjoyed immediately before that day by the committee of Forfás<sup>104</sup> established under section 10 of the Act of 1993<sup>105</sup> (as amended by section 46 of the Act of 1998<sup>106</sup>) referred to pursuant to such establishment as Science Foundation Ireland, and

(b) all liabilities incurred by the committee of Forfás referred to in *paragraph (a)* before that day,

and accordingly, without any further conveyance, transfer or assignment—

(i) the said property, real and personal, shall on that day vest in the Foundation for all the estate, term or interest for which immediately before that day, it was so vested in the committee referred to in *paragraph (a)* but subject to all trusts and equities affecting the property subsisting and capable of being performed,

(ii) the said rights shall, as and from that day, vest in the Foundation, and

(iii) the said liabilities shall, as and from that day, be liabilities of the Foundation.

(2) All moneys, stocks, shares and securities transferred to the Foundation by this section that, on the establishment day<sup>107</sup>, are standing in the name of the committee of Forfás referred to in *subsection (1)* or of any trustee or agent of such committee shall, on the request of the Foundation, be transferred into the name of the Foundation.

(3) Every right and liability transferred to the Foundation by this section may, on or after the establishment day<sup>108</sup>, be sued on, recovered or enforced by or against the Foundation in its own name and it shall not be necessary for the Foundation to give notice to the person whose right or liability is transferred by this section of the transfer.

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<sup>101</sup> “[F]unctions’ includes powers and duties, and reference to the performance of functions includes, as respects powers and duties, references to the exercise of the powers and performance of the duties” (s 2(1), “functions”).

<sup>102</sup> “‘Minister’ means the Minister for Enterprise, Trade and Employment” (s 2(1), “Minister”), now re-titled as the Minister for Jobs, Enterprise and Innovation (by SI 185/2010 and SI 245/2011).

<sup>103</sup> 25 July 2003 (see s 3 and SI 326/2003).

<sup>104</sup> “‘Forfás’ has the meaning assigned to it by section 5 of the [Industrial Development Act 1993]” (s 2(1), “Act of 1993” and “Forfás”).

<sup>105</sup> “Act of 1993” means the Industrial Development Act 1993 (see s 2(1), “Act of 1993”).

<sup>106</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>107</sup> 25 July 2003 (see s 3 and SI 326/2003).

<sup>108</sup> 25 July 2003 (see s 3 and SI 326/2003).

(3) Section 12 of the Finance Act 1895 shall not apply to the vesting in the Foundation of any property or right transferred by or under this section.

### PART 3

#### AMENDMENT OF INDUSTRIAL DEVELOPMENT ACTS 1986 TO 1998 AND SHANNON FREE AIRPORT DEVELOPMENT COMPANY ACTS 1959 TO 1998

**28.**—Section 21 of the Act of 1986<sup>109</sup> is amended by deleting subsection (5) of that section.

Amendment of section 21 of Act of 1986.

**29.**—The Act of 1986<sup>110</sup> is amended by substituting the following for section 25:

Amendment of section 25 of Act of 1986.

“Employment grants. 25.—(1) The Authority may make a grant on such terms and conditions as it thinks proper in respect of a person employed in an industrial undertaking which conforms to the criteria set out in subsections (3) and (4) of section 21.

(2) Without the prior permission of the Government, the total amount of money granted to a particular undertaking under this section shall not exceed in the aggregate the higher of—

(a) [€7,500,000<sup>111</sup>], or

(b) [€7,500,000<sup>112</sup>] in excess of the aggregate amount of such expenditure for which the prior permission of the Government has previously been obtained.”.

**30.**—(1) Section 28 of the Act of 1986<sup>113</sup> is amended by substituting the following for subsection (4) (as amended by the Act of 1998<sup>114</sup>):

Amendment of section 28 of Act of 1986.

“(4) Without the prior permission of the Government, the total amount of money granted to a particular undertaking under this section shall not exceed in the aggregate the higher of—

(a) [€7,500,000<sup>115</sup>], or

(b) [€7,500,000<sup>116</sup>] in excess of the aggregate amount of such expenditure for which the prior permission of the Government has previously been obtained.”.

<sup>109</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>110</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>111</sup> Amended by Industrial Development Act 2009, s 3(a).

<sup>112</sup> Amended by Industrial Development Act 2009, s 3(a).

<sup>113</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>114</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>115</sup> Amended by Industrial Development Act 2009, s 3(b).

<sup>116</sup> Amended by Industrial Development Act 2009, s 3(b).

Amendment of  
section 29 of Act of  
1986.

**31.**—The Act of 1986<sup>117</sup> is amended by substituting the following for section 29 (as amended by the Act of 1998<sup>118</sup>):

“Research  
grants.

29.—(1) Following consultation with such bodies as may be specified by the Minister from time to time, the Authority may make a grant (in this section referred to as a research grant), subject to subsection (5), on such terms and conditions as it thinks proper towards the cost of research and development to which this section applies.

(2) This section applies to research and development which—

(a) has as its primary object the promotion or development of new or improved industrial processes, methods or products, and, in particular, such processes, methods or products as are likely either to involve the use or development of local materials, agricultural products or other natural resources or to offer prospects of expansion in existing industry, promotion of new industry or to increase industrial employment or to enhance the viability, competitiveness or strategic importance of existing industry in the State, and

(b) is carried out wholly or mainly in the State and wholly or mainly sponsored by one or more than one industrial undertaking in the State.

(3) For the purpose of a research grant the Authority may consult such adviser, consultant, institute or other organisation or person as it considers proper.

(4) (a) Subject to paragraph (b), the amount of a research grant shall not exceed 50 per cent of the approved costs of the research and development concerned or [€7,500,000<sup>119</sup>] whichever is the smaller sum.

(b) The amount of a research grant may, with the approval of the Government in a particular case, exceed [€7,500,000<sup>120</sup>] by such sum as the Government shall in that case specify, provided that the percentage limit specified in paragraph (a) is not exceeded.

(c) In this section ‘approved costs’ means in relation to a particular research grant, such expenditure by the industrial undertaking or

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<sup>117</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>118</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>119</sup> Amended by Industrial Development Act 2009, s 3(c).

<sup>120</sup> Amended by Industrial Development Act 2009, s 3(c).

undertakings concerned as the Authority is satisfied has been or will be incurred for the purpose of promoting the research and development concerned and has been or will be expended on—

- (i) the provision of sites or premises (including the acquisition of land), the construction and adaptation of buildings, and the provision of services and other works;
- (ii) the provision of plant, machinery, equipment and materials;
- (iii) the payment of fees or other remuneration<sup>121</sup> to technical advisers consulted in connection with the research and development;
- (iv) the salaries and wages paid to and the travel and subsistence expenses of persons engaged on the research and development or in identifying product or process development prospects within the industrial undertaking; and
- (v) overhead charges associated with the research and development concerned.

(5) The Authority may, in the case of small industrial undertakings as defined from time to time by the Minister, make payment of up to one-third of a research grant prior to the approved costs being incurred on condition that the amount so paid shall be repaid to the Authority if the research or development project concerned has not been carried out to the satisfaction of the Authority.

(6) The Authority shall not make a payment under subsection (5) unless it is satisfied that the industrial undertaking has available to it sufficient assets to cover its liability under that subsection.

(7) The Authority shall not, without the prior permission of the Government, give in respect of a particular industrial undertaking, research grants exceeding in the aggregate the higher of—

(a) [€7,500,000<sup>122</sup>]; or

(b) [€7,500,000<sup>123</sup>] in excess of the aggregate amount of research grants for which the permission

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<sup>121</sup> “[R]emuneration’ includes allowances for expenses, benefits-in-kind and super-annuation” (s 2(1), “remuneration”).

<sup>122</sup> Amended by Industrial Development Act 2009, s 3(c).

<sup>123</sup> Amended by Industrial Development Act 2009, s 3(c).

of the Government has previously been obtained by the Authority.”.

Amendment of section 31 of Act of 1986.

**32.**—Section 31 of the Act of 1986<sup>124</sup> is amended by substituting the following for subsection (4) (as amended by the Act of 1998<sup>125</sup>):

“(4) Without the prior permission of the Government, the total amount of money expended in the purchase or taking of shares in a particular industrial undertaking under this section shall not exceed in the aggregate the higher of—

(a) [€7,500,000<sup>126</sup>]; or

(b) [€7,500,000<sup>127</sup>] in excess of the aggregate amount of such expenditure for which the prior permission of the Government has previously been obtained.”.

Amendment of section 34 of Act of 1986.

**33.**—The Act of 1986<sup>128</sup> is amended by substituting the following for section 34:

“Aggregate limit on investment aid.

**34.**— Without the prior permission of the Government, the total amount of money granted under sections 21 (as amended by the *Industrial Development (Science Foundation Ireland) Act 2003*), 22 or 25 (inserted by the *Industrial Development (Science Foundation Ireland) Act 2003*) to a particular undertaking or expended in the purchase or taking of shares in the same industrial undertaking under section 31 (as amended by the *Industrial Development (Science Foundation Ireland) Act 2003*) shall not exceed in the aggregate the higher of—

(a) [€15,000,000<sup>129</sup>]; or

(b) [€15,000,000<sup>130</sup>] in excess of the aggregate amount of such grants for which the prior permission of the Government has previously been obtained.”.

Amendment of Shannon Free Airport Development Company

**34.**—The Shannon Free Airport Development Company (Amendment) Act 1986 is amended—

(a) in section 2, by substituting “€50,000,000” for “£200,000,000” (inserted by the Act of 1998<sup>131</sup>), and

<sup>124</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>125</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>126</sup> Amended by Industrial Development Act 2009, s 3(d).

<sup>127</sup> Amended by Industrial Development Act 2009, s 3(d).

<sup>128</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>129</sup> Amended by Industrial Development Act 2009, s 3(e).

<sup>130</sup> Amended by Industrial Development Act 2009, s 3(e).

<sup>131</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

(b) in section 3, by substituting “€400,000,000” for “£250,000,000” (inserted by the Act of 1998<sup>132</sup>).

35.—The Act of 1993<sup>133</sup> is amended—

Amendment of Act of 1993.

(a) in section 6(1) by substituting the following for paragraph (b) (as amended by the Act of 1998<sup>134</sup>):

“(b) to advise on the development and co-ordination of policy for Enterprise Ireland, IDA and Science Foundation Ireland and such other bodies (established by or under statute) as the Minister may by order designate,”

(b) in section 6(1) by substituting the following for paragraph (e) (as amended by the Act of 1998<sup>135</sup>):

“(e) to advise and co-ordinate Enterprise Ireland, IDA and Science Foundation Ireland in relation to their functions.”

(c) in section 9(1) (as amended by the Act of 1998<sup>136</sup>) by inserting “, IDA or Science Foundation Ireland” for “or IDA”,

(d) in section 9(3) (as amended by the Act of 1998<sup>137</sup>) by substituting “Forfás, Enterprise Ireland, IDA and Science Foundation Ireland” for “Forfás, Enterprise Ireland and IDA”,

(e) by substituting the following for section 11:

“Grants.

11.—(1) There may be paid by the Minister to Forfás, IDA, Enterprise Ireland and Science Foundation Ireland, out of moneys provided by the Oireachtas, grants of such amounts as the Minister, with the consent of the Minister for Finance, may sanction for—

(a) the administrative and general expenses of Forfás, IDA, Enterprise Ireland and Science Foundation Ireland, and

(b) the obligations and liabilities of Forfás, IDA, Enterprise Ireland and Science Foundation Ireland.

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<sup>132</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>133</sup> “Act of 1993” means the Industrial Development Act 1993 (see s 2(1), “Act of 1993”).

<sup>134</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>135</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>136</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>137</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

(2) The aggregate amount of grants made by the Minister to Forfás, and the agencies under subsection (1)(b) (other than grants to which section 14(3) of the Act of 1986<sup>138</sup> applies) shall not exceed [€7,000,000,000<sup>139</sup>].”,

(f) by substituting the following for section 12:

“Industrial incentives. 12.—(1) Without the prior permission of the Government, the total amount of money granted to a particular industrial undertaking under sections 21 (as amended by the *Industrial Development (Science Foundation Ireland) Act 2003*) and 22 of the Act of 1986<sup>140</sup> shall not exceed in the aggregate the higher of—

(a) [€7,500,000<sup>141</sup>], or

(b) [€7,500,000<sup>142</sup>] in excess of the aggregate amount of such grants for which the prior permission of the Government has previously been obtained.”,

(g) in the First Schedule by—

(i) substituting the following for paragraph 2(2) (as amended by the Act of 1998<sup>143</sup>):

“(2) The Board of Forfás shall consist of not more than 13 members and the Board of IDA shall consist of not more than 12 members.”,

and

(ii) substituting the following for paragraph 3(1) (as amended by the Act of 1998<sup>144</sup>):

“(1) On every anniversary of the establishment day, 2 of the members of the Board shall retire from office.”,

and

(h) in paragraph 2(2) (as amended by the Act of 1998<sup>145</sup>) of the Second Schedule by substituting “IDA, Enterprise Ireland, National Standards Authority of Ireland or Science Foundation Ireland” for “IDA, Enterprise Ireland or the National Standards Authority of Ireland”.

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<sup>138</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>139</sup> Amended by Industrial Development Act 2009, s 4(a).

<sup>140</sup> That is, the Industrial Development Act 1986 (see s 2(1), “Act of 1986”).

<sup>141</sup> Amended by Industrial Development Act 2009, s 4(b).

<sup>142</sup> Amended by Industrial Development Act 2009, s 4(b).

<sup>143</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>144</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

<sup>145</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).

**36.**—Section 10 (as amended by the Finance Act 1999) of the Act of 1995<sup>146</sup> is amended in paragraph (3)(a) by substituting “€500,000,000” for “£200,000,000”.

Amendment of section 10 of Act of 1995.

**37.**—Section 52 of the Act of 1998<sup>147</sup> is amended by substituting “IDA, NSAI or Science Foundation Ireland” for “IDA or the NSAI”.

Amendment of Act of 1998.

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<sup>146</sup> “Act of 1995” means the Industrial Development Act 1995 (s 2(1), “Act of 1995”).

<sup>147</sup> “Act of 1998” means the Industrial Development (Enterprise Ireland) Act 1998 (see s 2(1), “Act of 1998”).