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*Number 3 of 2018*

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**TECHNOLOGICAL UNIVERSITIES ACT 2018**

**REVISED**

**Updated to 10 November 2022**

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This Revised Act is an administrative consolidation of the *Technological Universities Act 2018*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Consumer Rights Act 2022 (37/2022)*, enacted 7 November 2022, and all statutory instruments up to and including the *Higher Education Authority Act 2022 (Commencement) Order 2022 (S.I. No. 554 of 2022)*, made 8 November 2022, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to [revisedacts@lawreform.ie](mailto:revisedacts@lawreform.ie).





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## **TECHNOLOGICAL UNIVERSITIES ACT 2018**

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### **Introduction**

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

### **Related legislation**

This Act is not collectively cited with any other Act.

### **Annotations**

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at [www.lawreform.ie/annotations](http://www.lawreform.ie/annotations).

### **Material not updated in this revision**

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at [www.irishstatutebook.ie](http://www.irishstatutebook.ie).

### **Acts which affect or previously affected this revision**

- *Higher Education Authority Act 2022 (31/2022)*

All Acts up to and including *Consumer Rights Act 2022 (37/2022)*, enacted 7 November 2022, were considered in the preparation of this revision.

### **Statutory instruments which affect or previously affected this revision**

- *Technological Universities Act 2018 (Section 36) (Appointed Day) (No. 2) Order 2022* (S.I. No. 175 of 2022)
- *Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2022* (S.I. No. 56 of 2022)
- *Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2021* (S.I. No. 360 of 2021)
- *Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2020* (S.I. No. 568 of 2020)
- *Further and Higher Education, Research, Innovation and Science (Transfer of Departmental Administration and Ministerial Functions) Order 2020* (S.I. No. 451 of 2020)
- *Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2018* (S.I. No. 437 of 2018)
- *Technological Universities Act 2018 (Commencement) Order 2018* (S.I. No. 124 of 2018)

All statutory instruments up to and including *Higher Education Authority Act 2022 (Commencement) Order 2022* (S.I. No. 554 of 2022), made 8 November 2022, were considered in the preparation of this revision.



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**TECHNOLOGICAL UNIVERSITIES ACT 2018**

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**Updated to 10 November 2022**

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An Act to provide for the establishment of technological universities; to provide for the functions and governance of technological universities; to provide for the dissolution, in certain circumstances, of institutes of technology and Dublin Institute of Technology and the transfer of their functions, assets, liabilities and staff to technological universities; to provide for the reform of the governing authorities, and investigation into the performance of functions, of institutes of technology and Dublin Institute of Technology; to provide for investigation into the performance of functions of the Institute for Advanced Studies and its Constituent Schools and the National College of Art and Design; to provide for the consequential amendment of certain enactments and to provide for related matters.

[19th March, 2018]

**Be it enacted by the Oireachtas as follows:**

**Annotations:**

**Modifications (not altering text):**

- C1** Functions transferred and references construed (21.10.2020) by *Further and Higher Education, Research, Innovation and Science (Transfer of Departmental Administration and Ministerial Functions) Order 2020* (S.I. No. 451 of 2020), arts. 2, 3(1)(a), (2) and sch. part 1, in effect as per art. 1(2), subject to transitional provisions in arts. 4-8.
2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by this Order are transferred to the Department of Further and Higher Education, Research, Innovation and Science.
- (2) References to the Department of Education and Skills contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Further and Higher Education, Research, Innovation and Science.
3. (1) The functions vested in the Minister for Education and Skills -
- (a) by or under the Acts specified in Part 1 of the Schedule, and
- (b) ...
- are transferred to the Minister for Further and Higher Education, Research, Innovation and Science.
- (2) References to the Minister for Education and Skills contained in any Act or instrument made under such Act and relating to any functions transferred by paragraph (1) shall, from the

commencement of this Order, be construed as references to the Minister for Further and Higher Education, Research, Innovation and Science.

...

SCHEDULE

Article 3

Part 1

...

Technological Universities Act 2018 (No. 3 of 2018)

...

## PART 1

### PRELIMINARY AND GENERAL

#### Short title and commencement

1. (1) This Act may be cited as the Technological Universities Act 2018.
- (2) 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.

#### Annotations:

#### Editorial Notes:

**E1** Power pursuant to subs. (2) exercised (24.04.2018) by *Technological Universities Act 2018 (Commencement) Order 2018* (S.I. No. 124 of 2018).

2. The 24th day of April 2018 is appointed as the day on which the Technological Universities Act 2018 (No. 3 of 2018), other than sections 65 (a), 68, 69, 70, 76, 77, 79, 80 (b), 82, 83, 84, 85, 91, 92 and 94, shall come into operation.

#### Interpretation

#### 2. In this Act—

“academic council” means, in relation to a technological university, the academic council under *section 16*;

“Act of 1940” means the Institute for Advanced Studies Act 1940;

“Act of 1971” means the National College of Art and Design Act 1971;

“Act of 1992” means the Regional Technical Colleges Act 1992;

“Act of 2003” means the Protection of Employees (Fixed-Term Work) Act 2003;

“Act of 2012” means the Qualifications and Quality Assurance (Education and Training) Act 2012;

“An tÚdarás” means An tÚdarás um Ard-Oideachas;

“applicant college” has the meaning assigned to it by *section 38*;

F1[“applicant higher education provider” has the meaning assigned to it by *section 44A*;]

“applicant institutes” has the meaning assigned to it by *section 29*;

F2[“applicant technological university”—

(a) in Chapter 11 of Part 2, has the meaning assigned to it by *section 38*,

(b) in Chapter 12 of Part 2, has the meaning assigned to it by *section 44A*,  
and

(c) in any other provision of this Act, means a technological university to which *paragraph (a)* or *(b)* applies;];

F1[“business and operation”, in relation to a higher education provider, includes—

(a) the programmes of education and training, and the programmes of research, provided by it,

(b) any land and any rights, powers and privileges related to or connected with such land owned by it or to which it is entitled,

(c) any property (other than land), including choses-in-action, owned by it or to which it is entitled,

(d) any liabilities incurred by it or other commitments entered into by it, including liabilities with regard to superannuation benefits in respect of members of its staff,

(e) the members of its staff,

(f) its body of students, and

(g) the records and data held by it;]

“Director”, other than in the definition of “statutory body”, means, in relation to a college within the meaning of the Act of 1992, a person appointed under *section 9* of that Act;

“education and training board” means an education and training board established under the Education and Training Boards Act 2013;

“education and training board area” has the meaning assigned to it by the Education and Training Boards Act 2013;

“enactment” means—

(a) an Act of the Oireachtas,

(b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(c) an instrument made under an Act of the Oireachtas or a statute referred to in *paragraph (b)*;

“Framework” means the National Framework of Qualifications kept and maintained by the Qualifications and Quality Assurance Authority of Ireland in accordance with *section 43* of the Act of 2012;

“graduate” means a person on whom there has been conferred or who has been granted or given an educational award on successful completion of

a programme of education and training at an institute or a technological university;

“governing body” means, as the case may be—

- (a) in so far as it relates to a technological university, the governing body established under *Chapter 3 of Part 2*,
- (b) in so far as it relates to the Dublin Institute of Technology, the Governing Body established under section 6 of the Dublin Institute of Technology Act 1992, or
- (c) in so far as it relates to a college within the meaning of section 2 of the Act of 1992, a governing body established under section 6 of the Act of 1992;

F1[“higher education provider” means a person or institution which provides at least one programme of education and training leading to the award of a degree or other qualification which is at least at bachelor degree level and is included within the Framework;]

“institute” means—

- (a) the Dublin Institute of Technology, or
- (b) a college within the meaning of section 2 of the Act of 1992;

“local authority” means a local authority for the purposes of the Local Government Act 2001;

“Minister” means Minister for Education and Skills;

“pensionable public servant” shall be construed in accordance with Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012;

“president” means—

- (a) in relation to a technological university, the president appointed under *section 13*, or, as the case may be, *section 56*, and
- (b) in relation to the Dublin Institute of Technology, the President appointed under section 9 of the Dublin Institute of Technology Act 1992;

“programme of education and training” has the meaning assigned to it by section 2 of the Act of 2012;

“regulations of a technological university” has the meaning assigned to it by *paragraph 12 of Schedule 1*;

“statutory body” means—

- (a) a Minister of the Government,
- (b) a local authority,
- (c) a board, authority or other body established by or under an enactment other than the Companies Act 2014 or an existing company within the meaning of that Act, or
- (d) a company formed and registered under the Companies Act 2014, or an existing company within the meaning of that Act, in which all of the shares are held by or on behalf of or jointly with—
  - (i) any Minister of the Government,

- (ii) directors appointed by any Minister of the Government, or
- (iii) a board, authority or other body referred to in *paragraph (c)*,  
and whose functions are conferred by or under an enactment;
- “strategic development plan” has the meaning assigned to it by *section 18*;
- “student”, in relation to an institute or technological university, means—
- (a) a person registered as a student by the institute or technological university, or
- (b) a full-time officer of the student union who was first elected to his or her office while he or she was registered as a student by the institute or technological university;
- “student union”, in relation to an institute or technological university, means the student union or other student representative body recognised by the institute or technological university;
- “technological university” means a technological university established by virtue of an order under *section 36*.

**Annotations:****Amendments:**

- F1** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 85(b), commenced on enactment.
- F2** Substituted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 85(a), commenced on enactment.

**Modifications (not altering text):**

- C2** Functions transferred and references construed (21.10.2020) by *Further and Higher Education, Research, Innovation and Science (Transfer of Departmental Administration and Ministerial Functions) Order 2020 (S.I. No. 451 of 2020)*, arts. 2, 3(1)(a), (2) and sch. part 1, in effect as per art. 1(2), subject to transitional provisions in arts. 4-8.

2. (1) The administration and business in connection with the exercise, performance or execution of any functions transferred by this Order are transferred to the Department of Further and Higher Education, Research, Innovation and Science.

(2) References to the Department of Education and Skills contained in any Act or any instrument made under such Act and relating to any administration and business transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Department of Further and Higher Education, Research, Innovation and Science.

3. (1) The functions vested in the Minister for Education and Skills -

(a) by or under the Acts specified in Part 1 of the Schedule, and

(b) ...

are transferred to the Minister for Further and Higher Education, Research, Innovation and Science.

(2) References to the Minister for Education and Skills contained in any Act or instrument made under such Act and relating to any functions transferred by paragraph (1) shall, from the commencement of this Order, be construed as references to the Minister for Further and Higher Education, Research, Innovation and Science.

...

SCHEDULE



Article 3

## Part 1

...

Technological Universities Act 2018 (No. 3 of 2018)

...

**Orders**

3. Where an order under F3[an order under *section 36, 43 or 44F*] is proposed to be made, a draft of the order shall 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 each such House.

**Annotations:****Amendments:**

- F3** Substituted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 86, commenced on enactment.

**Expenses of Minister**

4. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of monies provided by the Oireachtas.

**Offences**

5. (1) A person guilty of an offence under this Act shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or to both.
- (2) Where an offence under this Act is committed by a person who is a member of a governing body of a technological university, summary proceedings for the offence may be brought and prosecuted by the technological university.

**Amendments and repeals consequent upon orders of Minister**

6. (1) Other than where *subsection (2)* applies, on the day appointed by order under *section 36* or *43*, the First Schedule to the Act of 1992 is amended by the deletion from column 1 of, as the case may be, the names of the dissolved applicant institutes or the name of the applicant college specified in the order.
- (2) Where the Dublin Institute of Technology is specified in an order under *section 36*, or *section 43*, the following Acts are repealed on the day appointed by that order—
- (a) the Dublin Institute of Technology Act 1992;
- (b) the Dublin Institute of Technology (Amendment) Act 1994.

**PART 2**

## TECHNOLOGICAL UNIVERSITY

## CHAPTER 1

*Definitions for Part 2***Definitions for Part 2**

7. (1) In this Part—

F4[“advisory panel”—

(a) in so far as it relates to an application under *section 29*, has the meaning assigned to it by *section 31*,

(b) in so far as it relates to an application under *section 38*, has the meaning assigned to it by *section 40*, and

(c) in so far as it relates to an application under *section 44A*, has the meaning assigned to it by *section 44C*;

F4[“appointed day” means, as may be appropriate—

(a) in so far as it relates to an order under *section 36*, the day appointed by that order,

(b) in so far as it relates to an order under *section 43*, the day appointed by that order, and

(c) in so far as it relates to an order under *section 44F*, the day appointed by that order;]

“chairperson” has the meaning assigned to it by *section 12*;

“dissolved applicant institutes” has the meaning assigned to it by *section 36*;

“eligibility criteria” has the meaning assigned to it by *section 28(1)*.

(2) A reference in this Part to a region includes a reference to each of the regions in which F4[the campuses of a technological university, applicant institutes or an applicant higher education provider, as may be appropriate,] are located.

**Annotations:****Amendments:**

**F4** Substituted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 87(a), (b), commenced on enactment.

## CHAPTER 2

*Functions of technological university***Technological university**

8. (1) A technological university shall be a body corporate with perpetual succession and shall have the power to sue, and may be sued, in its

corporate name and may, with the consent of the Minister F5[...], acquire, hold and dispose of land, an interest in land or any other property.

- (2) The Minister, following consultation with a technological university, may by order specify a name, other than the name specified in the order under *section 36* relating to the technological university, by which the technological university may describe itself for operational purposes.
- (3) The seal of the technological university shall be authenticated by the signature of—
- (a) the chairperson or a member of the governing body authorised by the governing body to act in that behalf, and
- (b) the president or a member of staff of the technological university authorised by the president to act in that behalf.
- (4) Judicial notice shall be taken of the seal of the technological university and any document purporting to be an instrument made by and sealed with the seal of the technological university shall, unless the contrary is shown, be received in evidence and taken to be such an instrument without further proof.

**Annotations:**

**Amendments:**

**F5** Deleted (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 88, S.I. No. 554 of 2022.

**Functions of technological university**

9. (1) The functions of a technological university, having particular regard to the needs of the region in which the campuses of the technological university are located, shall be to—
- (a) provide teaching and facilitate learning that—
- (i) is informed by research, and
- (ii) promotes excellence at all levels of higher education within the Framework,
- (b) provide programmes of education and training that reflect the needs of individuals, business, enterprise, the professions, the community, local interests and other stakeholders in the region in which the campuses of the technological university are located and facilitate learning by flexible means,
- (c) provide for the broad education, intellectual and personal development of students, for the purpose of enabling them, as graduates, to excel in their chosen careers and to contribute responsibly to social, civic and economic life in innovative and adaptable ways,
- (d) provide opportunities for staff and students—
- (i) of the technological university to teach, learn or conduct research at institutions that provide higher education outside the State, or to obtain relevant work experience outside the State, and
- (ii) of institutions that provide higher education outside the State to teach, learn or conduct research at the technological university,

- (e) collaborate with institutions that provide higher education inside and outside the State, including on joint research projects and provision of programmes of education and training,
- (f) support a body of research that includes research relevant at regional, national and international levels and pursue excellence in the conduct of that research,
- (g) support entrepreneurship, enterprise development and innovation in business, enterprise and the professions through teaching and the conduct of research and through effective transfer to those and other sectors of knowledge arising from that research,
- (h) collaborate with business, enterprise, the professions, the community, local interests and related stakeholders in the region in which the campuses of the technological university are located—
  - (i) to promote the involvement of those stakeholders in the design and delivery of programmes of education and training, and
  - (ii) to ensure that, in so far as possible, innovation activity and research undertaken by the technological university reflects the needs of those stakeholders,
- (i) support the development of a skilled labour force including, where appropriate, engaging in the education and training of apprentices in accordance with policy relating to that education and training for the time being communicated to the technological university by An tÚdarás, the Government or any Minister of the Government,
- (j) support the mobility of staff and students of the technological university into and out of the labour force through collaboration with business, enterprise, the professions and related stakeholders in the region in which the campuses of the technological university are located,
- (k) serve the community and public interest by—
  - (i) developing and promoting strong social and cultural links, and links supporting creativity, between the technological university and the community in the region in which the campuses of the technological university are located,
  - (ii) supporting (without prejudice to the generality of *subsection (4)*) the delivery of policies or objectives of the Government or any Minister of the Government, for the time being communicated to the technological university by An tÚdarás, the Government or any Minister of the Government, in relation to development of business and enterprise at a local, regional or national level,
  - (iii) fostering close and effective relationships with—
    - (I) a statutory body whose functions relate to regional development in the region in which the campuses of the technological university are located,
    - (II) a local authority or local authorities in whose local authority area or areas the campuses of the technological university are located,
    - (III) the education and training board or boards in whose education and training board area or areas the campuses of the technological university are located,
    - (IV) a provider of further education and training in the region in which the campuses of the technological university are located, and

- (V) organisations representing the social, creative and cultural interests of the community in the region in which the campuses of the technological university are located,
- and
- (iv) in so far as possible in the performance of its functions—
- (I) contributing to the promotion of the economic, cultural, social, scientific and technological development of the State,
- (II) respecting the diversity of values, beliefs and traditions in Irish society,
- (III) promoting critical and free enquiry, informed intellectual discourse and public debate within the technological university and in wider society, and
- (IV) promoting an entrepreneurial ethos,
- (l) promote access to the technological university and the education it provides, by economically or socially disadvantaged persons, by persons who have a disability and by persons from sections of society in the region in which the campuses of the technological university are located who are significantly under-represented in its student body,
- (m) undertake assessment of students, and award degrees and other qualifications,
- (n) make best use of its expertise and resources, whether or not on a commercial basis, for the purposes of its functions under this Act,
- (o) provide directly, or in collaboration with other providers of programmes of education and training, facilities for all levels of higher education within the Framework, including technological and professional education, and for research,
- (p) collaborate with persons or bodies inside and outside the State for the purpose of its functions under this Act, and
- (q) promote the attainment of gender balance and equality of opportunity among the students and staff of the technological university.
- (2) A technological university may accept gifts of money, land or other property subject to such trusts and conditions, if any, as are not in conflict with this Act, specified by the donor.
- (3) A technological university shall have all such powers as are necessary or expedient for the performance by it of its functions.
- (4) A technological university shall, in the performance of its functions, have regard to policies of the Government (including policies relating to education and training or remuneration of staff employed in the education sector) for the time being.
- (5) (a) For the purposes of the performance of its functions, a technological university shall establish procedures relating to resolution of disputes.
- (b) Procedures established under *paragraph (a)* shall—
- (i) be established following consultation with each trade union and staff association recognised by the technological university and with the student union,

- (ii) provide for consideration of a dispute by a person who is independent of the persons involved in the dispute, and
  - (iii) be published in such manner as the technological university considers appropriate.
- (6) A technological university may perform any of its functions through or by any member of the staff of the technological university authorised in that behalf by the technological university.
- (7) A technological university may delegate any of the functions that, in its opinion, can be better or more conveniently performed by the academic council, to the academic council.
- (8) For the purposes of *subparagraph (i) of subsection (1)(h)* “involvement”, in relation to a programme may include—
- (a) developing, with the technological university, the curriculum of the programme,
  - (b) contributing to assessment, as required by the programme, of the progress of the student, or
  - (c) providing a work placement for a student registered on the programme.
- (9) In *subsection (1)* “providers” has the same meaning as it has in section 2 of the Act of 2012.

#### Academic freedom

10. (1) A technological university, in performing its functions, shall—
- (a) have the right and responsibility to preserve and promote the principles of academic freedom in the conduct of its internal and external affairs, and
  - (b) without prejudice to the generality of *paragraph (a)*, be entitled to regulate its affairs in accordance with its independent ethos and the principles of academic freedom, and in doing so shall have regard to—
    - (i) the promotion and preservation of equality of opportunity and access to higher education,
    - (ii) resources, wherever originating, that are available to the technological university for the purpose of performing its functions, and
    - (iii) the need to secure the most beneficial, effective and efficient use of those resources.
- (2) A member of the academic staff of a technological university shall not, subject to the provisions of any enactment or rule of law, be disadvantaged, or subject to less favourable treatment by the technological university, arising from his or her questioning and testing received wisdom, putting forward new ideas or stating controversial or unpopular opinions in his or her teaching, research and any other activities either in or outside the technological university.

### CHAPTER 3

#### *Governance of technological university*

**Governing body of technological university**

**11.** (1) A technological university shall have a governing body to perform the functions of the technological university under this Act.

F6[(1A) A governing body of a technological university shall—

(a) promote the success (including academic success) and reputation of the technological university,

(b) satisfy itself that appropriate systems, procedures and practices are in place—

(i) to perform the functions of the technological university,

(ii) for the internal performance management and accountability of the technological university in respect of—

(I) the performance of its functions, and

(II) the achievement of the objectives in the strategic development plan under section 18,

and

(iii) in order to implement, and report on compliance with, the policies (whether set out in codes, guidelines or other documents, or any combination thereof) of the Government or a Minister of the Government to the extent that those policies may affect or relate to the functions of the technological university, and

(c) establish and implement arrangements for the management of the performance of the president.

(1B) Without prejudice to the generality of subsections (1) and (1A), the governing body of a technological university shall perform the following functions with regard to the technological university:

(a) approve expenditure for major capital and investment projects;

(b) approve annual financial statements;

(c) provide for and maintain a system of audit;

(d) provide for and maintain a system of risk management;

(e) provide for and maintain a system of quality assurance in accordance with the Act of 2012;

(f) review and oversee the implementation of major plans of action and provide strategic direction;

(g) delegate such functions as may be appropriate to the president;

(h) manage the financial affairs of the technological university to ensure value for money and its financial viability;

(i) account to An tÚdarás for funding provided to the technological university by An tÚdarás.]

(2) The provisions of *Schedule 1* shall apply to a governing body.

**Annotations:****Amendments:**

**F6** Inserted (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 89, S.I. No. 554 of 2022.

**Membership of governing body of technological university**

F7[12. (1) Subject to this Chapter, a governing body of a technological university shall consist of 19 members as determined in accordance with this Chapter.

(2) The members of a governing body shall be—

(a) a chairperson (in this section and in Schedule 1 referred to as the "chairperson"), who shall be an external member, appointed by the governing body,

(b) 9 external members (other than the chairperson), appointed by the governing body,

(c) the president,

(d) 5 internal members (other than the president), being—

(i) 3 members of the academic staff of the technological university, elected by the academic staff of the technological university,

(ii) one member of the non-academic staff of the technological university, elected by the non-academic staff of the technological university, and

(iii) one member of the academic or non-academic staff of the technological university, elected by the academic and non-academic staff of the technological university, and

(e) 3 student union representatives appointed by the governing body.

(3) The internal members of a governing body shall be elected for appointment as such internal members in accordance with regulations made under *subsection (7)*.

(4) Subject to *subsection (5)*, with regard to the appointment of external members of a governing body—

(a) 3 such members shall be nominated by the Minister, and

(b) 7 such members shall be appointed by the governing body in accordance with a process for such appointments that is determined by the governing body and approved by the Minister.

(5) Before a person is nominated for appointment or appointed, as may be appropriate, as an external member of a governing body of a technological university, the Minister or the governing body of the technological university, as the case may be, shall be satisfied that the person is suitable for appointment as such an external member by reason of his or her possessing knowledge of, and experience in, matters connected with the objects and functions of the technological university to enable him or her to make a substantial contribution to the effective and efficient performance of those functions.



- (6) (a) The term of office of a member of the governing body, other than the president, shall not exceed 4 years and such a member may not serve more than 2 consecutive terms of office.
- (b) A member of the governing body who is a student at the technological university shall hold office for such period, not exceeding one year, as the governing body may determine but may be re-appointed for a further period not exceeding one year.
- (7) A governing body shall, with the approval of the Minister, make such regulations relating to the selection, election, nomination or appointment of members of the governing body as it thinks fit, and their selection, election, nomination or appointment shall be carried out in accordance with those regulations.
- (8) In performing functions under this section, the Minister and a governing body shall have regard to the objectives that—
- (a) not less than 40 per cent of the members of the governing body shall be women and not less than 40 per cent of them shall be men,
- (b) the membership of the governing body shall take account of the different locations of the campuses of the technological university, and
- (c) the membership of the governing body shall broadly reflect the composition of Irish society, including persons who are competent in the Irish language.
- (9) In this section—
- "external member", in relation to a governing body, means a member of the governing body other than an internal member or a student member thereof or a member of the academic council of the technological university;
- "internal member", in relation to a governing body, means a member of the governing body who is a member of the staff of the technological university or a person who is remunerated under a contract with the technological university;
- "student member", in relation to a governing body, means a member of the governing body who is a student at the technological university.]

**Annotations:****Amendments:**

- F7** Substituted (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 90, S.I. No. 554 of 2022.

**F8[ Transitional arrangements for membership and chairperson of governing body**

- 12A.** (1) A governing body of a technological university shall, as soon as practicable after the relevant date and with the approval of the Minister, determine the arrangements and procedures to be put in place by it to ensure that the composition of the governing body of the technological university complies with *section 12* (inserted by section 90 of the Act of 2022) within the period referred to in *subsection (2)*.
- (2) Subject to *subsections (3) to (6)*, a governing body of a technological university shall, within 12 months of the relevant date—

- (a) determine the composition of the governing body of its technological university in accordance with the arrangements and procedures put in place by it under *subsection (1)*,
  - (b) appoint the members (other than the president) of the governing body accordingly, and
  - (c) by notice in writing, inform the Minister of the composition as so determined.
- (3) (a) A person who was the chairperson of a governing body of a technological university on the relevant date may continue after that date to be the chairperson of the governing body of that technological university until his or her membership of the governing body ceases, provided that he or she is an external member within the meaning of *section 12* (inserted by section 90 of the Act of 2022).
- (b) For the purposes of *paragraph (a)*, a term served by a person referred to in that paragraph as a member of the governing body, but not as chairperson thereof, before the commencement referred to in that paragraph shall be disregarded for the purposes of *subsection (6)(a)* of *section 12* (inserted by section 90 of the Act of 2022).
- (4) A person (other than the president) who was appointed as a member (including the chairperson) of the governing body before the relevant date and who is re-appointed as such member pursuant to *subsection (2)(b)*—
- (a) shall be so re-appointed for a term of office of no longer than the unexpired term for which he or she was so appointed, and
  - (b) the term of office served by the member (including the chairperson) immediately before the relevant date and the term of office for which he or she is re-appointed under *paragraph (a)* shall be regarded as one term of office for the purposes of *subsection (6)(a)* of *section 12* (inserted by section 90 of the Act of 2022).
- (5) (a) Nothing in this section shall operate to terminate the term of office of a member of a governing body of a technological university who was, before the relevant date, appointed or elected as such member under *section 55* if he or she wishes to serve the unexpired term for which he or she was so appointed or elected and notwithstanding that he or she is not re-appointed as such member pursuant to *subsection (2)(b)*.
- (b) A member of a governing body of a technological university referred to in *paragraph (a)* shall not be reckoned in the number of members of a governing body of a technological university specified in *section 12* (inserted by section 90) during any part of his or her term of membership of the governing body which, but for this subsection, would have ceased.
- (6) Notwithstanding *section 12(6)* and *paragraph 4* of Schedule 1, where the term of office of all or the majority of the members of a governing body (including the chairperson thereof) of a technological university expires by the effluxion of time during the period referred to in *subsection (2)*, the Minister may, at the request of the governing body of the technological university and if the members concerned so agree, extend the term of office of those members for such period (that is not longer than the period referred to in *subsection (2)*) as the Minister may determine to facilitate that governing body to comply with that subsection.
- (7) In this section—

"Act of 2022" means the Higher Education Authority Act 2022;

"relevant date" means the date on which section 90 of the Act of 2022 comes into operation.]

**Annotations:****Amendments:**

- F8** Substituted (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 91, S.I. No. 554 of 2022.

**Editorial Notes:**

- E2** The section heading is taken from the amending section in the absence of one included in the amendment.

## CHAPTER 4

*Staff of technological university***President of technological university**

- 13.** (1) A technological university shall have a chief officer (in this section, and *Schedules 1* and *2*, referred to as the "president").
- (2) The president shall be appointed by the technological university.
- (3) The president may be removed from office by the technological university for stated reasons.
- (4) Subject to this Act, the president shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) as may be determined by the technological university, subject to the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.
- (5) The selection criteria, including experience, training and expertise appropriate to the functions of a president under this Act, and procedures in respect of the appointment of a president shall be established by the technological university and published in such manner as it considers appropriate.
- (6) The provisions of *Schedule 2* shall apply to a president.

**Staff of technological university**

- 14.** (1) A technological university may, subject to the approval of An tÚdarás given with the consent of the Minister and the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of staff of the technological university as it from time to time considers appropriate.
- (2) The staff of a technological university shall be employed on such terms and conditions as may be determined by the technological university, subject to the approval of An tÚdarás given with the consent of the Minister and the Minister for Public Expenditure and Reform.
- (3) There shall be paid by a technological university to its staff such remuneration, fees, allowances and expenses as may be approved from

time to time by the Minister with the consent of the Minister for Public Expenditure and Reform.

- (4) A technological university shall ensure that a company in which it has a proprietary interest shall only pay to staff of the technological university such remuneration, fees, allowances and expenses as may be determined by the technological university, subject to the approval of An tÚdarás given with the consent of the Minister and the Minister for Public Expenditure and Reform.
- (5) A technological university may, in accordance with procedures established by the technological university following consultation with each trade union or staff association recognised by it, suspend or dismiss a member of its staff.
- (6) A technological university shall, within the period specified in a request in writing for information relating to matters referred to in *paragraphs (a) to (e)* made by An tÚdarás, comply with the request for information and furnish the information in writing to An tÚdarás relating to—
- (a) the number of employees employed by the technological university,
  - (b) their composition by grade,
  - (c) their terms and conditions of employment (including their remuneration, fees, allowances, expenses and superannuation),
  - (d) any company in which the technological university has a proprietary interest, and
  - (e) any other related matter.

#### **Superannuation of staff of technological university**

- 15.** (1) Subject to section 48 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, a pensionable public servant who—
- (a) is not a member of the Single Public Service Pension Scheme, and
  - (b) is appointed under *section 13 or 14* to be a member of staff of a technological university,
- shall, on his or her appointment to the technological university concerned, become and be a member of the Education Sector Superannuation Scheme 2015 or the ESSS 2015 (S.I. No. 290 of 2015) in accordance with its terms and conditions.
- (2) Nothing in this section shall prevent the Education Sector Superannuation Scheme 2015 or the ESSS 2015 being varied in accordance with its terms and conditions.

### CHAPTER 5

#### *Academic council of technological university*

#### **Academic council of technological university**

- 16.** (1) A technological university shall have an academic council.
- (2) Subject to this section, a governing body shall make regulations of a technological university which shall provide, in relation to the academic council, for—

- (a) the number of members,
  - (b) procedures for selection and appointment of members,
  - (c) term of office of members,
  - (d) eligibility for re-appointment of members, and
  - (e) the number of consecutive periods for which members may hold office.
- (3) Without prejudice to the generality of *subsection (2)* —
- (a) the majority of members of the academic council shall be members of the academic staff of the technological university, and
  - (b) the regulations of a technological university under *subsection (2)* shall provide for the following persons to be members referred to in *paragraph (a)* —
    - (i) at least one member of the academic staff with sufficient experience, in the view of the technological university, of business, enterprise or a profession,
    - (ii) members of the academic staff with sufficient experience, in the view of the technological university, of collaboration with business, enterprise, the professions and related stakeholders in the region in which the campuses of the technological university are located for a purpose as referred to in *section 9(1)(h)*, and
    - (iii) such number of students of the technological university as it considers appropriate,
  - (c) in making regulations under *subsection (2)* the governing body shall have regard to the objective that at least 40 per cent of members of the academic council shall be women and at least 40 per cent shall be men.
- (4) The president shall be—
- (a) an *ex officio* member of the academic council, and
  - (b) 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 he or she at any time chooses not to so preside, he or she shall nominate a person to preside in his or her place.
- (5) An academic council shall hold such and so many meetings as may be necessary for the performance of its functions under this Act and, subject to any regulations of a technological university as relate to the academic council, may regulate its own procedure.
- (6) An academic council may establish such and so many committees as it considers necessary to assist it in the performance of its functions under this Act.
- (7) Persons who are members of the academic council or other members of the staff of the technological university may be members of a committee established under *subsection (6)*.

#### Functions of academic council

17. (1) Subject to this section, an academic council shall control the academic affairs of the technological university, including the curriculum of, and instruction and education provided by, the technological university.

- (2) In the performance of its functions, an academic council shall—
- (a) have regard to the resources available to the technological university, and
  - (b) be subject to review by the technological university, in a form and at such frequency as may be required by the technological university.
- (3) Without prejudice to the generality of *subsection (1)*, the functions of an academic council shall include—
- (a) designing and developing programmes for the technological university,
  - (b) supporting the implementation of those programmes,
  - (c) promoting the involvement, in a programme, of business, enterprise, the professions, the community, local interests and related stakeholders in the region in which the campuses of the technological university are located,
  - (d) making recommendations to the technological university on programmes for the development of research,
  - (e) making recommendations to the technological university relating to the selection, admission, retention and exclusion of students,
  - (f) making recommendations to the governing body regarding the form and content of regulations of a technological university relating to the academic affairs of the technological university including—
    - (i) the assessment of students and determination of the results of that assessment, and
    - (ii) procedures for appeals by students relating to the results of assessments,
  - (g) making recommendations to the technological university for the awarding of fellowships, scholarships, bursaries, prizes or other awards,
  - (h) making general arrangements for academic counselling including tutorials,
  - (i) performing any other functions delegated to it by the technological university, and
  - (j) implementing any regulations of the technological university relating to the functions of the academic council.
- (4) In *subsection (3)*—
- “involvement” shall be construed in accordance with *section 9(8)*;
- “programme” means a programme of education and training.

## CHAPTER 6

### *Plans and Statements*

#### **Strategic development plan**

18. (1) (a) The president, as soon as practicable after the appointed day, shall prepare a plan (in this section called a “strategic development plan”) for the period specified in the plan.

- (b) The period specified in the strategic development plan shall be such period as the technological university considers appropriate and directs the president to specify in the plan, being a period of not less than 3 years and not more than 5 years from the date that the president prepares the plan under *paragraph (a)*.
  - (c) The president shall prepare each subsequent strategic development plan not earlier than 6 months, and not later than 3 months, before the expiration of the period specified in the plan.
- (2) A strategic development plan shall specify—
- (a) the objectives of the technological university for the period specified in the plan and the strategies for achieving those objectives,
  - (b) the purposes for which the technological university proposes to use its resources,
  - (c) how the technological university shall comply with any requirements imposed on it under the Act of 2012,
  - (d) the plans of the technological university to provide programmes of education and training that meet the needs of individuals, business, enterprise, the professions, the community, local interests and other stakeholders in the region in which the campuses of the technological university are located, and
  - (e) the plans of the technological university to develop and promote strong social and cultural links, and links supporting creativity, between the technological university and the community in the region in which the campuses of the technological university are located.
- (3) The president, in preparing a strategic development plan under *subsection (1)(c)*, shall have regard to each of the following provided or issued to the technological university by the Qualifications and Quality Assurance Authority of Ireland during the period of the plan being replaced:
- (a) a report under section 34 of the Act of 2012;
  - (b) a direction under section 35 of that Act.
- F9[(3A) The president shall, for the purposes of preparing a strategic development plan under *subsection (1)(c)*, consult with—
- (a) the Minister,
  - (b) such other Ministers of the Government as the president considers appropriate,
  - (c) An tÚdarás,
  - (d) the students or the student union of the technological university,
  - (e) the members of the staff of the technological university or the trades unions or staff associations of those members of staff,
  - (f) the academic council of the technological university,
  - (g) the education and training board or boards in whose education and training board area or areas the campuses of the technological university are located or such other education and training board as the governing body considers appropriate,
  - (h) a local authority in whose functional area the campuses of the technological university are located, and

- (i) such other body or person as the president considers appropriate.]
- (4) The president shall submit the draft strategic development plan to the technological university for approval once it has been prepared.
- (5) A technological university, having regard to the resources available to it, may either approve the strategic development plan without modification or, after consultation with the president, approve the plan with such modifications as it thinks fit.
- (6) As soon as practicable after it approves the strategic development plan under *subsection (5)*, the technological university shall provide a copy of the plan to the Minister and An tÚdarás and the Qualifications and Quality Assurance Authority of Ireland and publish it in such manner as the technological university considers appropriate.

**Annotations:****Amendments:**

**F9** Inserted (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 92, S.I. No. 554 of 2022.

**Modifications (not altering text):****Equality statement**

- 19.** (1) (a) The president, as soon as practicable after the appointed day, shall prepare a statement (in this section called an “equality statement”) for the period specified in the statement.
- (b) The period to which the equality statement relates shall be such period as the technological university considers appropriate and directs the president to specify in the statement, being a period of not less than 3 years and not more than 5 years from the date that the president prepares the equality statement under *subsection (1)*.
- (c) The president shall prepare each subsequent equality statement not earlier than 6 months, and not later than 3 months, before the expiration of the period specified in the plan.
- (2) The equality statement shall specify—
- (a) the policy of the technological university for enabling access to it, and the education it provides, by economically or socially disadvantaged persons, by persons who have a disability and by persons from sections of society significantly under-represented in the student body, and
- (b) the policy of the technological university relating to equality, including gender equality, in all activities of the technological university.
- F10**[(2A) The president shall, for the purposes of preparing an equality statement, consult with—
- (a) the Minister,
- (b) such other Ministers of the Government as the president considers appropriate,
- (c) An tÚdarás,
- (d) the students or the student union of the technological university,



- (e) the members of the staff of the technological university or the trades unions or staff associations of those members of staff,
  - (f) the academic council of the technological university,
  - (g) the education and training board or boards in whose education and training board area or areas the campuses of the technological university are located or such other education and training board as the governing body considers appropriate,
  - (h) a local authority in whose functional area the campuses of the technological university are located, and
  - (i) such other body or person as the president considers appropriate.]
- (3) The president shall submit the draft equality statement to the technological university for approval once it has been prepared.
- (4) The technological university, having regard to the resources available to it, may either approve the draft equality statement without modification or, after consultation with the president, approve the statement with such modifications as it thinks fit.
- (5) The technological university, in approving the draft equality statement under *subsection (4)*, shall have regard to such policies on the matters referred to in *subsection (2)* as may from time to time be determined by the Minister.
- (6) A technological university shall implement the policies set out in the equality statement.

**Annotations:****Amendments:**

**F10** Inserted (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 93, S.I. No. 554 of 2022.

## CHAPTER 7

*Finance, property and reporting***Budgets of technological university**

- 20.** (1) In relation to a technological university, An tÚdarás shall, on or before the first day of March in each year, notify the president of the funding to be provided (in this section referred to as “allocated funding”) by An tÚdarás for that year to the technological university, from moneys provided to An tÚdarás under F11[ *section 19 of the Higher Education Authority Act 2022*].
- (2) The president shall, on or before the first day of April in each year, or such other date as An tÚdarás may approve, prepare and submit, following approval by the technological university, 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, other than allocated funding, expected income of the technological university for that year.
- (3) The allocated funding and the expected income of the technological university referred to in *subsection (2)* shall be the budget of the technological university for that year.

- (4) A technological university shall not, in a year, exceed its budget for the year.
- (5) An tÚdarás may at any time, on an application in that behalf being made to it by a technological university, increase the amount of the allocated funding of the technological university from moneys provided to An tÚdarás under F11[ [section 19 of the Higher Education Authority Act 2022](#)].
- (6) Where the president is of the opinion that—
- (a) the actual expenditure in a year, or
- (b) a proposed course of action,
- taking into account any increase under *subsection (5)*, will or is likely to result in expenditure in excess of the budget for that year such that it would constitute a material departure from the budget (in this section referred to as a “material departure from the budget”), the president shall so inform the technological university and give reasons for his or her opinion.
- (7) The technological university shall advise the president as to whether it agrees with his or her opinion and shall inform the president as soon as practicable after being informed of the president’s opinion under *subsection (6)* if it decides—
- (a) in a case relating to actual expenditure in a year, not to decrease that actual expenditure, or
- (b) in a case relating to a proposed course of action, to continue with that proposed course of action.
- (8) The president shall, as soon as is practicable following receipt of the advice of the technological university under *subsection (7)*, inform An tÚdarás if he or she is still of the opinion that there will be a material departure from the budget.
- (9) Where, notwithstanding this section, a technological university incurs expenditure in excess of its budget that is not met from the income of the technological university other than the allocated funding, that excess shall be a first charge on the budget for the next succeeding year.

**Annotations:****Amendments:**

- F11** Substituted (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 145 and sch. 4, S.I. No. 554 of 2022.

**Borrowing, guaranteeing and underwriting**

- 21.** (1) Subject to *subsection (2)*, a technological university, or any company in which the technological university has a proprietary interest, may borrow money by means of a bank overdraft or otherwise and may guarantee or underwrite a loan taken or borrowing undertaken by any person.
- (2) An tÚdarás shall, from time to time with the approval of the Minister, given with the consent of the Minister for Public Expenditure and Reform and the Minister for Finance, make rules to be complied with by a technological university in relation to any borrowing, guaranteeing or underwriting under *subsection (1)* and any such rules, which may be

amended in like manner to which they are made, shall include rules relating to—

- (a) the purposes for which any proposed borrowing, guaranteeing or underwriting may be undertaken by a technological university,
  - (b) the demonstration by a technological university of its ability to meet the costs arising from any such borrowing, guaranteeing or underwriting,
  - (c) the identification of the potential for any such proposed borrowing, guaranteeing or underwriting to give rise to additional costs for the State,
  - (d) the requirement for a technological university to obtain the prior approval of An tÚdarás, which approval shall be subject to the consent of the Minister and which consent is subject to the prior consent of the Minister for Public Expenditure and Reform and the Minister for Finance, before borrowing, guaranteeing or underwriting,
  - (e) the provision by a technological university to An tÚdarás of information relating to any borrowing, guaranteeing or underwriting undertaken under *subsection (1)*, and
  - (f) the requirement to comply with the provisions of section 67 of the Credit Institutions (Stabilisation) Act 2010.
- (3) Where An tÚdarás makes or amends rules under *subsection (2)*, it shall—
- (a) so notify, and furnish a copy of the rules or amendments to, a technological university, and
  - (b) arrange for the rules or amendments to be published on the internet.

#### Accounts of technological university

- 22.** (1) A technological university shall keep, in such form as An tÚdarás may approve, all proper and usual accounts and records of all moneys received or expended by it.
- (2) A technological university shall each year submit accounts kept under *subsection (1)* for audit to the Comptroller and Auditor General to the extent and by such date as he or she may from time to time direct.
- (3) Immediately after the audit referred to in *subsection (2)* the technological university shall furnish to the Minister F12[and An tÚdarás] a copy of—
- (a) the accounts, and
  - (b) the report of the Comptroller and Auditor General on the accounts.
- (4) The Minister shall cause a copy of the accounts furnished under this section and a copy of the report of the Comptroller and Auditor General on those accounts, to be laid before each House of the Oireachtas.

#### Annotations:

#### Amendments:

**F12** Inserted (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 94, S.I. No. 554 of 2022.

**Annual report**

- 23.** (1) A technological university shall, not later than 30 June in each year, prepare and submit to the Minister and An tÚdarás a report on its activities in the immediately preceding year.
- (2) The Minister shall, as soon as may be after receiving the report, cause copies of it to be laid before each House of the Oireachtas.
- (3) As soon as may be following the copies being laid before each House of the Oireachtas under *subsection (2)*, the technological university shall arrange for the report to be published on the internet.
- (4) The president of the technological university shall prepare a draft of the report under this section for approval by the technological university before it is submitted to the Minister and An tÚdarás and, in doing so, shall have regard to—
- (a) the strategic development plan of the technological university,
  - (b) the equality statement of the technological university, and
  - (c) any requirements imposed on the technological university under the Act of 2012.

**Fees**

- 24.** (1) A technological university may determine and charge fees of such amounts as it considers appropriate for student registration, courses, lectures, examinations, exhibitions or any other event, service or publication held or provided at or by, or produced by, the technological university.
- (2) An tÚdarás may, with the technological university, review the fees charged or proposed to be charged by the technological university 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 technological university on the fees that, in its opinion, should be charged.

**Power to establish, or acquire, hold or dispose of shares in, companies**

- 25.** (1) For the purposes of performing any one or more of its functions, a technological university may, either alone or jointly with another person, cause such one or more companies to be formed and registered under—
- (a) the Companies Act 2014, or
  - (b) the laws of a place other than the State,
- as it considers appropriate.
- (2) A technological university may, for the purposes specified in *subsection (1)*, acquire or hold shares or any other interest in, or become a member of, a company formed and registered under—
- (a) the Companies Act 2014 (or an existing company within the meaning of that Act), or
  - (b) the laws of a place other than the State.

(3) F13[Subject to *subsection (3A)*, a technological university] may only cause a company to be formed and registered under *subsection (1)* or acquire or hold shares or any other interest in, or become a member of a company under *subsection (2)*, if the company is in such form consistent with this Act as may be determined by the technological university F14[...].

F15[(3A) A technological university shall obtain the consent of the Minister and the Minister for Public Expenditure and Reform if the company concerned referred to in *subsection (3)* is formed for purposes other than the manufacture or development of a product, service or process, or the creation and use of intellectual property connected therewith for commercial purposes, arising from the conduct of research or the undertaking of innovation activity by the technological university.]

(4) A technological university may dispose of shares or any other interest in a company to which this section applies.

**Annotations:**

**Amendments:**

- F13** Substituted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 95(a)(i), commenced on enactment.
- F14** Deleted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 95(a)(ii), commenced on enactment.
- F15** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 95(b), commenced on enactment.

CHAPTER 8

*Investigation and information*

**Investigator and report**

26. F16[...]

**Annotations:**

**Amendments:**

- F16** Repealed (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

**Information requested by Minister**

27. (1) A governing body shall furnish to the Minister any information requested by the Minister concerning the performance by a technological university of its functions.

(2) F17[...]

(3) F17[...]

**Annotations:****Amendments:**

- F17** Repealed (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

**F18[Review of matter and report by governing body of technological university**

- 27A.** (1) If a governing body has concerns regarding a matter relating to the governance, or the performance of the functions of the technological university, the governing body shall arrange for a review of the matter to be undertaken.
- (2) A governing body may appoint such person as it considers appropriate (in this section referred to as a "reviewer") to carry out a review of the matter concerned.
- (3) A reviewer may request such information and assistance as he or she may require for the purposes of the review from the governing body, the president and the members of the staff of the technological university and the governing body, the president and the members of staff of the technological university shall comply with any such request.
- (4) A reviewer shall review the matter concerned and shall prepare a report of the outcome of the review and any recommendation made arising therefrom and shall provide a copy of the report to the governing body and the president.
- (5) A governing body shall, if recommended to do so by the report prepared by a reviewer, take such measures as it considers appropriate with regard to the matter concerned.
- (6) A governing body shall retain a copy of a report of the outcome of any review undertaken under *subsection (1)* and shall provide a report to An tÚdarás annually or, more frequently, if so requested by An tÚdarás on the outcome of any review undertaken by the governing body under that subsection, including any measures taken under *subsection (5)*.]

**Annotations:****Amendments:**

- F18** Inserted (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 96, S.I. No. 554 of 2022.

**Editorial Notes:**

- E3** The section heading is taken from the amending section in the absence of one included in the amendment.

## CHAPTER 9

*Application to become technological university*

**Eligibility criteria**

**28.** (1) The applicant institutes concerned shall, in relation to an application for an order under *section 36*, jointly comply with the following criteria (in this chapter referred to as “eligibility criteria”):

(a) of the students of the applicant institutes registered on a programme that leads to an award to at least honours bachelor degree level—

(i) at least 4 per cent are research students registered on a programme which leads to an award to at least masters degree level, and

(ii) at least 30 per cent fall within one or more than one of the following classes of students:

(I) students who are registered on a programme that is provided on a flexible basis, such as by means of part-time, online or distance learning;

(II) students who are registered on a programme that has been designed, and is being delivered, with the involvement (which shall be construed in accordance with *subsection (2)(b)*), of business, enterprise, the professions, the community, local interests and other related stakeholders in the region in which the campuses of the applicant institutes are located;

(III) students who are not less than 23 years of age;

(b) the applicant institutes have a plan that demonstrates, to the satisfaction of the advisory panel, that they would have capacity, as a technological university to increase within 10 years of the date of the making of an order under *section 36*, from at least 4 per cent to at least 7 per cent, the proportion of their research students referred to in *paragraph (a)(i)*;

(c) of the full-time academic staff of the applicant institutes engaged in the provision of a programme that leads to an award to at least honours bachelor degree level—

(i) at least 90 per cent hold a masters degree or doctoral degree,

(ii) at least 45 per cent hold—

(I) a doctoral degree, or

(II) subject to *subparagraph (iii)*, a terminal degree, as well as sufficient practical experience gained in the practice of a profession to which the programme relates, such that the degree and experience together can reasonably be viewed by the advisory panel as equivalent to a doctoral degree,

and

(iii) not more than 10 per cent hold only the qualifications referred to in *subparagraph (ii)(II)*;

(d) the applicant institutes have a plan that demonstrates, to the satisfaction of the advisory panel, that they would have capacity, as a technological university, to increase, within 10 years of the date of the making of an order under *section 36*, from at least 45 per cent to at least 65 per cent, the proportion of their full-time academic staff referred to in *paragraph (c)(ii)*;

(e) of the full-time academic staff of the applicant institutes engaged in both of the following, at least 80 per cent hold a doctoral degree—

- (i) the provision of a programme that leads to an award at doctoral degree level, and
  - (ii) the conduct of research;
- (f) each of the full-time academic staff of the applicant institutes engaged in the supervision of students registered on a programme that leads to an award to doctoral degree level—
- (i) holds—
    - (I) a doctoral degree, or
    - (II) a terminal degree, as well as sufficient practical experience gained in the practice of a profession to which the programme relates, such that the degree and experience together can reasonably be viewed by the advisory panel as equivalent to a doctoral degree,and
  - (ii) has a record of continued conduct of research in an area relevant to the programme;
- (g) in respect of not less than 3 fields of education—
- (i) the applicant institutes provide programmes that lead to awards to doctoral degree level, and
  - (ii) the academic staff and students of the applicant institutes conduct research;
- (h) in relation to a programme referred to in *paragraph (g)*, the applicant institutes demonstrate, to the satisfaction of the advisory panel—
- (i) that they carry out innovation activity and conduct research to a high standard, and
  - (ii) that the innovation and research has positive social and economic effects on business, enterprise, the professions, the community, local interests and other related stakeholders in the region in which the campuses of the applicant institutes are located;
- (i) all programmes provided by the applicant institutes that lead to an award to doctoral degree level comply with any policy relating to doctoral education as may be agreed from time to time between An tÚdarás and the Qualifications and Quality Assurance Authority of Ireland following consultation with bodies representing the interests of an institute, a technological university or a university specified in paragraphs (a) to (d) of section 4(1) of the Universities Act 1997;
- (j) the applicant institutes have a plan that demonstrates to the satisfaction of the advisory panel that they would have capacity, as a technological university to increase within 5 years of the date of the making of an order under *section 36*, from at least 3 to at least 5, the fields of education referred to in *paragraph (g)*;
- (k) the applicant institutes demonstrate to the satisfaction of the advisory panel that the applicant institutes have, at the time they apply under *section 29* for an order under *section 36*, the capacity to effectively perform the functions of a technological university and in particular demonstrate —
- (i) that they have integrated, coherent and effective governance structures in place concerning academic, administrative and management matters,



- (ii) that they have strong links with business, enterprise, the professions, the community, local interests and other stakeholders in the region in which the campuses of the applicant institutes are located,
  - (iii) that they have, under section 28 of the Act of 2012, established procedures in writing for quality assurance in relation to which—
    - (I) no notice has been furnished by the Qualifications and Quality Assurance Authority of Ireland under section 36(1) of the Act of 2012, or
    - (II) approval has not been withdrawn under section 36 of that Act,
  - (iv) that they develop, and have procedures in place to further develop programmes that respond to the needs of business, enterprise, the professions, the community, local interests and other related stakeholders in the region in which the campuses of the applicant institutes are located,
  - (v) that they —
    - (I) provide opportunities for staff and students of the applicant institutes to teach, learn or conduct research at institutions that provide higher education outside the State, or to obtain relevant work experience outside the State,
    - (II) provide opportunities for staff and students of institutions that provide higher education outside the State to teach, learn or conduct research at the applicant institutes, and
    - (III) collaborate with institutions that provide higher education outside the State, including on joint research projects and for the purpose of provision of programmes;
  - (l) that they develop and promote and if an order is made under *section 36* have procedures in place to further develop and promote, as a technological university, strong social and cultural links, and links supporting creativity, between the technological university and the community in the region in which the campuses of the technological university will be located.
- (2) (a) In this section—
- “award” means an award that is recognised within the Framework;
- “credit” has the same meaning as it has in section 56 of the Act of 2012;
- “field of education” means a field of education described as a narrow field of education in the International Standard Classification of Education being the classification for the time being adopted by the United Nations Educational, Scientific and Cultural Organisation;
- “level” means recognised at the level concerned within the Framework;
- “programme” means programme of education and training;
- “research student” means a student who is registered on a programme of education and training where not less than 60 per cent of the available credits are assigned in respect of a thesis or theses prepared by the student based on research conducted by him or her.
- (b) For the purposes of *subparagraph (ii)(II)* of *subsection (1)(a)*, “involvement” in relation to a programme may include—

- (i) developing, with one or, as the case may be, more than one of the applicant institutes concerned, the curriculum of the programme,
  - (ii) contributing to assessment, as required by the programme, of the progress of a student, or
  - (iii) providing a work placement for a student registered on the programme.
- (c) A reference, in *paragraph (c), (e) or (f) of subsection (1)*—
- (i) to a masters or doctoral degree held by a member of staff of the applicant institutes is a reference to a degree awarded to masters or doctoral level within the Framework and if not awarded within the Framework is, to the satisfaction of the advisory panel, equivalent to such a degree, or
  - (ii) to a terminal degree held by a member of staff of the applicant institutes is a reference to an award to at least honours bachelor degree level within the Framework which, in the view of the advisory panel, was at the time the award was made the highest academic award available in the discipline concerned, and if not so awarded within the Framework is, to the satisfaction of the advisory panel, equivalent to such a degree.

#### **Application for order under *section 36***

- 29.** (1) Two or more institutes (in this section referred to as “applicant institutes”) may jointly apply to the Minister for an order under *section 36*.
- (2) An application by applicant institutes under this section shall be in writing in such form, including electronic form, as may be directed by the Minister.

#### **Requirements on application under *section 29***

- 30.** An application by applicant institutes under *section 29* shall include information—
- (a) demonstrating compliance by the applicant institutes with the eligibility criteria,
  - (b) demonstrating that plans and arrangements are in place for managing academic, financial and administrative matters arising on the making of an order under *section 36*, and
  - (c) to enable the Minister and advisory panel to have regard to the matters referred to in *section 34(2)*.

#### **Advisory panel for purpose of application under *section 29***

- 31.** (1) The Minister, within 30 days of receipt of an application under *section 29*, shall forward the application to An tÚdarás and the Qualifications and Quality Assurance Authority of Ireland with a direction in writing to each to nominate at least 3 persons having a special interest or expertise in, or knowledge of, matters relating to higher education, at least two of whom shall have expertise at an international level in standards and practice in higher education, for appointment by the Minister to an advisory panel under *subsection (3)*.

- (2) Within 60 days of the direction of the Minister under *subsection (1)*, An tÚdarás and the Qualifications and Quality Assurance Authority of Ireland shall furnish their nominations to the Minister.
- (3) The Minister, within 30 days of the receipt of the later of the nominations furnished under *subsection (2)*, shall appoint from amongst those nominees an advisory panel of at least 3 persons, at least two of whom shall have expertise at an international level in standards and practice in higher education (in this section referred to as an “advisory panel”), to assess the application under *section 29*, and shall furnish the application under *section 29* to the advisory panel.
- (4) For the purposes of its assessment and report under this Chapter, the advisory panel may consult with the applicant institutes concerned, An tÚdarás, the Qualifications and Quality Assurance Authority of Ireland, and any other person or body it considers appropriate.

#### **Report of advisory panel to An tÚdarás**

- 32.** (1) Within 120 days of being appointed, the advisory panel, having assessed the application under *section 29*, and having had regard to the matters referred to in *section 34(2)*, shall furnish a report to An tÚdarás with a recommendation whether to make an order under *section 36*.
- (2) Where the report under *subsection (1)* states that the applicant institutes do not jointly comply with one or more of the eligibility criteria, it shall—
  - (a) identify the eligibility criteria concerned, and
  - (b) specify conditions (including relating to the period of time within which conditions shall be met), compliance with which, in the view of the advisory panel, would be reasonably expected to enable the applicant institutes to jointly comply with the eligibility criteria concerned.

#### **Report of An tÚdarás to Minister**

- 33.** Within 60 days of receiving and having considered the report under *section 32*, An tÚdarás, having had regard to the eligibility criteria and the report, shall furnish the following to the Minister:
  - (a) the report,
  - (b) the views of An tÚdarás regarding the report, and
  - (c) any other information that An tÚdarás considers relevant.

#### **Decision on application under *section 29***

- 34.** (1) Within 60 days of receiving and having considered the report, views and information under *section 33*, having considered the application and information under *section 29* and having had regard to the matters referred to in *subsection (2)*, the Minister shall, by notice in writing, inform the applicant institutes of his or her proposed decision and shall in the notice provide reasons for the proposed decision.
- (2) When considering the report, views and information under *section 33* and the application and information under *section 29* in accordance with *subsection (1)*, the Minister shall have regard to the following matters:
  - (a) if the needs of students, business, enterprise, the professions, the community, local interests and other stakeholders in the region in which the campuses of the applicant institutes are located would be more

- efficiently and effectively served by the proposed technological university;
- (b) if the projected demand, based on demographic trends, for higher education in the region in which the campuses of the applicant institutes are located would justify the making of the order under *section 36*;
  - (c) if sufficient financial resources are available to the applicant institutes to meet projected costs arising on the making of the order under *section 36*;
  - (d) if the proposed technological university would be financially viable if the order under *section 36* were made;
  - (e) if making the order under *section 36* would comply with such policies of the Government as relate to higher education.
- (3) A notice under *subsection (1)* shall state that the applicant institutes may make representations to the Minister in relation to the proposed decision not later than 30 days after the giving of the notice.
- (4) The Minister, within 60 days after the giving of notice under *subsection (1)*, shall consider any representations made under *subsection (3)* before deciding to—
- (a) grant the application and make an order under *section 36*,
  - (b) postpone, subject to compliance with conditions under *section 35*, the granting of the application and the making of the order under *section 36*, or
  - (c) refuse the application.
- (5) The Minister shall give notice in writing to the applicant institutes concerned of a decision under *subsection (4)* as soon as practicable after it is made which shall, in relation to a decision under *subsection (4)(b)* or *(c)*—
- (a) include reasons for the decision,
  - (b) inform the applicant institutes that—
    - (i) they jointly may, under *Part 3*, appeal the decision, including any conditions specified under *section 35*, within 30 days of the date of the notice, and
    - (ii) the notice of appeal shall specify the grounds for the appeal,and
  - (c) inform the applicant institutes that the decision shall be suspended until, as the case may be—
    - (i) the decision becomes final under *subsection (6)*, or
    - (ii) the disposal of an appeal under *Part 3*.
- (6) If, on the expiration of the period of 30 days beginning on the date of the notice under *subsection (5)*, no appeal under *Part 3* is made, the Minister's decision under *subsection (4)(b)* or *(c)* is final.
- (7) If, following an appeal of a decision under *subsection (4)(b)* or *(c)*, the appeals board orders the Minister under *section 46(5)(b)* to reconsider the decision, that decision is suspended until it has been reconsidered by the Minister.

**Conditions for compliance with all eligibility criteria**

35. (1) The Minister may specify conditions (including in relation to the period of time within which those conditions shall be met) with which the applicant institutes are required to jointly comply with in order to meet the eligibility criteria.
- (2) Conditions specified under *subsection (1)* shall include—
- (a) any conditions specified in the report under *section 32(2)(b)*, and
  - (b) such further conditions as the Minister, having regard to the eligibility criteria, considers necessary.
- (3) A decision under *section 34(4)(b)* shall be final where the applicant institutes do not jointly comply with the conditions imposed under *subsection (1)* within the period specified in the conditions.
- (4) (a) Where the applicant institutes are of the view, before the expiration of the period specified in the conditions specified under *subsection (1)*, that they have jointly complied with the conditions concerned, they shall jointly so notify the Minister in writing, giving their reasons for forming the view.
- (b) Within 60 days of receipt of a notice under *paragraph (a)*, the Minister shall consider the information furnished by the applicant institutes and, having consulted with An tÚdarás, the Qualifications and Quality Assurance Authority of Ireland, or any other person or body as the Minister considers appropriate, the Minister shall, by notice in writing, inform the applicant institutes of his or her proposed decision as to whether the applicant institutes jointly comply with the conditions and shall in the notice provide reasons for the proposed decision.
- (c) A notice under *paragraph (b)* shall state that the applicant institutes may jointly make representations to the Minister in relation to the proposed decision not later than 30 days after the giving of the notice to the applicant institutes.
- (d) The Minister shall consider any representations made under *paragraph (c)* before deciding to—
- (i) grant the application and make an order under *section 36*, or
  - (ii) refuse the application.
- (e) The Minister shall give notice in writing to the applicant institutes of a decision under *paragraph (d)* as soon as practicable after it is made which shall, in relation to a decision under *paragraph (d)(ii)*—
- (i) include reasons for the decision,
  - (ii) inform the applicant institutes that—
    - (I) they jointly may, under *Part 3*, appeal the decision within 30 days of the date of the notice, and
    - (II) the notice of appeal shall specify the grounds for the appeal,and
  - (iii) inform the applicant institutes that the decision shall be suspended until, as the case may be—
    - (I) the decision becomes final under *subsection (5)*, or

(II) the disposal of an appeal under *Part 3*.

(5) If, on the expiration of the period of 30 days beginning on the date of the notice under *subsection (4)*, no appeal under *Part 3* is made, the Minister's decision under *subsection (4)(d)(ii)* is final.

(6) If, following an appeal of a decision under *subsection (4)(d)(ii)*, the appeals board orders the Minister under *section 46(5)(b)* to reconsider the decision, that decision is suspended until it has been reconsidered by the Minister.

## CHAPTER 10

### *Establishment of a technological university*

#### **Order establishing technological university**

**36.** (1) The Minister, following a decision under *section 34(4)(a)* or *section 35(4)(d)(i)*, shall by order appoint a day (in this Chapter referred to as the "appointed day") for the purposes of *subsection (2)*.

(2) On the appointed day—

(a) the applicant institutes specified in the order shall stand dissolved (in this section referred to as the "applicant institutes"), and

(b) there shall stand established a technological university (in this section referred to as a "technological university") to be known by the name specified in the order, in both the English and Irish languages, to perform the functions conferred on a technological university by or under this Act.

#### **Annotations:**

#### **Editorial Notes:**

<b>E4</b>	Power pursuant to section exercised (1.05.2022) by Technological Universities Act 2018 (Section 36) (Appointed Day) (No. 2) Order 2022 (S.I. No. 175 of 2022), in effect as per art. 2.
<b>E5</b>	Power pursuant to section exercised (1.04.2022) by <i>Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2022</i> (S.I. No. 56 of 2022), in effect as per art. 2.
<b>E6</b>	Power pursuant to section exercised (1.10.2021) by <i>Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2021</i> (S.I. No. 360 of 2021), in effect as per art. 2.
<b>E7</b>	Power pursuant to section exercised (1.01.2021) by <i>Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2020</i> (S.I. No. 568 of 2020), in effect as per art. 2.
<b>E8</b>	Power pursuant to section exercised (1.01.2019) by <i>Technological Universities Act 2018 (Section 36) (Appointed Day) Order 2018</i> (S.I. No. 437 of 2018), in effect as per art. 2.

#### **Transfer of functions from applicant institutes to technological university**

**37.** (1) On the appointed day all functions that, immediately before the appointed day, were vested by or under any enactment in the applicant institutes specified in an order under *section 36*, shall stand transferred to the technological university specified in that order.

(2) References in any enactment (other than this Act) to the applicant institutes specified in an order under *section 36* shall, on and after the appointed

day, be construed as references to the technological university specified in that order.

## CHAPTER 11

### *Joint application of institute of technology and technological university*

#### **Application for order under section 43**

- 38.** (1) One, and only one, institute which is not one of the applicant institutes in respect of which an application for an order under *section 36* is in being (in this Chapter referred to as an “applicant college”) and a technological university (in this Chapter referred to as an “applicant technological university”) may jointly apply to the Minister for an order under *section 43*.
- (2) The Minister shall not consider more than one application under this section by a particular technological university at any one time.
- (3) An application under this section shall be in writing in such form, including electronic form, as may be directed by the Minister.

#### **Requirements on application under section 38**

- 39.** An application under *section 38* shall include information—
- (a) demonstrating the capability of the applicant college and applicant technological university to jointly perform the functions of a technological university,
- (b) demonstrating that plans and arrangements are in place for managing academic, financial and administrative matters arising on the making of an order under *section 43*, and
- (c) to enable the Minister and advisory panel to consider the matters referred to in *section 41*.

#### **Advisory panel for purpose of application under section 38**

- 40.** (1) The Minister, within 30 days of receipt of an application under *section 38*, shall forward the application to An tÚdarás with a direction in writing to appoint an advisory panel under *subsection (2)*.
- (2) Within 60 days of the receipt of a direction under *subsection (1)*, An tÚdarás shall appoint a panel of at least 3 persons having a special interest or expertise in, or knowledge of, matters relating to higher education, at least one of whom shall have expertise, at an international level, in standards and practice in higher education (in this Chapter referred to as an “advisory panel”), to assess the application under *section 38*.
- (3) Within 120 days of being appointed, the advisory panel, having assessed the application under *section 38*, and having had regard to the matters referred to in *section 41*, shall furnish a report to the Minister and An tÚdarás with a recommendation whether to make an order under *section 43*.
- (4) For the purposes of its assessment and report under this section, the advisory panel may consult with the applicant college, applicant technological university, An tÚdarás, the Qualifications and Quality

Assurance Authority of Ireland, and any other person or body it considers appropriate.

**Matters to which Minister shall have regard on application under *section 38***

**41.** In deciding whether to make an order under *section 43*, the Minister shall have regard to the following matters:

- (a) if the needs of students, business, enterprise, the professions, the community, local interests and other related stakeholders in the region in which the campuses of the applicant college and applicant technological university are located would be more efficiently and effectively served if the order were made;
- (b) if the projected demand, based on demographic trends, for higher education in the region in which the campuses of the applicant college and applicant technological university are located, would justify the making of the order;
- (c) if sufficient financial resources are available to the applicant college and applicant technological university to meet the projected costs arising on the making of the order;
- (d) if the applicant college and the applicant technological university would together be financially viable if the order were made;
- (e) if making the order would comply with such policies of the Government as relate to higher education.

**Decision on application under *section 38***

**42.** (1) Within 60 days of receiving the report under *section 40(3)*, the Minister, having considered the application and information under *sections 38* and *39* and the report and recommendation under *section 40*, and having had regard to the matters referred to in *section 41*, and consulted with An tÚdarás, shall, by notice in writing, inform the applicant college and applicant technological university of his or her proposed decision and shall in the notice provide reasons for the proposed decision.

(2) A notice under *subsection (1)* shall state that the applicant college and applicant technological university may make representations to the Minister in relation to the proposed decision not later than 30 days after service of the notice.

(3) The Minister shall consider any representations made under *subsection (2)* before deciding to—

- (a) make an order under *section 43*, or
- (b) refuse to make an order under *section 43*.

(4) The Minister shall give notice in writing to the applicant college and applicant technological university of a decision under *subsection (3)* as soon as practicable after it is made, which shall, in relation to a decision under *subsection (3)(b)*—

- (a) include reasons for the decision,
- (b) inform the applicant college and applicant technological university that—
  - (i) they may jointly, under *Part 3*, appeal the decision within 30 days of the date of the notice, and



- (ii) the notice of appeal shall specify the grounds for the appeal,
- (c) inform the applicant college and applicant technological university that the decision shall be suspended until—
  - (i) the decision becomes final under *subsection (5)*, or
  - (ii) subject to *subsection (6)*, the disposal of an appeal under *Part 3*.
- (5) If, on the expiration of the period of 30 days beginning on the date of the notice under *subsection (4)*, no appeal under *Part 3* is made, the Minister's decision under *subsection (3)(b)* is final.
- (6) If, following an appeal of a decision under *subsection (3)(b)*, the appeals board orders the Minister under *section 46(5)(b)* to reconsider the decision, that decision is suspended until it has been reconsidered by the Minister.

#### **Order dissolving applicant college**

- 43.** (1) The Minister, following a decision under *section 42(3)(a)*, shall by order appoint a day (in this Chapter referred to as the "appointed day") for the purposes of *subsection (2)*.
- (2) On the appointed day the applicant college specified in the order shall stand dissolved.

#### **Transfer of functions from applicant college to technological university**

- 44.** (1) On the appointed day all functions that, immediately before the appointed day, were vested by or under any enactment in the applicant college specified in an order under *section 43*, shall stand transferred to the applicant technological university which jointly applied, with that applicant college, for an order under *section 43*.
- (2) References in any enactment (other than this Act) to the applicant college specified in an order under *section 43* shall, on and after the appointed day, be construed as references to the applicant technological university which jointly applied, with that applicant college, for an order under *section 43*.

### F19[CHAPTER 12

#### *Joint application of higher education provider and technological university]*

#### F19[Application for order under *section 44F*

- 44A.** (1) One, and only one, higher education provider (in this Chapter referred to as an "applicant higher education provider") and a technological university (in this Chapter referred to as an "applicant technological university") may jointly apply to the Minister for an order under *section 44F*.
- (2) The Minister shall not consider more than one application under this section by a particular technological university at any one time.
- (3) An application under this section may relate to a part only of the business and operation of an applicant higher education provider that is specified in the application.

- (4) An application under this section shall be in writing in such form, including electronic form, as may be directed by the Minister.]

**Annotations:**

**Amendments:**

- F19** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 97, commenced on enactment, subject to transitional provision in s. 105.

**F20[Requirements on application under section 44A**

**44B.** An application under *section 44A* shall include information—

- (a) demonstrating the capability of the applicant higher education provider and applicant technological university to jointly perform the functions of a technological university,
- (b) demonstrating that plans and arrangements are in place for managing academic, financial and administrative matters arising on the making of an order under *section 44F*, and
- (c) to enable the Minister and advisory panel to consider the matters referred to in *section 44D*.]

**Annotations:**

**Amendments:**

- F20** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 97, commenced on enactment, subject to transitional provision in s. 105.

**F21[Advisory panel for purposes of application under section 44A**

- 44C.** (1) The Minister, within 30 days of the receipt of an application under *section 44A*, shall forward the application to An tÚdarás with a direction in writing to appoint an advisory panel under *subsection (2)*.
- (2) Within 60 days of the receipt of a direction under *subsection (1)*, An tÚdarás shall appoint a panel of at least 3 persons having a special interest or expertise in, or knowledge of, matters relating to higher education, at least one of whom shall have expertise, at an international level, in standards and practice in higher education (in this Chapter referred to as an "advisory panel"), to assess the application under *section 44A*.
- (3) Within 120 days of being appointed, the advisory panel, having assessed the application under *section 44A*, and having had regard to the matters referred to in *section 44D*, shall furnish a report to the Minister and An tÚdarás with a recommendation whether to make an order under *section 44F*.
- (4) For the purposes of its assessment and report under this section, the advisory panel may consult with the applicant higher education provider, the applicant technological university, An tÚdarás, the Qualifications and Quality Assurance Authority of Ireland, and any other person or body it considers appropriate.]

**Annotations:****Amendments:**

- F21** Inserted (12.10.2022) by *Higher Education Authority Act 2022* (31/2022), s. 97, commenced on enactment, subject to transitional provision in s. 105.

**F22[Matters to which Minister shall have regard on application under section 44A**

**44D.** (1) The Minister shall, for the purposes of *subsection (2)*, have regard to such of the following matters as respects the applicant higher education provider as the Minister considers appropriate:

- (a) whether the applicant higher education provider has been established and is operated for the principal purposes of higher education, training and research;
- (b) the number of programmes of education and training provided by the applicant higher education provider which lead to education awards that are included within the Framework;
- (c) whether the applicant higher education provider has a good track record in relation to performance in the field of education and has provided programmes referred to in *paragraph (b)* in the State for such period before the application under *section 44A* as the Minister considers appropriate in order to demonstrate that performance;
- (d) whether the level of qualifications of the academic staff of the applicant higher education provider are at a sufficiently high level to provide the programmes of education and training which it provides;
- (e) whether the applicant higher education provider has integrated, coherent and effective governance structures in place concerning academic, administrative, financial and management matters;
- (f) whether the applicant higher education provider—
  - (i) has, under section 28 of the Act of 2012, established procedures in writing for quality assurance in relation to which the Qualifications and Quality Assurance Authority of Ireland—
    - (I) has approved those procedures under the Act of 2012,
    - (II) has not proposed by notice under section 36(1) of that Act to withdraw that approval, and
    - (III) has not withdrawn that approval under section 36 of that Act,
 or
  - (ii) if the applicant higher education provider is a linked provider within the meaning of the Act of 2012, has, under section 28 of that Act, established procedures in writing for quality assurance in relation to which a relevant designated awarding body within the meaning of that Act—
    - (I) has approved those procedures under the Act of 2012,
    - (II) has not proposed by notice under section 39(1) of that Act to withdraw that approval, and

- (III) has not withdrawn that approval under section 39 of that Act;
- (g) whether the applicant higher education provider is financially viable and has sufficient financial resources available, should an order be made under *section 44F*, to meet any projected costs arising as a result of the application under *section 44A* and to continue to provide education for such period as may be specified in that application;
- (h) the outcome of the due diligence processes undertaken in relation to the applicant higher education provider for the purposes of the application under *section 44A* to assess the appropriateness of an order being made under *section 44F*;
- (i) the arrangements proposed for the business and operation or, as the case may be, a part of the business and operation of the applicant higher education provider to become and form part of the applicant technological university;
- (j) such other matters as may be determined by the Minister in consultation with An tÚdarás.
- (2) In deciding whether to make an order under *section 44F*, the Minister shall, in addition to the matters to which he or she had regard under *subsection (1)*, have regard to the following matters:
- (a) if the needs of students, business, enterprise, the professions, the community, local interests and other related stakeholders in the region in which the campuses of the applicant higher education provider and applicant technological university are located would be more efficiently and effectively served if the order were made;
- (b) if the projected demand, based on demographic trends, for higher education in the region in which the campuses of the applicant higher education provider and applicant technological university are located, would justify the making of the order;
- (c) if sufficient financial resources are available to the applicant higher education provider and applicant technological university to meet the projected costs arising on the making of the order;
- (d) if the applicant higher education provider and the applicant technological university would together be financially viable if the order were made;
- (e) if making the order would comply with such policies of the Government as relate to higher education.
- (3) In this section, "level", in relation to qualifications, means included at the level concerned within the Framework.]

**Annotations:****Amendments:**

- F22** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 97, commenced on enactment, subject to transitional provision in s. 105.

**F23[Decision on application under *section 44A***

- 44E.** (1) Within 60 days of receiving the report under *section 44C(3)*, the Minister, having considered the application and information under *sections*

44A and 44B and the report and recommendation under *section 44C*, and having had regard to the matters referred to in *section 44D*, and consulted with An tÚdarás, shall, by notice in writing, inform the applicant higher education provider and applicant technological university of his or her proposed decision and shall in the notice provide reasons for the proposed decision.

- (2) A notice under *subsection (1)* shall state that the applicant higher education provider and applicant technological university may make representations to the Minister in relation to the proposed decision not later than 30 days after service of the notice.
- (3) The Minister shall consider any representations made under *subsection (2)* before deciding to—
- (a) make an order under *section 44F*, or
- (b) refuse to make an order under *section 44F*.
- (4) The Minister shall give notice in writing to the applicant higher education provider and applicant technological university of a decision under *subsection (3)* as soon as practicable after it is made, which shall, in relation to a decision under *subsection (3)(b)*—
- (a) include reasons for the decision,
- (b) inform the applicant higher education provider and applicant technological university that—
- (i) they may jointly, under *Part 3*, appeal the decision within 30 days of the date of the notice, and
- (ii) the notice of appeal shall specify the grounds for the appeal, and
- (c) inform the applicant higher education provider and applicant technological university that the decision shall be suspended until—
- (i) the decision becomes final under *subsection (5)*, or
- (ii) subject to *subsection (6)*, the disposal of an appeal under *Part 3*.
- (5) If, on the expiration of the period of 30 days beginning on the date of the notice under *subsection (4)*, no appeal under *Part 3* is made, the decision of the Minister under *subsection (3)(b)* is final.
- (6) If, following an appeal of a decision under *subsection (3)(b)*, the appeals board orders the Minister under *section 46(5)(b)* to reconsider the decision, that decision is suspended until it has been reconsidered by the Minister.]

**Annotations:****Amendments:**

- F23** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 97, commenced on enactment, subject to transitional provision in s. 105.

**F24[Order for business and operation of higher education provider or part thereof to become and form part of technological university**

- 44F.** (1) The Minister, following a decision under *section 44E(3)(a)*, shall by order appoint a day (in this Chapter referred to as the "appointed day") for the purposes of *subsection (2)*.

- (2) On the appointed day, the business and operation of the applicant higher education provider shall become and form part of the applicant technological university or, if the application under *section 44A* for an order under this section relates to a part only of that business and operation, that part of the business and operation of the applicant higher education provider shall become and form part of the applicant technological university on that day.
- (3) An order under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the order.
- (4) The applicant higher education provider shall arrange with the applicant technological university for the transfer, with effect from the appointed day, of its business and operation or that part of its business and operation, as the case may be, to the applicant technological university consequent upon the making of an order under this section.
- (5) Other than in cases where a part only of the business and operation of an applicant higher education provider is the subject of an order under this section, references in any enactment (other than this Act) to the applicant higher education provider specified in an order under this section shall, on and after the appointed day, be construed as references to the applicant technological university which jointly applied, with that applicant higher education provider, for an order under this section.]

**Annotations:****Amendments:**

- F24** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 97, commenced on enactment, subject to transitional provision in s. 105.

**PART 3****APPEALS****Appeals board**

- 45.** (1) Applicant institutes may appeal a decision under *section 34(4)(b)* or *(c)* or *section 35(4)(d)(ii)* and an applicant college and applicant technological university may appeal a decision under *section 42(3)(b)* F25[and an applicant higher education provider and applicant technological university may appeal a decision under *section 44E(3)(b)*].
- (2) The Minister, within 7 days of receipt of a notice of appeal shall request nominations from the Qualifications and Quality Assurance Authority of Ireland of persons to appoint to an appeals board for the purposes of that appeal.
- (3) As soon as practicable, and in any event not later than 42 days after the Minister's request under *subsection (1)*, the Qualifications and Quality Assurance Authority of Ireland shall nominate—
- (a) 2 persons having a special interest or expertise in, or knowledge of, matters relating to higher education, one of whom shall be the chairperson and one of whom shall be an ordinary member of the appeals board, and

- (b) one person to be an ordinary member of the appeals board who, as a practising solicitor or a practising barrister, has not less than 10 years' experience.
- (4) (a) An employee or member of the Qualifications and Quality Assurance Authority of Ireland shall not be nominated under *subsection (3)(a)*.
- (b) A solicitor or barrister who is in the full-time service of the State shall not be nominated under *subsection (3)(b)*.
- (5) The Minister shall appoint an appeals board, consisting of the chairperson and ordinary members nominated under *subsection (3)*, who shall be paid such fees and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (6) The Minister shall furnish such support of an administrative nature to an appeals board as the Minister in his or her opinion determines is necessary to enable the board to perform its functions.
- (7) In relation to the appeal falling to be determined by an appeals board, the board—
- (a) shall establish the procedures to be followed regarding the making of submissions to the board and their form, and
- (b) may establish the procedures to be followed regarding—
- (i) the holding of a hearing,
- (ii) the examination by the board of the parties to the appeal or other persons,
- (iii) requests by the appeals board for information or further information, for the purposes of the appeal, from the parties to the appeal or other persons,
- (iv) provision by the appeals board to the parties to the appeal of all information for the purposes of the appeal received by the appeals board, and
- (v) any other matter as the appeals board considers appropriate for the proper performance of its functions.
- (8) An appeals board shall be independent in the performance of its functions.

**Annotations:****Amendments:**

**F25** Inserted by *Higher Education Authority Act 2022 (31/2022)*, s. 98, commenced on enactment.

**Appeal**

- 46.** (1) For the purposes of the appeal for which an appeals board is appointed, the board—
- (a) shall request submissions from the parties to the appeal and the parties shall furnish the submissions to the appeals board within the period specified in the request,
- (b) following consideration of the submissions, may hold a hearing, and

- (c) may request such information from the parties to the appeal, or any other person as the appeals board considers necessary for the proper performance of its functions, and the parties to the appeal or other person, as the case may be, shall furnish the information to the appeals board within the period specified in the request.
- (2) If a hearing is held—
- (a) each of the parties to the appeal is entitled to be heard at the hearing, and
- (b) the appeals board may adjourn the hearing of a matter at any stage in the proceedings until a date specified by the board.
- (3) A decision by a majority of the members of an appeals board shall suffice for any purpose.
- (4) In considering an appeal under this Part an appeals board shall consider—
- (a) submissions from the parties to the appeal,
- (b) the evidence presented at any hearing of the matter, and
- (c) all information furnished to the appeals board.
- (5) On completion of its consideration of the appeal the board shall make a decision determining the appeal as soon as practicable in all the circumstances of the case, which may be a determination to—
- (a) affirm the decision of the Minister, or
- (b) quash the decision of the Minister and direct the Minister, for stated reasons, to reconsider his or her decision within a specified period.
- (6) The appeals board shall notify the parties to the appeal of its determination under *subsection (5)* as soon as practicable after it is made.
- (7) In the case of a determination under *subsection (5)(b)*, the Minister shall reconsider his or her decision within the specified period or the specified period as extended for a further period by the appeals board following:
- (a) a request from the Minister;
- (b) consultation with the parties to the appeal; and
- (c) the board being satisfied that there is good and sufficient reason for so extending.

## PART 4

### TRANSITIONAL AND CONSEQUENTIAL PROVISIONS

#### CHAPTER 1

##### *Definitions for Chapters 2 and 3 of Part 4*

##### **Definitions for Chapters 2 and 3 of Part 4**

**47.** In *Chapters 2 and 3* of this Part—

F26[“appointed day” means, as may be appropriate—



- (a) in so far as it relates to an order under *section 36*, the day appointed by that order, and
- (b) in so far as it relates to an order under *section 43*, the day appointed by that order;
- (c) in so far as it relates to an order under *section 44F*, the day appointed by that order;]

“dissolved body” means—

- (a) in so far as it relates to an order under *section 36*, any one of the applicant institutes specified in that order, and
- (b) in so far as it relates to an order under *section 43*, the applicant college specified in that order;

“liability date” has the meaning assigned to it by section 62 of the Act of 2012;

F26[“technological university” means, as may be appropriate—

- (a) in so far as it relates to an order under *section 36*, a technological university established by that order,
- (b) in so far as it relates to an order under *section 43*, the technological university to which, under *section 44(1)* and this Part, the functions of the applicant college specified in the order are transferred, and
- (c) in so far as it relates to an order under *section 44F*, the technological university as respects which the business and operation, or a part thereof, of the applicant higher education provider specified in the order became and formed part of it under that section.]

**Annotations:**

**Amendments:**

- F26** Substituted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 99(a), (b), commenced on enactment.

## CHAPTER 2

### *General transitional provisions consequent upon order under Part 2*

#### **Transfer of land and other property to technological university**

- 48.** (1) On the appointed day, all lands that, immediately before that day, were vested in the dissolved body and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in the technological university for all the estate or interest therein that, immediately before the appointed day, was vested in the dissolved body, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed.
- (2) On the appointed day, all property (other than land), including choses-in-action, that immediately before that day, was vested in the dissolved body shall stand vested in the technological university without any assignment.

- (3) Every chose-in-action vested in the technological university by virtue of *subsection (2)* may, on and after the appointed day, be sued on, recovered or enforced by the technological university in its name, and it shall not be necessary for the technological university or the dissolved body to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

**Transfer of rights and liabilities and continuation of leases, licences and permissions to technological university**

49. (1) All rights and liabilities of the dissolved body by virtue of any contract or commitment (expressed or implied) entered into by it before the appointed day shall on that day stand transferred to the technological university.
- (2) Every right and liability transferred by *subsection (1)* to the technological university may, on and after the appointed day, be sued on, recovered or enforced by or against it in its name, and it shall not be necessary for the technological university or the dissolved body to give notice to any person of the transfer of any such right or liability.
- (3) Every lease, licence, wayleave or permission granted by the dissolved body in relation to land or other property vested in the technological university and in force immediately before the appointed day, shall continue in force on and after that day as if granted by the technological university.

**Liability for loss occurring before appointed day**

50. (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance, before the appointed day, of a function of the dissolved body transferred by this Act shall, on and after that day, lie against the technological university and not against the dissolved body.
- (2) Any legal proceedings pending immediately before the appointed day, to which the dissolved body is a party, that relate to a function of the dissolved body transferred by this Act, shall be continued on and after that day, with the substitution in the proceedings of the technological university for the dissolved body.
- (3) Where, before the appointed day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, on and after the appointed day, in so far as they are enforceable against the dissolved body, be enforceable against the technological university and not the dissolved body.
- (4) Any claim made or proper to be made by the dissolved body in respect of any loss or injury arising from the act or default of any person before the appointed day shall, on and after that day, where the claim relates to a function of the dissolved body transferred by this Act, be regarded as having been made by or proper to be made by the technological university and may be pursued and sued for by that technological university as if the loss or injury had been suffered by that technological university.

**Provisions consequent upon transfer of functions, assets and liabilities to technological university**

51. (1) Anything commenced and not completed before the appointed day by or under the authority of the dissolved body may, in so far as it relates to a function of the dissolved body transferred by this Act, be carried on or completed on or after the appointed day by the technological university.
- (2) Every instrument made under an enactment and every document (including any certificate) granted or made by the dissolved body shall, if and in so far as it was operative immediately before the appointed day, have effect on and after that day as if it had been granted or made by the technological university.
- (3) References to the dissolved body in the constitution of any company and relating to a function transferred by this Act shall, on and after the appointed day, be construed as references to the technological university.
- (4) Any money, stocks, shares or securities transferred by *section 48* that, immediately before the appointed day, were standing in the name of the dissolved body shall, on and after that day, on the request of the technological university, be transferred into the name of the technological university.
- (5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested under *section 48* or *49* in a technological university shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

**Final accounts and final report of dissolved body**

52. (1) The technological university shall, in respect of the period specified under *subsection (3)*, prepare final accounts of the dissolved body.
- (2) A technological university shall, not later than the date on which it submits its first set of accounts following the appointed day to the Comptroller and Auditor General under *section 22*, submit the final accounts of the dissolved body to the Comptroller and Auditor General for audit and shall, immediately after the audit, present a copy of the accounts and a copy of the Comptroller and Auditor General's report on the accounts to the Minister who, as soon as practicable thereafter, shall cause copies of those accounts and that report to be laid before each House of the Oireachtas.
- (3) For the purposes of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of the dissolved body.
- (4) The technological university shall, not later than the date on which it submits its first annual report following the appointed day to the Minister, prepare and submit to the Minister the final report of the activities of the dissolved body and the Minister shall, as soon as practicable thereafter, cause a copy of the final report to be laid before each House of the Oireachtas.
- (5) The final annual report of the dissolved body shall be published on the internet by the technological university as soon as practicable after copies of the report are laid under *subsection (4)*.

**Transfer of staff to technological university**

53. (1) Every person who, immediately before the appointed day—

- (a) was a member of the staff of a dissolved body shall, on the appointed day, become and be a member of the staff of the technological university, and
  - (b) was a fixed-term employee of a dissolved body shall, on the appointed day, become and be a fixed-term employee of the technological university for the duration of his or her contract of employment.
- (2) Except in accordance with a collective agreement negotiated with a recognised trade union or staff association, a person referred to in *subsection (1)* shall be subject to such terms and conditions of service, including terms and conditions relating to remuneration, as are not less favourable than the terms and conditions of service, including terms and conditions relating to remuneration, to which the person was subject immediately before the appointed day.
- (3) In *subsection (2)*, a reference to terms and conditions relating to remuneration does not include conditions in relation to superannuation.
- (4) In relation to a person referred to in *subsection (1)*, previous service with the dissolved body shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the following:
- (a) the Redundancy Payments Acts 1967 to 2014;
  - (b) the Protection of Employees (Part-Time Work) Act 2001;
  - (c) the Protection of Employees (Fixed-Term Work) Act 2003;
  - (d) the Organisation of Working Time Act 1997;
  - (e) the Terms of Employment (Information) Acts 1994 to 2012;
  - (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
  - (g) the Unfair Dismissals Acts 1977 to 2015;
  - (h) the Maternity Protection Acts 1994 and 2004;
  - (i) the Parental Leave Acts 1998 and 2006;
  - (j) the Adoptive Leave Acts 1995 and 2005;
  - (k) the Carer's Leave Act 2001.

### Superannuation

54. (1) A person referred to in *section 53* who, immediately before the appointed day, was a member of a relevant superannuation scheme or the Single Public Service Pension Scheme shall, on the appointed day, continue to be a member of such scheme in accordance with its terms and conditions.
- (2) Nothing in this section shall prevent a relevant superannuation scheme being varied in accordance with its terms and conditions.
- (3) In this section "relevant superannuation scheme" means, as the case may be—
- (a) the Education Sector Superannuation Scheme 2015 or the ESSS 2015, or
  - (b) the Education Sector Superannuation Scheme referred to in Article 3(4) of the Education Sector Superannuation Scheme (Transfer of Departmental Administration and Ministerial Functions) Order 2001 (S.I.

No. 14 of 2001), in so far as that scheme has not been revoked by the scheme referred to in *paragraph (a)*.

### CHAPTER 3

#### *Arrangements consequent upon order under Part 2*

#### **Arrangements for first governing body following order under Part 2**

55. (1) The governing body of the dissolved body standing appointed immediately before the day appointed by order under *section 36* shall stand dissolved on that appointed day.
- (2) The Minister shall appoint, with effect from the appointed day in respect of the first governing body of the technological university to be established following that appointed day—
- (a) a person to be the chairperson,
  - (b) 2 external members, and
  - (c) one external member nominated in accordance with its or their own procedures by the education and training board or boards in whose education and training board area or areas the campuses of the technological university are situated.
- F27[(3) The governing body, comprising the president and persons appointed under *subsection (2)*, shall within 6 months of the appointed day comply with *section 12(4), (7) and (8)*.]
- (4) (a) If an education and training board or boards referred to in *subsection (2)(c)* is or are not in a position to furnish a nomination in writing to the Minister within 6 weeks of receipt by it or them of a request in writing from the Minister to do so the Minister shall nominate the external member for the purposes of *subsection (2)(c)*.
- (b) If the governing body referred to in *subsection (3)* has not complied with that subsection within 6 months of the appointed day the Minister shall, as soon as practicable, nominate and appoint persons to the governing body who, in the opinion of the Minister, are representative of those persons who would, in accordance with *subsection (3)*, stand to be, as the case may be, F27[appointed under *section 12(2)(b) or (d)*].
- (5) (a) The term of office of a member of the governing body of the technological university appointed or elected under this section, other than the president, shall be 2 years.
- (b) Appointment as a member of the governing body of a technological university under this section, of a person who is a student at the technological university, shall not affect the operation of F27[*section 12(6)(b)*] in relation to that member.
- (6) *Subsections (2) to (6)* apply notwithstanding *section 12*.
- (7) (a) In *subsections (2) to (7)*, “appointed day” means only the day appointed by order under *section 36*.
- (b) In this section “external member” has the meaning assigned to it by *section 12*.
- (8) Subject to this section, *Schedule 1* shall apply to a governing body appointed under this section.

**Annotations:****Amendments:**

- F27** Substituted (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 145 and sch. 4, S.I. No. 554 of 2022.

**First president following order under section 36**

56. (1) The Minister, at any time before the day appointed by order under *section 36*, may designate a person to be appointed to be the first president of the technological university.
- (2) If, immediately before the day appointed by order under *section 36* a person stands designated by the Minister under *subsection (1)*, the technological university shall appoint that person to be the first president with effect from the day appointed by order under *section 36*.
- (3) A person standing designated under *subsection (1)* who stood appointed immediately before his or her appointment as president of the technological university under *subsection (2)*, as Director or, as the case may be, president of a dissolved body (in this section referred to as the “first appointment”) shall hold office as the first president of the technological university for such term as the Minister may direct when designating that person under *subsection (1)* being—
- (a) the unexpired term of the first appointment, or
- (b) a period longer than the unexpired term which does not exceed 10 years.
- (4) A person, other than a person referred to in *subsection (3)*, standing designated under *subsection (1)* shall hold office as the first president of the technological university for such term not exceeding 10 years as the Minister shall direct when designating that person under *subsection (1)*.
- (5) This section shall apply notwithstanding *section 13* or *paragraph 8 of Schedule 2*.

**Arrangements for Director or president of a dissolved body following order under Part 2**

57. (1) A person (other than a person referred to in *section 56(3)*) who, immediately before the day appointed by order under *section 36* stands appointed as a Director or, as the case may be, president of a dissolved body shall on and after that day, cease to be such Director or president and shall become and be a fixed-term employee of the technological university for the duration of his or her contract of employment.
- (2) A person who, immediately before the day appointed by order under *section 43*, stands appointed as a Director or, as the case may be, president of a dissolved body shall on and after that day, cease to be such Director or president and shall become and be a fixed-term employee of the technological university for the duration of his or her contract of employment.
- (3) Except in accordance with a collective agreement negotiated with a recognised trade union or staff association, a person referred to in *subsection (1)* or *(2)* shall be subject to such terms and conditions of service, including terms and conditions relating to remuneration, as are not less

favourable than the terms and conditions of service, including terms and conditions relating to remuneration, to which the person was subject immediately before the appointed day.

- (4) In relation to a person referred to in *subsection (1) or (2)*, previous service with the dissolved body shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the following:
- (a) the Redundancy Payments Acts 1967 to 2014;
  - (b) the Protection of Employees (Part-Time Work) Act 2001;
  - (c) the Protection of Employees (Fixed-Term Work) Act 2003;
  - (d) the Organisation of Working Time Act 1997;
  - (e) the Terms of Employment (Information) Acts 1994 to 2014;
  - (f) the Minimum Notice and Terms of Employment Acts 1973 to 2005;
  - (g) the Unfair Dismissals Acts 1977 to 2015;
  - (h) the Maternity Protection Acts 1994 and 2004;
  - (i) the Parental Leave Acts 1998 and 2006;
  - (j) the Adoptive Leave Acts 1995 and 2005;
  - (k) the Carer's Leave Act 2001.
- (5) In *subsection (3)*, a reference to terms and conditions relating to remuneration does not include conditions in relation to superannuation.

#### Arrangements for certain governing bodies following order under *section 43*

58. F28[...]

##### Annotations:

##### Amendments:

**F28** Repealed (10.11.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

#### Continuation of programmes of education and training following order under *Part 2*

59. F29[(1)] Every programme of education and training that, immediately before the day appointed by order under *section 36 or 43* was provided by a dissolved body and led to an award—
- (a) made by the Qualifications and Quality Assurance Authority of Ireland under section 50 of the Act of 2012,
- F29[(aa) made by the dissolved body as a designated awarding body for the purposes of the Act of 2012,]
- (b) made by the dissolved body in accordance with the authority delegated to that dissolved body by the Qualifications and Quality Assurance Authority of Ireland under section 53 of the Act of 2012, or

(c) made by the Dublin Institute of Technology where it is the dissolved body,

shall, on the appointed day, become and be a programme of education and training provided by the technological university in respect of which the order under *section 36* or *43* is made that leads to an award made by that technological university.

**F29**[(2) Subject to *subsection (3)*, every programme of education and training included in the business and operation of the applicant higher education provider the subject of an order under *section 44F*, that immediately before the day appointed by that order was provided by the applicant higher education provider and led to an award—

(a) made by the Qualifications and Quality Assurance Authority of Ireland under *section 50* of the Act of 2012,

(b) made by a relevant designated awarding body within the meaning of the Act of 2012 pursuant to an arrangement under *section 2(3)* of that Act with the applicant higher education provider as a linked provider within the meaning of that Act, or

(c) made by the applicant higher education provider in accordance with the authority delegated to that provider by the Qualifications and Quality Assurance Authority of Ireland under *section 53* of the Act of 2012,

shall, on the appointed day, become and be a programme of education and training provided by the technological university in respect of which the order under *section 44F* is made that leads to an award made by that technological university.

(3) A technological university in respect of which an order under *section 44F* is made may, with the approval of the Minister, determine in respect of programmes of education and training referred to in *subsection (2)* to which *paragraph (b)* of that subsection applies that the relevant designated awarding body concerned may continue, after the appointed day, to make awards in respect of those programmes to students who are enrolled in those programmes immediately before that day.]

**Annotations:**

**Amendments:**

**F29** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 100(a)-(c), commenced on enactment.

**Arrangements relating to international education mark following order under Part 2**

**60.** (1) Where, immediately before the day appointed by order under *section 36*, a dissolved body was authorised by the Qualifications and Quality Assurance Authority of Ireland to use the international education mark under *section 61* of the Act of 2012, the technological university, in respect of which the order under *section 36* is made shall, on and after that day—

(a) be so authorised,

(b) comply with any condition imposed under *section 61(8)(b)* of the Act of 2012 to which the authorisation is subject, and



- (c) be liable to pay the annual charge under section 62 of the Act of 2012 in respect of the authorisation of the dissolved body.
- (2) Where, immediately before the day appointed by order under *section 43*, both a dissolved body and a technological university were authorised by the Qualifications and Quality Assurance Authority of Ireland to use the international education mark under section 61 of the Act of 2012, the technological university, in respect of which the order is made shall, on and after that day—
- (a) comply with any condition, imposed under section 61(8)(b) of the Act of 2012, to which the authorisation of the dissolved body is subject,
- (b) continue to comply with any condition imposed under that section 61(8)(b) of that Act to which its authorisation is subject,
- (c) be liable to pay the annual charge under section 62 of the Act of 2012 in respect of the authorisation of the dissolved body, and
- (d) continue to be liable to pay the annual charge in respect of its authorisation under that section 62 of that Act.
- (3) Where, immediately before the day appointed by order under *section 43*, a technological university was authorised by the Qualifications and Quality Assurance Authority of Ireland to use the international education mark under section 61 of the Act of 2012 but the applicant college was not so authorised, the authorisation of the technological university, F30[in respect of which the order is made shall, on the date that is 12 months after the appointed day, be deemed to have been withdrawn under section 63 of the Act of 2012, unless before that date the technological university applies for and is authorised to continue to use the international education mark].
- F31[(3A) Where, immediately before the day appointed by order under *section 44F*, both a higher education provider and a technological university were authorised by the Qualifications and Quality Assurance Authority of Ireland to use the international education mark under section 61 of the Act of 2012, the technological university, in respect of which the order is made shall, on and after that day—
- (a) comply with any condition, imposed under section 61(8)(b) of the Act of 2012, to which the authorisation of the higher education provider is subject,
- (b) continue to comply with any condition imposed under that section 61(8)(b) of that Act to which its authorisation is subject,
- (c) be liable to pay the annual charge under section 62 of the Act of 2012 in respect of the authorisation of the higher education provider, and
- (d) continue to be liable to pay the annual charge in respect of its authorisation under that section 62 of that Act.
- (3B) Where, immediately before the day appointed by order under *section 44F*, a technological university was authorised by the Qualifications and Quality Assurance Authority of Ireland to use the international education mark under section 61 of the Act of 2012 but the applicant higher education provider was not so authorised, the authorisation of the technological university, in respect of which the order is made shall, on the date that is 12 months after the appointed day, be deemed to have been withdrawn under section 63 of the Act of 2012, unless before that date the technological university applies for and is authorised to continue to use the international education mark.

(3C) A technological university referred to in *subsection (3)* or *(3B)* may, in accordance with each of those subsections, apply to the Qualifications and Quality Assurance Authority of Ireland for authorisation for its continued use of the international education mark under section 61 of the Act of 2012 and that section shall, with any necessary modifications, apply to such an application as it applies to an application for authorisation to use the international education mark.]

(4) (a) For the purpose of *subsection (1)*, the liability date applying to the technological university concerned shall be the same date as applied to the dissolved body and on the first such liability date the technological university shall pay any portion of the annual charge remaining unpaid by the dissolved body on the appointed day.

(b) For the purpose of *subsection (2)*, the liability date shall be the anniversary of the appointed day and on the first such liability date the technological university concerned shall pay any portion of the annual charge remaining unpaid by the dissolved body on the appointed day.

F32[(c) For the purposes of *subsection (3A)*, the liability date shall be the anniversary of the appointed day and on the first such liability date the technological university concerned shall pay any portion of the annual charge remaining unpaid by the higher education provider on the appointed day.]

**Annotations:**

**Amendments:**

- F30** Substituted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 101(a), commenced on enactment.
- F31** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 101(b), commenced on enactment.
- F32** Inserted (12.10.2022) by *Higher Education Authority Act 2022 (31/2022)*, s. 101(c), commenced on enactment.

**Arrangements relating to quality assurance and access, transfer and progression procedures following order under Part 2**

**61. (1)** On the day appointed by order under *section 36*—

(a) any procedures of the dissolved body for quality assurance under section 28 of the Act of 2012 standing established immediately before that day shall continue in being as procedures for quality assurance, under that section 28 of that Act, of the technological university, in respect of which the order is made.

(b) any procedures of the dissolved body for access, transfer and progression in relation to learners standing established under section 56 of the Act of 2012 immediately before that day shall continue in being under section 56 of that Act, as procedures of the technological university, in respect of which the order is made.

**(2)** On the day appointed by order under *section 43*—

(a) any procedures for quality assurance under section 28 of the Act of 2012 standing established immediately before that day shall—

(i) where they were established by the dissolved body, no longer apply, and

(ii) where they were established by the technological university, in respect of which the order is made, continue to apply,

and

(b) any procedures for access, transfer and progression in relation to learners standing established, immediately before that day, under section 56 of the Act of 2012 shall—

(i) where they were established by the dissolved body, no longer apply, and

(ii) where they were established by the technological university, in respect of which the order is made, continue to apply.

F33[(3) On the day appointed by order under *section 44F*—

(a) any procedures for quality assurance under section 28 of the Act of 2012 standing established immediately before that day shall—

(i) where they were established by the applicant higher education provider, no longer apply, and

(ii) where they were established by the technological university, in respect of which the order is made, continue to apply,

and

(b) any procedures for access, transfer and progression in relation to learners standing established, immediately before that day, under section 56 of the Act of 2012 shall—

(i) where they were established by the applicant higher education provider, no longer apply, and

(ii) where they were established by the technological university, in respect of which the order is made, continue to apply.]

**Annotations:**

**Amendments:**

**F33** Inserted (12.10.2022) by *Higher Education Authority Act 2022* (31/2022), s. 102, commenced on enactment.

**Arrangements for suspension or dismissal of staff following order under *Part 2***

**62.** (1) Where an order has been made under *section 36* or *43*, and a process that may result in the suspension or dismissal of a member of staff of the dissolved body has, before the appointed day, been commenced but not completed immediately before that day in accordance with procedures made or conditions determined under, as the case may be—

(a) section 12A of the Dublin Institute of Technology Act 1992, or

(b) section 11A of the Act of 1992,

the process shall, on or after that day, be continued by the dissolved body under those procedures or conditions, and the dissolved body may suspend or dismiss a member of staff, as if the order had not been made.

(2) For the purposes of *subsection (1)*, if procedures or conditions referred to in *paragraph (a) or (b)* of that subsection provide for the delegation of powers relating to dismissal or suspension to the president or Director of a dissolved body to which an order under *section 36 or 43* refers, and a process for the suspension or dismissal of a member of staff of the dissolved body involving such delegated powers is commenced but not completed immediately before the appointed day, the process shall notwithstanding *section 6, 55 or 56*, on or after that day, be continued by the president or Director of the dissolved body who may suspend or dismiss a member of staff.

F34[(3) Where an order has been made under *section 44F*, and a process that may result in the suspension or dismissal of a member of staff of the applicant higher education provider specified in the order has, before the appointed day, been commenced but not completed immediately before that day in accordance with procedures made or conditions determined by that applicant higher education provider, the process may, on or after that day, be continued by the technological university under procedures made or conditions determined by it, and the technological university may suspend or dismiss the member of staff in accordance with such procedures and conditions.]

**Annotations:**

**Amendments:**

**F34** Inserted by *Higher Education Authority Act 2022 (31/2022)*, s. 102, commenced as of date of revision.

**Arrangements for academic council following order under *Part 2***

**63.** Any recommendation made, before the day appointed by order under *section 36 or 43* under *section 11(3)(d) or (j)* of the Dublin Institute of Technology Act 1992 or *section 10(3)(c) or (g)* of the Act of 1992, by the academic council of the dissolved body shall on or after that day, be a recommendation, under *section 17(3)(d) or (g)*, of the academic council of the technological university in respect of which the order under *section 36 or 43* is made.

**Arrangements for certain procedures where order under *Part 2***

**64. (1)** Where an order has been made under *section 36 or 43* and any process for—

- (a) the selection, admission, retention or exclusion of students of,
- (b) the conduct of examinations or the evaluation of academic progress of students of, or
- (c) the awarding of scholarships, prizes or other awards to students of, or other persons by,

a dissolved body is commenced before the appointed day by the academic council or governing body of the dissolved body under any—

(i) academic regulations made under, as the case may be, section 11(3)(f) of the Dublin Institute of Technology Act 1992 or section 10(3)(e) of the Act of 1992, or

(ii) conditions determined or regulations or, as the case may be, rules made for the conduct of the affairs of the Institute under the Second Schedule to the Dublin Institute of Technology Act 1992 or of the college, within the meaning of the Act of 1992, under the Second Schedule to that Act,

but not completed immediately before that day, then the process concerned, including in relation to a matter referred to in *subsection (2)* shall, notwithstanding *section 6*, on or after that day, be continued by that academic council or governing body as if the order had not been made.

(2) Where, immediately before the day appointed by order under *section 36* or *43*, a recommendation has been made under section 11(3)(e) of the Dublin Institute of Technology Act 1992 or section 10(3)(d) of the Act of 1992 by the academic council of the dissolved body but a final decision has not been made by the governing body of the dissolved body in relation to a student, that academic council and recommendation shall, continue in being until a final decision of that governing body is made in relation to the student.

## PART 5

### AMENDMENT OF DUBLIN INSTITUTE OF TECHNOLOGY ACT 1992, DUBLIN INSTITUTE OF TECHNOLOGY (AMENDMENT) ACT 1994, ACT OF 1992, REGIONAL TECHNICAL COLLEGES (AMENDMENT) ACT 1994 AND OTHER ENACTMENTS

#### CHAPTER 1

##### *Amendment of Dublin Institute of Technology Act 1992, Dublin Institute of Technology (Amendment) Act 1994 and other enactments*

##### **Amendment of section 2 of Dublin Institute of Technology Act 1992**

**65.** Section 2 of the Dublin Institute of Technology Act 1992 is amended—

(a) by the insertion of the following definitions:

“ ‘education and training board area’ has the meaning assigned to it by the Education and Training Boards Act 2013;

‘regulations of the Institute’ means rules made by the Governing Body under Paragraph 12 of the Second Schedule (amended by *section 76* of the *Technological Universities Act 2018*);

‘student’ means a person registered as a student by the Institute or a full-time officer of the student union who was first elected or appointed to his or her office while he or she was registered as a student by the Institute;

‘student union’ means the student union or other student representative body recognised by the Institute;”

and

(b) by the substitution of the following definition for the definition of “Education and Training Board”:

“ ‘education and training board’ means an education and training board established under the Education and Training Boards Act 2013;”.

### **Offences**

66. The Dublin Institute of Technology Act 1992 is amended by the insertion of the following section after section 2:

“**2A.** (1) A person guilty of an offence under this Act shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or to both.

(2) Where an offence under this Act is committed by a person who is a member of the Governing Body, summary proceedings may be brought and prosecuted by the Institute.”.

### **Amendment of section 3 of Dublin Institute of Technology Act 1992**

67. Section 3 of the Dublin Institute of Technology Act 1992 is amended by the insertion of the following subsection after subsection (4):

“(5) The Minister, following consultation with the Institute, may by order specify a name, other than the Dublin Institute of Technology, by which the Institute may describe itself for operational purposes.”.

### **Governing Body**

68. The Dublin Institute of Technology Act 1992 is amended by the substitution of the following section for section 6:

“**6.**(1) The Institute shall have a Governing Body established under this Act to perform the functions of the Institute under this Act.

(2) The Second Schedule shall apply to the Governing Body.

(3) The Governing Body, having not fewer than 12 and not more than 20 members, shall consist of—

(a) the President,

(b) a chairperson (in this section and the Second Schedule referred to as the ‘chairperson’), who shall be an external member, appointed by the Governing Body,

(c) at least one but not more than 3 members of the academic staff of the Institute, the number of whom shall be determined, and who shall be elected, by the academic staff of the Institute,

(d) one member of the non-academic staff of the Institute, elected by the non-academic staff of the Institute,

(e) at least one but not more than 2 undergraduate students of the Institute, the number of whom shall be determined, and who shall be nominated, by the student union in accordance with its own procedures,

(f) one post-graduate student of the Institute, nominated by the student union in accordance with its own procedures,

- (g) at least 3 but not more than 8 external members, at least one of whom has expertise in standards and practice in higher education outside the State, nominated by a committee of the Governing Body comprising the chairperson and 2 other external members of the Governing Body formed for that purpose,
  - (h) 2 external members nominated by the Minister, and
  - (i) one external member nominated, in accordance with its own procedures, by the education and training boards in whose education and training board area the campuses of the Institute are located.
- (4) (a) The term of office of a member of the Governing Body, other than the President, shall not exceed 4 years and such a member may not serve more than 2 consecutive terms of office.
- (b) A member of the Governing Body who is a student at the Institute shall hold office for such period, not exceeding one year, as the Governing Body may determine but may be re-appointed for a further period not exceeding one year.
- (5) Before appointing members under subsection (3)(g) the Governing Body shall agree with An tÚdarás the competencies required of such members relating to areas such as business, enterprise, industry, finance, law, corporate governance, human resources, community organisation or other areas relevant to the functions of the Institute.
- (6) (a) The Governing Body shall, for the purposes of this section, make regulations of the Institute relating to conduct of elections, seeking of nominations for appointment and appointment of members to the Governing Body.
- (b) In making regulations of the Institute under paragraph (a) the Governing Body shall have regard to the objective that at least 40 per cent of members of the Governing Body shall be women and at least 40 per cent shall be men.
- (7) In this section ‘external member’ in relation to the Institute means a person who is not—
- (a) the President,
  - (b) a member of the Academic Council,
  - (c) a member of staff of the Institute, or
  - (d) a student of the Institute.”.

#### **Amendment of section 7 of Dublin Institute of Technology Act 1992**

**69.** Section 7 of the Dublin Institute of Technology Act 1992 is amended by the deletion of subsections (4) and (5).

#### **Amendment of section 11 of Dublin Institute of Technology Act 1992**

**70.** Section 11 of the Dublin Institute of Technology Act 1992 is amended by the substitution of the following subsection for *subsection (2)*:

“(2) (a) Subject to paragraphs (b), (c), (d) and (e) the Governing Body shall make regulations of the Institute which shall provide, in relation to the Academic Council, for—

- (i) the number of members,
  - (ii) procedures for selection and appointment of members,
  - (iii) eligibility for reappointment of members, and
  - (iv) the number of consecutive periods for which members may hold office.
- (b) Without prejudice to the generality of paragraph (a) —
- (i) the majority of members of the Academic Council shall be members of the academic staff of the Institute, and
  - (ii) the regulations of the Institute under paragraph (a) shall provide for such number of students of the Institute, as it considers appropriate, to be members of the Academic Council.
- (c) The President shall be—
- (i) an *ex officio* member of the Academic Council, and
  - (ii) 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 he or she at any time chooses not to so preside, he or she shall nominate a person to preside in his or her place.
- (d) Other than the President and members of the Academic Council who are also students of the Institute, members of the Academic Council shall hold office for a period of 3 years and shall be eligible for reappointment.”.

#### **Amendment of section 12A of Dublin Institute of Technology Act 1992**

**71.** Section 12A of the Dublin Institute of Technology Act 1992 is amended in subsection (1) by—

(a) the substitution of the following paragraph for paragraph (b):

“(b) The Minister shall give notice in writing informing the Governing Body of the policies of the Government or the Minister relating to recruitment and selection of staff (including the President) and the Institute, in recruiting or selecting staff, shall establish procedures that comply with those policies.”,

and

(b) the deletion of paragraph (c).

#### **Amendment of dismissal arrangements for certain staff of Dublin Institute of Technology**

**72.** (1) The following are repealed:

(a) section 13(3) and (4) of the Dublin Institute of Technology Act 1992, and

(b) section 69(b) of the Education and Training Boards Act 2013.

(2) (a) Where an inquiry is commenced under section 105 of the Vocational Education Act 1930 but, immediately before the coming into operation of *subsection (1)*, is not determined then, notwithstanding that coming into operation, sections 105, 106 and 107 of the Vocational Education



Act 1930 and sections 7 and 8 of the Vocational Education (Amendment) Act 1944 shall continue to apply, in so far as they relate to that inquiry, as if *subsection (1)* had not come into operation.

- (b) Where an officer of the Institute stands to be removed under section 13(4) of the Dublin Institute of Technology Act 1992 immediately before the coming into operation of *subsection (1)*, then notwithstanding that coming into operation, sections 7 and 8 of the Vocational Education (Amendment) Act 1944 shall continue to apply to that officer in so far as they relate to that removal.
- (c) Where, before the coming into operation of *subsection (1)*, the Institute makes payments *ex gratia* to an officer in accordance with section 13(3)(b) of the Dublin Institute of Technology Act 1992, it shall, notwithstanding that coming into operation, and with the consent of the Minister, continue to make those payments and the provisions of subsection (3)(c) of that section shall continue to apply in respect of those payments.

#### **Amendment of section 14 of Dublin Institute of Technology Act 1992**

**73.** (1) Section 14 of the Dublin Institute of Technology Act 1992 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) An tÚdarás shall, on or before the first day of March in each year, notify the President of the funding (in this section referred to as ‘allocated funding’) to be provided by An tÚdarás for that year to the Institute, from moneys provided to An tÚdarás under section 12 of the Higher Education Authority Act 1971.”,

(b) by the substitution of the following subsection for subsection (2):

“(2) The President shall, on or before the first day of April in each year, or such other date as An tÚdarás may approve, prepare and submit following approval by the Governing Body, 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, other than allocated funding, expected income of the Institute for that year.”,

(c) by the insertion of the following subsection after subsection (2):

“(2A)The allocated funding and the expected income of the Institute referred to in subsection (2), shall be the budget of the Institute for that year.”,

(d) in subsection (4), by the substitution of “on an application in that behalf being made to it by” for “on application made to it by”,

(e) in subsection (5) by the deletion of “financial” in both places where it occurs,

(f) in subsection (7) by the deletion of “financial”,

(g) by the substitution of the following subsection for subsection (8):

“(8) Subject to subsection (9), the Institute, or any company in which the Institute has a proprietary interest, may borrow money by means of a bank overdraft or otherwise and may guarantee or underwrite a loan taken or borrowing undertaken by a person or a body of persons.”,

(h) by the substitution of the following subsection for subsection (9):

“(9) An tÚdarás may, from time to time with the approval of the Minister, the Minister for Public Expenditure and Reform and the Minister for Finance, make rules to be complied with by the Institute in relation to any borrowing, underwriting or guaranteeing under subsection (8), and any such rules, which may be amended in like manner to which they are made, shall include rules relating to—

- (a) the purposes for which any proposed borrowing, underwriting or guaranteeing may be undertaken by the Institute,
- (b) the demonstration by the Institute of its ability to meet the costs arising from any such borrowing, underwriting or guaranteeing,
- (c) the identification of the potential for any such proposed borrowing, underwriting or guaranteeing to give rise to additional costs for the State,
- (d) the requirement to obtain the prior approval of An tÚdarás before borrowing, underwriting or guaranteeing where paragraph (c) applies, and
- (e) the provision by the Institute to An tÚdarás of information relating to any borrowing, underwriting or guaranteeing undertaken under subsection (8).”

and

(i) by the insertion of the following new subsection:

“(10) Where An tÚdarás makes or amends rules under subsection (9) it shall—

- (a) so notify, and furnish a copy of the rules or amendments to, the Governing Body, and
- (b) arrange for the rules or amendments to be published on the internet.”

(2) The amendments of section 14 of the Dublin Institute of Technology Act 1992 effected by *paragraphs (a) to (c) of subsection (1)* shall apply in relation to the next year beginning after the coming into operation of that subsection.

#### **Amendment of section 15 of Dublin Institute of Technology Act 1992**

**74.** Section 15 of the Dublin Institute of Technology Act 1992 is amended—

(a) by the insertion of the following subsection after subsection (2):

“(2A) The Minister and An tÚdarás shall not require the supply of information under subsection (2) and An tÚdarás shall not require the supply of information under subsection (3), in respect of a matter specified by the Minister under section 21(1), during the period beginning on the appointment of the investigator under section 21 to investigate the matter and ending when the final report on the matter is furnished under section 21(9).”

and

(b) by the insertion of the following subsection after subsection (3):

“(4) The Minister may provide information supplied to him under subsection (2) to an investigator for the time being appointed under section 21.”.

#### **Investigator and report**

75. The Dublin Institute of Technology Act 1992 is amended by the substitution of the following section for section 21:

- “21.(1) Following consultation with An tÚdarás, the Minister may appoint a person (in this section referred to as an ‘investigator’) to carry out an investigation into any matter specified in writing by the Minister concerning the performance by the Institute or the Governing Body of its functions.
- (2) The Minister shall by notice in writing inform the Governing Body of his or her proposal to appoint an investigator under subsection (1) and the matter to be investigated.
- (3) A notice under subsection (2) shall state that the Governing Body may make representations to the Minister in relation to the proposed appointment not later than 14 days after the giving of the notice to the Governing Body.
- (4) The Minister shall consider any representations made pursuant to subsection (3) before making an appointment under subsection (1).
- (5) An investigator shall be entitled at all reasonable times to enter any premises occupied by the Institute and shall be afforded every facility and cooperation, including access to equipment and records as the investigator may require to perform his or her functions under this section, by the following:
- (a) the President;
  - (b) a Director;
  - (c) a member of the Governing Body;
  - (d) an employee of the Institute;
  - (e) a contractor appointed by the Institute to perform any function on its behalf and an employee of that contractor;
  - (f) a consultant or advisor appointed by the Institute.
- (6) Each person referred to in paragraphs (a) to (f) of subsection (5) shall comply with a request of the investigator to provide such information and assistance as the investigator may reasonably require for the purposes of the investigation.
- (7) As soon as practicable after the investigation, the investigator shall prepare a draft of the report on the investigation that he or she proposes to furnish to the Minister (in this section referred to as the ‘draft report’).
- (8) The investigator shall furnish the draft report to the Minister, An tÚdarás and the Governing Body and may furnish the draft report, or part of the draft report, to any other person as he or she considers necessary and shall give notice to the Minister, An tÚdarás, the Governing Body and such other person, that they may make representations to the investigator concerning the draft

report or, as the case may be, part of the draft report, not later than 28 days after it is furnished to them.

(9) As soon as practicable after the expiration of the 28 days referred to in subsection (8) and, having considered any representations made pursuant to that subsection, the investigator may amend the draft report and shall furnish the final report on the investigation to the Minister and An tÚdarás.

(10) In this section ‘records’ means any document, or any other written or printed material in any form, including information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form.”.

#### **Amendment of Second Schedule to Dublin Institute of Technology Act 1992**

**76.** (1) The Dublin Institute of Technology Act 1992 is amended by the substitution of the following for the Second Schedule:

#### “SECOND SCHEDULE

#### Section 6

#### THE GOVERNING BODY

1. (1) The Governing Body shall retain in its possession a seal of the Institute.
- (2) The seal of the Institute shall be authenticated by the signature of the chairperson or a member of the Governing Body authorised by the Governing Body to act in that behalf and by the signature of an officer of the Institute authorised to act in that behalf.
- (3) Judicial notice shall be taken of the seal and any document purporting to be an instrument made by, and sealed with the seal of, the Institute shall, unless the contrary is shown, be received in evidence and taken to be such an instrument without further proof.
2. (1) A member of the Governing Body, other than the President shall, subject to the provisions of this Act, hold office upon such terms and conditions (including terms and conditions relating to remuneration, allowances or expenses) as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.
- (2) There may be paid by the Governing Body to its members, other than the President, such allowances in respect of expenses (if any) as the Minister, with the approval of the Minister for Public Expenditure and Reform, may determine.
3. (1) A member of the Governing Body, other than the President, may resign from office by giving notice in writing to the chairperson (or if the member concerned is the chairperson, to the President) of his or her resignation and the resignation shall take effect on the day when the chairperson, or as the case may be, the President receives the notice.
- (2) Where the chairperson of the Governing Body resigns as chairperson he or she shall at the same time cease to be a member of the Governing Body.
- (3) The Governing Body may at any time remove from office a member of the Governing Body if, in the opinion of the Governing Body—
  - (a) the member has become incapable through ill-health of performing his or her functions,

- (b) the member has committed stated misbehaviour, or
  - (c) the removal of the member appears to be necessary for the effective performance by the Governing Body of its functions.
- (4) A member of the Governing Body shall cease to be qualified for office and shall cease to hold office if he or she—
- (a) is adjudicated bankrupt,
  - (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (d) is convicted of any indictable offence in relation to a company or any other body corporate,
  - (e) is convicted of an offence involving fraud or dishonesty,
  - (f) has a declaration under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
  - (g) is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act.
4. (1) If a member of the Governing Body, other than the President, dies, resigns, ceases to be qualified to be or ceases for any reason, to be a member of the Governing Body, the Governing Body may appoint a person to fill the casual vacancy.
- (2) A person appointed to be a member of the Governing Body pursuant to subparagraph (1) —
- (a) shall be representative of the person, referred to at section 6(3)(b) to (i), who occasioned the casual vacancy,
  - (b) shall hold office for so much of the term of office of the member who occasioned the casual vacancy concerned as remains unexpired at the date of the appointment, and
  - (c) shall be eligible for reappointment as a member of the Governing Body on the expiry of that term of office.
5. (1) The Governing Body shall hold at least 6 meetings in every 12 month period and such and so many additional meetings as may be necessary, as determined by the chairperson, for the due fulfilment of its functions.
- (2) The chairperson shall convene a meeting of the Governing Body when requested to do so by not less than the number of members that constitutes a quorum.
- (3) The quorum for a meeting of the Governing Body shall be set by the Governing Body at its first meeting and may be amended from time to time in accordance with standing orders under paragraph 11.
- (4) At a meeting of the Governing Body it shall appoint from amongst its members a member (other than the President) to be its deputy-chairperson and 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 Body.
- (5) At a meeting of the Governing Body—

- (a) the chairperson shall, if present, be the chairperson of the meeting,
  - (b) if and so long as the chairperson is not present or if the office of chairperson is vacant, the deputy-chairperson, if present, shall be chairperson of the meeting, and
  - (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 Body who are present shall choose one of their number to be chairperson of the meeting.
- (6) Every question at a meeting of the Governing Body shall be determined by a majority of the votes of the members of the Governing Body 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 or casting vote.
- (7) Subject to subparagraph (3), the Governing Body may act notwithstanding one or more vacancies among its members.
- (8) The Governing Body may hold or continue a meeting by the use of any means of communication by which all the members can hear and be heard at the same time (in this Schedule referred to as an “electronic meeting”).
- (9) A member of the Governing Body who participates in an electronic meeting is taken for all purposes to have been present at the meeting.
6. (1) The Governing Body may establish committees, consisting in whole or in part of persons who are members of the Governing Body or members of staff of the Institute, to assist and advise it in relation to the performance of any of its functions.
- (2) In appointing members of a committee established under this paragraph, the Governing Body shall have regard to—
- (a) the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee, and
  - (b) the objective that at least 40 per cent of members of the committee shall be women and at least 40 per cent shall be men.
- (3) The Governing Body may pay to members of a committee established under this paragraph such expenses incurred by them as the Governing Body may, with the consent of the Minister and the Minister for Public Expenditure and Reform, determine.
- (4) The Governing Body may remove a member of a committee established under this paragraph from the committee at any time.
- (5) The acts of a committee shall be subject to confirmation by the Governing Body, unless the Governing Body otherwise determines.
- (6) The Governing Body may determine the terms of reference and the procedure of a committee established under this paragraph.
- (7) The Governing Body may appoint a person to be chairperson of a committee established under this paragraph.
- (8) A committee shall provide the Governing Body with such information as the Governing Body may from time to time require, in respect of the committee’s activities and operations, for the purposes of the performance by the Governing Body of its functions.
- (9) The Governing Body may at any time dissolve a committee established under this paragraph.

7. (1) Where a member of the Governing Body is—
- (a) nominated as a member of Seanad Éireann,
  - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
  - (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,
- he or she shall thereupon cease to be a member of the Governing Body.
- (2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a representative in the European Parliament shall be disqualified, while he or she is so entitled or is such a representative, from being a member of the Governing Body or a member of a committee established under paragraph 6.
8. (1) Subparagraph (2) applies where, at a meeting of the Governing Body, any of the following matters arise, namely—
- (a) an arrangement to which the Governing Body is a party,
  - (b) an arrangement to which the Governing Body proposes to become a party,
  - (c) a contract or other agreement with the Governing Body, or
  - (d) a proposed contract or other agreement with the Governing Body.
- (2) A member of the Governing Body present at the meeting referred to in subparagraph (1) who has a pecuniary interest or other beneficial interest in, or material to, the matter concerned shall—
- (a) disclose to the Governing Body at the meeting the fact of that interest and its nature,
  - (b) not influence (or seek to influence) a decision to be made in relation to the matter,
  - (c) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
  - (d) take no part in any deliberation of the Governing Body relating to the matter, and
  - (e) not vote on a decision relating to the matter.
- (3) Where an interest is disclosed pursuant to this paragraph, 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 member of the Governing Body by whom the disclosure is made shall not be counted in the quorum for the meeting.
- (4) Where, at a meeting of the Governing Body, a question arises as to whether or not a course of conduct, if pursued by a member of the Governing Body, would constitute a failure by him or her to comply with the requirements of subparagraph (2), the question may, subject to subparagraph (5), be determined by the chairperson of the meeting, whose decision shall be final, and where the question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.
- (5) Where, at a meeting of the Governing Body, the chairperson of the meeting is the member in respect of whom a question to which subparagraph (4)

applies falls to be determined, the other members of the Governing Body attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.

- (9) Paragraph 8 shall apply to a member of a committee established under paragraph 6 where the member is not also a member of the Governing Body and for the purposes of that application—
- (a) a reference to a member of the Governing Body shall be construed as reference to a member of the committee, and
  - (b) a reference to the Governing Body shall be construed as reference to the committee.
10. (1) A person shall not disclose confidential information obtained by him or her while performing functions as—
- (a) a member of or an adviser or consultant to the Governing Body, or a member of the staff of such an adviser or consultant, or
  - (b) a member of a committee established under paragraph 6, unless he or she is authorised by the Governing Body to so do.
- (2) A person who contravenes subparagraph (1) commits an offence.
- (3) Nothing in this paragraph shall prevent the disclosure of information—
- (a) in a report made to the Governing Body,
  - (b) by or on behalf of the Governing Body to the Minister,
  - (c) by a member of the Governing Body to the Minister, or
  - (d) by a person in the circumstances referred to in section 35(2) of the Ethics in Public Office Act 1995.
- (4) In this paragraph confidential information includes—
- (a) information that is expressed by the Governing Body to be confidential either as regards particular information or as regards information of a particular class or description, and
  - (b) information relating to proposals of a commercial nature or tenders submitted to the Governing Body by contractors, consultants or any other person.
- (11) Subject to this Act, the Governing Body shall regulate, by standing orders or otherwise, its procedure and business.
- (12) Subject to this Act, the Governing Body may make, amend or revoke rules, (in this Act called ‘regulations of the Institute’) as it thinks fit for the conduct of the affairs of the Institute.”.
- (2) Any standing orders for the regulation of its procedure and business, or regulations for the conduct of the affairs of the Dublin Institute of Technology, made under the Second Schedule to the Dublin Institute of Technology Act 1992 and in being immediately before the coming into operation of the amendment of that Second Schedule under *subsection (1)*, shall continue in being after that coming into operation and may be amended or revoked as if made under that Second Schedule as amended under *subsection (1)*.



**Amendment of Third Schedule to Dublin Institute of Technology Act 1992**

77. The Third Schedule to the Dublin Institute of Technology Act 1992 is amended by—

- (a) the deletion of paragraphs 5 and 6, and
- (b) the substitution, in paragraph 7, of “for such period, not longer than 10 years from the date of his or her appointment as President, as the Governing Body with the consent of the Minister, determines” for “for a period of 10 years”.

**Amendment of Dublin Institute of Technology (Amendment) Act 1994**

78. Section 2 of the Dublin Institute of Technology (Amendment) Act 1994 is amended—

- (a) in subsection (1), by the substitution of “of an inspector” for “of a person appointed”,
- (b) by the insertion of the following subsection after subsection (1):

“(1A)Where the Minister proposes to make an order appointing a Commission under subsection (1) he or she shall, by notice in writing—

- (a) inform the Governing Body of the proposal to make such an order and of reasons for the proposal, and
- (b) invite the Governing Body to make representations in writing to the Minister concerning the proposal, not later than 14 days from the service of the notice.”

and

- (c) by the insertion of the following subsection after subsection (1A) (inserted under *paragraph (b)*):

“(1B)The Minister, in deciding whether to make an order appointing a Commission under subsection (1), which shall not be made earlier than 14 days from the service of the notice under subsection (1A), shall take into consideration any representations made to him or her by the Governing Body.”.

**Repeal of section 4 of Dublin Institute of Technology (Amendment) Act 1994**

79. The Dublin Institute of Technology (Amendment) Act 1994 is amended by the repeal of section 4.

## CHAPTER 2

*Amendment of Act of 1992, Regional Technical Colleges (Amendment) Act 1994 and other enactments***Amendment of section 2 of Act of 1992**

80. Section 2 of the Act of 1992 is amended—

- (a) by the substitution of the following definition for the definition of “education and training board”:

“ ‘education and training board’ means an education and training board established under the Education and Training Boards Act 2013;”,

and

(b) F35[...]

**Annotations:**

**Amendments:**

**F35** Repealed (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

**Offences**

**81.** The Act of 1992 is amended by the insertion of the following section after section 2:

**“2A.** (1) A person guilty of an offence under this Act shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or to both.

(2) Where an offence under this Act is committed by a person who is a member of the governing body of a college, summary proceedings may be brought and prosecuted by the college.”.

**Governing bodies**

**82.** F36[...]

**Annotations:**

**Amendments:**

**F36** Repealed (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

**Transitional arrangements consequent upon section 82**

**83.** F37[...]

**Annotations:**

**Amendments:**

**F37** Repealed (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

**Amendment of section 7 of Act of 1992**

**84.** F38[...]

**Annotations:****Amendments:**

- F38** Repealed (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

**Amendment of section 10 of Act of 1992**

**85.** Section 10 of the Act of 1992 is amended by the substitution of the following subsection for subsection (2):

“(2) (a) Subject to paragraphs (b), (c), (d) and (e), the governing body shall make regulations of the college in relation to the academic council, for—

(i) the number of members,

(ii) procedures for selection and appointment of members,

(iii) eligibility for reappointment of members, and

(iv) the number of consecutive periods for which members may hold office.

(b) Without prejudice to the generality of paragraph (a) —

(i) the majority of members of the academic council shall be members of the academic staff of the college,

(ii) the regulations of the college under paragraph (a) shall provide for such number of students of the college, as it considers appropriate, to be members of the academic council.

(c) The Director shall be—

(i) an *ex officio* member of the academic council, and

(ii) 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 he or she at any time chooses not to so preside, he or she shall nominate a person to preside in his or her place.

(d) Other than the Director and members of the academic council who are also students of the college, members of the academic council shall hold office for a period of 3 years and shall be eligible for reappointment.”.

**Amendment of section 11A of Act of 1992**

**86.** Section 11A of the Act of 1992 is amended in subsection (1) by—

(a) the substitution of the following paragraph for paragraph (b):

“(b) The Minister or, at the request of the Minister, An tÚdarás, shall give notice in writing informing the governing body of the policies of the Government or the Minister relating to recruitment and selection of staff (including the Director) and the college, in recruiting or selecting staff, shall establish procedures that comply with those policies.”.

and

(b) the deletion of paragraph (c).

**Amendment of dismissal arrangements for certain staff of colleges**

**87.** (1) The following are repealed:

(a) section 12(3) and (4) of the Act of 1992, and

(b) section 69(a) of the Education and Training Boards Act 2013.

(2) (a) Where an inquiry is commenced under section 105 of the Vocational Education Act 1930 but, immediately before the coming into operation of *subsection (1)* is not determined then, notwithstanding that coming into operation, sections 105, 106 and 107 of the Vocational Education Act 1930 and sections 7 and 8 of the Vocational Education (Amendment) Act 1944 under subsection (1) shall continue to apply, in so far as they relate to that inquiry, as if *subsection (1)* had not come into operation.

(b) Where an officer of a college stands to be removed under section 12(4) of the Act of 1992 immediately before the coming into operation of *subsection (1)*, then notwithstanding that repeal, sections 7 and 8 of the Vocational Education (Amendment) Act 1944 shall continue to apply to that officer in so far as they relate to that removal.

(c) Where, before the coming into operation of *subsection (1)*, the college makes payments *ex gratia* to an officer in accordance with section 21(1) of the Act of 1992, it shall, notwithstanding that coming into operation, and with the consent of the Minister, continue to make those payments and the provisions of section 21(2) of the Act of 1992 shall continue to apply in respect of those payments.

**Amendment of section 13 of Act of 1992**

**88.** (1) Section 13 of the Act of 1992 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) An tÚdarás shall, on or before the first day of March in each year, notify the Director of the funding (in this section referred to as ‘allocated funding’) to be provided by An tÚdarás for that year to a college, from moneys provided to An tÚdarás under section 12 of the Higher Education Authority Act 1971.”,

(b) by the substitution of the following subsection for subsection (2):

“(2) The Director shall, on or before the first day of April in each year, or such other date as An tÚdarás may approve, prepare and submit following approval by the governing body, 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, other than allocated funding, expected income of the college for that year.”,

(c) by the insertion of the following subsection after subsection (2):

“(2A)The allocated funding and the expected income of the college referred to in subsection (2), shall be the budget of the college for that year.”,

(d) in subsection (4), by the substitution of “on an application in that behalf being made to it by” for “on application made to it by”,

(e) in subsection (5), by the deletion of “financial” in both places where it occurs,

(f) in subsection (7), by the deletion of “financial”,

(g) by the substitution of the following subsection for subsection (8):

“(8) Subject to subsection (9), a college or any company in which the college has a proprietary interest, may borrow money by means of a bank overdraft or otherwise and may guarantee or underwrite a loan taken or borrowing undertaken by a person or a body of persons.”,

(h) by the substitution of the following subsection for subsection (9):

“(9) An tÚdarás may, from time to time with the approval of the Minister, the Minister for Public Expenditure and Reform and the Minister for Finance, make rules to be complied with by a college in relation to any borrowing, guaranteeing or underwriting under subsection (8), and any such rules, which may be amended in like manner to which they are made, shall include rules relating to—

(a) the purposes for which any proposed borrowing, guaranteeing or underwriting may be undertaken by a college,

(b) the demonstration by a college of its ability to meet the costs arising from any such borrowing, guaranteeing or underwriting,

(c) the identification of the potential for any such proposed borrowing, guaranteeing or underwriting to give rise to additional costs for the State,

(d) the requirement to obtain the prior approval of An tÚdarás before borrowing, guaranteeing or underwriting where paragraph (c) applies, and

(e) the provision by a college to An tÚdarás of information relating to any borrowing, guaranteeing or underwriting undertaken under subsection (8).”,

and

(i) by the insertion of the following new subsection:

“(10) Where An tÚdarás makes or amends rules under subsection (9) it shall—

(a) so notify, and furnish a copy of the rules or amendments to, the governing body of each college, and

(b) arrange for the rules or amendments to be published on the internet.”.

(2) The amendments of section 13 of the Act of 1992 effected by paragraphs (a) to (c) of subsection (1) shall apply in relation to the next year beginning after the coming into operation of that subsection.

#### **Amendment of section 14 of Act of 1992**

**89.** Section 14 of the Act of 1992 is amended—

(a) by the insertion of the following subsection after subsection (2):

“(2A) The Minister and An tÚdarás shall not require the supply of information under subsection (2) and An tÚdarás shall not require

the supply of information under subsection (3), in respect of a matter specified by the Minister under section 20(1), during the period beginning on the appointment of the investigator under section 20 to investigate the matter and ending when the final report on the matter is furnished under section 21(9).”,

and

(b) by the insertion of the following subsection after subsection (3):

“(4) The Minister may provide information supplied to him under subsection (2) to an investigator for the time being appointed under section 20.”.

### **Investigator and report**

**90.**The Act of 1992 is amended by the substitution of the following section for section 20:

“**20.** (1) Following consultation with An tÚdarás, the Minister may appoint a person (in this section referred to as an ‘investigator’) to carry out an investigation into any matter specified in writing by the Minister concerning the performance by a college or its governing body of its functions.

(2) The Minister shall by notice in writing inform the governing body of his or her proposal to appoint an investigator under subsection (1) and the matter to be investigated.

(3) A notice under subsection (2) shall state that the governing body may make representations to the Minister in relation to the proposed appointment not later than 14 days after the giving of the notice to the governing body.

(4) The Minister shall consider any representations made pursuant to subsection (3) before making an appointment under subsection (1).

(5) An investigator shall be entitled at all reasonable times to enter any premises occupied by a college and shall be afforded every facility and cooperation, including access to equipment and records as the investigator may require to perform his or her functions under this section, by the following:

(a) the Director;

(b) a member of the governing body;

(c) an employee of the college;

(d) a contractor appointed by the college to perform any function on its behalf and an employee of that contractor;

(e) a consultant or advisor appointed by the college.

(6) Each person referred to in paragraphs (a) to (e) of subsection (5) shall comply with a request of the investigator to provide such information and assistance as the investigator may reasonably require for the purposes of the investigation.

(7) As soon as practicable after the investigation, the investigator shall prepare a draft of the report on the investigation that he or she proposes to furnish to the Minister (in this section referred to as the ‘draft report’).

- (8) The investigator shall furnish the draft report to the Minister, An tÚdarás and the governing body and may furnish the draft report, or part of the draft report, to any other person as he or she considers necessary and shall give notice to the Minister, An tÚdarás, the governing body and such other person, that they may make representations to the investigator concerning the draft report or, as the case may be, part of the draft report, not later than 28 days after it is furnished to them.
- (9) As soon as practicable after the expiration of the 28 days referred to in subsection (8) and, having considered any representations made pursuant to that subsection, the investigator may amend the draft report and shall furnish the final report on the investigation to the Minister and An tÚdarás.
- (10) In this section ‘records’ means any document, or any other written or printed material in any form, including information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form.”.

#### Amendment of Second Schedule to Act of 1992

##### 91. F39[...]

#### Annotations:

#### Amendments:

**F39** Repealed (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 5 and sch. 1 part 1, S.I. No. 554 of 2022.

#### Amendment of Third Schedule to Act of 1992

**92.** The Third Schedule to the Act of 1992 is amended by the deletion of paragraphs 5 and 6.

#### Amendment of section 2 of Regional Technical Colleges (Amendment) Act 1994

**93.** Section 2 of the Regional Technical Colleges (Amendment) Act 1994 is amended—

(a) in subsection (1), by the substitution of “of an inspector” for “of a person appointed”, and

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

“(1A)Where the Minister proposes to make an order appointing a Commission under subsection (1) he or she shall, by notice in writing—

(a) inform the governing body of the college concerned of the proposal to make such an order and of reasons for the proposal, and

(b) invite the governing body to make representations in writing to the Minister concerning the proposal, not later than 14 days from the service of the notice.”,

and

(c) by the insertion of the following subsection after subsection (1A) (inserted by *paragraph (b)*):

“(1B) The Minister, in deciding whether to make an order appointing a Commission under subsection (1), which shall not be made earlier than 14 days from the service of the notice under subsection (1A), shall take into consideration any representations made to him or her by the governing body.”.

#### **Repeal of section 4 of Regional Technical Colleges (Amendment) Act 1994**

94. The Regional Technical Colleges (Amendment) Act 1994 is amended by the repeal of section 4.

## PART 6

### AMENDMENT OF CERTAIN ENACTMENTS

#### **Amendment of Higher Education Authority Act 1971**

95. Section 1(1) of the Higher Education Authority Act 1971 is amended in the definition of “institution of higher education” by the insertion of the following paragraph after paragraph (b):

“(ba) a technological university within the meaning of the *Technological Universities Act 2018*,”.

#### **Amendment of Student Support Act 2011**

96. The Student Support Act 2011 is amended—

(a) in section 7(1), by the insertion of the following paragraph after paragraph (b):

“(ba) a technological university within the meaning of the *Technological Universities Act 2018*,”

and

(b) in section 30(1), by the insertion of the following paragraph after paragraph (b):

“(ba) a technological university within the meaning of the *Technological Universities Act 2018*,”.

#### **Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012**

97. The Act of 2012 is amended—

(a) in section 2—

(i) in the definition of “designated awarding body”, by the insertion of “a technological university,” after “Act of 1997,”,

(ii) in the definition of “relevant provider”, by the insertion of the following paragraph after paragraph (b):

“(ba) a technological university”,



and

(iii) by the insertion of the following definition:

“ ‘technological university’ has the meaning assigned to it by the *Technological Universities Act 2018*;”,

and

(b) in section 65(5), by the insertion of the following paragraph after paragraph (b):

“(ba) a technological university,”.

## PART 7

### AMENDMENT OF CERTAIN ENACTMENTS TO PROVIDE FOR INVESTIGATION AND INFORMATION

#### CHAPTER 1

##### *Amendment of Act of 1940*

#### **Investigator and report**

98. The Act of 1940 is amended by the insertion of the following section after section 29:

“**29A.** (1) Following consultation with An tÚdarás, the Minister may appoint a person (in this section referred to as an ‘investigator’) to carry out an investigation into any matter specified in writing by the Minister concerning the performance by the Institute or as the case may be, a Constituent School of its functions.

(2) The Minister shall by notice in writing inform the Council, or, if applicable, the Governing Board of a Constituent School of his or her proposal to appoint an investigator under subsection (1) and the matter to be investigated.

(3) A notice under subsection (2) shall state that the Council or, if applicable, the Governing Board of a Constituent School may make representations to the Minister in relation to the proposed appointment not later than 14 days after the giving of the notice to the governing body.

(4) The Minister shall consider any representations made pursuant to subsection (3) before making an appointment under subsection (1).

(5) An investigator shall be entitled at all reasonable times to enter any premises occupied by the Institute or, if required, a Constituent School and shall be afforded every facility and cooperation, including access to equipment and records as the investigator may require to perform his or her functions under this section, by the following:

(a) the Registrar;

(b) a member of the Council;

(c) a member of the Governing Board of a Constituent School;

- (d) a Director of a Constituent School;
  - (e) an employee of the Institute or a Constituent School;
  - (f) a contractor appointed by the Institute or a Constituent School to perform any function on its behalf and an employee of that contractor;
  - (g) a consultant or advisor appointed by the Institute or a Constituent School.
- (6) Each person referred to in paragraphs (a) to (g) of subsection (5) shall comply with a request of the investigator to provide such information and assistance as the investigator may reasonably require for the purposes of the investigation.
- (7) As soon as practicable after the investigation, the investigator shall prepare a draft of the report on the investigation that he or she proposes to furnish to the Minister (in this section referred to as the 'draft report').
- (8) The investigator shall furnish the draft report to the Minister, An tÚdarás, the Institute and, if applicable a Constituent School and may furnish the draft report, or part of the draft report, to any other person as he or she considers necessary and shall give notice to the Minister, An tÚdarás, the Institute, a Constituent School (where applicable) and such other person, that they may make representations to the investigator concerning the draft report or, as the case may be, part of the draft report, not later than 28 days after it is furnished to them.
- (9) As soon as practicable after the expiration of the 28 days referred to in subsection (8) and, having considered any representations made pursuant to that subsection, the investigator may amend the draft report and shall furnish the final report on the investigation to the Minister and An tÚdarás.
- (10) In this section 'records' means any document, or any other written or printed material in any form, including information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form."

#### Information requested by Minister

99. The Act of 1940 is amended by the insertion of the following section after section 29A (inserted by *section 98*):

- "29B.** (1) The Institute or a Constituent School shall furnish to the Minister any information requested by the Minister concerning the performance by the Institute or a Constituent School of its functions.
- (2) The Minister shall not request information under subsection (1) in respect of a matter specified by the Minister under section 29A(1), during the period beginning on the appointment of the investigator under section 29A to investigate the matter and ending when the final report on the matter is furnished under section 29A(9).
- (3) The Minister may provide information furnished to him or her under subsection (1) to an investigator for the time being appointed under section 29A."

## CHAPTER 2

*Amendment of Act of 1971***Investigator and report**

**100.** The Act of 1971 is amended by the insertion of the following section after section 15:

- “15A.** (1) Following consultation with An tÚdarás, the Minister may appoint a person (in this section referred to as an ‘investigator’) to carry out an investigation into any matter specified in writing by the Minister concerning the performance by the College of its functions.
- (2) The Minister shall by notice in writing inform An Bord of his or her proposal to appoint an investigator under subsection (1) and the matter to be investigated.
- (3) A notice under subsection (2) shall state that An Bord may make representations to the Minister in relation to the proposed appointment not later than 14 days after the giving of the notice to An Bord.
- (4) The Minister shall consider any representations made pursuant to subsection (3) before making an appointment under subsection (1).
- (5) An investigator shall be entitled at all reasonable times to enter any premises occupied by the College and shall be afforded every facility and cooperation, including access to equipment and records, as the investigator may require to perform his or her functions under this section, by the following:
- (a) the Director;
  - (b) a member of An Bord;
  - (c) the Registrar;
  - (d) an employee of the College;
  - (e) a contractor appointed by the College to perform any function on its behalf and an employee of that contractor;
  - (f) a consultant or advisor appointed by the College.
- (6) Each person referred to in paragraphs (a) to (f) of subsection (5) shall comply with a request of the investigator to provide such information and assistance as the investigator may reasonably require for the purposes of the investigation.
- (7) As soon as practicable after the investigation, the investigator shall prepare a draft of the report on the investigation that he or she proposes to furnish to the Minister (in this section referred to as the ‘draft report’).
- (8) The investigator shall furnish the draft report to the Minister, An tÚdarás and An Bord and may furnish the draft report, or part of the draft report, to any other person as he or she considers necessary and shall give notice to the Minister, An tÚdarás, An Bord and such other person, that they may make representations to the investigator concerning the draft report or, as the case may

be, part of the draft report, not later than 28 days after it is furnished to them.

(9) As soon as practicable after the expiration of the 28 days referred to in subsection (8) and, having considered any representations made pursuant to that subsection, the investigator may amend the draft report and shall furnish the final report on the investigation to the Minister and An tÚdarás.

(10) In this section ‘records’ means any document, or any other written or printed material in any form, including information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form.”.

#### **Amendment of section 16 of Act of 1971**

**101.** Section 16 of the Act of 1971 is amended—

(a) by the insertion of the following subsection after subsection (2):

“(3) The Minister shall not require the supply of information under subsection (2) in respect of a matter specified by the Minister under section 15A(1), during the period beginning on the appointment of the investigator under section 15A to investigate the matter and ending when the final report on the matter is furnished under section 15A(9).”.

and

(b) by the insertion of the following subsection after subsection (3) (inserted by *paragraph (a)*):

“(4) The Minister may provide information supplied to him or her under subsection (2) to an investigator for the time being appointed under section 15A.”.

## SCHEDULE 1

## Governing Body of Technological University

## Section 12

1. The governing body shall retain in its possession a seal of the technological university.
2. (1) A member of the governing body, other than the president, holds office upon such terms and conditions (including terms and conditions relating to remuneration, allowances or expenses) as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform.  
(2) There may be paid by the governing body to its members, other than the president, F40[such remuneration (if any) and] such allowances in respect of expenses (if any) as the Minister with the approval of the Minister for Public Expenditure and Reform, may determine.
3. (1) A member of the governing body, other than the president, may resign from office by giving notice in writing to the chairperson (or if the member concerned is the chairperson, to the president) of his or her resignation and the resignation shall take effect on the day when the chairperson, or as the case may be, president receives the notice.  
(2) Where the chairperson of the governing body resigns as chairperson he or she shall at the same time cease to be a member of the governing body.  
(3) The governing body may at any time remove from office a member of the governing body, if, in the opinion of the governing body—
  - (a) the member has become incapable through ill-health of performing his or her functions,
  - (b) the member has committed stated misbehaviour, or
  - (c) the removal of the member appears to be necessary for the effective performance by the governing body of its functions.
- (4) A member of the governing body shall cease to be qualified for office and shall cease to hold office if he or she—
  - (a) is adjudicated bankrupt,
  - (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (d) is convicted of any indictable offence in relation to a company or any other body corporate,
  - (e) is convicted of an offence involving fraud or dishonesty,
  - (f) has a declaration under section 819 of the Companies Act 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
  - (g) is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Companies Act 2014, whether by virtue of that Chapter or any other provision of that Act.

4. (1) If a member of the governing body, other than the president or chairperson, dies, resigns, ceases to be qualified for or ceases to hold office or is removed from office for any reason, the governing body may appoint a person to be a member of the governing body to fill the casual vacancy so occasioned in the same manner as the member of the governing body who occasioned the casual vacancy was appointed.
- (2) A person appointed to be a member of the governing body pursuant to *subparagraph (1)*—
- (a) holds office for so much of the term of office of the member who occasioned the casual vacancy concerned as remains unexpired at the date of the appointment, and
- (b) is eligible for reappointment as a member of the governing body on the expiry of that term of office.
5. (1) The governing body shall hold at least 6 meetings in any 12 month period and such and so many additional meetings as may be necessary, as determined by the chairperson, for the due fulfilment of its functions.
- (2) The chairperson shall convene a meeting of the governing body when requested to do so by not less than the number of members which constitute a quorum.
- (3) The quorum for a meeting of the governing body shall be set by the governing body at its first meeting and may be amended from time to time in accordance with standing orders under *paragraph 11*.
- (4) At a meeting of the governing body it shall appoint from amongst its members a member (other than the president) to be its deputy-chairperson and 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 body.
- (5) At a meeting of the governing body—
- (a) the chairperson shall, if present, be the chairperson of the meeting,
- (b) if and so long as the chairperson is not present or if the office of chairperson is vacant, the deputy-chairperson, if present, shall be chairperson of the meeting, or
- (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 body who are present shall choose one of their number to be chairperson of the meeting.
- (6) Every question at a meeting of the governing body shall be determined by a majority of the votes of the members of the governing body present and voting on the question, and, in the case of an equal division of votes, the chairperson shall have a second or casting vote.
- (7) Subject to *subparagraph (3)*, the governing body may act notwithstanding one or more vacancies among its members.
- (8) The governing body may hold or continue a meeting by the use of any means of communication by which all the members can hear and be heard at the same time (in this Schedule referred to as an “electronic meeting”).

- (9) A member of the governing body who participates in an electronic meeting is taken for all purposes to have been present at the meeting.
6. (1) The governing body may establish committees F40[(including committees relating to audit and risk management functions)], consisting in whole or in part of persons who are members of the governing body or members of staff of the technological university to assist and advise it in relation to the performance of any of its functions.
- (2) In appointing members of a committee established under this paragraph, the governing body shall have regard to—
- (a) the range of qualifications and experience necessary for the proper and effective discharge of the functions of the committee, and
- (b) the objective that at least 40 per cent of members of the committee shall be women and at least 40 per cent shall be men.
- (3) The governing body may pay to members of a committee established under this paragraph such expenses incurred by them as the governing body may, with the consent of the Minister and the Minister for Public Expenditure and Reform, determine.
- (4) The governing body may remove a member of a committee established under this paragraph from the committee at any time.
- (5) The acts of a committee shall be subject to confirmation by the governing body, unless the governing body otherwise determines.
- (6) A committee established under this paragraph may regulate, by standing order or otherwise, its procedure and business.
- (7) The governing body may appoint a person to be chairperson of a committee established under this paragraph.
- (8) A committee shall provide the governing body with such information as the governing body may from time to time require, in respect of the committee's activities and operations, for the purposes of the performance by the governing body of its functions.
- (9) The governing body may at any time dissolve a committee established under this paragraph.
7. (1) Where a member of the governing body is—
- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,
- he or she shall thereupon cease to be a member of the governing body.
- (2) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit in that House or who is a representative in the European Parliament shall be disqualified, while he or she is so entitled or is such a representative, from being a member of the governing body or a member of a committee established under paragraph 6.

8. (1) *Subparagraph (2)* applies where at a meeting of the governing body any of the following matters arise, namely—
- (a) an arrangement to which the governing body is a party,
  - (b) an arrangement to which the governing body proposes to become a party,
  - (c) a contract or other agreement with the governing body, or
  - (d) a proposed contract or other agreement with the governing body.
- (2) Any member of the governing body present at the meeting referred to in *subparagraph (1)* who has a pecuniary interest or other beneficial interest in, or material to, the matter concerned shall—
- (a) disclose to the governing body at the meeting the fact of that interest and its nature,
  - (b) not influence (or seek to influence) a decision to be made in relation to the matter,
  - (c) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
  - (d) take no part in any deliberation of the governing body relating to the matter, and
  - (e) not vote on a decision relating to the matter.
- (3) Where an interest is disclosed pursuant to this paragraph, 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 member of the governing body by whom the disclosure is made shall not be counted in the quorum for the meeting.
- (4) Where at a meeting of the governing body a question arises as to whether or not a course of conduct, if pursued by a member of the governing body, would constitute a failure by him or her to comply with the requirements of *subparagraph (2)*, the question may, subject to *subparagraph (5)*, be determined by the chairperson of the meeting, whose decision shall be final, and where the question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.
- (5) Where, at a meeting of the governing body, the chairperson of the meeting is the member in respect of whom a question to which *subparagraph (4)* applies falls to be determined, the other members of the governing body attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.
9. *Paragraph 8* shall apply to a member of a committee established under *paragraph 6* where the member is not also a member of the governing body and for the purposes of that application—
- (a) a reference to a member of the governing body shall be construed as reference to a member of the committee,
  - (b) a reference to the governing body shall be construed as reference to the committee.
10. (1) A person shall not disclose confidential information obtained by him or her while performing functions as—



- (a) a member of or an adviser or consultant to the governing body, or a member of the staff of such an adviser or consultant, or
  - (b) a member of a committee established under paragraph 6, unless he or she is authorised by the governing body to so do.
- (2) A person who contravenes *subparagraph (1)* commits an offence.
- (3) Nothing in this paragraph shall prevent the disclosure of information—
- (a) in a report made to the governing body,
  - (b) by or on behalf of the governing body to the Minister,
  - (c) by a member of the governing body to the Minister, or
  - (d) by a person in the circumstances referred to in section 35(2) of the Ethics in Public Office Act 1995.
- (4) In this paragraph “confidential information” includes—
- (a) information that is expressed by the governing body to be confidential either as regards particular information or as regards information of a particular class or description, and
  - (b) proposals of a commercial nature or tenders submitted to the governing body by contractors, consultants or any other person.
11. Subject to this Act, a governing body shall regulate, by standing orders or otherwise, its procedure and business.
12. Subject to this Act, a governing body may make, amend or revoke rules, (in this Act called “regulations of the technological university”) as it thinks fit for the conduct of the procedure and business of the technological university.

**Annotations:****Amendments:**

**F40** Inserted (10.11.2022) by *Higher Education Authority Act 2022* (31/2022), s. 104(a), (b), S.I. No. 554 of 2022.

**SCHEDULE 2**

## President of Technological University

*Section 14*

1. The president of a technological university shall carry on and manage, and control generally, the academic, administrative, and financial activities of the technological university, and matters relating to its staff and perform such other functions (if any) as may be determined by, the technological university, and for those purposes shall have such powers as are necessary or expedient.

2. The president shall perform his or her functions subject to such policies as may be determined from time to time by the technological university and shall be accountable to the technological university for the efficient and effective management of the technological university and for the due performance of his or her functions.
3. The president may make proposals to the technological university on any matter relating to its functions.
4. The president shall provide the technological university with any information (including financial information) in relation to the performance of his or her functions as the technological university may request.
5. The technological university may designate a member of the staff of the technological university to perform the functions of the president in the absence of the president or where the position of president is vacant, and a member so designated shall in such absence or upon such position being vacant, perform those functions.
6. (1) A president, with the consent of the technological university, may delegate in writing any of his or her functions to a specified member of staff of that technological university, and that member of staff shall be accountable to the president for the performance of the functions so delegated.
  - (2) The president shall be accountable to the technological university for the performance of functions delegated by him or her in accordance with *subparagraph (1)*.
  - (3) The president, with the consent of the technological university in writing, may revoke a delegation made in accordance with this paragraph.
  - (4) In this paragraph “functions” does not include a function delegated by the technological university to the president subject to a condition that the function shall not be delegated by the president to anyone else.
7. A president shall not hold any other office or position without the consent of the technological university.
8. Unless he or she resigns, retires or is removed from office, a president shall hold office for such period as the governing body, with the consent of the Minister, determines but the period shall not exceed 10 years from the date of the president’s appointment.
9. (1) The president shall, whenever required in writing 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 (in this paragraph referred to as the “Committee”), give evidence to that Committee in relation to—
  - (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 technological university is required by this Act to prepare,
  - (b) the economy and efficiency of the technological university in the use of its resources,
  - (c) the systems, procedures and practices employed by the technological university for the purpose of evaluating the effectiveness of its operations, and

- (d) any matter affecting the technological university concerned 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 *clause (a), (b) or (c)*) that is laid before Dáil Éireann.
- (2) In the performance of his or her duties under this paragraph, the president 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.
10. (1) In this paragraph “ Committee ” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than 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, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee.
- (2) Subject to *subparagraph (3)*, the president shall, at the request in writing of a Committee, attend before it to give account for the general administration of the technological university.
- (3) The president shall not be required to give account before a Committee for any matter that is or has been or may be the subject of proceedings before a court or Tribunal in the State.
- (4) Where the president is of the opinion that a matter in respect of which he or she is requested to give account before a Committee is a matter to which *subparagraph (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and unless the president does so at a time when he or she is before the Committee, he or she shall do so in writing.
- (5) Where the president has informed a Committee of his or her opinion in accordance with *subparagraph (4)* and the Committee does not withdraw the request referred to in *subparagraph (2)* in so far as it relates to a matter the subject of that opinion—
- (a) the president may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question of whether the matter is one to which *subparagraph (3)* applies, or
- (b) the chairperson of the Committee may, on behalf of the Committee, make such an application, and the High Court shall determine the matter.
- (6) Pending the determination of an application under *subparagraph (5)*, the president shall not attend before the Committee to give account for the matter the subject of the application.
- (7) If the High Court determines that the matter concerned is one to which *subparagraph (3)* applies, the Committee shall withdraw the request referred to in *subparagraph (2)*, but if the High Court determines that *subparagraph (3)* does not apply, the president shall attend before the Committee to give account for the matter.
- (8) In the performance of his or her duties under this paragraph, the president shall not question or express an opinion on—

- (a) the merits of any policy of the Government or a Minister of the Government, or
- (b) the merits of the objectives of such a policy.