



BILLE NA nOLSCOILEANNA, 1996

UNIVERSITIES BILL, 1996

ESTABLISHMENT AND DIRECTION OF UNIVERSITIES

Mar a ritheadh ag Dáil Éireann
As passed by Dáil Éireann

EXPLANATORY MEMORANDUM

Purpose of the Bill

The purpose of the Bill is to:

- (i) establish the constituent colleges of the National University of Ireland and St. Patrick's College, Maynooth as constituent universities of the National University of Ireland;
- (ii) provide a revised composition of governing authorities of universities;
- (iii) provide structures for accountability and transparency in the affairs of universities.

Provisions of the Bill

PART I

PRELIMINARY AND GENERAL

Section 1 provides that the short title of the Act is the Universities Act, 1996.

Section 2 provides that the Act, or any particular purpose or provision of the Act, shall come into operation on such day or days as is fixed by order by the Minister.

Section 3 defines the key terms used in the Act.

Section 4 provides that the Act shall apply to the National University of Ireland, Cork, the National University of Ireland, Dublin, the National University of Ireland, Galway, the National University of Ireland, Maynooth, Dublin City University, the University of Limerick and Trinity College, and any other universities established in the future under *section 9*.

The section further provides that particular sections will not apply in relation to Trinity College, unless the Minister makes an Order applying them. The Minister shall not make such an Order if a Private Act is enacted, within three years of the commencement of Part III, which amends the Charter of the College in a manner consistent with this Act.

Section 5 provides that the expenses incurred by the Minister in the administration of the Act shall be paid out of moneys provided by the Oireachtas.

Section 6 repeals the enactments mentioned in *Parts I* and *II* of the *First Schedule*.

PART II

ESTABLISHMENT AND IDENTITY OF UNIVERSITIES

Section 7 provides for the establishment of the constituent colleges of the National University of Ireland as constituent universities of the National University of Ireland.

Section 8 provides for the incorporation of an educational institution as part of a university. An order under this section would be made by the Minister for Education with the consent of the Minister for Finance, the institution concerned and the governing authority of the university and following consultation with the Higher Education Authority (HEA). It must also be approved by both Houses of the Oireachtas before it becomes effective.

Section 9 provides for the establishment of additional universities. It provides that new universities can be established by order of the Government, after consideration of the advice of a body of experts, and the advice of the HEA. An order under this section must be approved by both Houses of the Oireachtas before it becomes effective.

Section 10 provides that the Minister may change the name of a university where a university requests this. In the case of a constituent university, it will require the approval of the Senate of the National University of Ireland to a name change other than where such a university is extending its name to indicate that it is the successor to its corresponding constituent college.

Section 11 provides that the corporate status of both Dublin City University and the University of Limerick will be retained as provided in the Dublin City University Act, 1989, and in the University of Limerick Act, 1989, respectively.

PART III

UNIVERSITIES GENERALLY

CHAPTER I

Objects and Functions

Section 12 sets out the objects of a university. These include the advancement of knowledge; the promotion of learning and the highest standards in teaching; the promotion of cultural and social life of society, the official languages of the State and Irish cultures; contribution to the realisation of economic and social development; the education of higher level professional, managerial and technical personnel and the dissemination of the outcomes of research; the facilitation of lifelong learning; and the promotion of gender balance and equality of opportunity among students and employees of the university.

Section 13 provides for the implementation of the objects of a university outlined in *section 12* by providing that a university shall have the powers and functions necessary to further its objects. *Subsection (2)* provides for specific powers and functions, including the awarding of degrees, provision of courses, engaging in research, establishing companies and collaboration with other relevant interests to further the objects of the university. *Subsection (3)* provides that in performing its functions a university shall be entitled to act in accordance with its ethos and the principles of academic freedom and shall have regard to the promotion of equality, effective and efficient use of resources and accountability obligations.

CHAPTER II

Governance

Section 14 provides that each university shall have a governing authority, which shall perform the functions conferred on a university by this Act.

Section 15 provides for the composition of the governing authorities of the universities. The provisions of this section allow each university to have a governing authority which best suits its own interests within a broad policy framework. Broad parameters are set out within which each governing authority may be regarded as being representative of the various stakeholders while at the same time reflecting each university's unique traditions.

The section provides that within a range of between twenty and thirty eight members, the membership shall include the chief officer of the university, one or two senior administrative staff, a chairperson (if other than the chief officer), members of the academic and non-academic staff, students (including one post-graduate), between one and four persons each appointed by the governing authority from bodies in the wider community and nominees of the Minister for Education and one or two nominees of the local Education Board, when established. Appointment of nominees of the Minister is subject to consultation with the chief officer and the number of members drawn from the wider community under *subsection (3)(a)* and the Minister's nominees shall be the same. In addition, *subsection (4)* provides that a governing authority may co-opt up to four other persons as members, having regard to the extent to which cultural and artistic interests are represented, and include up to four graduates of the university as members. Members appointed under these latter provisions may not be employees or students of the university, except where the governing authority waives this restriction (*subsection (7)*).

Subsection (5) allows for representation on governing authorities of individual universities from bodies which reflect the traditions and history of each university. In the case of the present colleges of the National University of Ireland, Cork, Dublin and Galway, this includes nominees of County Councils, certain Lord Mayors and Mayors and two nominees of the National University of Ireland. In the case of Trinity College, special provision for fellows is made. In the case of the present Recognised College at Maynooth, nominees of the trustees of St. Patrick's College and two nominees of the National University of Ireland is provided for. Dublin City University and the University of Limerick are given the authority to appoint representatives from their fund-raising bodies. The Mayor of Limerick and the chairperson of the Limerick County Council or his or her nominee will also be members of the governing authority of the

University of Limerick. A nominee of councils in the Dublin area will also be on the governing authority of Dublin City University.

Subsection (6) provides that there can be representation on a university's governing authority for employees or students of an educational institution which is associated with the university.

Subsection (8) ensures that the number of members of an authority appointed from nominees of the Minister shall not be less than the number of persons appointed by the Minister or the Government before the commencement of this Part, or three persons, whichever is the lesser number.

Subsection (9) ensures that there will be a representation of at least two persons from business or industry on each governing authority.

Subsection (10) provides for gender balance among the membership of governing authorities.

Subsection (11) provides for the making of regulations, by a governing authority, relating to selection, election, nomination or appointment of members.

Section 16 provides that each governing authority will decide whether it is to be chaired by the chief officer (President/Provost) or a person from outside the university. In the case of universities which at present have a chairperson other than the chief officer, this arrangement will continue. Except where the chief officer is the chairperson, the chairperson must not be an employee of the university or a member of the governing authority. Where a chief officer chairs the governing authority at present, this situation cannot be altered while the present incumbent occupies the office of chairperson. The chairperson, where other than the chief officer, may be removed from office by the governing authority. A chairperson appointed under this section will not be appointed on a full-time basis and will exercise no executive functions in the university.

Section 17 sets out the functions of the governing authority. It provides that the governing authority will be responsible for controlling the property of the university and for the appointment of the chief officer and other employees. In carrying out the latter functions, the governing authority shall develop such interview and other procedures as will ensure participation in the selection process by high quality candidates from both within and outside the staff of the university. In carrying out its functions the authority will be required to have special regard to the promotion of the Irish language and cultures, to the attainment of gender balance and equality of opportunity in education and to the promotion of economic, cultural and social development.

Section 18 provides that the Government can appoint a Visitor to a university, where a university does not already have a visitor. The Visitor must be a Judge of the High Court, or a retired High Court or Supreme Court Judge. Before appointing a judge as Visitor the Government must consult with the President of the High Court. Provision is made for replacement of a Visitor in circumstances where a Visitor resigns or otherwise becomes incapable of performing his or her functions.

Section 19 provides for visitation of a university. Where there is *prima facie* evidence that there has been a breach by a university of

the laws, ordinances or statutes governing it, the Minister, after giving a university an opportunity to make its case and with the agreement of Government, may request that the Visitor to the university enquire into aspects of the operation of the university. The Visitor will proceed with the investigation if he or she is satisfied that there are reasonable grounds for the Minister's opinion. The Visitor will be entitled to enter the university to conduct an inspection of the university, its buildings, equipment and records or to enquire into the academic or other affairs of the university. The Visitor is to be afforded all reasonable co-operation and facility by the university, its employees and its governing authority.

Section 20 provides for the suspension of a governing authority. Where, after receiving the report of a Visitor, the Minister, having considered the views of the university, is of the opinion that a governing authority is performing its functions in a manner which breaches the laws, statutes or ordinances governing it and that the governing authority should be suspended, and the Visitor concurs, the Minister may recommend to the Government the suspension of the governing authority. The Government may by order, with the consent of both Houses of the Oireachtas, suspend the governing authority. The Visitor would then appoint another body to carry out the functions of the governing authority for up to one year. A new authority must be established within one year of the suspension in the same manner as the first governing authorities are set up after the passing of this Act. This would involve the appointment of a commission under *section 22*.

CHAPTER III

Interim Arrangements

Section 21 provides that a governing authority of a university which held office prior to the commencement of this Act shall remain in office until the new governing authority has been constituted in accordance with the provisions of this Act and when such an authority has been so constituted the old governing authority will be automatically dissolved.

Section 22 provides that the Minister will appoint a commission for each university to determine the composition of the first governing authority under this Act and to oversee its appointment. In the case of the constituent universities, Dublin City University and the University of Limerick, the commission will comprise the President, the Registrar, two nominees of the present governing body and the Chairman of the HEA or his or her nominee. In addition the Chancellor of the National University of Ireland or a nominee will sit on the commission for the constituent universities. The Provost, Vice-Provost and two nominees of the present Board and the Chairman of the HEA or his or her nominee will provide the commission for Trinity College. The commission will be dissolved when the governing authority holds its first meeting. This section also provides that the Visitor may appoint any person or body or persons to carry out the functions of a commission where a commission fails to act.

CHAPTER IV

Staff of a University

Section 23 provides for the appointment of the chief officer of a university, the selection of whom will be a function of the governing

authority in accordance with procedures determined by the governing authority and set out in a university statute. The chief officer will be the accounting officer of the university and may be called upon to give evidence in that capacity before the Public Accounts Committee of Dáil Éireann.

Section 24 provides for matters relating to staffing, such as appointment, suspensions, dismissal, terms, pay, and pensions. Each university will decide its staffing structures having regard to the efficient use of resources, accountability for public funds, Government pay policy in the public sector, the impact of their decisions on their budgets and guidelines issued by the HEA under *section 48*. Universities must publish their staff selection procedures in statutes or regulations.

The terms and conditions of staff will be a matter for the universities in consultation with their staff. Pensions will be subject to the approval of the Ministers for Education and Finance. Pay and allowances will also generally be subject to the approval of the Ministers for Education and Finance. However, departures from the normal levels are permitted within a framework to be agreed between the universities and HEA. For the removal of doubt, *subsection (8)* asserts that the terms and conditions of existing staff are not altered by the Act.

CHAPTER V

Academic Council

Section 25 provides that 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. The section further provides for certain specific functions.

Section 26 provides for the composition of the academic council, the majority of the members of which shall be academic staff in the university drawn from a range of academic disciplines and a range of levels. Membership will also include students, the number to be determined by the governing authority. The numbers, composition, selection, appointment and terms of office of members shall be provided for in a statute of each university. The section also provides that the composition and terms of office of members who are first appointed under this Act will be determined in consultation with members of the academic council holding office at the commencement of this section of the Act. The chief officer shall be, *ex officio*, a member of the academic council.

Section 27 concerns the business of the academic council. The section provides that an academic council will hold meetings, as it thinks necessary to perform its functions and may regulate its own procedure. The chief officer will be entitled to preside over meetings of the academic council or a committee of the council if he or she chooses to do so. An academic council may establish committees to assist in the performance of its functions. Such a committee may consist of members and non-members of the academic council.

Section 28 provides that existing academic councils will be dissolved when councils as provided by this Act have been established.

CHAPTER VI

Charters and Statutes

Section 29 provides that a university may have a charter providing for the objects and functions of the university in respect of its academic and administrative affairs; arrangements the university has for the promotion of the Irish language and cultures; the composition of the governing authority; the rights of the employees and students of the university, their responsibility to the university and the responsibility of the university to them; arrangements for review of, or appeals against, decisions of the governing authority and the academic council which affect employees or students; the university's policy in respect of the promotion of equality of opportunity among its students and employees; the university's policy in relation to adult and continuing education; and any other matters that the governing authority may consider relevant. Charters under this section are to be prepared following appropriate consultation within the university and will be supplemental charters where a university is already governed by charter. *Subsections (4) and (5)* provide for the recognition by order of a proposed charter by the Government and the Houses of the Oireachtas.

Section 30 provides that this Act will apply to the charter of the National University of Ireland and the charter of any of its constituent universities in the same way as the Universities Act, 1908, applies to them. The section further provides that the Government may amend by order, following the application of a university, the charter of a university in the manner agreed with the university. *Subsection (3)* provides for the consolidation into a single instrument of a charter which has been amended by this Act.

Section 31 provides that a university may make statutes which may regulate the affairs of the university. Having made a statute, a governing authority will be required to publish it in the *Iris Oifigiúil* and to inform the HEA and the Minister. The section further provides that existing statutes that are not in conflict with this Act will remain in place. The section also repeals section 5 of the Irish Universities Act, 1908.

CHAPTER VII

Planning and Evaluation

Section 32 provides that the chief officer will prepare a strategic development plan setting out the medium- to long-term goals for the university and detailing the plans for achieving them. The plan is to be prepared by the chief officer and the governing authority will approve the plan which will then be submitted to the HEA and the Minister.

Section 33 requires each governing authority, through the chief officer, to establish procedures for quality assurance in the education and related services provided by the university. Procedures will include evaluations of all departments, faculties and services of a university not less than once every ten years. This would involve evaluation by university staff in the first instance followed by evaluation by people from outside the university, including people who are competent to make national and international comparisons on such issues. There will also be assessment by those, including

students, availing of the services of a university. The governing authority will publish findings arising from the application of these procedures. The governing authority will implement such findings. A governing authority will review the effectiveness of the procedures, at least every fifteen years, and publish the results of such a review.

Section 34 provides that each university will set out its policies on access and equality in its activities. In determining these policies a university will have regard to Ministerial policies. Universities shall implement the policies set out in their policy statement.

CHAPTER VIII

Finance, Property and Reporting

Section 35 provides that each university will submit to the HEA a statement of the proposed expenditure and expected income of the university for the financial year. The HEA will determine the amount of moneys to be allocated to the university for the financial year and that amount together with other expected income of the university, as agreed with the HEA, will be the budget of the university for the financial year. The chief officer will have the responsibility of ensuring that the budget is carried into effect as agreed, unless a departure from the budget is agreed with the HEA. If a governing authority exceeds its budget in a manner which cannot be met from its own resources, then any such excess shall be the first charge on the university's budget for the next financial year.

Section 36 provides that 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 or persons and that any such borrowing, guaranteeing or underwriting will be in accordance with a framework agreed between the universities and the HEA.

Section 37 provides that accounts relating to income and expenditure must be kept in a form prescribed by the HEA. The Comptroller and Auditor General will decide which accounts are to be submitted for audit by that Office. The audited accounts, together with the Comptroller and Auditor General's report, will be made available to the Minister and to the HEA and laid before each House of the Oireachtas.

Section 38 provides that a university may determine and charge fees 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. The HEA may review certain fees with the universities and may advise the universities on fee levels.

Section 39 provides for the preparation by a university, at least every three years, of a report on its activities in the context of its strategic development plan. The university will give a copy of the report to the Minister who will lay it before the Houses of the Oireachtas.

Section 40 provides that a university may dispose of its land and buildings. Where the land and buildings have been funded from public moneys after the date of passing of this Act, *section 40* provides that the sale or other disposal will be subject to the terms and conditions agreed by the Minister and the governing authority. *Subsection (3)* provides that, where a university becomes a privately funded

body, the grants paid to the university after the passing of this Act through which property was acquired, refurbished or developed must be repaid on terms agreed between the governing authority and the Minister. Where agreement cannot be reached, subsection (4) provides for arbitration by a court appointed arbitrator under the Arbitration Acts, 1954 and 1980.

The schedule provides for a university council and its legal status. The schedule also provides for the term of office of the members, filling of casual vacancies, removal, resignation, age limits, liability for membership, conditions of service, remuneration and the holding and

National University of Ireland, Maynooth

Section 41 establishes the Recognised College at St. Patrick's College, Maynooth, as a constituent university of the National University of Ireland to be known as the National University of Ireland, Maynooth, or in the Irish Language Ollscoil na hÉireann, Má Nuad.

Section 42 provides for the transfer of the staff who are at present employed in St. Patrick's College, Maynooth, to the new university. Where staff are paid from public funds they will become employees of the university automatically on the commencement of the Act. Where staff are paid partly from public funds, they will remain the staff of St. Patrick's College, Maynooth, unless and until agreement is reached between the two institutions that they should be employees of the new university. Further provisions provide for the preservation of remuneration and terms and conditions of employment of transferred employees.

PART IV

This Schedule provides for arrangements relating to pension schemes for the staff of the National University of Ireland

National University of Ireland

Section 43 amends the charter of the National University of Ireland in so far as it relates to the General Board of Studies and the Senate of the National University of Ireland. In providing for the composition of a new Senate, the section provides for an equal number of representatives from each of the constituent universities of the National University of Ireland including the National University of Ireland, Maynooth, and follows the existing provisions relating to the composition. The section also provides for gender balance in the composition of the Senate of the National University of Ireland.

Section 44 amends the Irish Universities Act, 1908 by deleting provisions which are no longer relevant. Subparagraph (d) removes the restriction on the public funding of the teaching of religion or theology in a constituent college.

Section 45 sets out the relationship between the National University of Ireland and the constituent universities. The role of the National University of Ireland will include establishing the matriculation requirements for the constituent universities, in addition to which the constituent universities may set other requirements. The National University of Ireland will also have a role in reviewing academic standards and in the appointment, with the agreement of the universities, of external examiners. Subsection (6) provides that the present powers of the National University of Ireland in respect of the presidents or other employees of the constituent colleges which the National University of Ireland appointed will remain in place for those officers or employees.

Section 46 sets out the membership of the constituent universities of the National University of Ireland. The membership of each university will include the members of its governing authority and its academic council, its employees, its students, its graduates and other persons that the governing authority may appoint.

Section 47 provides that the HEA will set out its policies on access and equality in its strategic development plans. Determining these policies a university will have regard to the HEA's policies. Universities shall implement the policies set out by the HEA in its policy statement.

PART V

An tÚdarás

Section 47 provides that the HEA will assist the universities in achieving the objectives of Chapters IV, VII and VIII. In so doing, the HEA may review strategic development plans, quality assurance procedures and equality policies and may also review the numbers or grades of employees of the university, and the proportion of the budget of the university to be applied to the different activities of the university. The section also provides that the HEA may publish reports on such reviews.

Section 48 provides that the HEA, after consultation with the chief officers of a university, may issue guidelines on the numbers or grades of employees of a university, and the proportion of the budget of the university to be applied to the different activities of the university. The section further provides that these guidelines will not be binding on a university.

Section 49 provides that a university must provide the HEA with such information on staffing as the HEA requests.

PART VI

Miscellaneous

Section 50 provides that the title "university" may not be used to describe an educational establishment or facility without the approval of the Minister except in relation to an educational establishment or facility established or described as such before the date on which this Act was first introduced to the Dáil. Section 50 further states that the Minister may apply to the High Court for an injunction to restrain any person from using the title "university" in contravention of this section.

FIRST SCHEDULE

Enactments Repealed

The first schedule repeals the National Institute for Higher Education, Limerick, Act, 1980 and the National Institution for Higher Education, Dublin, Act, 1980. It further repeals sections in the University of Limerick Act, 1989 and the Dublin City University Act, 1989 which will be obsolete on the passing of this Act.

SECOND SCHEDULE

The second schedule renames the constituent colleges and is to be read in conjunction with section 7(1) which establishes the colleges as constituent universities.

THIRD SCHEDULE

Governing Authority

The third schedule provides for a range of practical matters relating to the operation and business of a governing authority. The schedule provides for a university seal and its legal status. The schedule also provides for the term of office of the members, filling of casual vacancies, removal from office, resignation, age limits, eligibility for membership, conflicts of interest, remuneration and the holding and conduct of meetings.

FOURTH SCHEDULE

Chief Officer

The fourth schedule outlines the role and function of the chief officer of a university. The role is to manage the university subject to the policies of the governing authority to which he or she will be responsible for the exercise of his or her powers and functions. The schedule also provides for the delegation of the powers of the chief officer, but in the event of such delegation he or she will remain accountable to the governing authority for the exercise of the powers.

FIFTH SCHEDULE

Superannuation

This Schedule provides for matters relating to pension schemes for the staff of the universities.

*An Roinn Oideachais,
Márta, 1997.*

THIRD SCHEDULE

Section 46 sets out the structure of the constituent universities of the National University of Ireland. The membership of each university will include the members of its governing authority and its academic council, its employees, its students, its graduates and other persons entitled to be members of the university.

Section 47 provides that the HEA will assist the universities in achieving the objectives of Chapters IV, VII and VIII. In so doing, the HEA may review quality assurance procedures and equality policies and may also review the numbers or grades of employees of the university, and the proportion of the budget of the university to be applied to the different activities of the university.

FOURTH SCHEDULE

Section 49 provides that a university must provide the HEA with such information on staffing as the HEA requests.

FIFTH SCHEDULE

Section 50 provides that the title "university" may not be used to describe an educational establishment or facility without the approval of the Minister except in relation to an educational establishment or facility established or described as such before the date on which this Act was first introduced to the Dáil. Section 50 further states that the Minister may apply to the High Court for an injunction to restrain any person from using the title "university" in contravention of this section.

FIRST SCHEDULE

Enactments Repealed

The first schedule repeals the National Institute for Higher Education, Limerick, Act, 1969 and the National Institute for Higher Education, Galway, Act, 1969. It further repeals sections in the University of Limerick Act, 1989 and the Dublin City University Act, 1989 which will be obsolete on the passing of this Act.

SECOND SCHEDULE

The second schedule renames the constituent colleges and is to be read in conjunction with section 7(1) which establishes the colleges as constituent universities.