



Bille na nOllscoileanna (Forbairt agus Nuálaíocht) (Leasú), 2015
Universities (Development and Innovation) (Amendment) Bill 2015

Mar a tionscnaíodh

As initiated



**BILLE NA nOLLSCOILEANNA (FORBAIRT AGUS NUÁLAÍOCHT) (LEASÚ), 2015
UNIVERSITIES (DEVELOPMENT AND INNOVATION) (AMENDMENT) BILL 2015**

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Higher Education Authority Act 1971 (No. 22)

Pensions Act 1990 (No. 25)

Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)

Universities Act 1997 (No. 24)



**BILLE NA nOLLSCOILEANNA (FORBAIRT AGUS NUÁLAÍOCHT) (LEASÚ), 2015
UNIVERSITIES (DEVELOPMENT AND INNOVATION) (AMENDMENT) BILL 2015**

Bill

entitled

An Act to amend the Universities Act 1997, to develop the operation of the universities, to encourage education, innovation, research and scholarship in the universities, and to make provision for related matters. 5

Be it enacted by the Oireachtas as follows:

Short title, collective citation and commencement

1. (1) This Act may be cited as Universities (Development and Innovation) (Amendment) Act 2015. 10
- (2) This Act and the Principal Act, as amended, may be cited together as the Universities Acts 1997 to 2015.
- (3) 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. 15

Definitions

2. (1) In this Act, except where the contrary intention appears or the context otherwise requires— 20
 - “An tÚdarás” means An tÚdarás um Ard-Oideachas established pursuant to section 2 of the Act of 1971;
 - “DAC” means a designated activity company formed pursuant to Part 16 of the Act of 2014;
 - “the Commission” means the Commission for Public Service Appointments established pursuant to Part 2 of the Act 2004; 25
 - “section 12 funding” means payments to An tÚdarás out of moneys provided by the Oireachtas pursuant to section 12 of the Act of 1971;
 - “Minister” means the Minister for Education and Skills;
 - “the Act of 1971” means the Higher Education Authority Act 1971; 30
 - “the Act of 1990” means the Pensions Act 1990;

“the Act of 2004” means the Public Service Management (Recruitment and Appointments) Act 2004;

“the Act of 2009” means the Financial Measures (Miscellaneous Provisions) Act 2009;

“the Act of 2014” means the Companies Act 2014; and 5

“the Principal Act” means the Universities Act 1997.

(2) Section 3 of the Principal Act is amended in subsection (1)—

(a) by inserting the following before the definition of “employee”:

“ ‘education’ means education, examination, instruction, lectures, research, scholarship, study, teaching or training undertaken or provided in a university or by any person acting under the authority of a university; it includes the award of degrees and other qualifications; and it includes all activities necessary or expedient for or ancillary to such purposes;”, 10

(b) by inserting the following before the definition of “the Minister”:

“ ‘innovation’ includes creativity, ingenuity, novelty, renewal and transformation in all of their forms — artistic, cultural, economic, educational and social; and, in particular, it includes the development of new business methods, models or practices, or of new businesses, products, services, structures, technologies, intellectual property or work practices;”, 15
20

(c) by inserting the following before the definition of “the Senate”:

“ ‘remuneration’ has the meaning specified in section 25(9);

‘research’ includes the systematic examination, inquiry or investigation into, or the careful consideration, observation or study of, materials, sources and the like, in order to contribute to knowledge, develop theories, establish facts or reach conclusions; 25

‘scholarship’ includes the publication or dissemination, in any appropriate form or means, of the fruits of research;”.

(3) The Principal Act is amended, in section 3, by inserting the following subsection after subsection (3): 30

“(4) For the purposes of this section ‘intellectual property’ includes—

(a) any right, interest or cause of action relating to copyright or a related right under the Copyright and Related Rights Act 2000 as amended,

(b) any right, interest or cause of action relating to design rights, geographical indications, patents, plant breeders’ rights, trademarks, and the like, 35

(c) any right, interest or cause of action relating to breach of confidence or passing off, or for the protection of know-how or trade secrets, and 40

- (d) any right, interest or cause of action which a court accepts is sufficiently similar or related to the other rights or causes of action in this paragraph.
- (5) For the avoidance of doubt, for the purposes of this section ‘intellectual property’ also includes— 5
 - (a) any right, interest or cause of action which is ancillary to, or arising out of the same subject matter as, a right, interest or cause of action in subsection (4),
 - (b) any right, interest or cause of action relating to any matter in subsection (4), whether that matter is registered or not, or capable 10 of registration or not, and
 - (c) any right to apply for, and any application for, any of the matters in subsection (4).”.
- (4) In this Act, including a Schedule to this Act—
 - (a) a reference to any other enactment shall, except where the context otherwise 15 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, 20
 - (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. 25
- (5) A reference in this Act to the performance of functions includes a reference to the exercise of powers and the performance of duties.

Objects of university

3. Section 12 of the Principal Act is amended—

- (a) in paragraph (a), by substituting “through education, innovation, research and scholarship,” for “through teaching, scholarly research and scientific investigation,” 30
- (b) in paragraph (h), by substituting “education, innovation, research and scholarship,” for “teaching and research,”
- (c) in paragraph (i), by substituting “education, innovation, research and scholarship,” for “research,” 35
- (d) in paragraph (j), by deleting “and”,
- (e) in paragraph (k), by substituting “,” for “.”, and
- (f) by inserting, after paragraph (k), the following:

- “(l) to develop, promote and facilitate the distinctive intellectual atmosphere of an academic and scholarly community dedicated to education, innovation, research and scholarship in all of their forms and across the full range of academic endeavour,
- (m) to conduct education in the context of innovation, research and scholarship, and *vice versa*, and 5
- (n) to strive for the intellectual, social and cultural development of every member of the university and of society at large.”.

Functions of university

- 4. Section 13(2) of the Principal Act is amended by substituting the following for paragraphs (a), (b) and (c): 10
 - “(a) shall provide education, and shall promote and facilitate education, innovation, research and scholarship in all of their forms and across the full range of academic endeavour,
 - (b) shall promote and facilitate the internationalisation of education (including, in particular, higher education), innovation, research and scholarship, both within and outside of the State, 15
 - (c) shall seek diverse sources of funding (other funding paid to An tÚdarás, out of moneys provided by the Oireachtas pursuant to section 12 of the 1971 Act) to further the objects set out in section 12 of this Act, the functions set out in this section, and the principles set out in sections 14 and 14A,”. 20

Academic tenure

- 5. (1) The Principal Act is amended by inserting the following after section 14:
 - “**Academic tenure** 25
 - 14A.** (1) To preserve and promote the principles of academic freedom provided for in section 14, and to provide security against arbitrary dismissal, the principle of academic tenure guarantees that the employment of officers shall not be terminated, except—
 - (a) in the case of a non-continuation of a contract during the course of or at the end of a period of probation, if any; 30
 - (b) where the officer attains the age for the time being prescribed in law or agreed in the officer’s contract of employment as the ordinary retirement age for the office-holder, if any;
 - (c) where the officer earlier retires from office, resigns, or dies; 35
 - (d) where the officer’s contract of employment is discharged by operation of law;
 - (e) pursuant to procedures adopted pursuant to section 25(6); or
 - (f) pursuant to procedures adopted pursuant to subsection (4).

- (2) A governing authority may apply the principle of academic tenure to members of the academic staff other than officers, on terms consistent with their contracts of employment.
- (3) In the implementation of the objects of the university pursuant to section 12, and in the performance of the functions of the university pursuant to section 13, a governing authority shall respect the principles of academic freedom provided for in section 14 and the principle of academic tenure provided for in section 14A. 5
- (4) For the purposes of subsection (1)(f), a university may terminate the employment of an officer who is incapable by reason of physical or mental infirmity from continuing in office, but only in accordance with procedures, and subject to any conditions, specified in or pursuant to a statute made following consultation through normal industrial relations structures operating in the university with recognised staff associations or trade unions.”. 10 15
- (2) Section 25 of the Principal Act is amended, in subsection (1), by inserting, after “in accordance with procedures specified in” and before “in a statute or regulation”, the following:
- “or pursuant to”.
- (3) Section 25 of the Principal Act is amended, in subsection (6)— 20
- (a) by inserting, after “subject to any conditions, specified in” and before “a statute made following consultation”, the following:
- “or pursuant to”;
- and
- (b) by substituting for “and shall provide for the tenure of officers” the following: 25
- “; provided that—
- (a) any such statute, procedures or conditions shall respect the principles of academic freedom provided for in section 14 and the principle of academic tenure provided for in section 14A, and
- (b) no member of the academic staff of a university shall be suspended or dismissed merely for exercising the principles of academic freedom provided for in section 14”. 30

Funding

6. (1) Section 25 of the Principal Act is amended by substituting the following subsection for subsections (4) and (5): 35
- “(4) Subject to subsection (5), where a university makes use of section 12 funding to pay remuneration to the employees of that university, then such remuneration shall be paid according to such rates, scales or ranges of remuneration as may be approved from time to time by the Minister with the consent of the Minister for Public Expenditure and Reform. 40

- (5) A university shall not pay remuneration less than rates, scales or ranges of remuneration approved pursuant to subsection (4); but, having regard to section 14, a university may pay remuneration greater than rates, scales or ranges of remuneration approved pursuant to subsection (4)— 5
- (a) where the governing authority is satisfied that it is necessary to meet the objects of the university, and
- (b) only in accordance with a framework which shall be agreed between the universities and An tÚdarás.”.
- (2) (a) Where the universities object to rates, scales or ranges of remuneration as approved by the Minister with the consent of the Minister for Public Expenditure and Reform pursuant to section 25(4) of the Principal Act (as inserted by *subsection (1)*), then any of the universities concerned may apply to the Commission to determine appropriate rates, scales or ranges of remuneration. 10
- (b) Once the Commission has determined appropriate rates, scales or ranges of remuneration, then where a university makes use of section 12 funding to pay remuneration to the employees of that university, such remuneration shall be paid according to rates, scales or ranges of remuneration determined pursuant to *paragraph (a)* notwithstanding any rates, scales or ranges of remuneration which may previously have been approved by the Minister with the consent of the Minister for Public Expenditure and Reform pursuant to section 25(4) of the Principal Act. 15 20
- (3) (a) Where the universities and An tÚdarás have been unable to agree a framework for the purposes of section 25(5)(b) of the Principal Act (as inserted by *subsection (1)*), then any of the universities concerned or An tÚdarás may apply to the Commission to determine an appropriate framework of rates, scales or ranges of remuneration. 25
- (b) Once the Commission has determined an appropriate framework of rates, scales or ranges of remuneration, then where a university makes use of section 12 funding to pay remuneration to the employees of that university, such remuneration shall be paid according to rates, scales or ranges of remuneration determined pursuant to paragraph (a) notwithstanding that no framework has been agreed between the universities and An tÚdarás pursuant to section 25(5)(b) of the Principal Act (as inserted by *subsection (1)*). 30
- (4) The Principal Act is amended by inserting the following after section 20: 35
- “Directions of Minister**
- 20A.** (1) The Minister may, in relation to the use made by a university of section 12 funding in the performance of its functions, give a direction in writing to that university requiring it to comply with a policy decision made by the Government or the Minister in so far as that decision relates to the remuneration of public servants employed in that university and paid out of section 12 funding. 40
- (2) A university shall comply with a direction under this subsection.
- (3) Where the Minister is of the opinion that there are reasonable grounds

for contending that the functions of a university are being performed in a manner which *prima facie* constitutes a breach of a direction given pursuant to subsection (1), 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; and subsections (2) to (4) of section 20, and section 21, shall apply.” 5

- (5) The Principal Act is amended, in section 21(1), by inserting after “a request under section 20(1)” and before “, is of the opinion that”, the following: 10

“or section 20A(3)”.

- (6) Having regard to section 14 of the Principal Act, where a university makes use of funding other than section 12 funding to pay remuneration to the employees of that university, then such remuneration shall be paid according to rates, scales or ranges of remuneration determined in accordance with a framework which shall be agreed 15 between the universities and An tÚdarás.

- (7) (a) Where the universities and An tÚdarás have been unable to agree a framework for the purposes of *subsection (6)*, then any of the universities concerned or An tÚdarás may apply to the Commission to determine an appropriate framework of rates, scales or ranges of remuneration. 20

- (b) Once the Commission has determined an appropriate framework of rates, scales or ranges of remuneration, then where a university makes use of funding other than section 12 funding to pay remuneration to the employees of that university, such remuneration shall be paid according to rates, scales or ranges of remuneration determined pursuant to paragraph (a) notwithstanding that no 25 framework has been agreed between the universities and An tÚdarás pursuant to *subsection (6)*.

- (8) A university shall not pay remuneration less than rates, scales or ranges of remuneration approved pursuant to *subsections (6) or (7)*; but, having regard to section 14 of the Principal Act, a university may pay remuneration greater than rates, 30 scales or of remuneration approved pursuant to *subsections (6) or (7)*—

(a) where the governing authority is satisfied that it is necessary to meet the objects of the university, and

(b) only with the consent of An tÚdarás or of the Minister, which consent shall have regard to section 14 of the Principal Act and shall not be unreasonably withheld. 35

- (9) (a) Where both An tÚdarás and the Minister have withheld their consent pursuant to *subsection (8)(b)*, then the university concerned may apply to the Commission to determine whether the proposed departure from rates, scales or ranges of remuneration determined pursuant to *subsections (6) or (7)* is necessary to meet the objects of the university concerned. 40

(b) If the Commission determines that the proposed departure from rates, scales or ranges of remuneration determined pursuant to *subsections (6) or (7)* is necessary to meet the objects of the university concerned, then the remuneration in question may be paid by the university concerned notwithstanding that the consent of An

tÚdarás and of the Minister required pursuant to *subsection (8)(b)* has been withheld.

- (c) Any application pursuant to this subsection is without prejudice to any cause of action, for judicial review or otherwise, which the university concerned may have in respect of the failure of An tÚdarás or of the Minister pursuant to *subsection (8)(b)* to have proper regard to section 14 of the Principal Act or in respect of the unreasonable withholding of consent by An tÚdarás or the Minister pursuant to *subsection (8)(b)*. 5
- (10) The Commission shall establish procedures for applications pursuant to this section; provided that an application pursuant to this section shall be conducted in private and shall be given such priority over the other business of the Commission as the Commission considers reasonable. 10
- (11) Section 3 of the Act of 2005 is amended in subsection (1) by inserting, after “(l)” and before “otherwise,” the following:
- “to make determinations pursuant to section 5 of the Universities (Development and Innovation) (Amendment) Act 2015; 15
- (m)”.
- (12) Section 25 of the Principal Act is amended by inserting, after subsection (8), the following:
- “(9) In this Act, ‘remuneration’ means any consideration, whether in cash or in kind, which an employee receives from his or her employer in respect of his or her employment, and includes pay, fees, allowances, expenses, superannuation, and payments connected with appointment or termination of employment.”. 20
- (13) The Principal Act is amended, in section 25(8)(a), by substituting “tenure and remuneration,” for “tenure, remuneration, fees, allowances, expenses and superannuation”. 25

Staff

7. (1) Section 25 of the Principal Act is amended by inserting, after subsection (9) (inserted by *section 6(12)*), the following: 30
- “(10) Any promotion accepted by an officer, or any appointment of an officer to a new position in the university, shall constitute an agreement for the purposes of subsection (8)(b).”.
- (2) Any statutes in force in a university immediately before the commencement of this Act shall constitute an agreement for the purposes of section 25(8)(b) of the Principal Act. 35
- (3) Section 51 of the Principal Act is amended by substituting “whether out of section 12 funding or otherwise” for “fees, allowances, expenses and superannuation”.

Superannuation

8. (1) A university or the National University of Ireland shall determine the terms and 40

conditions of any superannuation scheme for its employees in accordance with the *Schedule*.

- (2) *Subsection (1)* shall apply only to employees appointed to a university after the commencement of a superannuation scheme in accordance with the *Schedule*, and only such employees may become members of any superannuation scheme established pursuant to *subsection (1)* and in accordance with the *Schedule*. 5
- (3) Nothing in this section or in the *Schedule* shall affect the operation of section 25 of the Act of 1997, of the Fifth Schedule to the Act of 1997, or of the Act of 2009, in so far as they relate to superannuation.
- (4) Nothing in section 25 of the Act of 1997, of the Fifth Schedule to the Act of 1997, or of the Act of 2009, in so far as they relate to superannuation, shall affect the operation of this section or of the *Schedule* or of any superannuation scheme established pursuant to *subsection (1)* and in accordance with the *Schedule*. 10
- (5) For the avoidance of doubt, the rights and entitlements in respect of superannuation enjoyed on the commencement of this section by persons who are employees or former employees of a university shall not, by virtue of the operation of this section, be any less beneficial than those rights and entitlements enjoyed by those persons immediately before the commencement of this section. 15
- (6) Any superannuation scheme established pursuant to *subsection (1)* and in accordance with the *Schedule*, may— 20
- (a) be a defined contribution scheme (within the meaning of section 2(1) of the Act of 1990),
 - (b) provide for additional voluntary contributions (within the meaning of section 2(1) of the Act of 1990),
 - (c) provide for the transfer of accrued rights from another superannuation scheme, 25
 - (d) provide for the transfer of rights accrued under a superannuation scheme established pursuant to *subsection (1)* and in accordance with the *Schedule* to another superannuation scheme, and
 - (e) provide for benefits (within the meaning of section 2(1) of the Act of 1990) based upon the average earnings of a member of the scheme throughout that member's entire career as a member of the scheme. 30
- (7) The Minister may, by order, make regulations for the purposes of this section, and may, in particular, by order, make regulations relating to the functions of the trustees of any superannuation scheme established pursuant to *subsection (1)* and in accordance with the *Schedule*. 35

Corporations

9. (1) A university may establish by incorporation in the State or elsewhere, or participate in the establishment of, such corporations as it thinks fit for the purpose of promoting or assisting, or in connection with, the objects or functions of the university.
- (2) The employees of a corporation referred to in *subsection (1)* shall be employed on such terms and conditions of employment, including remuneration, as the corporation 40

from time to time determines.

- (3) (a) Where a corporation referred to in *subsection (1)* is not a DAC, it may pay remuneration to employees of a university only in accordance with a framework of rates, scales or ranges of remuneration which shall be agreed between the universities and An tÚdarás. 5
- (b) Where the universities and An tÚdarás have been unable to agree a framework for the purposes of *paragraph (a)*, then any of the universities concerned or An tÚdarás may apply to the Commission to determine an appropriate framework of rates, scales or ranges of remuneration.
- (c) Once the Commission has determined an appropriate framework of rates, scales or ranges of remuneration, then a corporation referred to in *paragraph (a)*, may pay remuneration to employees of a university in accordance with a framework of rates, scales or ranges of remuneration determined pursuant to *paragraph (b)* notwithstanding that no framework has been agreed between the universities and An tÚdarás pursuant to *paragraph (a)*. 10 15
- (4) Where a corporation referred to in *subsection (1)* is a DAC, its objects shall be understood to include education, innovation, research and scholarship, and Part 16 of the Act of 2014 shall be construed and applied accordingly.
- (5) (a) Where a corporation referred to in *subsection (1)* is a DAC, it may pay remuneration to employees of a university only in accordance with a framework of rates, scales or ranges of remuneration which shall be agreed between the universities. 20
- (b) Where the universities have been unable to agree a framework for the purposes of *paragraph (a)*, then any of the universities concerned may apply to the Commission to determine an appropriate framework of rates, scales or ranges of remuneration. 25
- (c) Once the Commission has determined an appropriate framework of rates, scales or ranges of remuneration, then a corporation referred to in *paragraph (a)* may pay remuneration to employees of a university in accordance with a framework of rates, scales or ranges of remuneration determined pursuant to *paragraph (b)* notwithstanding that no framework has been agreed between the universities pursuant to *paragraph (a)*. 30

Intellectual property

10. (1) For the purposes of encouraging research and innovation, the universities and the Minister shall develop, and from time to time revise, an Intellectual Property Protocol, to encourage the development and exploitation of intellectual property by the universities and corporations formed by them pursuant to *section 9*. 35
- (2) In developing and revising an Intellectual Property Protocol pursuant to *subsection (1)*, the universities and the Minister shall consult An tÚdarás, the Minister for Jobs, Enterprise and Innovation, and the Minister for Public Expenditure and Reform. 40
- (3) The Act of 2000 is amended, except where the contrary intention appears or the context otherwise requires—

(a) by inserting, in section 2(1), before “educational establishment”, the following:

“ ‘education’ has the meaning specified in section 3(1) of the Universities Act 1997, as amended;”,

(b) by inserting “education,” before “research or private study”, wherever occurring,
and

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(c) by substituting “education” for “instruction” or “instructions”, wherever occurring—

(i) in sections 53, 55, 63, 168, 171, 172, 223, 224, 230 and 330, and

(ii) in the shoulder notes to sections 53 and 223.

SCHEDULE

SUPERANNUATION

Section 8(2)

1. As soon as practicable after the commencement of this Act, a university or the National University of Ireland shall prepare and submit to An tÚdarás 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. 5
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. 10
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.
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 Public Expenditure and Reform, be carried out by the university in accordance with its terms. 15
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 Public Expenditure and Reform. 20
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 Public Expenditure and Reform. 25
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. 30

Bille na nOllscoileanna (Forbairt agus
Nuálaíocht) (Leasú), 2015

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú Acht na nOllscoileanna, 1997, d'fhorbairt oibriú na n-ollscoileanna, do spreagadh oideachas, nuálaíocht, taighde agus scoláireacht sna hollscoileanna, agus do dhéanamh socrú maidir le nithe gaolmhara.

*Na Seanadóirí Sean D. Barrett, Feargal Quinn agus
David Norris a thug isteach,*

22 Eanáir, 2015

Universities (Development and Innovation)
(Amendment) Bill 2015

BILL

(as initiated)

entitled

An Act to amend the Universities Act 1997, to develop the operation of the universities, to encourage education, innovation, research and scholarship in the universities, and to make provision for related matters.

*Introduced by Senators Sean D. Barrett, Feargal
Quinn, David Norris,*

22nd January, 2015

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