

# **Code of Governance for Irish Universities**

**2019**

# Preface

Good governance arrangements are essential for organisations large and small and whether operating in the public or private sector. Governance comprises the systems and procedures under which organisations are directed and controlled. A robust system of governance is vital in order to enable organisations to operate effectively and to discharge their responsibilities as regards transparency and accountability to those they serve. Given their pivotal role in society and in national economic and social development, together with their reliance on public as well as private funding, good governance is particularly important in the case of Universities.

The principle of good governance in Irish universities is well established - initially enshrined in the Universities Act, 1997 and subsequently detailed in the 2001 framework, "The Financial Governance of Irish Universities" agreed between the HEA and the Conference of the Heads of Irish Universities (now the Irish Universities Association). In 2007, the HEA/IUA published "Governance of Irish Universities - A Governance Code of Legislation, Principles, Best Practice and Guidelines" which updated and replaced the relevant provisions of the 2001 Code. All universities adopted the HEA/IUA "Governance of Irish Universities", its principles and its reporting requirements, implementing it with effect from 2007. Since then, the reporting requirements have been submitted on an annual basis to the HEA, as required by the Code.

The Department of Finance issued a revised Code of Practice for the Governance of State Bodies in May 2009, to reflect current best practice in governance. This Code updated the previous 2001 Code which provided a key input into the 2007 HEA/IUA "Code of Governance for Irish Universities". The Department of Finance 2009 Code, while covering much the same areas as the earlier Code, updated requirements, responsibilities and accountabilities in certain areas such as internal control, audit and risk management. While many of these had been anticipated in the 2007 University Code, important new areas were also addressed and reflected in the Code of Governance for Irish Universities 2012.

In August 2016, the Department of Public Expenditure and Reform published a revised Code of Practice for the Governance of State Bodies to meet the highest standards of corporate governance and provide a framework for the application of best practice taking account of developments in respect of oversight, reporting requirements and the appointment of Board members. In 2017, the IUA commenced the revision of the Code for the Governance of Universities, bringing the original Code of Practice in line with the revised 2016 Code of Practice for the Governance of State Bodies. The HEA has been consulted at various stages of the project and provided an initial analysis of the 2016 Code sections which were not relevant to the educational sector. The Code has been drafted taking the original 2016 Code of Practice for the Governance of State Bodies as its starting point. This document was localised for the Universities while tracking all changes to the original and keeping a log of all removed sections. In some cases, sections have been adapted or expanded to bring the Code in line with the relevant University legislation. This Code has been presented to and agreed with the HEA prior to becoming effective.

The IUA Code of Governance of Irish Universities is hereafter referred to as “the Code”. This revised Code now replaces the previous Code of Governance for Irish Universities 2012.

The high-level principles of the Code of Practice for the Governance of Universities are set out at the beginning of each section of this Code.

It should be noted that:

- this Code should be read in conjunction with the legislative provisions which govern the Universities. Existing legislative provisions<sup>1</sup> applying to the Universities on matters that are also the subject of this Code, continue to apply and for the avoidance of doubt, in the event of any conflict or inconsistency, the legislative provisions prevail. The Code includes legislative references where relevant.
- provisions contained in this Code, including financial thresholds, may be amended from time to time by the Minister for Public Expenditure and Reform, having consulted with relevant Ministers;
- the Minister for Public Expenditure and Reform may issue circulars and/or guidance notes, from time to time, in relation to this Code; and
- this Code does not intend to address academic governance matters, which are subject to separate QQI legislation.

It is noted that the *Code of Practice for the Governance of State Bodies*, which forms the basis of this Code, will be a living document which will evolve in line with best practice. The most recent version of the *Code of Practice for the Governance of State Bodies* is available on the Department of Public Expenditure and Reform Government Accounting website ([govacc.per.gov.ie/governance-of-state-bodies](http://govacc.per.gov.ie/governance-of-state-bodies)). Similarly, it is intended that this document will also be a living document and evolve over time in line with both best practice and legislative changes. The most recent version of this Code is available on the IUA website.

**This Code is effective from XX 2019**

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<sup>1</sup> Any reference contained in this Code of Practice, whether a reference to any enactment or otherwise, should be construed as a reference to such provision as amended, adapted or extended from time

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# Introduction

Good governance arrangements are essential for organisations large and small, whether operating in the public or private sectors. Governance comprises the systems and procedures under which organisations are directed and controlled. A robust system of governance is vital in order to enable organisations to operate effectively and to discharge their responsibilities as regards transparency and accountability to those they serve - including the Government as shareholder, the taxpayer, students and all other stakeholders - and pursue value for money in their endeavours, while managing risk appropriately.

As public entities, universities should act prudently, ethically and with transparency, and should conduct their activities consistent with their statutory responsibilities. Given their pivotal role in society and in national economic and social development, together with their reliance on public as well as private funding, good governance is particularly important in the case of the universities.

**University Legislation and Related Legislative Frameworks:** Governance requirements arising from the provisions of the 1997 Act and the agreed frameworks under that Act. These are statutory obligations.

**Universities Code Principles and Best Practice:** This is a voluntary code outlining a further set of principles and best practices, which take account of developments in governance since 1997 and are intended to be generally applicable to the internal practices, external relations and accountabilities of the universities.

The Governing Authority of each university is primarily responsible for ensuring that its activities are governed by the ethical and other considerations enshrined in the Code. Where a university's practices are not consistent with particular provisions of this Code, the reasons should be clear and documented.

The provisions of this Code are supplementary to and do not affect existing statutory requirements relating to a university, or any other legislation applicable to it or its activities.

**More Detailed Governance Guidelines and Templates:** Appended to this Code are a set of illustrative guidelines and templates to inform the implementation of this Code while recognising the particular ethos, circumstances and organisational structures of each university. They are not intended to be prescriptive in their detail. It is recognised that it is not feasible or desirable to attempt to provide for all situations or to rule out flexibilities in application that may be needed to take account of the circumstances of individual universities.

Good governance should be seen as an aid to performance and effectiveness. It is not there to inhibit enterprise or innovation. Good governance arrangements necessarily involve having appropriate checks and balances in relation to decision-making in the institutions, so as to safeguard the collective responsibility of the

Governing Authority.

This document will assist universities and their governing authorities in the good and proper management of universities and in ensuring that appropriate procedures and controls are implemented to manage the risks facing such complex institutions, while at the same time respecting their autonomy.

It will also provide comfort to the State and the public at large that universities are operating to the highest standards of governance and accountability in relation to all their activities.

While this document deals primarily with governance issues as applicable to governing authorities, the principles and best practices in it are equally applicable to other organs of governance, such as academic councils/boards, committees of the governing bodies and committees generally, as well as faculties, schools, and departments.

In this Code, it is recognised that the internal structures of the universities with regard to Audit and Risk Management vary, while at the same time ensuring that the Audit and Risk Management functions of the university concerned and the requirements of this Code are complied with. For the purposes of brevity, the Code refers to the Audit and/or Risk Management Committee. It is noted, however, that there may be one or separate committees in individual universities covering audit and risk management or that risk may be managed differently in some universities. The title Audit and/or Risk Management Committee is used, therefore, to describe the requirements of the Code in relation to those two particular functions and is not prescriptive regarding structure. However, each university is required to ensure its full compliance with the Audit and Risk Management requirements of this Code.

It is intended to keep the content and operation of “Governance of Irish Universities” under review and to amend it from time to time in the light of experience and following appropriate consultation.

As outlined in section 9 (4) of the 1997 Act, each University is a “...body corporate with perpetual succession and an official seal and have power to sue and may be sued in its corporate name and to acquire, hold and dispose of land or any other property.”

Also outlined in section 14(1) of the 1997 Act, each University shall “...have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs and be entitled to regulate its affairs in accordance with its independent ethos and traditions and the traditional principles of academic freedom.”

High standards of corporate governance in Universities are critical to ensuring a positive contribution to the

State's overall economic efficiency, competitiveness, social cohesion and regional development.<sup>2</sup>

The Governing Authority and Management of the University are accountable for the proper management of the organisation. In meeting their responsibility to ensure that all activities whether or not specifically referred to in this document meet the highest standards of corporate governance, Governing Authority members and employees of the Universities and their subsidiaries should be strongly guided by the principles set out in this Code.

Good governance encourages better informed and longer-term decision-making as well as the efficient use of resources. It strengthens accountability for the stewardship of resources and is characterised by robust scrutiny which places ongoing emphasis on improving public sector performance.<sup>3</sup>

The corporate governance framework typically comprises elements of legislation, regulation, self-regulatory arrangements, voluntary codes, commitments and business practices that have evolved within the organisation.

This Code is a sectoral Code and, in the process of implementation, Sample Documents should be replaced by localised University documents.

## About this Code

The Code provides a framework for the application of best practice in corporate governance by Universities. Universities should demonstrate their commitment to achieving the highest possible standards of corporate governance.

Universities and their subsidiaries are required to confirm to the Minister of Education & Skills and the HEA, as appropriate, that they comply with the *Code of Practice for the Governance of State Bodies*, as encapsulated by this Code, in their governance practices and procedures. The requirements should be applied in all trading subsidiaries and, as appropriate, in joint ventures of the University. Appropriate confirmation should be provided to the HEA in relation to these.

The Code concerns both the internal practices of the Universities and their external relations with Government, the Minister of Education & Skills, the Minister for Public Expenditure and Reform, and the HEA. Reference is made to ethics in public office obligations that apply to all designated Governing Authority members and

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<sup>2</sup> Adapted from the "Guidelines on Corporate Governance of State-Owned Enterprises" (OECD, 2015) page 11

<sup>3</sup> "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 6



designated office holders.

The Code of Practice for Governance of State Bodies recognises that all aspects of that Code may not necessarily be appropriate for some smaller State bodies. Accordingly, certain requirements have been identified as proportionately applicable to the Universities and reflected in this university-specific Code, which has been approved by the HEA.

The provisions of this Code do not override existing statutory requirements and other obligations imposed by the Companies Act 2014, Ethics in Public Office legislation, the specific statutory provisions relating to the Universities themselves and any other relevant legislation (e.g. equality legislation, employment legislation, etc).

## Oversight Agreements

Clear accountability underpins effective relations between Government Departments and the State bodies under their aegis. Effective accountability depends upon respective roles and responsibilities being clearly defined and understood on both sides of the agreement.

The starting point for clarity of accountabilities is the oversight agreement between the Minister/Department of Education and Skills, the HEA as their representative agency, and the University. The oversight agreement is a written statement between the Minister/Department of Education and Skills, the HEA as their representative agency, and the University, which clearly defines the terms of the Department of Education & Skills relationship with the University.

The oversight agreement should reflect the University legal framework; the environment in which the University operates (e.g. commercial, non-commercial, regulatory); the purpose and responsibilities of the University; the University's level of compliance with this Code; details of the Performance Delivery Agreement (e.g. outputs to be delivered); and arrangements for oversight, monitoring and reporting on conformity with Government policy, including those actions and areas of expenditure where prior sanction from the Department of Education & Skills and/or the Department of Public Expenditure and Reform is required.

The details of the Oversight Arrangements and Agreements are set out in Section 8.

## Compliance Requirements

All Universities have a responsibility to implement good corporate governance standards. The University should reach agreement and formally document with the Minister/Department of Education & Skills, and the HEA as

their representative, the extent to which the compliance requirements in this Code might be suitably adapted in their case. The Universities should then note the agreement reached in its annual report, in the form of the financial statements, and explain whether the requirements are to be phased-in over a longer period of time, or otherwise varied in some way.

## Comply or Explain

As outlined, exemptions from specific provisions in this Code may be justified in certain situations provided the objectives of those provisions can be achieved by other governance measures. Any University with derogations from the provisions of this Code should also have explanatory notes written into their oversight agreements with the HEA, with reasons for the exemptions clearly explained.

# University Legislation and Related Legislative Frameworks

## The 1997 Act

The Universities Act 1997 is the primary piece of legislation governing universities. The Act imposes a number of considerable governance requirements on universities and these are detailed in this section.

### Governing Authority

In accordance with Section 15 of the 1997 Act all universities are required to have a governing authority established: -

#### *“15 – Governing Authority*

- (1) Subject to section 21 [see **Appendix A**], each university shall have a governing authority established in accordance with this Act which shall be known by whatever name the governing authority decides.*
- (2) Subject to this Act, the functions of a university [see **Section 18 – Appendix A**] shall be performed by or on the directions of its governing authority.*
- (3) All acts and things done by a governing authority, or in the name of or on behalf of the university with the express or implied authority of the governing authority, shall be deemed to have been done by the university.*
- (4) The Third Schedule shall apply to the governing authority.”*

The governing authority determines the financial constraints within which the Academic Council operates and reviews decisions of that authority in accordance with Section 27 (1) of the 1997 Act:

#### *“27 – Academic Council*

- (1) Each university shall have an academic council which shall, subject to the financial constraints determined by the governing authority and to review by that authority, control the academic affairs of the university, including the curriculum of, and instruction and education provided by, the university.”*

The operation of the governing authority is governed by the Third Schedule of the 1997 Act as set out below: -

**“Third Schedule**  
**GOVERNING AUTHORITY**

1.
  - (1) *As soon as practicable after its establishment, the governing authority of a university shall provide and retain in its possession a seal of the university.*
  - (2) *The seal of a university shall be authenticated by the signature of the chairperson or a member of the governing authority, and by the signature of an employee of the university, authorised by the governing authority to act in that behalf.*
  - (3) *Judicial notice shall be taken of the seal of a university, and every document purporting to be an instrument made by a university and to be sealed with the seal of the university (purporting to be authenticated in accordance with this Schedule) shall be received in evidence and shall, unless the contrary is shown, be deemed to be such instrument, without further proof.*
2.
  - (1) *Each governing authority shall have a chairperson, as provided for in section 17, who may be designated by such title as the governing authority determines.*
  - (2) *The chairperson may, at any time, resign from office as chairperson by letter addressed to the governing authority and the resignation shall take effect on the date on which the letter is received.*
3.
  - (1) *A member of a governing authority may, for good and valid reason, be removed from office by resolution of the governing authority.*
  - (2) *A member of a governing authority may, at any time, resign from office as a member by letter addressed to the chairperson and the resignation shall take effect on the date on which the letter is received.*
  - (3) *A member of a governing authority who is absent from all meetings of the governing authority for a period of six consecutive months, unless the absence was due to illness or was approved by the governing authority, shall at the expiration of that period cease to be a member of the governing authority.*
  - (4) *A member of a governing authority (including a chairperson appointed under section 17 (3)) whose term of office expires by effluxion of time shall be eligible for re-appointment.*

4.
  - (1) *Subject to this Schedule and to section 21, the term of office of a member of each succeeding governing authority, other than an ex officio member, shall be not less than three years and not more than five years as determined by the governing authority holding office immediately before the appointment of that member.*
  - (2) *A member of a governing authority who is a student of the university shall hold office for such period, not exceeding one year, as the governing authority may determine but may be re-appointed for a further period or further periods, on each occasion not exceeding one year.*
5.
  - (1) *If a member of a governing authority dies, resigns, is removed from office or for any other reason ceases to hold office, the governing authority shall arrange for the filling of the casual vacancy so occasioned as soon as practicable.*
  - (2) *A person who becomes a member of a governing authority to fill a casual vacancy shall, subject to this Schedule, hold office for the remainder of the term of office of the member whose death, resignation, removal from office or ceasing for other reasons to hold office occasioned the casual vacancy and shall, subject to paragraph 3 (4), be eligible for re-appointment.*
6.
  - (1) *Each governing authority shall, from time to time as the occasion requires, appoint from amongst its members a member (other than the chief officer) to be its deputy-chairperson.*
  - (2) *The deputy-chairperson shall, unless he or she sooner resigns as deputy-chairperson, hold office until he or she ceases to be a member of the governing authority.*
7.
  - (1) *Where a member of a governing authority—*
    - (a) *is adjudged bankrupt or makes, under the protection or procedure of a court, a composition or arrangement with creditors,*
    - (b) *is sentenced to a term of imprisonment by a court of competent jurisdiction, or*
    - (c) *ceases to be a member of the category of person, as provided for in section 16, to which he or she belonged at the time of becoming a member, he or she shall thereupon cease to be a member of the governing authority.*
  - (2) *A person shall not be eligible to be a member of a governing authority if he or she—*
    - (a) *is an undischarged bankrupt,*
    - (b) *within the immediately preceding three years has, under the protection or procedure of a court, made a composition or arrangement with creditors, or*
    - (c) *within the immediately preceding five years, has been sentenced to a term of imprisonment by a court of competent jurisdiction.*

8. (1) *A member of a governing authority who has an interest in—*
- (a) *a company (other than a public company of which he or she is not a director or otherwise involved in its management) or concern with which the university proposes to make a contract, or*
  - (b) *a contract which the university proposes to make, shall disclose to the governing authority the fact of the interest and its nature and shall take no part in any deliberation or decision of the governing authority relating to the contract, and the disclosure shall be recorded in the minutes of the governing authority.*
- (2) *A member of a governing authority of a university who is related to a person who is a candidate for appointment by the governing authority as an employee of the university, shall disclose to the governing authority the fact of the relationship and its nature and shall, if the governing authority so decides, take no part in any deliberation or decision of the governing authority relating to the appointment, and the disclosure and decision shall be recorded in the minutes of the governing authority.*
- (3) *A member of a governing authority of a university shall at all times act, as a member, in the best interests of the university and shall not act as a representative of any special interest provided that nothing in this paragraph shall restrict a member from representing at meetings of the governing authority the views of those by whom he or she has been elected or to restrict the freedom of expression of that member.*
9. *The chairperson and members of a governing authority, other than an ex officio member who is an employee of the university, shall be paid out of funds at the disposal of the governing authority such allowances for expenses as the Minister, with the approval of the Minister for Finance, may decide.*
10. (1) *A governing authority shall hold such and so many meetings, and at such times, as the chairperson may determine.*
- (2) *The chairperson shall convene a meeting of the governing authority whenever requested to do so by not less than the number of members which constitute a quorum.*
- (3) *The quorum for a meeting of a governing authority shall be one third of the total number of members, rounded up to the nearest whole number, plus one.*
11. *At a meeting of a governing authority—*

- (a) *the chairperson shall, if present, be the chairperson of the meeting, or*
  - (b) *if and so long as the chairperson is not present or the office of chairperson is vacant, the deputy-chairperson shall, if present, be the chairperson of the meeting,*
  - (c) *if and so long as the chairperson is not present or the office of chairperson is vacant, and the deputy-chairperson is not present or the office of deputy-chairperson is vacant, the members of the governing authority who are present shall choose one of their number to preside at the meeting.*
12. *Every question at a meeting of a governing authority shall be determined by consensus, but where in the opinion of the chairperson or other person presiding consensus is not possible, the question shall be decided by a majority of the votes of members present and voting on the question and, in the case of an equal division of votes, the chairperson or other person presiding shall have a second or casting vote.*
13. *Subject to paragraph 10 (3), a governing authority may act notwithstanding one or more than one vacancy among its members or any deficiency in the election or appointment of a member which may subsequently be discovered.*
14. *Subject to this Act, a governing authority shall regulate, by standing orders or otherwise, its procedure and business.*
15. *Subject to this Act, the governing authority of a university may make, from time to time, such regulations as it thinks fit for the conduct of the affairs of the university.*

### **Role of Chairperson**

The roles of the Chairperson and Chief Officer are governed by the 1997 Act. The role of the Chairperson<sup>4</sup> is governed in particular by Section 17, which is reproduced below and by the Third Schedule of the Act.

#### *“17 – Chairperson of governing authority*

- (1) *The first meeting of a governing authority of a university shall be chaired by the chief officer and, subject to this section, at that meeting and from time to time as the governing authority determines, the governing authority shall decide whether—*
  - (a) *the holder of the office of chief officer should be or continue to be the chairperson; or*
  - (b) *a person other than the holder of the office of chief officer should be appointed as chairperson.*

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<sup>4</sup> The Chairperson “may be designated by such title as the Governing Authority determines.” [1997 Act, Third Schedule, Section 2 (1).] The titles “Chairperson”, “Chancellor” and “Cathaoirleach” are in use.

- (2) *Where the governing authority decides that the holder of the office of chief officer should be the chairperson then, subject to this section, the chief officer shall, ex officio, be the chairperson on and from the passing of the resolution to that effect.*
- (3) *Where the governing authority decides at a meeting that a person other than the chief officer should be the chairperson, it shall, as soon as practicable at that or a subsequent meeting, by a majority vote of not less than two-thirds of its members, appoint a person who is not an employee of the university or a member of the governing authority to be the chairperson.*
- (4) *Until a person is appointed under subsection (3), but subject to this section, the chief officer shall act as chairperson of all meetings of the governing authority.*
- (5) *Subject to this section, a chairperson appointed under subsection (3) shall hold office on such terms and conditions as the governing authority may, at the date of his or her appointment, determine.*
- (6) *A person holding office as chairperson of a governing authority in accordance with subsection (3) may, at any time for stated reasons, be removed from the office of chairperson by the governing authority and where a person is so removed from office, subsections (1), (2) and (3), with the necessary modifications, shall apply.*
- (7) *In the case of the governing authority of Trinity College or a constituent university, the person holding the office of chief officer (by whatever name known) on the commencement of this Part shall be the chairperson of the governing authority of that university under this Act until his or her term of office as chief officer expires, he or she is sooner removed from the office of chairperson in accordance with subsection (6), or the office otherwise becomes vacant.*
- (8) *Where immediately before the commencement of this Part the chief officer of a university was not the chairperson (by whatever name known) of the governing body (by whatever name known) of the university, then, except for the first meeting of a governing authority of the corresponding university under this Act or in the circumstances referred to in subsection (4), the chief officer shall not be eligible to be the chairperson of the governing authority.*
- (9) *An appointment under subsection (3) shall not be on a fulltime basis and the person appointed shall exercise no function in respect of the control and management of the university other than the functions of chairperson of the governing authority.”*

### **Role of Chief Officer**

The role of the Chief Officer<sup>5</sup> is governed particularly by Section 24 and by the Fourth Schedule of the Act as amended by Section 53 of the Institute of Technology Act 2006, which are reproduced below.

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<sup>5</sup> The Chief Officer “shall be called the Chief Officer or Provost or by such other title as the Governing Authority determines.” [1997 Act, Section 24 (1)]



“24 - Chief officer

- (1) *A governing authority shall, in accordance with procedures specified in a statute, appoint in a whole-time capacity a person to be chief officer of its university, who shall be called the Chief Officer or Provost or by such other title as the governing authority determines.*
- (2) *For the purposes of section 19 of the Comptroller and Auditor General (Amendment) Act, 1993<sup>6</sup>, the expression "accounting officer" shall include a chief officer of a university to which this Act applies.*
- (3) *The Fourth Schedule shall apply to the chief officer.”*

**Fourth Schedule<sup>7</sup>**

**CHIEF OFFICER**

1. *The chief officer of a university shall, subject to this Act, manage and direct the university in its academic, administrative, financial, personnel and other activities and for those purposes has such powers as are necessary or expedient.*
2. *In performing his or her functions the chief officer shall be subject to such policies as may be determined from time to time by the governing authority and shall be answerable to the governing authority for the efficient and effective management of the university and for the due performance of his or her functions.*
3. (1) *A chief officer may delegate any of his or her functions to an employee of the university, including any functions delegated to the chief officer in accordance with section 25 (2), unless they are so delegated to the chief officer subject to the condition that they shall not be sub-delegated, and the employee shall be answerable to the chief officer for the performance of those functions.*  
  
(2) *Notwithstanding any such delegation, the chief officer shall at all times remain answerable to the governing authority in respect of the functions so delegated.*
4. *A chief officer shall not hold any other office or position without the consent of the governing authority.*
5. *A chief officer shall be entitled to be a member of and preside over any and every committee appointed by the governing authority.*

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<sup>6</sup> Please see <http://www.irishstatutebook.ie/1993/en/act/pub/0008/index.html>.

<sup>7</sup> As amended by the Institutes of Technology Act, 2006.

6. *A person who, immediately before the commencement of Part III, was employed as the Chief Officer of a constituent college or as Master of the Recognised College of St. Patrick's College, Maynooth shall, if he or she so consents, be appointed as the chief officer of the corresponding constituent university on that commencement.*
7. *Unless he or she otherwise resigns, retires or is removed from office, a chief officer shall hold office for a period of 10 years and, in the case of a chief officer to whom paragraph 6 applies, any period spent as Chief Officer of a constituent college or as Master of the Recognised College of St. Patrick's College, Maynooth before the commencement of Part III shall be reckoned as part of that 10 year period.*
8. *A Chief Officer shall, whenever required to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports and reports of the Comptroller and Auditor General, give evidence to that Committee on-*
  - (a) *The regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that the university is required by this Act to prepare,*
  - (b) *The economy and efficiency of the university in the use of its resources*
  - (c) *The systems, procedures and practices employed by the university for the purpose of evaluating the effectiveness of its operations, and*
  - (d) *Any matter affecting the university referred to in a special report of the Comptroller and Auditor General under Section 11(2) of the Comptroller and Auditor General Act 1993 or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in subparagraph (a), (b) or (c)) that is laid before Dáil Éireann.*
9. *A Chief Officer, if required under paragraph 8 to give evidence, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.*
10. *From time to time and whenever so requested, a chief officer shall account for the performance of the university's functions to a Committee of one or both Houses of the Oireachtas and shall have regard to any recommendations of such Committee relevant to these functions."*

## Policies on Quality Assurance and Equality

Section 35 of the 1997 Act deals with Quality Assurance.

Universities are required under Section 35 (1) of the 1997 Act to *“...establish procedures for quality assurance aimed at improving the quality of education and related services provided by the university.”*

Section 35 (3) of the 1997 Act requires a governing authority to *“...implement any findings arising out of an evaluation carried out in accordance with procedures established under this section ...”*

Section 35 (4) of the 1997 Act requires a governing authority to *“...arrange for a review of the effectiveness of the procedures provided for by this section and the implementation of the findings arising out of the application of those procedures.”*

The full provisions of Section 35 of the 1997 Act are set out in **Appendix A**.

Section 36 of the 1997 Act deals with Equality policy and requires:

*“...the chief officer to prepare a statement of the policies of the university in respect of—*

- (a) access to the university and to university education by economically or socially disadvantaged people, by people who have a disability and by people from sections of society significantly under-represented in the student body; and*
- (b) equality, including gender equality, in all activities of the university, and the chief officer, in preparing the statement, shall have regard to such policies on those matters as may from time to time be determined by the Minister.”*

and to implement those policies in accordance with Section 36 (3) of the Act.

The full provisions of Section 36 of the 1997 Act are set out in **Appendix A**.

## Disposal of Assets and Access to Assets by Third Parties

The disposal of university assets and access to university assets are governed by the 1997 Act, and in particular by Sections 13 and 42 of that Act. Section 13 (2) of the 1997 Act provides that universities *“may purchase or otherwise acquire, hold and dispose of land or other property”*.

Section 42 deals with the disposal of land or other property and is set out below:-

“42 – Disposal of Land, etc.

- (1) *Subject to subsection (2), a university may sell or otherwise dispose of any land the property of the university.*
- (2) *Where the acquisition, development or refurbishment of land, the property of a university, was funded in whole or in part out of moneys provided by the Oireachtas after the date of the passing of this Act, a sale or other disposal of that land shall be subject to such terms and conditions relating to a payment to the Minister in recompense for such moneys, as may be agreed between the Minister and the governing authority.*
- (3) *If a university ceases to be funded substantially from moneys provided by the Oireachtas, then all moneys provided to the university by the Oireachtas after the date of the passing of this Act for the acquisition, development or refurbishment of land, or for the acquisition of any other assets which are the property of the university, shall be repayable to the Minister subject to such terms and conditions, including as to the amount to be so repaid, as may be agreed between the Minister and the governing authority.*
- (4) *Where the Minister and a governing authority cannot agree on terms and conditions referred to in this section, the issues in dispute shall be determined by an arbitrator appointed by the Chief Officer of the High Court and any arbitration shall be conducted in accordance with the Arbitration Acts, 1954 and 1980.”*

## Remuneration

Section 25 of the 1997 Act deals with remuneration of staff and provides for the payment to university employees of “*such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister [for Education and Skills] with the consent of the Minister for Finance*” and further provides that “*a university may depart from levels of remuneration, fees, allowances and expenses approved ...in accordance with a framework which shall be agreed between the universities and An tÚdarás [HEA]*”. This framework is attached at **Appendix B**.

## Reporting Arrangements

The reporting requirements of universities are set out in Sections 37, 39 & 41 of the 1997 Act.

Section 37 deals with university budgets and requires a governing authority to “*..prepare and submit to An tÚdarás, in such form and manner as may from time to time be approved by An tÚdarás, a statement of the proposed expenditure and expected income of the university for the financial year.*”

Section 39 deals with keeping of accounts and records and requires that accounts “...be submitted annually by a university to the Comptroller and Auditor General, for audit...and immediately after the audit, a copy of the accounts, together with a copy of the report of the Comptroller and Auditor General on the accounts, shall be presented by the university to An tÚdarás and to the Minister.”

Section 41 requires the Chief Officer with the approval of the governing authority to “...prepare a report on the operations and the performance of the university...” and send this to the HEA and the Minister for Education and Skills.

### **Strategic Planning**

Section 34 of the 1997 Act makes provisions in regard to strategic planning and evaluation in the universities.

The requirement to prepare “a plan which shall set out the aims of the Governing Authority for the operation and development of the university and its strategy for achieving those aims, and for carrying out the functions of the university, during the period, being not less than three years, to which the plan relates” is provided for in Section 34(1) of the 1997 Act.

In accordance with Section 34(3) a copy of the strategic development plan is provided to the Minister and to the HEA.

The full provisions of Section 34 of the 1997 Act are set out in **Appendix A**.

Under Section 41(1) of the 1997 Act, the Chief officer shall, with the approval of the governing authority and having regard to the strategic development plan under Section 34, as soon as practicable after the statutory interval (not exceeding three years), prepare a report on the operations and performance of the university during that period.

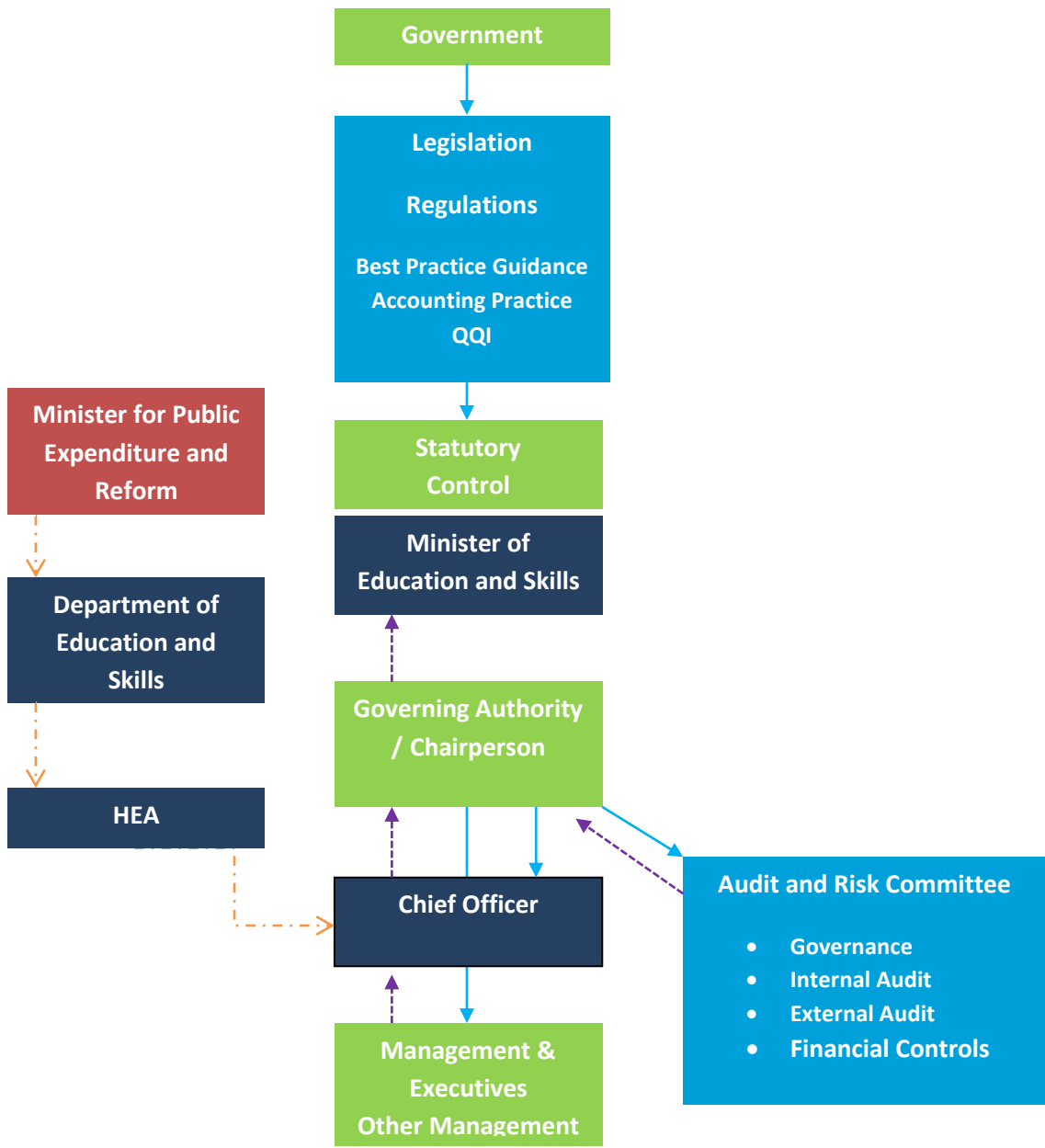
In accordance with Section 41(2) the governing authority shall publish the report in such form as it sees fit and provide the Minister with a copy. On receipt of the report the Minister will lay it before each House of the Oireachtas as soon as practicable.

The full provisions of Section 41 of the 1997 Act are set out in **Appendix A**.

### **Borrowing**

Under Section 38 of the 1997 Act, universities must observe the provisions of any Framework for Borrowings and Loan Guarantees (as amended, adapted or extended from time to time) agreed between the universities and the HEA under Section 38(2) of the 1997 Act. The current framework is at **Appendix C**.

## Governance Framework



Appoints/Gives Direction →

Reports to/Accountable to - - - - ->

Provides oversight - - - - ->

## Governance Framework

The Governance Framework schematic on the previous page shows the main features of the governance framework relationship between Government and the Universities. The diagram does not purport to cover all aspects of this relationship which will vary depending on the differing nature, scale and responsibilities of the University and the governing legislation establishing the University.

Universities have governing legislation which provides for, inter alia, the appointment of the Governing Authority and the Chairperson, for the approval of the form of the annual report, in the form of the financial statements, and for the furnishing of such information as the Minister may require. The Chairperson and Governing Authority are ultimately responsible to the Minister (who is responsible to Government) for the operation and proper functioning of the University.

The functions and duties of the Governing Authority are set out in the governing legislation of the Universities. The Governing Authority should, using their high-level functions and duties as a guide, prepare customised /standing orders for the Governing Authority.

The Chief Officer shall whenever required to do so by the Public Accounts Committee (PAC) of the Oireachtas, give evidence on the regularity and propriety of the Universities accounts, economy and efficiency of use of resources, effectiveness of operations and any other matters referred to the committee by C&AG.



# 1. Role of the Governing Authority

## Guiding Principles

Each University should be clear about its mandate and from that identify the various functions, roles and responsibilities entailed in the delivery of that mandate.

The Governing Authority is collectively responsible and accountable for institutional activities. The functions of a university shall be performed by or on the directions of its Governing Authority.

The Governing Authority should fulfil key functions within its remit, including: reviewing and guiding strategic direction and major plans of action, risk management policies and procedures, annual budgets and business plans, setting performance objectives, monitoring implementation and University performance, and overseeing major capital expenditure and investment decisions.<sup>8</sup>

The Governing Authority appoints a chief officer to manage and direct the university in its academic, administrative, financial, personnel and other activities and for those purposes the chief officer has such powers as are necessary or expedient; in performing his or her functions the chief officer shall be subject to such policies as may be determined from time to time by the Governing Authority and shall be answerable to the Governing Authority for the efficient and effective management of the university and for the due performance of his or her functions.

The Governing Authority should act on a fully informed and ethical basis, in good faith, with due diligence and care, and in the best interest of the University, having due regard to its legal responsibilities and the objectives set by Government.

The Governing Authority should promote the development of the capacity of the University including the capability of its leadership and staff.

The role of the Governing Authority is governed in particular by Section 18, Universities Act, 1997 (see Appendix A) which determines that the functions of the Governing Authority of a university shall be:

- to control and administer the land and other property of the university,
- to appoint the chief officer and such other employees as it thinks necessary for the purposes of the university,
- to determine the membership from time to time of the governing authority, and
- to perform such other functions as are imposed on it by any Act , charter, if any, statutes and regulations.

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<sup>8</sup> Adapted from the "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page 53

## Provisions

**1.1 Leadership:** The Governing Authority's role is to provide leadership and direction of the university within a framework of prudent and effective controls which enables risk to be assessed and managed. The Governing Authority will approve a strategic development plan and shall provide a copy of the plan to An tÚdarás and to the Minister in accordance with section 34 of the Act.

The role, procedural operation and functions of the Governing Authority of a university are governed by the 1997 Act. Section 18 of the 1997 Act (see Appendix A) sets out the functions of the Governing Authority. In particular, the Third Schedule of the Act (see under University Legislation and Related Legislative Frameworks) governs the operation of the Governing Authority.

**1.2 Ethical Standards:** The Governing Authority has a key role in setting the ethical tone of the university, not only by its own actions but also in setting an example for senior management and staff. High ethical standards are in the long-term interests of the university and a key means to help maintain a high level of credibility and trustworthiness. The Governing Authority should lead by example and ensure that good standards of governance and ethical behaviours permeate all levels of the organisation.

**1.3 Compliance:** The Governing Authority should review the controls and procedures adopted by the University to provide itself with reasonable assurance that such controls and procedures are adequate to secure compliance by the University with its statutory and governance obligations.

**1.4 Collective Responsibility:** The collective responsibility and authority of the Governing Authority should be safeguarded. Excessive influence on governing authority decision-making by individual members should be avoided, while allowing Governing Authority members the opportunity to fully contribute to governing authority deliberations.

**1.5 Governing Authority Oversight Role:** The Governing Authority should be supplied, in a timely fashion, with information which is of a suitable quality to enable Governing Authority members to discharge their duties satisfactorily. The management of the university has a duty to provide the Governing Authority with all necessary information to enable the Governing Authority and its Committees in the performance of their governance role to a high standard. The Governing Authority of the University should take all necessary steps to make themselves aware of any relevant information and access all information as necessary. While the Governing Authority of a University may establish an Audit and/or Risk Management Committee to assist with its consideration of issues relating to audit, governance and risk management, the Governing Authority maintains responsibility for and makes the final decisions on all of these areas.

**1.6 Advice to Minister:** The Governing Authority should ensure that the Chief Officer keeps the HEA

advised of matters arising in respect of the University.

## Matters for Decision of the Governing Authority

### 1.7 Matters for Decision of the Governing Authority:

The Governing Authority should meet regularly, effectively exercise its strategic governance role, and monitor executive management and performance.

The Governing Authority should have a formal schedule of matters specifically reserved to it for decision to ensure the proper management and control of the University. This schedule should include the various statutory functions reserved to the Governing Authority as set out in the 1997 Act:

- Section 18 - Functions of a Governing Authority;
- Section 25 - Staff;
- Section 27 - Academic Council;
- Section 34 - Strategic Development Plan;
- Section 35 - Quality Assurance;
- Section 36 - Equality Policy.

In addition, the schedule could include the following:

- Significant acquisitions, disposals and retirement of assets of the university or its subsidiaries. The schedule should specify clear quantitative thresholds for contracts above which the approval of the Governing Authority is required;
- Major investments and capital projects, delegated authority levels, treasury policy and risk management policies;
- Approval of terms of major contracts.

### 1.8 Annual Confirmation: The governing authority has responsibility for ensuring that the university has in place a sound system of internal management and control, including

- Managerial control systems, which may include defining policies, setting objectives and plans, setting Key Performance Indicators, and monitoring financial and other performance;
- Financial and operational control systems and procedures which may include the physical safeguards of assets, segregation of duties, authority and approval procedures, and information systems.

The Governing Authority is required to confirm annually to the HEA that the University has an appropriate system of internal and financial control in place.

- 1.9 Expenditure and Performance:** Decisions on major items of expenditure should be aligned with medium to long-term strategies. A performance measurement system should be put in place to assess the effectiveness/ outcome of such expenditure and this should be reported to the Governing Authority.
- 1.10 Post Resignation/Retirement:** The obligations of Governing Authority members regarding the non-disclosure of private and confidential information do not cease when membership of the Governing Authority ends. Such obligations could include the return of papers at the end of a Governing Authority members term. This should be brought to the attention of Governing Authority members on their appointment to the Governing Authority.
- 1.11 Conflict of Interest:** The Governing Authority should have procedures in place to monitor and manage potential conflicts of interest of Governing Authority members and management (See paragraph 5.5).
- 1.12 External Auditors:** The Governing Authority has a responsibility to establish procedures for maintaining an appropriate relationship with the external auditors engaged by the Governing Authority.
- 1.13 Terms of Reference:** The Audit and/or Risk Management Committee and other committees of the Governing Authority should have a written constitution and terms of reference which are reviewed regularly by the Governing Authority and updated as appropriate.
- 1.14 Protected Disclosures:** Section 21 of the Protected Disclosures Act 2014 requires that every public body shall establish and maintain procedures for the making of protected disclosures by workers and for dealing with such disclosures. Written information in relation to those procedures must be provided to workers employed by the university. The Minister for Public Expenditure and Reform has published Guidance for the purpose of assisting public bodies in the performance of their functions under section 21(1) of Protected Disclosures Act 2014 (available on the Department of Public Expenditure and Reform website). Universities shall have regard to this Guidance when establishing and maintaining their own protected disclosures procedures under the Act.

## Statement of Strategy

- 1.15 Strategic Plan:** As per section 34 of the 1997 Act, the Governing Authority of the University shall require the Chief Officer to prepare a strategic plan. In addition to the requirements of Section 34 of the 1997 Act (see Appendix A), university strategic plans, approved by the Governing Authority, should set appropriate objectives, goals, and relevant indicators and targets against which performance can be clearly measured. As agreed from time to time, through a process of strategic dialogue between the HEA and the university, each university is held accountable for its performance against the set of clearly defined national priorities and key system objectives in the framework and the strategic plan referred above, with public funding aligned to facilitate delivery of agreed outcomes.
- 1.16 Strategy statement:** In addition to the requirements of Section 41(1) of the 1997 Act (see Appendix A), the report of the Chief Officer should normally refer to the specific aims and targets proposed by the university in its strategic plan, the expected outputs and outcomes, and the key performance indicators by which the achievement of the aims and targets is assessed. Implementation of the University's strategy should be supported through an annual planning and budgeting cycle and should take appropriate account of the National Strategy for Higher Education.
- 1.17** Decisions on major items of expenditure should be aligned with medium to long-term strategies. A performance measurement system should be put in place to assess the effectiveness/ outcome of such expenditure.
- 1.18 Implementation:** In addition to the requirements of 1997 Act, implementation of the strategy by the management of the University should be supported through an annual planning and budgeting cycle. The Governing Authority should approve annual programmes and budgets and should formally undertake an evaluation of actual performance by reference to the programme and/or budget on an annual basis.
- 1.19 Annual Report:** The Governing Authority should state in the annual accounts that they are responsible for the approval of the annual report, in the form of the financial statements, and whether they consider the financial statements to be a true and fair view of the university's financial performance and its financial position at the end of the year. There should also be a statement by the external auditors engaged by the Governing Authority about their reporting responsibilities.
- 1.20 Secretary of the Governing Authority:** The Governing Authority, in appointing a Secretary of the Governing Authority, has a duty to ensure that the person appointed has the skills necessary to discharge their statutory and legal duties, and such other duties as may be delegated by the Governing Authority.
- 1.21 Role of Secretary of the Governing Authority:** The role of the Secretary of the Governing Authority

should be seen as a support to the Governing Authority. The scale and scope of the role will depend on the size, nature and responsibilities of the University. The Secretary of the Governing Authority may be assigned such functions and duties as may be delegated by the Governing Authority. The duties can be classified as follows:

- statutory duties;
- duty of disclosure;
- duty to exercise due care, skill and diligence; and
- administrative duties.

**1.22 Governance:** The Secretary of the Governing Authority should report to the Chairperson on all Governing Authority matters and should assist the Chairperson in ensuring relevant information is made available to the Governing Authority and its committees.

The Secretary of the Governing Authority is responsible for advising the Governing Authority through the Chairperson on all governance matters, including statutory obligations and regulations as appropriate.

# Division of Responsibilities

## Guiding Principles

There should be a clear division of responsibilities between leading and managing the Governing Authority and the executive responsibility for running the University. No one individual should have unfettered powers of decision.<sup>9</sup>

## Code Provision

**1.23 Separation of Roles:** Through leadership of the Governing Authority, the Chairperson plays a key role in the strategic direction of the institution, but is not to be drawn into day-to-day executive management. For the Governing Authority to be effective, there must be a constructive and challenging working relationship between the Chairperson and the Chief Officer of the institution. This relationship will depend on the personalities involved, but it is desirable to emphasise the need for both sides to recognise that the roles are formally distinct. The relationship should be mutually supportive, but must also incorporate the checks and balances imposed by the different roles each has within an institution's constitution.

For convenience Appendix D provides an example of Governing Authority Standing Orders and Appendix E details the Reserved Functions of the Governing Authority, whether derived directly from the Acts or other instruments.

**Appendix D: Sample Governing Authority Standing Orders**

**Appendix E: Reserved Functions of the Governing Authority**

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<sup>9</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 8

## 2. Role of the Chairperson

### Guiding Principles

The Chairperson is responsible for leadership of the Governing Authority and ensuring its effectiveness on all aspects of its role.<sup>10</sup>

The Chairperson should display high standards of integrity and probity and set expectations regarding culture, values and behaviours for the University, and for the tone of discussions at Governing Authority level.

The role of the Chairperson is governed in particular by Section 17, Universities Act, 1997 and by the Third Schedule of the Act.

### Code Provisions

- 2.1 Governing Authority's Agenda:** The Chairperson and the Chief Officer are responsible for the effective management of the Governing Authority's agenda and ensuring that adequate time is available for discussion of all agenda items, in particular strategic issues. The Chairperson and the Chief Officer should meet in advance of the Governing Authority meeting to agree the agenda.
- 2.2 Openness and Debate:** Essential to the effective functioning of the Governing Authority is dialogue which is both constructive and challenging. The Chairperson should promote a culture of openness and debate by facilitating the effective contribution of key management and all Governing Authority members.
- 2.3 Timely Information:** The Chairperson and/or Secretary, as appropriate, is responsible for ensuring that the Governing Authority receive accurate, timely and clear information. The Chairperson and/or Secretary, as appropriate, should ensure effective communication with all relevant stakeholders.<sup>11</sup>
- 2.4 Governing Authority Skills:** Where a Chairperson is of the view that specific skills are required on the Governing Authority, the Minister should be advised of this view for his/her consideration sufficiently in advance of a time when vacancies are due to arise, so that the Minister may take the Chairperson's views into consideration when making appointments under section 16 3(a) of the 1997 Act.
- 2.5 Information Flows:** Under the direction of the Chairperson, the responsibilities of the Secretary of the

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<sup>10</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 5

<sup>11</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 8



Governing Authority include ensuring appropriate information flows within the Governing Authority and its committees and between management and Governing Authority members, as well as facilitating induction, mentoring and assisting with ongoing professional development as required.<sup>12</sup>

## 2.6 Annual Reporting Requirements:

The Chairperson is responsible for ensuring that the Governing Authority meets its Annual Reporting Requirements, as further identified in Section 6 and as follows:

- **Annual Report:** In accordance with Section 37 of the 1997 Act, an Annual Report of the proceedings of the University shall be published in such form as may be determined by the HEA.
- **Statutory Financial Statements:** In accordance with Section 39 of the 1997 Act, the statutory financial statements shall be submitted to the Comptroller and Auditor General and, together with a copy of a report of the Comptroller and Auditor General, shall be presented to the HEA and to the Minister.
- **Annual Statement of Governance:** In addition to the reporting requirements set out in the relevant legislation, universities shall provide to the HEA an Annual Governance Statement which will be signed by the Chief Officer and also the Chairperson of the Governing Authority confirming that the Statement has been approved by the Governing Authority (Appendix K). The latest version of the Annual Governance Statement is available on the HEA's website.
- **Statement on Internal Control:** The Statement on Internal Control should be reviewed by the external auditors engaged by the Governing Authority who should consider if the statement is consistent with the information of which they are aware from their audit work. The external auditors should report their findings accordingly in the accounts to be submitted annually by a university to the Comptroller & Auditor General for audit, in accordance with Section 39 of the 1997 Act. The statement may be reviewed also by the Comptroller & Auditor General. Refer to Annual Governance Statement (Appendix K).

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<sup>12</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

## 3. Role of Members of the Governing Authority

### Guiding Principles

The University should be headed by an effective Governing Authority which is collectively responsible for the long-term sustainability of the University.

All Governing Authority members should bring an independent judgement to bear on issues such as strategy, performance, resources, key appointments, and standards of conduct.

### Code Provisions

**3.1 Fiduciary Duty:** All Governing Authority members have a fiduciary duty to the University in the first instance (i.e. the duty to act in good faith and in the best interests of the University).

The principle fiduciary duties include:

- to act in good faith in what the Governing Authority member considers to be the interest of the University;
- to act honestly and responsibly in relation to the conduct of the affairs of the University;
- to act in accordance with the University's Act 1997 and exercise his or her powers only for the purposes allowed by law;
- not to benefit from or use the University's property, information or opportunities for his or her own or anyone else's benefit, unless the University's constitution permits it, or a resolution is passed in a general meeting;
- not to agree to restrict the Governing Authority member's power to exercise an independent judgement;
- to avoid any conflict between the Governing Authority member's duties to the University and the Governing Authority member's other interests unless the Governing Authority member is released from his or her duty to the University in relation to the matter concerned;
- to exercise the care, skill and diligence which would be reasonably expected of a person in the same position with similar knowledge and experience as a Governing Authority member. A Governing Authority member may be held liable for any loss resulting from their negligent behaviour; and
- to have regard to interests of the University's members.

The powers of governance and management of a University are set out in the Universities Act, 1997 and the university statutes, where applicable, and the Governing Authority owe their duties, first and foremost, to the University.

**3.2 Subsidiary Boards & the Companies Act 2014:** The universities are not subsidiaries under the Companies Act 2014. Under the Companies Act 2014 there is specific statutory recognition for the fiduciary duties of directors of companies incorporated under the Companies Act, 2014 or the Companies Acts, 1963-2013. While Universities are not incorporated under the Companies Act 2014, Boards of Universities subsidiaries formed under the Companies' Acts must adhere with the specific duties and obligations they have under the Companies Act 2014. It is the responsibility of each Board member to act in conformity with applicable provisions.

A Board member of a subsidiary company, as a company director, shall comply with the notification requirement to the Registrar of Companies upon becoming a Board member with a signed statement in the following terms:

*"I acknowledge that, as a director, I have legal duties and obligations imposed by the Companies Act, other statutes and common law".*

Part 5 of the Companies Act 2014 consolidates the duties and responsibilities of directors in one unified code for clarity and transparency. The Companies Act, 2014 applies to all company directors, incorporated under the provisions of the Companies Act, 2014 or under any former company law enactment including those directors that have been formally appointed and to de facto directors.

The Companies Act 2014 also includes a number of general duties for directors:

- Directors must ensure compliance with the Companies Act and the various tax acts.
- Directors must ensure that the Company Secretary is suitably qualified.
- Directors must acknowledge the existence of their duties by signing a declaration to that effect.
- Directors must take into account the interests of the members of the company and have regard to the interests of the employees.
- Restrictions on loans, quasi loans, credit transactions and certain guarantees and security exist for directors, but will be subject to the new summary approval procedure.
- Directors must disclose any interests in contracts made by the company.
- Directors must notify the company of any interests in shares in the company, its parent or subsidiary, but no obligation arises if the shares held represent less than 1% of the share capital

of the company, or the shares do not have voting rights.

Directors who are found to be in breach of their duties will be liable to account for any gains accrued and must indemnify companies for losses resulting from any breaches of duties. A court may grant relief from liability where it is satisfied that a director acted honestly and reasonably at all times.

**3.3 Non-compliance:** The Governing Authority is responsible for ensuring compliance with all statutory obligations applicable to the university. Where individual Governing Authority members become aware of non-compliance with any such obligation, they should immediately bring this to the attention of their fellow Governing Authority members with a view to having the matter rectified subject to the provisions of the 1997 Act. However, if the matter cannot be rectified and/or constitutes a flagrant breach of the members' obligations, the Chief Officer, on behalf of the Governing Authority, should advise the HEA accordingly indicating:

- i) the consequences of such non-compliance; and
- ii) the steps that have been or will be taken to rectify the position.

The HEA should be notified without delay where:

- i) there are serious weakness in controls that have not been addressed despite having been drawn to the attention of the Governing Authority or the Chairperson;
- ii) there is a significant strategic or reputational risk to the University that is not being addressed despite having been drawn to the attention of the Governing Authority or the Chairperson; and/or
- iii) there are serious concerns about possible illegality or fraud occurring in a University that have not been addressed despite having been drawn to the attention of the Governing Authority or the Chairperson.

**3.4 Professional Advice:** In the normal course, outside legal or other advice required will be obtained by the Secretary on behalf of the Governing Authority in accordance with the collective nature of its responsibilities. Notwithstanding the foregoing, a governing authority should lay down formal procedures whereby an individual member or group of members, in the furtherance of their duties, may seek, in exceptional circumstances, independent legal or other professional advice at the reasonable expense of the university; the Secretary shall deal with the matter in accordance with procedures to be laid down by the Governing Authority. The Governing Authority should have in place a procedure for recording the concerns of members that cannot be resolved.

**3.5 Letter of Appointment:** A formal standard letter of appointment should be issued to new Governing

Authority members. The letter of appointment should include the following:

- role of the Governing Authority and that of a Governing Authority member;
- the Governing Authority's terms of reference;
- duration of appointment and renewal provisions;
- support and training to be provided;
- the time commitment involved;
- level of remuneration, if applicable;
- conflict of interest rules;
- termination arrangements; and
- rules on confidentiality.

The letter is to be provided to the Secretary of the Governing Authority for record.

## **Appendix F: Outline of Obligations under Ethics in Public Office Acts**

## Briefing for New Members of the Governing Authority

**3.6** On appointment of new Governing Authority members, the Secretary should provide them with the following information in the form of a member's handbook or guide:

- A formal schedule of matters reserved to the Governing Authority for decision;
- Procedures for obtaining information on relevant new laws and regulations;
- Procedures to be followed when, exceptionally, decisions are required between governing authority meetings;
- A schedule detailing the composition of all Governing Authority committees and their terms of reference;
- A statement explaining the Governing Authority members' responsibilities in relation to the approval of the financial statements, and the University's system of internal control and audit;
- A statement informing the Governing Authority members that they have access to the advice and services of the Secretary, who is responsible to the Governing Authority for ensuring that governing authority procedures are followed and the applicable rules and regulations are complied with;
- Code of ethics/conduct for governing authority, including disclosure of Governing Authority members' interests and procedures for dealing with conflicts of interest;
- Specific university information;
- A copy of the most up-to-date version of the "Governance of Irish Universities" together with any relevant circulars and/or guidance notes;
- Any arrangements laid down by the Governing Authority for seeking legal or other professional advice.

**3.7** **Independent judgement:** All members of the Governing Authority should bring an independent judgement to bear on issues such as strategy, performance, resources, key appointments, and standards of conduct. Section 3 of this Code sets out the approach to dealing with any business or other interests of a Governing Authority member that could affect his/her independence.

**3.8** **Attendance Requirement:** The 1997 Act provides that members of the Governing Authority are elected, appointed or nominated in different circumstances. Those governing authority members who are appointed bring specific knowledge, skills, experiences and expertise to the deliberations of the Governing Authority and its committees and this is only possible if members attend all governing authority meetings and contribute as appropriate. The Governing Authority should clarify an expectation of 100% attendance at all governing authority meetings and as part of the assignment of

a new governing authority member evaluate attendance when the member is due to be re-appointed.

**3.9 Access to Secretary of the Governing Authority:** All members of the Governing Authority should have independent access to the advice and services of the Secretary of the University who is responsible to the Governing Authority for ensuring that governing authority procedures are complied with. The Secretary of the Board is also responsible for the formal induction of new Governing Authority members and for organising mentoring for Governing Authority members where required. The Secretary must ensure that Governing Authority members are fully aware of the appropriate rules, regulations and procedures.

## 4. Governing Authority Effectiveness

### Guiding Principles

The Governing Authority and its committees should, subject to the provisions of the Universities Act, 1997, have the appropriate balance of skills and knowledge to enable them to discharge their respective roles and responsibilities effectively.<sup>13</sup>

Governing authority members should receive formal induction on joining the Governing Authority and should regularly update and refresh their skills and knowledge.<sup>14</sup>

The Governing Authority should be supplied in a timely manner with information in a form and of a quality appropriate to enable it to discharge its duties.<sup>15</sup>

Governing authority members need to be able to allocate sufficient time to discharge their responsibilities effectively.<sup>16</sup>

The Governing Authority should undertake a self-assessment annual evaluation of its own performance and that of its committees. Evaluation of the Governing Authority should consider the balance of skills, experience, independence and knowledge of the University on the Governing Authority, its diversity, including gender, how the Governing Authority works together as a unit, and other factors relevant to its effectiveness.<sup>17</sup>

The Chairperson should act on the results of the performance evaluation by addressing any weaknesses identified through the Governing Authority annual self-assessment evaluation.

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<sup>13</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 10

<sup>14</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

<sup>15</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 13

<sup>16</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 12

<sup>17</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 14



## Code Provisions

**4.1 Governing Authority Appointments:** Governing Authority appointments must be made in compliance with section 16 of the 1997 Act.

**4.2 Skills and Knowledge:** Subject to the provisions of the Universities Act, 1997, Governing Authority members should have the appropriate skills and knowledge, updated as required, appropriate to the activities of the University, to enable them to discharge their respective duties and responsibilities effectively. This should include the identification by the Governing Authority of any gaps in competencies and ways these gaps could be addressed through future appointments.

Skill gaps present on the Governing Authority should be brought to the attention of the Minister sufficiently in advance of a time when vacancies are due to arise under section 16 3(a) of the 1997 Act, as outlined in section 2.4 of this Code.

**4.3 Specific Skills:** In compliance with the Guidelines on Appointments to State Boards, in preparing a specification for a role on a governing authority the Minister for Education & Skills will consult with the Chairperson of the Governing Authority when making an appointment under section 16 3(c) to seek his or her view on the specific skills that are required on the Governing Authority.

**4.4 Diversity:** Subject to the provisions of the Universities Act, 1997, appointments to the Governing Authority should be made against objective criteria with due regard for the benefits of diversity on the Governing Authority. The Chairperson of the Governing Authority should have due regard for the benefits of diversity on the Governing Authority, including gender, and advise the Nominating Body accordingly.

Section 16 (10) of the 1997 Act applies here and provides that:

*“In performing its functions under this section a governing authority shall ensure that each sex is represented on the governing authority in accordance with such gender balance as may from time to time be determined or approved by the Minister.”*

**4.5 Terms of Appointment:** The terms of appointment of governing authority members are made in line with Third Schedule of the 1997 Act detailed in Appendix A of this Code.

**4.6 Performance Review:** Monitoring of effective corporate governance by the Governing Authority includes continuous review of the internal structure of the University to ensure that there are clear lines of accountability for management throughout the University. In addition to requiring the

monitoring and disclosure of corporate governance practices on a regular basis, the Governing Authority should undertake an annual self- assessment evaluation of its own performance and that of its committees. An external evaluation proportionate to the size and requirements of the University should be carried out at least once in the term of every Governing Authority.

**4.7 Statement of How the Governing Authority Operates:** The annual report, in the form of the financial statements, should include a statement of how the Governing Authority operates, including a high-level statement of which types of decisions are to be taken by the Governing Authority and which are to be delegated to management (included in Appendix E).

**4.8 Appointment of Chief Officer and Chairperson:** The procedures for the appointment of a Chief Officer /Provost of the university are set out in Section 24 of the Universities Act, 1997. The procedures for the appointment of a Chairperson of the university are set out in Section 17 of the Universities Act, 1997.

**4.9 Frequency of Governing Authority Meetings:** The frequency of meetings of the Governing Authority and its committees and the attendance of each governing authority member at governing authority meetings should be reported in the annual report, in the form of the financial statements.

In accordance with the Universities Act, 1997, the Governing Authority shall hold such and so many meetings, and at such times, as the chairperson may determine. The Chairperson shall convene a meeting of the Governing Authority whenever requested to do so by not less than the number of members which constitute a quorum, being one third of the total number of members, rounded up to the nearest whole number, plus one. The membership of the Governing Authority, as set out in the Universities Act, 1997, includes a large number of internally elected staff members and students, in addition to the Chief Officer and other senior officers. Governing Authority members, including executive members, make a declaration of interest in relation to each agenda and recuse themselves prior to the relevant item if there is perceived to be a conflict of interest.

**A sample Governing Body Self-assessment Evaluation Questionnaire is provided for use by the Governing Body to self-assess/promote discussion regarding Governing Body performance. The questionnaire can be found in Appendix P of this Document.**

## 5. Codes of Conduct, Ethics in Public Office, Additional Disclosure of Interests by Governing Authority Members and Protected Disclosures

### Guiding Principles

To ensure continued integrity and transparency, and to avoid public concern or loss of confidence, the Governing Authority should ensure that appropriate policies are in place so that members and staff take decisions objectively and steps are taken to avoid or deal with any potential conflicts of interest, whether actual or perceived.<sup>18</sup>

These policies should ensure that any potential or actual conflicts of interest arising in the case of decision-making by governing authority members and the University's employees are addressed.

The Ethics in Public Office Acts 1995 to 2001 set out statutory obligations which apply to Governing Authority members and employees separately from the provisions of this Code.

### Code Provisions

**5.1 Codes of Conduct:** It is strongly recommended that all universities have published written codes of conduct for members of the Governing Authority and employees. The codes should be developed via a participative approach and should be approved by the Governing Authority taking into account the implications of all the relevant provisions of the 1997 Act as well as the Ethics in Public Office Act 1995 and Standards in Public Office Act 2001.

The up-to-date codes of conduct should be available upon request with a copy of each such code being accessible through the university's website and brought to the attention of all Governing Authority members, management and employees.

**5.2 Scope of Application:** The Code of Conduct should contain a description of nature, intent and scope of application of the Code and a statement of the guiding principles and obligations. Suggested guidelines for such a code are contained in Appendix G of this document. The Code for employees, a copy of which should be made available to all members of the Governing Authority and employees,

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<sup>18</sup> Adapted from "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) pages 13-14

should embrace such matters as duty to the university, procedures for addressing conflict of interest, limits on outside activities, acceptance of gifts and honesty in dealings.

**5.3 Compliance Requirements:** The Code should refer to the need for Governing Authority members and employees to comply with any relevant legislative and regulatory requirements.

**5.4 Ethics in Public Office:** The Code of Conduct should note that in addition to complying with the requirements of universities' own governing legislation each member of the Governing Authority of a university and each person holding a designated position of employment with a university should ensure his/her compliance with relevant provisions of the Ethics in Public Office Act, 1995 and Standards in Public Office Act, 2001. Each governing authority member, as the holder of a designated directorship under the Ethics in Public Office Acts 1995 and 2001 or not, is required to follow the obligations set out in Appendix C regarding disclosure of interests.

**5.5 Conflicts of Interest:** In addition to the statutory requirements, the Code of Conduct should set down a broader code for the disclosure of all relevant interests (pecuniary, family, financial or other) by members of the Governing Authority, which pose a real or potential risk for conflict of interest or could materially influence the member in the performance of his or her functions as a member of the Governing Authority or damage public confidence in the university.

The Code of Conduct should make clear that the obligations of governing authority members regarding the non-disclosure of private and confidential information do not cease when membership of the Governing Authority ends. The code should have regard, as appropriate, to best practice in reputable universities internationally and in the Irish public sector with respect to the relevant detailed disclosure provisions. This should be brought to the attention of governing authority members on their appointment to the Governing Authority.

**5.6 Non-disclosure of Information:** The Code of Conduct should make clear that certain obligations to a university, regarding in particular the non-disclosure of privileged or confidential information, do not cease when membership of the Governing Authority or employment in the University has ended. The Code should also address the provision of consultancy services by former members of the Governing Authority or employees to the University.

**5.7 Document Retention:** Former members of the Governing Authority should not retain documentation obtained during their terms of office as members and should return such documentation to the Secretary of the University or otherwise indicate to the Secretary that all such documentation in their possession has been disposed of in an appropriate manner. In the event that former Governing Authority members require access to papers from the time of their term on the Governing Authority,

this can be facilitated by the Secretary.

**Appendix F : Outline of Obligations under Ethics in Public Office Acts**

**Appendix G: Framework for a Code of Conduct**

# Additional Disclosure of Interests by Governing Authority Members

## Code Provisions

### 5.8 Disclosure of Interests by Governing Authority Members

- i) **Periodic Disclosure of Interests:** On appointment and annually thereafter, each member of the Governing Authority should furnish to the Secretary of the Governing Authority or other nominated person a statement in writing of:
- a) the interests of the Governing Authority member;
  - b) the interests, of which the Governing Authority member has actual knowledge, of his or her spouse or civil partner, child, or child of his/her spouse or civil partner;

which could materially influence the Governing Authority member in, or in relation to, the performance of his/her official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the Governing Authority member, or the spouse or civil partner or child, a substantial benefit.

For the purposes of this disclosure, interests has the same meaning as that contained in the Ethics in Public Office Act 1995. The statement of interests form used for annual statements under the 1995 Act could be utilised for this purpose on an administrative basis. Where the Governing Authority member is also a designated director for the purposes of the Ethics Acts, the annual statement of interests furnished in January each year under section 17 of the Ethics in Public Office Act 1995 will suffice for the purposes of the annual disclosure of interests under this Code.

- ii) **Disclosure of interest relevant to a matter which arises:** In addition to the periodic statements of interest required under (i) above, members of the Governing Authority are required to furnish a statement of interest at the time where an official function falls to be performed by the Governing Authority member and he/she has actual knowledge that he/she, or a connected person as defined in the Ethics Acts, has a material interest in a matter to which the function relates. For the purposes of this disclosure, material interests has the same meaning as that contained in the Ethics in Public Office Act 1995.
- iii) **Doubt:** If a Governing Authority member has a doubt as to whether an interest should be disclosed pursuant to this Code, he/she should consult with the Chairperson and/or Secretary

of the Governing Authority, as appropriate, and/or the person in the University nominated to deal with such queries.

- iv) **Confidential Register:** Details of interests disclosed under this Code should be kept by the Secretary of the Governing Authority in a special confidential register. Access to the register should be restricted to the Chairperson and Secretary of the Governing Authority, and to other members of the University on a strictly need to know basis.
- v) **Chairperson's Interests:** Where a matter relating to the interests of the Chairperson arises, the other members attending the meeting shall choose one of the members present at the meeting to chair the meeting. The Chairperson should absent himself/herself when the Governing Authority is deliberating or deciding on a matter in which the Chairperson or his/her connected person has an interest.
- vi) **Documents withheld:** Governing Authority or University documents on any deliberations regarding any matter in which a member of the Governing Authority has disclosed a material interest should not be made available to the Governing Authority member concerned.
- vii) **Early return of documents:** As it is recognised that the interests of a Governing Authority member and persons connected with him/her can change at short notice, a Governing Authority member should, in cases where he/she receives documents relating to his/her interests or of those connected with him/her, return the documents to the Secretary of the Governing Authority at the earliest opportunity.
- viii) **Absent:** A member should absent himself/herself when the Governing Authority is deliberating or deciding on matters in which that member (other than in his/her capacity as a member of the Governing Authority has declared a material interest and should not take part in any deliberation or decision of the Governing Authority in relation to those matters. In such cases consideration should be given as to whether a separate record (to which the member would not have access) should be maintained.
- ix) **Uncertainty:** Where a question arises as to whether or not an interest declared by a Governing Authority member is a material interest, the Chairperson, and or Secretary as appropriate, should determine the question as to whether the provisions of this Code apply. Where a Governing Authority member is in doubt as to whether he or she has an obligation under the Ethics in Public Office Acts 1995 and 2001, he or she should seek advice from the Standards in Public Office Commission under section 25 of the Ethics in Public Office Act 1995.

**Other Membership Conditions:** Section 7 of the Third Schedule of the 1997 Act  
<http://www.irishstatutebook.ie/eli/1997/act/24/schedule/3/enacted/en/>

## Protected Disclosures Legislation

- 5.9 Protected Disclosures Act 2014:** Section 21 of the Protected Disclosures Act 2014 requires that every University shall establish and maintain procedures for the making of protected disclosures by workers who are or were employed by the University and for dealing with such disclosures. Written information in relation to those procedures must be provided to workers employed by the University.
- 5.10 Guidance:** The Minister for Public Expenditure and Reform has published Guidance for the purpose of assisting public bodies in the performance of their functions under section 21(1) of [Protected Disclosures Act 2014](#) (available on the Department of Public Expenditure and Reform website). Universities shall have regard to this Guidance when establishing and maintaining their own protected disclosures procedures under the Act.
- 5.11 Annual Report:** Universities shall publish a report on protected disclosures in accordance with section 22 of the Protected Disclosures Act 2014 not later than 30 June in each year.



## 6. Business and Financial Reporting

### Guiding Principles

Taking account of public accountability and the special considerations which attach to Universities in relation to their management and operation, the annual report, in the form of the financial statements, taken as a whole, should be fair, balanced and understandable and provide the information necessary for an assessment of the University's financial performance, financial position, business model and strategy.<sup>19</sup>

A fundamental duty of the Governing Authority is to ensure that a balanced, true and fair view of the University's financial performance and financial position is made when preparing the annual report of the University and when submitting these to the HEA and Minister for Education and Skills.

The Governing Authority should ensure that timely and accurate disclosure is made to the Minister on all material matters regarding the University, including the business context, financial performance and position, and governance of the University.<sup>20</sup>

### Code Provisions

The publication of an annual report, in the form of the audited financial statements, is a primary expression of public accountability for the University. The objective of financial statements is to provide information about the financial performance, position and cash flows of the University that is useful for economic decision-making for a broad range of stakeholders.<sup>21</sup>

The Governing Authority of a University is required to arrange for the preparation of the financial statements in respect of each financial year. The annual financial statements are prepared from the information contained in the University's accounting records and other relevant information and in accordance with the accounting standards applicable to the University in a form as may be approved by the HEA.

The Governing Authority must present a University's financial statements that give a true and fair view of the income, expenditure (financial performance), assets, liabilities and capital (financial position) of the University as at the financial year end.

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<sup>19</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 16

<sup>20</sup> Adapted from "G20/OECD Principles of Corporate Governance" (OECD, September 2015) page 41

<sup>21</sup> Adapted from "FRS 102" (Financial Reporting Council, September 2015) page 28

Reference to financial statements giving a “*true and fair view*” means in the case of an entity and group financial statements, that the financial statements present fairly the income and expenses (financial performance), assets, liabilities and capital (financial position), and cash flows of the University or group concerned.

In order for a set of financial statements to give a true and fair view they should <sup>22</sup>:

- comply with the accounting standards applicable to the University;
- incorporate judgement as to valuation, disclosure, and materiality that aim to give a true and fair view;
- be prudent in the consideration of matters of judgement in the financial statements, especially where there is uncertainty; and
- ensure that the financial statements reflect the commercial substance of transactions, and not just their legal form.

In accordance with the 1997 Act, the Governing Authority is required to arrange for the financial statements to be audited by the Comptroller and Auditor General, the University’s independent auditor.

An audit is an independent examination of the financial statements. The purpose of an audit is to enhance intended users’ degree of confidence in the financial statements. Having conducted an examination of the financial statements, the Comptroller and Auditor General is required to report to the Governing Authority of the University. In that report, the Comptroller and Auditor General is required to form an opinion on a number of matters including, for example, whether the financial statements give a true and fair view and whether the financial statements are in agreement with the underlying accounting records.

The annual report, comprising the financial statements and commentary thereon, is a comprehensive report of the University’s activities throughout the preceding year.

The annual report, in the form of the financial statements, is to be submitted to the HEA within one month from the receipt by the University of the Audit Certificate from the Comptroller and Auditor General.

The University is required to submit an Annual Governance Statement, approved by the Governing Authority, to the Minister for Education and Skills/HEA in accordance with the specific reporting requirements set out in paragraph 6.7 of this Code. It includes items such as affirmation that Government policy is being complied with, significant post-balance sheet events, a statement on the system of internal control and an outline of all commercially significant developments affecting the University in the preceding year.

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<sup>22</sup> Adapted from the “The Principal Duties and Powers of Company Directors under the Companies Act” (ODCE, 2015)

# Annual Report

**6.1 Audited Financial Statements:** All Universities are required to publish audited financial statements, in a format to be agreed with the HEA. As set out above the financial statements are a formal record of the financial performance and financial position of the University.

**6.2 Preparation of Annual report, in the form of the financial statements:** Each University is required to produce an Annual report, in the form of the financial statements. The Governing Authority of a University is required to arrange for the preparation of the annual report, in the form of the financial statements, in respect of each financial year. The annual financial statements are prepared from the information contained in the University's accounting records and other relevant information and in accordance with the accounting standards applicable to the University in a form as may be approved by the HEA. The Governing Authority must present a University's financial statements that give a true and fair view of the income, expenditure (financial performance), assets, liabilities and capital (financial position) of the University as at the financial year end. Reference to financial statements giving a "true and fair view" means in the case of an entity and group financial statements, that the financial statements present fairly the income and expenses (financial performance), assets, liabilities and capital (financial position), and cash flows of the University or group concerned. In order for a set of financial statements to give a true and fair view they should:

- comply with the accounting standards applicable to the University;
- incorporate judgement as to valuation, disclosure, and materiality that aim to give a true and fair view;
- be prudent in the consideration of matters of judgement in the financial statements, especially where there is uncertainty; and
- ensure that the financial statements reflect the commercial substance of transactions, and not just their legal form.

Financial statements should be subject to external audit by Comptroller and Auditor General before inclusion in the University's annual report, in the form of the financial statements. Financial statements of universities should be submitted to the Department of Education and Skills within one month of the audit certificate on the accounts being issued by the C&AG.

**6.3 Annual Report:** In addition to disclosure requirements of the University's governing legislation, applicable accounting standards and other regulations applying to the Universities, specific elements to be disclosed in the annual report, in the form of the financial statements, include:

- A Statement of how the Governing Authority operates, including a statement of types of decisions to be taken by the Governing Authority and which are to be delegated to management.<sup>23</sup>
- The names of the Chairperson, the deputy Chairperson (if any), the Chief Officer and members of the Governing Authority and Governing Authority committees.
- Termination/Severance Payments and Agreements – The financial statements should disclose details of payments and agreements with an aggregate value in excess of €10,000 made in the reporting period, in a format to be agreed with the HEA and the Department of Education and Skills. This includes severance/ termination payments, granting of added years for pension purposes or early retirement without normal actuarial reductions. The value of the latter can be determined in accordance with guidance to be issued by the Department of Public Expenditure and Reform from time to time. Given the policy underlying the Freedom of Information Acts, in concluding settlements the University should not enter into confidentiality agreements which preclude it from disclosing details of the settlement reached in the financial statements, save in exceptional circumstances and on foot of legal advice that they are necessary in the circumstances of the case. When, in those circumstances, confidentiality agreements are entered into, parties to the agreements should be given prior notice that they may be subject to disclosure in any case when required by law.
- Travel and Subsistence - The financial statements should disclose the total costs incurred in relation to travel and subsistence in the period for the university.
- Hospitality Expenditure - The financial statements should disclose the expenditure incurred in relation to hospitality in the period.
- Legal Costs/Settlements – in cases where cumulative legal costs incurred in the year of account exceed €50,000, a note should be included in the financial statements, where appropriate, and in a format agreed with the HEA/Department of Education and Skills.

#### **6.4 Reporting Requirements:** Reporting requirements should be adhered to as follows:

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<sup>23</sup> Taken from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 7

*It is important to note that Departments of Education & Skills/HEA may choose to seek additional financial information at more frequent intervals than those outlined below.*

- i. **Draft Unaudited Financial Statements:** Draft unaudited financial statements<sup>24</sup> for each University should be furnished to the Comptroller and Auditor General by such date as the Comptroller and Auditor General may from time to time determine.
- ii. **Publication of Annual Report, in the form of Statutory Financial Statements:** The University should publish (or where publication is not required, submit to the Government) its annual report, in the form of the financial statements, **not later than one month** following completion of the audit of the financial statements of the University by the Comptroller and Auditor General.
- iii. **Board Fees:** In the interests of transparency and good governance, the Universities are required to publish in their annual report, in the form of the financial statements, details of non-salary-related fees paid in respect of Governing Authority members analysed by category of fees, and the salary of the Chief Officer.
- iv. **Board Meetings and Attendance:** The number of meetings of the Governing Authority and its committees and the attendance of each Governing Authority member at Governing Authority meetings should be reported in the annual report, in the form of the financial statements.
- v. **Disclosure of Key Management Personnel Compensation:** The University should disclose in their annual report, in the form of the financial statements, aggregate details of the salary scales of their executive members, analysed by the following categories:
  - a. Salaries and short-term employee benefits by reference to salary grades
  - b. Post-employment benefits; and
  - c. Termination benefits, other than pension entitlements;

An entity shall also disclose key management personnel compensation in total. Compensation includes all employee benefits. Key management personnel are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any Governing Authority members

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<sup>24</sup> Draft unaudited financial statements refer to draft financial statements and notes thereon (in accordance with applicable accounting standards) and not management accounts.

(whether executive or otherwise) of that entity who report directly to Chief Officer.

The following arrangements should also apply:

- a) The Universities should disclose in their financial statements the aggregate amount of total compensation paid to employees including employee numbers in whole time equivalent format.
  - b) The aggregate total compensation paid to employees should be split between salary, overtime and allowances.
  - c) A separate note on Chief Officer's salary and benefits (and termination payment if relevant) should also be included.
  - d) A separate note on termination benefits, other than standard pension entitlements, to all staff should be included. Chief Officer's termination benefits should be kept separate, as set out above.
- vi. **Employee Benefits:** In addition to disclosing the aggregate pay bill and total number of employees, the University should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell within each pay band of €10,000 from €60,000 upwards and an overall figure for total employer pension contributions in their annual report, in the form of the financial statements, .
- vii. **Pension Liabilities:** The standard conventions setting out how public service superannuation liabilities are reflected should be followed in all cases.

**6.5 Consultancy Costs:** The University should disclose details of expenditure on external consultancy/adviser fees in their annual report, in the form of the financial statements, for each accounting year for each entity.

For this purpose, consultancy fees mean fees paid to external parties providing advisory services of any nature. Such fees should be itemised by category as stated below or as the University considers appropriate having regard inter alia to its size and competitive position and to the extent to which information is already disclosed:

- Legal (legal fees across all areas to be included here e.g. for pension, HR etc.);
- Tax and financial advisory (e.g. due diligence, accounting, corporate finance);
- Public relations/marketing; and
- Pensions and human resources; and
- Other.

Note that financial advisory excludes what is currently required to be disclosed in respect of fees

paid to the auditors.

In procuring the services of external consultants, the University should comply with all applicable laws and have regard to Code guidelines regarding competitive tendering.

- 6.6 Statement on Internal Control:** The Statement of Internal Control should be included in the annual report, in the form of the financial statements, of the University. This statement should be reviewed by the Comptroller and Auditor General to confirm that it is consistent with the information of which they are aware from their audit work on the financial statements. The Comptroller and Auditor General should include their report on this matter in their audit report on the financial statements.
- 6.7 Deadlines:** Where the audit has been unavoidably delayed the relevant deadline can be extended, in consultation with the C&AG.
- 6.8 Web Publication:** Annual financial statements should be published on the University's website.

# Additional Reporting Requirements

**6.9 Annual Governance Statement:** The Chairperson must furnish to the HEA/Minister for Education and Skills, in conjunction with the University's annual report, in the form of the financial statements, a comprehensive report covering the University, in a format as agreed annually with the HEA. The Annual Governance Statement template is reviewed annually and agreed by the HEA and IUA. The current Annual Governance Statement template is published on the HEA website and can be found by clicking on the following link: <http://hea.ie/assets/uploads/2017/05/Appendix-2-Unis-Annual-Statement-of-Gov-Template.pdf>

**6.10 Commercially Sensitive Developments:** In line with the HEA Financial Memorandum requirements, the Chief Officer of the University must inform the HEA without delay of any circumstance that is having or is likely to have material adverse effect on the financial position of the University or its ability to maintain its capacity to deliver relevant education programmes, research and related activities.

The Chairperson should report to the HEA on significant commercially sensitive developments in the preceding 12 months as part of the Annual Governance Statement.

**6.11 Subsidiary Reporting:** A representative of the Board of each active subsidiary should furnish the Governing Authority with a report on an annual basis. This report should be received prior to the Governing Authority reporting.

**Reporting requirements for the University required under the annual report, in the form of the financial statements, and the Annual Governance Statement to the HEA are set out in tabular format in Appendices J and K. Appendix L and M provide templates for the Statement on System of Internal Control and the HEA Financial Memorandum.**

<b>Appendix J:</b>	<b>Annual Report/Financial Statements</b>
<b>Appendix K:</b>	<b>Annual Governance Statement</b>
<b>Appendix L:</b>	<b>Statement on System of Internal Control</b>
<b>Appendix M:</b>	<b>Financial Memorandum</b>



# 7. Risk Management, Internal Control, Internal Audit and Audit and/or Risk Management Committees

## Guiding Principles

The Governing Authority should have formal and transparent arrangements for governance, risk management and internal control and for maintaining an appropriate relationship with the Comptroller and Auditor General and/or external auditors, as appropriate.

Risk management and internal control are important and integral parts of a performance management system and crucial to the achievement of outcomes. They consist of an ongoing process designed to identify and address significant risks involved in achieving a university's outcomes.<sup>25</sup>

Advising on key risk is a matter for the Governing Authority. The Audit and/or Risk Management Committee should support the Governing Authority in this role.

## Code Provisions

**7.1 Risk Management Policy:** Each University should develop a Risk Management Policy and the Governing Authority should approve the risk management framework and monitor its effectiveness. The Governing Authority should review material risk incidents and note or approve management's actions, as appropriate.

**7.2 Risk Management:** It is the responsibility of the Governing Authority to ensure that a robust system of risk management is in place in the University. Such a system involves:

- establishing an Audit and/or Risk Management Committee to give an independent view in relation to risks and risk management systems;
- making risk management a standing item on the Governing Authority and/or relevant subcommittee meeting agenda;
- advising the relevant Minister of the need to include risk management experience/expertise in the competencies of at least one Governing Authority member. Where composition of the

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<sup>25</sup> "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 27

Governing Authority does not allow for this, expert advice should be sought externally;

- The identification of risks that threaten the achievement of the university's objectives;
- The evaluation of the likelihood of occurrence and potential impact of the risks identified;
- The segregation of risks according to their gravity;
- An appraisal of the techniques employed to manage the major risks and to identify any further steps that should be taken;
- An appraisal of the levels of residual risk - after the application of mitigation techniques - and whether the residual risk is acceptable;
- Continuous monitoring of the effectiveness of controls and management techniques;
- Decision-making informed by the risk management process.

The Governing Authority should make a provision for:

- approving the risk management policy, setting the University's risk appetite and monitoring its effectiveness, and approving the risk management plan and risk register at least annually;
- reviewing material risk incidents and noting actions taken to deal with them.
- making risk management a standing meeting agenda item regularly and at least once annually.
- considering the establishment of a Risk Committee and, in any event, including review of risk management in the terms of reference of the Audit Committee and/or Risk Management Committee
- requiring an external review of the effectiveness of the risk management framework on a periodic basis; and confirming in the annual governance statement that the Governing Authority has carried out an assessment of the University's principal risks, including a description of these risks, where appropriate, and associated mitigation measures or strategies.

## Internal Control

- 7.3 Internal Control:** The Governing Authority is responsible for ensuring that effective systems of internal control are implemented in the University including financial, operational and compliance controls and risk management and the Governing Authority should review the effectiveness of these systems annually.

The following are the key internal control procedures designed to provide effective internal control:

- i) the steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities and evidence of reaction to control failures);
- ii) processes used to identify business risks and to evaluate their financial implications;
- iii) details of the major information systems in place such as budgets, and means of comparing actual results with budgets during the year;
- iv) the procedures for addressing the financial implications of major business risks (such as financial instructions and notes of procedures, delegation practices such as authorisation limits, segregation of duties and methods of preventing and detecting fraud);
- v) the procedures for monitoring the effectiveness of the internal control system which may include: Audit and/or Risk Management Committees, management reviews, consultancy, inspection and review studies, the work of internal audit, and quality audit reviews;
- vi) Confirmation in the annual report, in the form of the financial statements, that there has been a review of the effectiveness of the system of internal control.

## Review of Effectiveness of Internal Control

**7.4 Effectiveness of Internal Control:** The existence of risk management policies and internal control systems do not on their own constitute effective risk management. Effective and on-going monitoring and review are essential elements of sound systems of risk management and internal control. Reviewing the effectiveness of internal control is an essential part of the Governing Authority's responsibilities. The Governing Authority is required to form its own view on effectiveness of internal control systems based on the information and assurances provided.

**7.5 Annual Review of Effectiveness of Internal Control:** The Governing Authority should review on an annual periodic basis the effectiveness of the university's system of internal controls, including financial, operational and compliance controls and risk management.

The annual review of effectiveness should consider the following <sup>26</sup>:

- changes since the last review in the nature and extent of significant risks and the ability of the university to respond effectively to changes in its business and external environment;
- the scope and quality of management's ongoing monitoring of risks and the system of internal control and, where applicable, the work of its Internal Audit Function and other

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<sup>26</sup> Adapted from "Internal Control: Revised Guidance for Directors on the Combined Code" (FRC, October 2005) paragraph

providers of assurance;

- the extent and frequency of the communication of the results of the monitoring to the Board, or Board committees, which enables it to build up a cumulative assessment of the state of control in the university and the effectiveness with which risk is being managed;
- the incidence of significant control failings or weaknesses that have been identified at any time during the period and the extent to which they have resulted in unforeseen outcomes or contingencies that have had, could have had, or may in the future have, a material impact on the university's financial performance or condition; and the effectiveness of the university's public reporting process. The annual review of effectiveness should conclude on the extent to which controls are adequate, and were operating, and should outline actions required to address any deficiencies arising.

**7.6 Timely Completion of Review:** Timely completion of the annual review is critical if it is to fulfil its objectives of providing assurance in relation to the operation of controls in the reporting period. The annual review should be conducted close to the end of the period under review or as soon as possible after the end of the financial period under review.

## Internal Audit

### Guiding Principle

Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve the University's operations. It helps Universities accomplish their objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes.<sup>27</sup>

### Code Provisions

**7.7 Internal Audit Function:** Each University should have a properly constituted independent internal audit service or engage appropriate external expertise which should operate in accordance with the provisions set out below.

**7.8 Independence:** The Internal Audit Function shall be independent of the activities it audits. This is to provide it with an environment in which it can make unbiased judgements and provide impartial advice

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<sup>27</sup> Definition from the Institute of Internal Auditors UK and Ireland (<http://www.theiia.org/guidance/standards-and-guidance/ippf/definition-of-internal-auditing/?search%C2%BCdefinition>)

to management. Internal Audit has no operating responsibilities, and will remain independent of, the activities being examined. However, if deemed appropriate by the Chief Officer, its remit may extend to systems being developed and it may provide advice on control and related matters arising without prejudicing its right to subsequently audit such systems.

**7.9 Internal Audit Universe:** The Internal Audit Function should have the right to review all the management and control systems, both financial and operational. The Internal Audit Function shall have unrestricted access to all functional areas, records (both manual and electronic), property, and personnel which it considers necessary to fulfil its responsibilities. Specifically, the Internal Audit Function shall be responsible for the effective review of both internal control and risk management. Rights of access to other bodies controlled or funded by the university should also be guaranteed.

**7.10 Annual Programme of Audits:** The Head of Internal Audit shall be responsible for drawing up an annual programme of audits having regard to the University's Strategic Plan in consultation with the Audit and/or Risk Management Committee. The Internal Audit Function shall demonstrate objectivity, comprehensiveness and relevance to management, the Audit and/or Risk Management Committee and the Board in respect of the areas to be audited and the respective priorities for these audits within the programme. The existence of the Internal Audit Function does not relieve line management of its responsibility for effective control of the activities for which it is responsible.

**7.11** The Internal Audit Function shall function professionally, adhering to the Code of Ethics and International Standards of the Institute of Internal Auditors or equivalent professional standards, save for outsourced functions.

The operation of the Internal Audit Function should follow the principles below:

- i) Charter:** The Internal Audit Function should have a formal charter, including terms of reference, which should be approved by the Governing Authority and should report directly to the Audit Committee and/or Risk Management Committee or its equivalent. The functional reporting structure for Internal Audit within the organisation should be clear and formally recorded.
- ii) Head of Internal Audit:** The Head of the Internal Audit Function should have considerable seniority within the University and the content of all internal audit reports should be entirely at his/her discretion. The Head of Internal Audit shall have direct access to the Chairperson of the Governing Authority, to the Chief Officer and to the Chairperson of the Audit Committee and/or Risk Management Committee in the performance of his or her duties.

- iii) **Compliance Tests:** In carrying out its on-going work, the Internal Audit Function should assess, using a risk based approach, the areas within its terms of reference (as set out in the audit charter), and report its findings to the Audit and/or Risk Management Committee.
- iv) **Resources:** The Internal Audit Function should be adequately resourced with the necessary skills, consistent with its responsibilities under this Code, including the ability to deal with non-financial aspects.
- v) **External Auditors and Internal Audit:** The Internal Audit Function will liaise closely with the external auditors appointed by the Governing Authority and the Comptroller and Auditor General so that the potential for co-operation between all parties is maximised. The work carried out by these entities can frequently be complementary and effectiveness can be increased through regular consultation.
- vi) **Value for Money Auditing:** In planning, executing and reporting its work, the Internal Audit Function should ensure that value-for-money auditing receives adequate attention based on the principles and provisions of the Public Spending Code, where relevant.
- vii) **Procurement and Disposal:** As part of its work, the Internal Audit Function should review compliance with procurement and disposal procedures from time to time and report to the Audit and/or Risk Management Committee and the Governing Authority.

## Appendix H: Sample Internal Audit Activity Charter

# Audit and/or Risk Management Committee

## Code Provisions

**7.12 Audit and/or Risk Management Committee:** The Governing Authority of a University should establish an Audit and/or Risk Management Committee of at least three independent non-executive members. It is recommended for an Audit and/or Risk Management Committee to have members drawn from outside the Governing Authority. An Audit and/or Risk Management Committee is more likely to have the broad range of skills and experience necessary where its membership is not restricted to the Governing Authority. The Audit and/or Risk Management Committee should be empowered to co-opt members to provide specialist skills at a particular time and to procure specialist advice at reasonable and approved expense to the organisation to assist the committee with specific areas of committee business. In general, the Audit and/or Risk Management Committees should be combined, however, in some larger universities there may be a requirement for separate Audit and/or Risk Management Committees.

The Audit and/or Risk Management Committee Guidance associated with this Code is contained in Appendix O.

# 8 Relations with the Oireachtas, Minister and Department of Education and Skills and HEA

## Guiding Principles

Good governance in the public sector is to ensure that entities achieve their intended outcomes, as defined in their governing legislation and Statements of Strategy, while acting in the public interest. This requires effective arrangements for defining outcomes in terms of sustainable economic, social, and environmental benefits which should be included in the University's oversight agreement with the Minister/Department for Education and Skills/HEA.<sup>28</sup>

Good governance requires effective procedures for the definition of responsibility and accountability, allocation of budgets, defining expected outputs and outcomes and clear procedures for monitoring performance.

The Departments for Education and Skills/HEA should have written oversight agreements with the University. Any University having derogations from provisions of this Code should have such explanatory notes written into their oversight agreements. Reasons for exemptions should be clearly explained in the oversight agreement with the Minister/Department for Education and Skills/HEA.

There should be an ongoing dialogue between the Department for Education and Skills/HEA and the University based on a common understanding of the objectives of the University and the actions through which it seeks to achieve those objectives.

## Code Provisions

The statutory basis for Irish Universities set out in the legislation defines the parameters for the level of operational autonomy and independence under which each University operates in pursuit of its objectives. Irrespective of the degree of autonomy and independence applying to any University, it must be subject to sufficient oversight and accountability to ensure that it is performing effectively and delivering its objectives to ensure that public resources are used efficiently and effectively.

Universities have certain functional independence under the 1997 Act. Functional independence can be achieved and is fully compatible with statutory and financial oversight by the Minister/Department for

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<sup>28</sup> "International Framework: Good Governance in the Public Sector" (IFAC/CIPFA, July 2014) page 10



Education and Skills/HEA and with proper and effective accountability. Effective accountability is strongly dependent on establishing clearly defined roles and responsibilities, in accordance with the 1997 Act, which are clearly understood and observed in practice by all parties.

## Parent Department Oversight Role

**8.1 Comply or Explain:** Universities are required to confirm to the HEA that they comply with this Code in their governance practices and procedures and, where appropriate, explain any non-compliance. A separate code for subsidiaries will apply.

This Code has been developed in partnership by the IUA and HEA and is based on the Code of Practice for the Governance of State Bodies, having regard to the provisions of the Universities Act, 1997 and other Acts of the Oireachtas.

## Oversight Agreements

**8.2 Oversight Agreements:** The Department for Education and Skills and the HEA should ensure that they have written oversight agreements with the University which clearly define the terms of the University's relationship with the Minister/Department of Education and Skills, and the HEA.

**8.3 The Oversight Agreements in place with the Universities comprise:**

**1) Performance Compacts:** The National Strategy for Higher Education performance-based framework for the system governance of higher education in Ireland sets out the areas of responsibility for setting national priorities of Government and related short to medium term objectives for the higher education system. The HEA and the universities have agreed a mandate which encompasses the responsibility to create a well-coordinated system of higher education institutions which, in its totality, is capable of delivering on national objectives set for the system by the Minister.

This aspect of the role requires the following:

- To focus on outcomes and the performance of each University and the higher education system as a whole.
- To negotiate a performance compact with each University reflecting its distinct mission.
- To monitor performance against agreed deliverables, and

- To provide funding based on performance

This framework is utilised as the context for conducting a process of strategic dialogue with individual institutions where institutions will agree performance compacts with the HEA, with institutional key performance indicators reflecting their contribution to overall system objectives.

Performance against the compacts is monitored via a system of annual reporting and the strategic dialogue process, whereby the HEA meets with each individual University to review performance and confirm good ongoing governance and accountability of the public funding distributed in each case.

**Annual Governance Statement:** Universities are required to submit an Annual Governance Statement to the HEA in accordance with the specific reporting requirements set out in section 6 of this Code. The Annual Governance Statement includes items such as affirmation that Government policy is being complied with, significant post balance sheet events, a statement on the system of internal control and an outline of all commercially significant developments affecting the University in the preceding year. The statement must be submitted to the HEA within 6 months of completion of the financial year. In addition, Universities are expected to flag all major governance issues to the HEA on an ongoing basis. The template statement for Universities is set out as Appendix K and Appendix L.

**2) Financial Memorandum:** The ongoing responsibilities and arrangements between the HEA and the Universities are set out in a financial memorandum which is signed by each institution on an annual basis (See Appendix M). The financial memorandum requires:

- Agreement on budgets and financial plans
- Provision of required Recurrent Grant Allocation Model (RGAM) returns
- Compliance with public pay policy
- Adherence to the borrowing and departures frameworks (if applicable)
- Compliance with public sector capital expenditure requirements
- Compliance with public sector procurement requirements

## Roles and Responsibilities

**8.4 Roles:** It is recommended the respective roles and responsibilities of the Chief Officer of the University, as well as the Chairperson of the Governing Authority are set out in writing. The roles and responsibilities of the Chairperson of Governing Authority and the Chief Officer of the University are

set out in the 1997 Act.

### The System Performance Framework

Universities shall agree Performance Delivery Agreements with the HEA on behalf of the Minister for Education and Skills, and report on progress against targets to the HEA and Minister. It is envisaged that once in place, these agreements will act as a performance contract between the Department of Education and Skills and the Universities, in which an agreed level of performance/service will be formalised and which will ultimately result in improved efficiency and effectiveness in the delivery of Educational services.

The agreements, once in place, allow for the adoption of both annual and multi-annual targets, and the development of output and outcome indicators, including milestones to measure performance against targets.

The system performance framework defined by the Minister for Education and Skills, is the anchor document to the content and objectives of the Performance Delivery Agreement taking account of the University's legal framework. The performance compact agreed between the HEA and the University aligned to specific objectives in the Department of Education and Skills' System Performance Framework, and consistent with the University's legal mandate, and with any Government policies for the reform and modernisation of the Education Sector.

The Governing Authority of the University should ensure that, once agreed, this Performance Delivery Agreement and the University's Statement of Strategy are communicated to all employees and that they have a clear understanding of their role in achieving these objectives.

**8.5 Performance Delivery Agreements:** The Strategic Dialogue process, Performance Compact, Annual Governance Statement and Financial Memorandum outlined in section 8.3 of this Code, together with the system of multi-annual budgeting and management reporting, constitute, once agreed, the performance delivery agreement between the HEA and the Universities, and:

- Include high level goals and objectives;
- identify the key programmes of activity for the University including for each individual expenditure programme;
- set out the key outputs specified in quantitative, measurable terms;
- identify the targets for that output in annual and multi annual targets with clear milestones;
- identify the cost of delivery of that programmes of activity; and
- set out the process for the formal review of the performance agreement.

- 8.6 High Level Goals and Objectives:** In stating High Level Goals and Objectives, the Performance Delivery Agreements, once agreed, in aggregate:
- set out relevant, quantitative metrics of impacts and/or results that will support examination of the effectiveness of the programme; and
  - include annual and multi-annual targets that set out clear milestones to measure progress toward a goal.
- 8.7 Key Outputs:** In stating Key Outputs, the Performance Delivery Agreement, once agreed, will:
- set out relevant, quantitative metrics of outputs that will support examination of the efficiency of the programme; and
  - include annual and multi-annual targets that set out clear milestones to measure delivery.
- 8.8 Review of Performance Delivery Agreement:** There should be at least one formal meeting per annum between the HEA and the Chairperson or non-executive nominees of the Governing Authority and top management of the University, to review the Performance Delivery Agreement, once agreed, and to strengthen the relationship between the two organisations.
- 8.9 Existing Service Level Agreements:** Where the Universities already have existing service level agreements and/or performance frameworks (which include specific performance targets and indicators) in place with the Department/ Minister for Education and Skill, these should be adapted to conform to the requirements of a Performance Delivery Agreement as set out in this Guidance.

## Periodic Critical Review

- 8.10 Periodic Critical Review:** The System Performance Framework and the associated strategic compact and dialogue process agreed with the HEA outlined in section 8.3 of this Code, provides a system of periodic critical review over a cycle of four years. This includes annual system performance reporting to the Minister for Education and Skills and review of overall achievement of objectives and targets at the end of each four-year period.

The periodic critical reviews themselves should be:

- **Proportionate.** Reviews must not be overly bureaucratic, administratively burdensome and should be appropriate for the size of the University.
- **Timely.** Reviews should be completed quickly in order to minimise disruption and reduce uncertainty about the University's future
- **Challenging.** Reviews should be robust and rigorous, and should examine and evaluate as wide a range of delivery options as possible.

- **Open and Inclusive.** Key stakeholders should have the opportunity to contribute to reviews.
- **Transparent.** Reviews should be routinely published.

# Procedures for Procurement

## Code Provisions

**8.11 Public Procurement:** It is the responsibility of the Governing Authority and management to ensure the implementation of appropriate systems and procedures to ensure that the requirements for public procurement are adhered to, and that the current value thresholds for the application of EU and national procurement rules are respected.

The Governing Authority should satisfy itself that procurement policies and procedures have been developed and published to all staff. It should also ensure that procedures are in place to detect non-compliance with procurement procedures. Universities should have a contracts database/listing for all contracts/payments in excess of €25,000, with monitoring systems in place to flag non-compliant procurement. Non-compliant procurement should be reported to the HEA in the Annual Statement of Governance.

**8.12 Procedures:** Competitive tendering should be the standard procedure in the procurement process of universities. Management, and ultimately the Governing Authority, should ensure that there is an appropriate focus on good practice in purchasing, and that procedures are in place to ensure compliance with current procurement legislation and rules.

**8.13 Legal Obligations:** EU Directives and national regulations impose legal obligations in regard to advertising and the use of objective tendering procedures for awarding contracts above certain value thresholds. Even in the case of procurement that might not be subject to the full scope of EU Directives, such as certain 'non-priority' services or service concessions, the EU Commission and European Court of Justice have ruled that EU Treaty principles must be observed.

**8.14 EU Treaty Principles:** The essential Treaty principles include non-discrimination, equal treatment, transparency, mutual recognition, proportionality, freedom to provide service and freedom of establishment. Any requirement to publicise contracts of significant value to a degree which allows parties in other Member States the opportunity to express an interest or to submit tenders will be adhered to.

**8.15 Corporate Procurement Plan:** Each university must develop a Corporate Procurement Plan. This plan

is underpinned by analysis of expenditure on procurement, and the procurement and purchasing structures in the University. The plan should set practical and strategic aims, objectives for improved procurement outcomes. Appropriate measures to achieve these aims should be implemented.

The Chairperson should affirm adherence to the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan in the Annual Statement of Governance.

- 8.16 Procurement Information:** Information on procurement policy and general guidance on procurement matters is published by the Office of Government Procurement. This can be viewed or downloaded from the [Office of Government Procurement website](#).

## Property Acquisition and Disposal of Surplus Property

### Code Provisions

- 8.17 Acquisition or Disposal of Assets:** As per section 42 of the 1997 Act, a university may sell or otherwise dispose of any land which is the property of the university.

In addition to any specific guidelines which apply to the University, all acquisitions, disposals or proposals to share property should be conducted in accordance with best practice taking into account the Universities Act, 1997, and relevant circulars and guidelines, as appropriate.

## Acquisition of Land, Buildings or other Material Assets

- 8.18 Procedures:** In accordance with the provisions of the Universities Act, 1997, and best practice, the following procedures should apply to all acquisitions:

- (i) **Independent Valuation:** Where land or property is being considered for acquisition an independent valuation must be obtained. These valuations should be obtained before any

decision is taken by the Governing Authority to purchase/acquire or sell/dispose lands. The valuations should be obtained from professional property valuation surveyors.

- (ii) **Listing of Parties to Transaction:** All parties to land and property transactions should be clearly reported to the Governing Authority when transactions are being considered. Any Governing Authority resolution related to the purchase of land or property should state the party or parties the asset is being purchased from.
- (iii) **Options by Others to Purchase:** Where a third party developer has obtained an option to purchase land and is selling this option to the University, any profit margin being charged by the developer, where it can be determined, should be reported to the Governing Authority.
- (iv) **Board Resolutions:** Any Governing Authority resolutions regarding the purchase or sale of an asset should state the price the asset has been purchased or sold for.
- (v) **Transparency:** Purchase of land or property should be conducted in as transparent a manner as possible without compromising the negotiating position of the University.
- (vi) **Due diligence:** A full due diligence report should be prepared for land or property that are being considered for acquisition.

## Capital Investment Appraisal

**The Public Spending Code:** [The Public Spending Code](#) is the comprehensive set of expenditure appraisal and value for money requirements and related guidance covering all public expenditure.

**8.19** The Governing Authority should ensure that robust and effective systems and procedures are in place in the University concerned to ensure compliance as appropriate, with the relevant principles, and requirements of the Public Spending Code and the Universities Act, 1997. The Chairperson of each University should confirm in the Annual Governance Statement that the University is adhering to the relevant aspects of the Public Spending Code.

**8.20 Investment Appraisal:** In addition, the Governing Authority should ensure that the University should have regard to appropriate models for investment appraisal in their sectors and seek to apply the best

practice financial and economic appraisal principles contained in the Public Spending Code for the appraisal and management of all investment proposals.

## Diversification, Establishment of Subsidiaries and Acquisitions by the Universities

Section 13 of the Universities Act, 1997, sets out the functions of universities:  
<http://www.irishstatutebook.ie/eli/1997/act/24/section/13/>

**8.21 Subsidiaries:** As one of the functions of a university, section 13 (2) (c) of the 1997 Act provides that a university, “... may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the university.”

Any proposals for the diversification of a university's activities, particularly in relation to diversification into areas outside the core functions of teaching and research, or for the establishment of new subsidiaries should require the approval of the Governing Authority, which should consider the full implications, including any financial or other risks, for the university.

**8.22 Approval:** When seeking such approval, the University should supply the Governing Authority with complete details of such proposed subsidiaries, joint ventures or acquisitions, and should do so at the earliest opportunity in order to avoid delays.

**8.23 Details:** Such details should include the following (which is not an exhaustive list) together with such other information as may be requested:

- the full business case for the proposal;
- cash flows and projections;
- risk analysis of proposal;
- the amount of share capital proposed for acquisition, compared with the entire issued share capital of the company concerned;
- details of any shares held in such company by any other State body, its subsidiaries or State body joint ventures;
- data on the financial commitment and exposure of the parent body, whether by way of equity, loans, guarantee or otherwise;
- other potential liabilities that may have a negative impact on the company;
- outstanding borrowings of such company from all sources, whether guaranteed or not, and any



commitments by them which could involve financial exposure for the University; and

- the proposed approach to the remuneration and conditions of employment of the CEO/Managing Director and, where appropriate, other employees of the subsidiaries should be outlined, when seeking approval for the establishment or acquisition of subsidiaries.

**8.24 Borrowing Limits:** Under Section 38 of the 1997 Act, universities must observe the provisions of any Framework for Borrowings and Loan Guarantees (as amended, adapted or extended from time to time) agreed between the universities and the HEA under Section 38(2) of the 1997 Act. The current framework is at Appendix C.

## Disposal of State Assets

**8.25 Disposal:** In addition to the relevant statutory provisions of the 1997 Act, universities should ensure that arrangements are in place and adhere to best practice for the disposal of assets with an anticipated value at or above a threshold level of €150,000, which should be by auction or competitive tendering process, other than in exceptional circumstances (such as a sale to a charitable body). The method used should be both transparent and likely to achieve a fair market-related price. The anticipated value may be determined either by a reserve price recorded in advance in the University's records or by a formal sign-off by the Governing Authority on the advice of the CFO or, if delegated by the Governing Authority, sign-off by the CFO, that, in its view, the anticipated value is likely to be less or greater than €150,000. Valuations should be carried out by a qualified and unconnected valuer.

Regard should also be given to national guidelines and protocol on Intellectual Property (IP) management<sup>29</sup> and reporting requirements on IP management in the Annual Governance Statement.

## Compliance with use of Auction or Tendering Requirements

**8.26 Governing Authority Approval - Use of Competitive Process:** If an auction or competitive tendering process takes place and the highest bid is not the bid accepted, then specific Governing Authority approval is required before the disposal of the asset or granting of access to property or infrastructure for commercial arrangements with third parties can be completed. The Governing Authority must ensure that the provisions of the [EU Commission Communication on State Aid](#) in sales of land and buildings by public authorities are complied with fully. Any such approvals, together with the reason

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<sup>29</sup> [https://www.knowledgetransferireland.com/About\\_KTI/Reports-Publications/REVIEW-OF-IP-MANAGEMENT-AND-CONFLICTS-OF-INTEREST.pdf](https://www.knowledgetransferireland.com/About_KTI/Reports-Publications/REVIEW-OF-IP-MANAGEMENT-AND-CONFLICTS-OF-INTEREST.pdf)

why a lower bid was permitted to be accepted, should be noted in the minutes of the Governing Authority.

- 8.27 State Aid:** A measure constituting State aid shall not be implemented before it has been approved by the EU Commission. The EU Commission *Guidance Paper on State aid-compliant financing, restructuring and privatisation of State-owned enterprises* sets out EU State aid rules, which must be complied with when carrying out or financing, restructuring and/or privatisation of State-owned enterprises and provides clarifications on the way the Commission applies the main State aid principles.
- 8.28 Governing Authority Approval – Non-Use of Competitive Process:** Where an auction or competitive tendering process is not used and the agreed price is €150,000 or more, then specific Governing Authority approval is required before negotiations start and also before the disposal of the asset can be completed. Where an auction or competitive tendering process is not used and the agreed price is €150,000 per annum or more, then specific Governing Authority approval is required before negotiations start and also before the granting of access to property or infrastructure for commercial joint venture arrangements with third parties can be completed.
- 8.29 Formal Certification:** No disposal of an asset should be completed until the officer authorising the disposal or grant of access has certified formally that (i) Governing Authority approval is not necessary, with the reasons, or (ii) Governing Authority approval, where necessary, has been obtained. No grant of access to property or infrastructure for commercial arrangements with third parties should be completed until the officer authorising the disposal or grant of access has certified formally that (i) Governing Authority approval is not necessary, with the reasons, or (ii) Governing Authority approval, where necessary, has been obtained.
- 8.30 Disposal of Assets to Governing Authority Members, Employees or their Families:** Disposal of assets, above a value of €5,000, to Governing Authority members, employees or their families or connected persons should, as with all disposals, be at a fair market-related price. Where the Governing Authority is considering a proposal for any such disposal, the Governing Authority member connected to the potential purchase should absent him or herself from the Governing Authority deliberations on the issue. A record of all such disposals to such persons (to include details of the asset disposed of, price paid and name of the buyer) should be noted in a register kept for this purpose (minor disposals below €5,000, may be omitted from the register). This register should be available for inspection, if requested, by the Governing Authority. The Governing Authority may specify that any disposal above an approved threshold should be formally endorsed by the Governing Authority, who may impose specific restrictions with regard to any such disposal.

- 8.31 Reporting Disposals to the Governing Authority:** Details of all disposals of assets below the threshold value of €150,000 without auction or competitive tendering process should be formally reported to the Governing Authority, including the paid price and the name of the buyer, on an annual basis. Details of all grants of access to property or infrastructure for commercial arrangements with third parties (save for connected third parties which is dealt with in paragraph 8.38) below the threshold value of €150,000 per annum without auction or competitive tendering process should be formally reported to the Governing Authority, including the paid price and the name of the buyer, on an annual basis.
- 8.32 Reporting Disposals to the Minister:** Details of and explanations for the disposals of assets above the threshold of €150,000 which have not been subject to auction or competitive tendering process should be included in the Annual Governance Statement (see paragraph 6.10 of this Code). Details of and explanations for the grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 per annum which have not been subject to auction or competitive tendering process should be included in the Annual Governance Statement.
- 8.33 Compliance:** The Chairperson should affirm in the Annual Governance Statement that the disposal procedures, as outlined, have been complied with.

## Tax Compliance

- 8.34 Tax Clearance:** It is the responsibility of the Governing Authority to satisfy itself that any Tax Clearance requirements regarding the payment of grants, subsidies and similar type payments, and regarding Public Sector Contracts, are fully adhered to. The Universities must have a valid tax clearance certificate and should maintain a valid tax clearance certificate or, where the contract is a relevant contract<sup>30</sup>, demonstrate satisfactory subcontractor tax compliance at the time of each payment.
- 8.35 Taxation:** The Universities should be exemplary in their compliance with taxation laws and should ensure that all tax liabilities are paid on or before the relevant due dates. The Governing Authority must take cognisance of any proposed corporate restructuring plans submitted for their approval and should ensure that they are being undertaken for bona fide commercial reasons and not as part of any tax avoidance scheme.
- 8.36 Tax Avoidance:** The Universities while availing of all legitimate taxation arrangements, should not

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<sup>30</sup> A relevant contract is a contract to carry out, or supply labour for the performance of relevant operations in the construction, forestry or meat processing industry. Source: (<http://www.revenue.ie/en/tax/rct>)

engage in unacceptable tax avoidance transactions. In broad terms, tax avoidance is offensive if it involves the use of the tax code for a purpose other than that intended by the Oireachtas (including an unintended use of a tax incentive) with a view to reducing the amount of tax to be paid by the University or some other party to a transaction in which the University participates. Where a doubt arises in a particular instance, the University should consult the Revenue Commissioners.

Where the approval of the Minister for Education and Skills with the consent of the Minister for Public Expenditure and Reform is required under legislation for any financial transaction, the Chairperson should provide confirmation from the Revenue Commissioners that the tax treatment of the financial transaction is compliant with Irish tax law.

**8.37 Report to Department:** A report on the University's compliance with tax laws should be provided through the Annual Governance Statement and Statement of Internal Control and furnished each year to the Department of Education and Skills/HEA. The report should confirm that the University has complied with its obligations under tax law.

## Legal Disputes Involving Other State Bodies

**8.38 Legal Disputes:** Where a legal dispute involves another State body, unless otherwise required by statute, every effort should be made to mediate, arbitrate or otherwise resolve before expensive legal costs are incurred. The University should pursue the most cost-effective course of action in relation to legal disputes.

In addition to the annual reporting requirement concerning details of legal disputes with other State bodies, the University is required to provide details of such legal disputes involving expenditure of €25,000 or over, once a year by the 30<sup>th</sup> of June of each year, to the HEA and to the relevant Vote section of the Department of Public Expenditure and Reform. , These details should include an estimate of the legal costs incurred up to the date of such information.

## 9 Remuneration and Superannuation

This section addresses the following areas:

- Remuneration and Superannuation
- Fees to Governing Authority Members
- Travel and Official Entertainment

### Guiding Principles

Governing Authorities of the Universities are required to implement Government policy in relation to the total remuneration package (including basic salary, allowances, and all other benefits in cash or in kind), and in relation to other provisions for superannuation and termination benefits, of the Chief Officer of the University.

Further pay policy as expressed from time to time in accordance with Frameworks agreed between the universities and the HEA under Section 25 (5) of the 1997 Act must also be implemented and adhered to. The Agreed Framework between the universities and the HEA for Departures from Approved Levels of Remuneration, Fees, Allowances and Expenses for University Employees is attached at Appendix B. The Governing Authorities of the Universities are required to affirm that Government policy on pay has been complied with. This is essential to maintaining public trust in as well as the credibility and reputation of the University concerned.

As part of the Annual Governance Statements, Chairpersons and Governing Authorities are also required to confirm compliance with Government policy on pay. The University is required to publish in its annual report, in the form of the financial statements, details of fees and expenses, where applicable, paid in respect of the Governing Authority, and the salary of the President.

### Code Provisions

The Governing Authorities of the Universities are required to affirm that Government policy on pay has been complied with in respect of all staff.

- 9.1 Departmental Consultation:** The Department of Education and Skills should be consulted in good time prior to the implementation of any pay proposals, which fall outside general government pay policy.
- 9.2 Appointments of the Chief Officer:** As per Section 24 (1) of the Universities Act, 1997, a governing authority shall, in accordance with procedures specified in a statute, appoint in a whole-time capacity a person to be chief officer of its university.

**9.3 Single Pension Scheme:** Pension provision for all persons in pensionable posts, including senior management and the Chief Officer, who are recruited on or after 1 January 2013 shall consist solely of membership of the Single Public Service Pension Scheme. This provision applies in all cases except where exempted under law (Public Service Pensions (Single Scheme and Other Provisions) Act 2012), and notwithstanding the existence in place of any private voluntary pension scheme for staff recruited on or prior to 31 December 2012.

## Fees to Governing Authority Members

As outlined in the Code, Governing Authority members play a number of critical roles in setting the strategic direction and overseeing the performance of the Universities discharging key responsibilities laid down in legislation.

Inherent in the role of Governing Authority is seeking to ensure that the University carries out its responsibilities as effectively and efficiently as possible, maximising its contribution to outcomes for citizens, and assuring public value

Public Servants and Public Sector employees cannot receive fees for their duties as a member of the Governing Authority. Therefore this section in respect of fees is relevant to external members of the Governing Authority and the Board of subsidiaries only.

## Code Provisions

**9.4 Authorised Fee Levels:** Current fee rates for Category 1 - 4 State Boards are available from the Remuneration, Industrial Relations and Pensions Division of the Department of Public Expenditure and Reform.

The Third Schedule, paragraph 9 of the 1997 Act, provides that:

*“The chairperson and members of a governing authority, other than an ex officio member who is an employee of the university, shall be paid out of funds at the disposal of the governing authority such allowances for expenses as the Minister, with the approval of the Minister for Finance, may decide.”*

Currently the Chairperson and members of a Governing Authority are not paid fees. Should this position change the current fee rates for Category 1 - 4 State Boards, available from the Remuneration, Industrial Relations and Pensions Division of the Department of Public Expenditure and Reform, shall apply.

**9.5 External Boards:** An executive other than the Chief Officer of the University will, subject to Governing Authority approval, be allowed to hold membership of the Boards of State funded bodies which are

not subsidiary to or associated with the main University, but may not receive a Board fee under the One Person One Salary rules.

- 9.6 Annual Governance Statement:** As part of the Annual Governance Statement, the Chairperson should affirm that Government policy on pay has been complied with.

## Travel and Official Entertainment

### Guiding Principles

Universities should certify that Government travel policy requirements are being implemented in all respects. Universities should also be cognisant of the need to achieve economy and efficiency in their expenditure on official travel and should have a policy in place that covers both foreign and domestic travel.

### Code Provisions

- 9.7** Universities should certify that Government travel and subsistence policy requirements are being implemented in all respects. In matters of official travel and subsistence, universities should adhere to civil service procedures as set out from time to time in guidance issued by the Department of Finance or communicated via the Department of Education and Skills or the Higher Education Authority, as appropriate. Similarly, universities should also be cognisant of the need to achieve economy and efficiency in their expenditure on official travel and should have a policy in place that covers both foreign and domestic travel.
- 9.8** The Governing Authority of the University should satisfy itself that the principles of the travel policy are adhered to and that the internal audit process is effective in ensuring that the university is fully complying with the policy. The purpose of the travel policy should be to ensure that the best value for money is obtained in respect of each official trip undertaken, consistent with the requirements of official business. Governing Authority members and staff should be advised of the details of the policy applying.
- 9.9** The Governing Authority members and employees must claim travel and subsistence only in respect of official business and not personal travel or accommodation and must not make a claim from more than one State body for the same journey. All Travel and Subsistence claims must include a clearly stated business purpose.

The Department of Public Expenditure and Reform [Circular 5/2017 Motor Travel Rates, Circular](#)

[6/2017: Domestic Subsistence Allowances, and Circular 7/2017 Subsistence Allowances Abroad](#) set out rates of subsistence allowance, which apply where applicable.

**9.10 International Travel:** Universities that incur significant expenditure on international travel by employees or members of the Governing Authority should put in place appropriate monitoring and control procedures to ensure compliance with relevant Department of Public Expenditure and Reform circulars and requirements.

**9.11 Official Entertainment:** Official Entertainment at universities must be in line with relevant university policies. Universities should be cognisant of the need to achieve economy and efficiency in their expenditure on official entertainment and should have a policy in place that covers both foreign and domestic official entertainment.

## Appendix N: Framework for a Travel Policy for the Universities



# 10 Quality Service Charter

## Principle

In their dealings with the public, the University should publish a quality service charter which outlines the nature and quality of service which customers and stakeholders, including learners, can expect.

Under QQI legislation there are requirements for learner and student charters and these must be in place in the University.

## Code Provisions

**10.1 Quality Charter:** The University should have a quality charter setting out the quality of education learners can expect and the level of service the general public and other stakeholders can expect of the organisation. Universities should promote the standards of service and the initiatives outlined in the “Principles of Quality Customer Service for Customers and Clients of the Public Service” which was originally launched in 1997 and was revised in 2000, having regard to the universities’ own quality and appeal systems. Guidelines in relation to the Principles of such standards of service are included at Appendix I.

**10.2 Charter Cycle:** The 4-step cycle of the quality service charter involves:

- Consultation with learners and stakeholders;
- Commitment to quality standards;
- Evaluation of performance; and
- Reporting on results

**10.3 Display and Content:** Quality charters should be displayed prominently (on websites and at the points of service). The charter should state the University’s commitment to providing:

- education and services in accordance with the legislative requirements established in the relevant Acts, (Universities Act 1997, Qualifications and Quality Assurance Act 2012 and associated legislation); and
- the principles of quality assurance and enhancement of academic activities set down by the relevant State quality assurance agencies (specifically, Quality and Qualifications Ireland [QQI]).

In addition, with regard to service provision, the charter should take account of the twelve Principles of Quality Customer Service for Customers and Clients of the Public Service (see Appendix I). The charter should define service standards in clear terms and simple language and should inform students and other stakeholders of contact and feedback mechanisms.

- 10.4 Action Plan:** The charter should be supported by an action plan, which describes in detail how the commitments and standards set out in the charter, and other enhancements, will be delivered and evaluated by the University.
- 10.5 Charters and Action Plans:** Charters and action plans should be produced as part of the same process and have separate but complementary roles. While the charter is a short, easy to read, accessible document which acts as a public commitment to students and others on what they can expect to receive when dealing with the University, the action plan is a more detailed document which describes how the charter commitments will be delivered and evaluated by the University. Both documents should share the same timeframe (ideally 3 years).
- 10.6 Complaints Procedures:** Each University should have published procedures for the management of complaints both in respect of students and of other stakeholders. Such processes should, where relevant, make reference to the role of Ombudsman and the Ombudsman for Children.

## Appendix I: Principles of Quality Customer Service for Customers and Clients of the Public Service

# Glossary

For the purpose of this Code, the terms below shall have the following meaning:

- **Accounting Officer** – the Comptroller and Auditor General (Amendment) Act, 1993 defines an Accounting Officer as “an officer referred to in section 22 of the [Exchequer and Audit Department’s Act of 1866] to whom the duty of preparing the appropriation accounts of a Department is assigned under that section”.
- **Annual report, in the form of the financial statements** – A report detailing the University’s activities and financial performance during the preceding year. It includes the financial statements and may generally also include reports from those charged with governance (for example, the Chairperson of the Governing Authority), a review of the University’s strategy and performance, information on risk management and governance, alongside other information for stakeholders
- **Annual Governance Statement** –The Chairperson must furnish to the HEA/Minister for Education and Skills, in conjunction with the University’s annual report, in the form of the financial statements, a comprehensive report covering the University, in a format as agreed annually with the HEA.
- **CIPFA** – Chartered Institute of Public Finance and Accountancy.
- **Connected Person<sup>31</sup>** – Companies Act 2014, Section 220 specifies that a person is connected with a director of a company if, but only if, the person (not being himself or herself a director of the company) is:
  - a. that director's spouse, civil partner, parent, brother, sister or child;
  - b. a person acting in his or her capacity as the trustee of any trust, the principal beneficiaries of which are that director, the spouse (or civil partner) or any children of that director or any body corporate which that director controls; or
  - c. in partnership with that director.

The term “child” referred to above is deemed to include the child of the director’s civil partner who is ordinarily resident with the director and the civil partner.

- **Fiduciary Duty** – A legal obligation of one party to act in the best interest of another. The principal fiduciary duties of a company director are set out in section 228 of the Companies Act 2014.

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<sup>31</sup> See Section 220 of the Companies Act, 2014.

- **Financial Statements** – A formal record of the financial activities and position of the University for the previous financial year, including disclosures, intended to communicate the University’s economic resources or obligations at a point in time or the changes therein for a period of time in accordance with a financial reporting framework.
- **FRC** – Financial Reporting Council (United Kingdom).
- **IFAC** – International Federation of Accountants.
- **Joint Venture** – A joint venture is a business entity created by two or more parties, generally characterised by shared ownership, shared returns and risks, and shared governance
- **Letter of Representation** – Letters of representation are letters from Governing Authority members addressed to the Comptroller and Auditor General. The letter makes representations concerning amounts in the financial statements and aspects of the audit. The letter is drafted by the Comptroller and Auditor General at the end of the audit and is submitted to the Governing Authority for signature, often by the Chairperson and the Chief Officer.
- **Management Letter** – Management letters are letters from the Comptroller and Auditor General to management setting out the failings / weaknesses found during the audit. Unless these weaknesses or failings are material, the Comptroller and Auditor General will issue a clean/unqualified/unmodified report. Management are required to prepare responses to the management letter points made. The Audit and/or Risk Management Committee needs to oversee implementation of the Comptroller and Auditor General’s management letter recommendations which the Comptroller and Auditor General will follow up on the following year.
- **ODCE**- Office of the Director of Corporate Enforcement
- **OECD**- Organisation for Economic Co-operation and Development
- **Oversight Agreement** – A written statement between the Minister/Department of Education and Skills/HEA and the University which clearly defines the terms of the relationship between the Minister/Department for Education and Skills/HEA and the University.
- **Parent Department** – Department for Education and Skills.
- **Performance Delivery Agreement** – An agreement between the Minister/Department for Education and Skills and the University in which an agreed level of service is formalised. A performance delivery

agreement comprises part of an oversight agreement.

- **Regulatory Body** – See definition on page 8 of this document.
- **Subsidiary** – A subsidiary is a company that is controlled by the holding or parent company – often indicated by holdings of more than 50% of the voting share capital of the company. A wholly owned subsidiary is 100% owned by a holding or parent company

### 18 – Functions of Governing Authority

- (1) *The functions of the governing authority of a university shall be, in pursuance of the objects of the university under section 12 but within the constraints of its budget under section 37-*
  - (a) *to control and administer the land and other property of the university,*
  - (b) *to appoint the chief officer and such other employees as it thinks necessary for the purposes of the university,*
  - (c) *subject to this Act and its charter, if any, statutes and regulations, to determine the membership from time to time of the governing authority, and*
  - (d) *to perform such other functions as are imposed on it by or under this or any other Act or by its charter, if any, statutes and regulations.*
- (2) *For the purposes of the performance of its functions under subsection (1)(b), the governing authority shall develop such interview and other procedures as in its opinion will best ensure participation in the selection process by high quality candidates from both within and outside of the employees of the university and specify those procedures in a statute or regulation.*
- (3) *A governing authority has, subject to this or any other Act or its charter, if any, such powers as are necessary for the purposes of performing its functions.*
- (4) *A governing authority may, from time to time, appoint such and as many committees, consisting either wholly or partly of members of the governing authority, as it thinks necessary to assist it in the performance of its functions and may assign to those committees such of its functions as it thinks fit.*
- (5) *A committee appointed under subsection (4) shall operate in such manner as the governing authority may direct and its acts shall be subject to confirmation by the governing authority unless the governing authority otherwise directs.*
- (6) *In performing its functions a governing authority, or a committee where appropriate, shall—*

- (a) *have regard to the promotion and use of the Irish language as a language of general communication and promote the cultivation of the Irish language and its associated literary and cultural traditions;*
- (b) *have regard to the attainment of gender balance and equality of opportunity among the students and employees of the university and shall, in particular, promote access to the university and to university education by economically or socially disadvantaged people and by people from sections of society significantly under-represented in the student body; and*
- (c) *ensure as far as it can that the university contributes to the promotion of the economic, cultural and social development of the State and to respect for the diversity of values, beliefs and traditions in Irish society.*

#### *21 – Suspension of Governing Authority*

- (1) *Where the Minister, after considering the report of an inquiry by a Visitor made in pursuance of a request under section 20(1)<sup>32</sup>, is of the opinion that the functions of a university or its governing authority are being performed in a manner which constitutes a breach of the laws, statutes or ordinances of or applicable to the university, the Minister shall so inform the chief officer and give to the chief officer a copy of the report of the Visitor.*
- (2)
  - (a) *if the Minister is still of the opinion that the functions are being performed in a manner which constitutes a breach of the laws, statutes or ordinances of or applicable to the university; and*
  - (b) *is of the opinion that, because of the report, the governing authority should be suspended and the Visitor concurs,*  
*recommend to the Government the suspension of the governing authority and of the membership of its members.*
- (3) *On receiving the recommendation of the Minister the Government may, by order but subject to subsection (8), suspend the governing authority.*
- (4) *Where the Government makes an order under section (3), the Visitor to the university shall, following consultation with the Minister and such persons within the university as the Visitor considers*

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<sup>32</sup> Section 20(1) states, “Where the Minister is of the opinion that there are reasonable grounds for contending that the functions of a university are being performed in a manner which prima facie constitutes a breach of the laws, statutes or ordinances applicable to the university, the Minister may, after first advising the governing authority of his or her opinion and with the concurrence of the Government, request the Visitor to the university to inquire into any matter giving rise to the Minister's opinion.”

*appropriate, appoint such person or body of persons as the Visitor thinks fit to perform the functions of the governing authority and that person or body shall perform those functions until the commencement of the first meeting of the governing authority after the appointment of its members in pursuance of subsection (6).*

- (5) *The remuneration, if any, of a person or member of a body appointed under subsection (4) shall be paid out of moneys provided by the Oireachtas.*
- (6) *The Visitor shall, as soon as practicable, but in any case not later than 12 months, after the suspension of a governing authority, following consultation with such persons within the university as the Visitor considers appropriate, determine the composition of the new governing authority and, by notice in writing, inform the Minister of the composition as so determined.*
- (7) *On the Minister being informed as provided in subsection (6), the governing authority shall be so constituted as so determined, in accordance with Chapter II.*
- (8) *Where the Government proposes to make an order under subsection (3), it shall cause a draft of the proposed order to be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by both Houses.*

#### *25 – Staff*

- (1) *Subject to subsection (2), a university may, in accordance with procedures specified in a statute or regulation, appoint such and so many persons to be its employees as it thinks appropriate, having regard to—*
  - (a) *the efficient use of its available resources, the requirements of accountability for the use of moneys provided to it by the Oireachtas and the policy relating to pay and conditions in the Public Service as determined from time to time by the Government,*
  - (b) *the implications of the appointments for its budget and for subsequent budgets, and*
  - (c) *the guidelines, if any, issued under section 50.*
- (2) *A governing authority may, subject to such conditions as it thinks fit, delegate to the chief officer any of the functions of the governing authority or the university relating to the appointment of employees of the university and the determination of selection procedures.*



- (3) *Except as otherwise provided by this section, the employees of a university shall be employed on such terms and conditions as the university from time to time determines.*
- (4) *Subject to subsection (5), there shall be paid by a university to the employees of that university, such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister with the consent of the Minister for Finance.*
- (5) (a) *A university may depart from levels of remuneration, fees, allowances and expenses approved under subsection (4) where the governing authority is satisfied that it is necessary to meet the objects of the university, but may do so only in accordance with a framework which shall be agreed between the universities and An tÚdarás.*
- (b) *A corporation referred to in section 13(2)(c)<sup>33</sup> may pay to employees of a university remuneration, fees, allowances and expenses only in accordance with a framework which shall be agreed between the universities and An tÚdarás.*
- (6) *A university may suspend or dismiss any employee but only in accordance with procedures, and subject to any conditions, specified in a statute made following consultation through normal industrial relations structures operating in the university with recognised staff associations or trade unions, which procedures or conditions may provide for the delegation of powers relating to suspension or dismissal to the chief officer and shall provide for the tenure of officers.*
- (7) *A university or the National University of Ireland shall determine the terms and conditions of any superannuation scheme for its employees in accordance with the Fifth Schedule and that Schedule shall apply to an amendment to an existing scheme in the same way as it applies to a new scheme.*
- (8) *For the removal of doubt, it is hereby declared that—*
- (a) *the rights and entitlement in respect of tenure, remuneration, fees, allowances, expenses and superannuation enjoyed on the commencement of this section by persons who are employees, and in the case of superannuation, former employees, of a university to which this Act applies shall not, by virtue of the operation of this Act, be any less beneficial than those rights and entitlements enjoyed by those persons as employees of the university or corresponding constituent college or Recognised College immediately before that commencement, and*

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<sup>33</sup> Section 13(2)(c) states that, “A University...may establish by incorporation in the State or elsewhere, or participate in the establishment of, such trading, research or other corporations as it thinks fit for the purpose of promoting or assisting, or in connection with the functions of, the University.”

- (b) *the conditions of service, restrictions and obligations to which such persons were subject immediately before the commencement of this Act shall, unless they are varied by agreement, continue to apply to such persons and shall be exercised or imposed by the university or the chief officer as may be appropriate, while such persons are employed by the university.*

#### *34 - Strategic development plan*

- (1) *A governing authority shall, as soon as practicable after its appointment and at such other times as it thinks fit, require the chief officer to prepare a plan which shall set out the aims of the governing authority for the operation and development of the university and its strategy for achieving those aims, and for carrying out the functions of the university, during the period, being not less than three years, to which the plan relates.*
- (2) *A governing authority may, having regard to the resources available to the university, either approve a strategic development plan prepared under subsection (1) without modification or, after consultation with the chief officer, approve the plan with such modifications as it thinks fit.*
- (3) *As soon as practicable after it approves the strategic development plan under subsection (2), the governing authority shall provide a copy of the plan to An tÚdarás and to the Minister.*

#### *35 - Quality assurance*

- (1) *A governing authority, in consultation with the academic council, shall, as soon as practicable after the governing authority is established under this Act and at such other times as it thinks fit, require the chief officer to establish procedures for quality assurance aimed at improving the quality of education and related services provided by the university.*
- (2) *The procedures shall include—*
- (a) *the evaluation, at regular intervals and in any case not less than once in every 10 years or such longer period as may be determined by the university in agreement with An tÚdarás, of each department and, where appropriate, faculty of the university and any service provided by the university, by employees of the university in the first instance and by persons, other than employees, who are competent to make national and international comparisons on the quality of teaching and research and the provision of other services at university level; and*

- (b) *assessment by those, including students, availing of the teaching, research and other services provided by the university, and shall provide for the publication in such form and manner as the governing authority thinks fit of findings arising out of the application of those procedures.*
- (3) *A governing authority shall implement any findings arising out of an evaluation carried out in accordance with procedures established under this section unless, having regard to the resources available to the university or for any other reason, it would, in the opinion of the governing authority, be impractical or unreasonable to do so.*
- (4) *A governing authority shall, from time to time, and in any case at least every 15 years, having regard to the resources available to the university and having consulted with An tÚdarás, arrange for a review of the effectiveness of the procedures provided for by this section and the implementation of the findings arising out of the application of those procedures.*
- (5) *A governing authority, in a report prepared in accordance with section 41, shall publish the results of a review conducted under subsection (4).*

#### *36 - Equality policy*

- (1) *A governing authority shall, as soon as practicable but not later than 12 months after it is established under this Act and at such other times as it thinks fit, require the chief officer to prepare a statement of the policies of the university in respect of—*
- (a) *access to the university and to university education by economically or socially disadvantaged people, by people who have a disability and by people from sections of society significantly under-represented in the student body; and*
- (b) *equality, including gender equality, in all activities of the university, and the chief officer, in preparing the statement, shall have regard to such policies on those matters as may from time to time be determined by the Minister.*
- (2) *A governing authority may, having regard to the resources available to the university, either approve the statement prepared under subsection (1) without modification or, after consultation with the chief officer, approve the statement with such modifications as it thinks fit.*
- (3) *A university shall implement the policies set out in the statement as approved under subsection (2).*

#### *41 - Report and information*

- (1) *The chief officer shall, with the approval of the governing authority and having regard to the strategic development plan under section 34, as soon as practicable after the end of each period, not exceeding three years commencing on the commencement of this Part or at the end of the previous such period, whichever is the later, as the governing authority thinks fit, prepare a report on the operations and the performance of the university during that period.*
- (2) *The governing authority shall publish the report in such form as it thinks fit and shall provide the Minister with a copy and the Minister shall cause a copy of the report to be laid before each House of the Oireachtas as soon as practicable after it is received by him or her.*

#### *Third Schedule – Governing Authority*

1. (1) *As soon as practicable after its establishment, the governing authority of a university shall provide and retain in its possession a seal of the university.*
- (2) *The seal of a university shall be authenticated by the signature of the chairperson or a member of the governing authority, and by the signature of an employee of the university, authorised by the governing authority to act in that behalf.*
- (3) *Judicial notice shall be taken of the seal of a university, and every document purporting to be an instrument made by a university and to be sealed with the seal of the university (purporting to be authenticated in accordance with this Schedule) shall be received in evidence and shall, unless the contrary is shown, be deemed to be such instrument, without further proof.*
2. (1) *Each governing authority shall have a chairperson, as provided for in section 17, who may be designated by such title as the governing authority determines.*
- (2) *The chairperson may, at any time, resign from office as chairperson by letter addressed to the governing authority and the resignation shall take effect on the date on which the letter is received.*
3. (1) *A member of a governing authority may, for good and valid reason, be removed from office by resolution of the governing authority.*
- (2) *A member of a governing authority may, at any time, resign from office as a member by letter addressed to the chairperson and the resignation shall take effect on the date on which the letter is received.*
- (3) *A member of a governing authority who is absent from all meetings of the governing authority for a period*

*of six consecutive months, unless the absence was due to illness or was approved by the governing authority, shall at the expiration of that period cease to be a member of the governing authority.*

*(4) A member of a governing authority (including a chairperson appointed under section 17 (3)) whose term of office expires by effluxion of time shall be eligible for re-appointment.*

*4. (1) Subject to this Schedule and to section 21, the term of office of a member of each succeeding governing authority, other than an ex officio member, shall be not less than three years and not more than five years as determined by the governing authority holding office immediately before the appointment of that member.*

*(2) A member of a governing authority who is a student of the university shall hold office for such period, not exceeding one year, as the governing authority may determine but may be re-appointed for a further period or further periods, on each occasion not exceeding one year.*

*5. (1) If a member of a governing authority dies, resigns, is removed from office or for any other reason ceases to hold office, the governing authority shall arrange for the filling of the casual vacancy so occasioned as soon as practicable.*

*(2) A person who becomes a member of a governing authority to fill a casual vacancy shall, subject to this Schedule, hold office for the remainder of the term of office of the member whose death, resignation, removal from office or ceasing for other reasons to hold office occasioned the casual vacancy and shall, subject to paragraph 3(4), be eligible for re-appointment.*

*6. (1) Each governing authority shall, from time to time as the occasion requires, appoint from amongst its members a member (other than the chief officer) to be its deputy-chairperson.*

*(2) The deputy-chairperson shall, unless he or she sooner resigns as deputy-chairperson, hold office until he or she ceases to be a member of the governing authority.*

*7. (1) Where a member of a governing authority—*

*(a) is adjudged bankrupt or makes, under the protection or procedure of a court, a composition or arrangement with creditors,*

*(b) is sentenced to a term of imprisonment by a court of competent jurisdiction, or*

*(c) ceases to be a member of the category of person, as provided for in section 16, to which he or she belonged*

*at the time of becoming a member,*

*he or she shall thereupon cease to be a member of the governing authority.*

*(2) A person shall not be eligible to be a member of a governing authority if he or she—*

*(a) is an undischarged bankrupt,*

*(b) within the immediately preceding three years has, under the protection or procedure of a court, made a composition or arrangement with creditors, or*

*(c) within the immediately preceding five years, has been sentenced to a term of imprisonment by a court of competent jurisdiction.*

*8. (1) A member of a governing authority who has an interest in—*

*(a) a company (other than a public company of which he or she is not a director or otherwise involved in its management) or concern with which the university proposes to make a contract, or*

*(b) a contract which the university proposes to make*

*shall disclose to the governing authority the fact of the interest and its nature and shall take no part in any deliberation or decision of the governing authority relating to the contract, and the disclosure shall be recorded in the minutes of the governing authority.*

*(2) A member of a governing authority of a university who is related to a person who is a candidate for appointment by the governing authority as an employee of the university, shall disclose to the governing authority the fact of the relationship and its nature and shall, if the governing authority so decides, take no part in any deliberation or decision of the governing authority relating to the appointment, and the disclosure and decision shall be recorded in the minutes of the governing authority.*

*(3) A member of a governing authority of a university shall at all times act, as a member, in the best interests of the university and shall not act as a representative of any special interest provided that nothing in this paragraph shall restrict a member from representing at meetings of the governing authority the views of those by whom he or she has been elected or to restrict the freedom of expression of that member.*

*9. The chairperson and members of a governing authority, other than an ex officio member who is an employee*

*of the university, shall be paid out of funds at the disposal of the governing authority such allowances for expenses as the Minister, with the approval of the Minister for Finance, may decide.*

*10. (1) A governing authority shall hold such and so many meetings, and at such times, as the chairperson may determine.*

*(2) The chairperson shall convene a meeting of the governing authority whenever requested to do so by not less than the number of members which constitute a quorum.*

*(3) The quorum for a meeting of a governing authority shall be one third of the total number of members, rounded up to the nearest whole number, plus one.*

*11. At a meeting of a governing authority—*

*(a) the chairperson shall, if present, be the chairperson of the meeting, or*

*(b) if and so long as the chairperson is not present or the office of chairperson is vacant, the deputy-chairperson shall, if present, be the chairperson of the meeting,*

*(c) if and so long as the chairperson is not present or the office of chairperson is vacant, and the deputy-chairperson is not present or the office of deputy-chairperson is vacant, the members of the governing authority who are present shall choose one of their number to preside at the meeting.*

*12. Every question at a meeting of a governing authority shall be determined by consensus, but where in the opinion of the chairperson or other person presiding consensus is not possible, the question shall be decided by a majority of the votes of members present and voting on the question and, in the case of an equal division of votes, the chairperson or other person presiding shall have a second or casting vote.*

*13. Subject to paragraph 10(3), a governing authority may act notwithstanding one or more than one vacancy among its members or any deficiency in the election or appointment of a member which may subsequently be discovered.*

*14. Subject to this Act, a governing authority shall regulate, by standing orders or otherwise, its procedure and business.*

*15. Subject to this Act, the governing authority of a university may make, from time to time, such regulations as it thinks fit for the conduct of the affairs of the university.*

# Appendix B

## Agreed Framework between the Universities and the HEA for Departures from Approved Levels of Remuneration, Fees, Allowances and Expenses for University Employees

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### 1. Introduction

#### 1.1. Section 25 (1) of the Universities Act 1997 provides as follows:

*“subject to subsection (2), a university may, in accordance with procedures specified in a statute or regulation, appoint such and so many persons to be its employees as it thinks appropriate, having regard to—*

- (a) the efficient use of its available resources, the requirements of accountability for the use of moneys provided to it by the Oireachtas and the policy relating to pay and conditions in the Public Service as determined from time to time by the Government,*
- (b) the implications of the appointments for its budget and for subsequent budgets, and*
- (c) the guidelines, if any, issued under section 50.”*

#### 1.2. Section 25(4) of the Universities Act 1997 provides as follows:

*“Subject to subsection (5), there shall be paid by a university to the employees of that university, such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister with the consent of the Minister for Finance.”*

#### 1.3. Section 25(5) (a) of the Act, allows for departures from levels of remuneration etc. as follows:

*“A university may depart from levels of remuneration, fees, allowances and expenses approved under subsection (4) where the governing authority is satisfied that it is necessary to meet the objects of the university, but may do so only in accordance with a framework, which shall be agreed between the universities and An tÚdarás”.*

For the purposes of the framework set out hereunder the term remuneration shall cover all forms of remuneration including fees, allowances and expenses.

### 2. Provisions of the Framework

#### 2.1. General Provisions



- 2.1.1.** The universities and the Higher Education Authority (HEA) (the parties) agree that the purpose of the framework provided for in the Act is to lay down principles to which the parties subscribe regarding the exercise of discretion on the part of a university to depart from levels of remuneration etc. approved by the Minister. The purpose of Section 25(5)(a) is to provide a discretion to a university where necessary to meet the objects of the university, in particular the advancement of knowledge through teaching, scholarly research and scientific investigation, the promotion of learning in its student body and in society generally and the promotion of the highest standards in, and quality of, teaching and research. It will enable universities to attract a person to its academic and research staff, who would, because of exceptional or scarce expertise and/or qualifications, command remuneration higher than the norm and who would not be prepared to work for the university unless so rewarded. The parties agree that the provisions of the framework will be used in exceptional circumstances only, for academic and research posts, and that its application shall have regard to avoiding any damage to the morale of staff in the universities. This framework shall not be used for administrative or technical appointments. Where a university wishes to make such an appointment outside approved levels of remuneration it shall make a submission to the HEA who shall forward this proposals, together with its observations, for consideration of the Ministers for Education and Skills and Finance, in accordance with section 25 (4) of the Universities Act.
- 2.1.2.** It is agreed by the parties that the implementation of this framework by a university should not have any repercussive effects in the university sector or in the public service generally deriving for example, from pay relativities or linkages or other conditions of employment which could form a basis for comparative claims from other groups. The parties agree that any employee who is paid as a result of an agreement under this framework shall be red circled and that any claims from university employees for improved conditions which are based on, or refer to, agreements made under this framework shall be opposed on that ground (without prejudice to any other grounds the university may have).
- 2.1.3.** It is agreed by the parties that, subject to paragraph 2.2.3 following, the provisions of the framework should not be used to provide additional remuneration to existing staff.
- 2.1.4.** The parties shall have regard to the IUA co-operation agreement in operating this framework with recruitment of staff being open and transparent and on the basis of best international practice.
- 2.2. Specific provisions and criteria**
- 2.2.1.** Subject to the general provisions set out above a departure as envisaged in Section 25(5)(a) of the Universities Act, 1997 shall take place only if

- (a) the Chief Officer confirms that the Governing Authority is satisfied and so certifies, that there is clear and documented justification that the departure is necessary to meet the objects of the university and that, in so far as its best endeavours can ascertain, it will have no adverse implications within the university sector or in the public sector generally;
- (b) it is limited to a contract appointment in accordance with the following principles:
  - a separate individual contract must be drawn up;
  - it must be a specified purpose or fixed-term contract, not normally exceeding five years. It may be renewed for one further period of up to five years after which a permanent appointment may be made using scales approved by the Ministers. Alternatively a university may seek prior approval of the Ministers for a salary outside approved limits;
  - the post must bear a unique title, duties and responsibilities, which differentiates it from an established post or grade;
  - the contract should include stated performance objectives for the post holder, provisions for performance review in the light of these stated objectives, and for reduction in remuneration and/or for early termination of contract in the event of failure to meet the stated objectives;
- (c) it is used as a means of recruiting a new staff member (but see 2.2.2 below);
- (d) any costs arising are met within agreed budgets, in accordance with Section 37(2) of the Universities Act.

**2.2.2.** The framework shall not, in line with the statement of general purpose in paragraph 2.1.1 (above), be used to change the conditions of existing permanent employees of the universities. However, the parties acknowledge that there may be a limited number of specific instances where a departure is required in order to retain key academic/research personnel because of their outstanding existing and potential contribution to the capacity of the university to meet its objects. In such cases a university may, with the prior agreement of the HEA, apply the provisions of the framework to existing staff. Any such appointments would be on a contract basis and would require the member of staff to be formally seconded from his or her existing position and would be subject to the conditions for the appointment being agreed in advance by the university and the HEA.

**2.2.3.** In the case of all departures under this framework the Chief Officer shall arrange for the documentation of all supporting considerations, including the conditions applying in appropriate comparable employments, and shall make such documentation available to the HEA in accordance with paragraph 2.2.4 (below).

**2.2.4.** Each university shall provide to the Higher Education Authority before end July and end January of each year details of, and detailed justifications for, any departures made by it under this framework. The justification will include the rationale for the proposed remuneration package. A template will be issued to the universities.

**2.2.5.** The framework shall not apply to the senior academic posts above the grade of Professor.

### **2.3. Duration and Review**

**2.3.1.** The revised framework shall have effect when it has been approved by the Higher Education Authority and when the HEA has been notified by the Chief Officers that it has been approved by the universities.

**2.3.2.** It will be subject to review by both parties after a period of four years or sooner if deemed necessary by either party.

**2.3.3.** The framework shall cease to have effect with regard to any further appointments following notice in writing by either the HEA or by any of the universities that they no longer, for stated reasons, subscribe to the framework. Such a notice shall be preceded by consultations between the parties and shall not affect any agreements made with specific individuals during the period when the framework was in force.

### 1. Provision in the Universities Act

“38 (1) A university 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 body of persons.

(2) Borrowing, guaranteeing and underwriting under subsection (1) shall be in accordance with a framework which shall be agreed from time to time between the universities and An tÚdarás, following consultations by An tÚdarás with the Minister [for Education and Skills] and the Minister for Finance”.

### 2. Purposes of Framework

As stated in the Department of Education letter dated 16th December, 1996 to Dr. Michael Mortell, Chairman, Conference of Heads of Irish Universities, the intent of the framework is

- That a university can engage in borrowing, underwriting and guaranteeing activities provided that they impose no threat to, and do not create any contingent liabilities for, the public purse.
- To ensure that the capacity of a university to function effectively is not endangered.
- That advanced approval by An tÚdarás or the ministers, of individual instances of borrowing, underwriting or guaranteeing by a university would not be required.

### 3. Understanding

The framework is set in the context of the current scheme operated by An tÚdarás for the funding of universities.

### 4. Budgetary Context

The wider budgetary arrangements which set the financial context for this framework are outlined in Section 37 of the Universities Act, 1997. This section requires a university to operate within an annual budget agreed with the HEA and stipulates that where a university incurs expenditure in excess of its budget that excess shall be a first charge on the budget for next succeeding financial year.

## 5. Framework Criteria

A university shall not be required to obtain prior consent from An tÚdarás to engage in borrowing, underwriting, and guaranteeing activities if the exercise of its powers under Section 38 (1) of the Universities Act, 1997 involves either

- (1) short-term activities by way of overdraft or otherwise within existing arrangements and practices established by the university; or
- (2) long-term activities for capital purposes only.

In either case the activities must comply with the following conditions:

- I. the purpose of the transaction is in accordance with the objects and functions of the university;
- II. any new capital investment is in accordance with the university's strategic plan;
- III. the university is able to demonstrate the benefit of the transaction, whether it be refinancing or new investments;
- IV. the university is able to meet annual servicing costs without recourse to additional grants from An tÚdarás;
- V. the university's ability to maintain financial and academic viability and structural and general service is not impaired;
- VI. the university has ensured that the servicing costs of the transaction represent value for money;
- VII. the level of charge against the core teaching and research funds of the university in respect of the annual servicing cost of capital, defined as the cost of capital repayment and total interest costs spread evenly over the period of the borrowing, based on a ten year repayment period, shall not exceed 4% of the University's annual income, as defined at paragraph 8 below.
- VIII. borrowing to finance additional student capacity where such capacity gives rise to the need for additional exchequer funding may only take place with the prior approval An tÚdarás;
- IX. borrowing arising from fully financed or tax financed projects approved under the Finance Acts, are not subject to the borrowing limit established under this framework and may take place provided the servicing of these borrowings has no impact on the annual income of the University, as defined in paragraph 8;
- X. the borrowing capacity of an individual university under this framework may not be transferred to another university.

## **6. Reporting/Recording Requirements**

Full details of borrowing, underwriting and guaranteeing arrangements (including repayment periods and interest rates) and implications for recurrent expenditure, as certified by the Chief Officer for the university, must be submitted with the annual budget to An tÚdarás. Although excluded from the calculation of the 4% limit the annual borrowing report should include borrowings in respect of fully financed and tax financed projects. Recording in the audited accounts should be in accordance with standard reporting practice and in accordance with the openness, transparency and accountability obligations of a publicly funded institution.

## **7. Review**

The framework shall be reviewed by An tÚdarás and the universities every three years, or earlier as may be required by either side.

## **8. Annual Income**

For the purpose of this Framework, a university's annual income is defined as core teaching income – comprising recurrent State grant, student fees and sundry income – and research income as reported in the University's funding statements. Income derived from self-funded ancillary operations is excluded from this definition of annual income for the purposes of calculating the borrowing limit as are the related borrowings.

**Note:** This is an illustrative example of a sample Governing Authority standing orders setting out what typically should be included. The requirements included below are not exhaustive. The Governing Authority standing orders should be tailored in accordance with the particular circumstance of the University. Section 14 of the Third Schedule of the 1997 Act provides:

*“Subject to this Act, a governing authority shall regulate, by standing orders or otherwise, its procedure and business.”*

### **[University] Governing Authority Standing Orders**

[University] was established under the Universities Act 1997 with effect from 1st January 20xx. [University] has adopted a corporate governance regime in accordance with best practice.

The purpose of this document is to set out the standing orders of the Governing Authority of [University].

These standing orders approved by the Governing Authority on [day month year] are effective from [day month year].

#### **1. Membership**

- Governing Authority members are appointed in accordance with the Universities Act 1997.
- Appointments to the Governing Authority shall be for a period of up to [5] years, in accordance with Section 16 of the Universities Act 1997.
- The Chairperson of the Governing Authority is also appointed in accordance with the Universities Act 1997. If at any meeting the Chairperson is not present, the deputy-Chairperson if present shall be Chairperson of the meeting. Where the position of deputy-Chairperson is vacant, the Governing Authority members present at the meeting shall choose a member to chair the meeting.
- Only members of the Governing Authority have the right to attend Governing Authority meetings. The Chief Officer and other officers of the university who are members of the Governing Authority shall attend Governing Authority meetings. Other individuals from the University and external advisers, may be invited to attend for all or part of any meeting, as and when appropriate as necessary.

#### **2. Secretary of the Governing Authority**

- The Secretary of the Governing Authority will ensure that the Governing Authority receives information and papers in a timely manner to enable full and proper consideration to be given

to the issues.

- The Secretary of the Governing Authority is also responsible for the formal induction of new members of the Governing Authority and organising mentoring for members where required.

### **3. Quorum**

- The quorum necessary for the transaction of business shall be one third of the total number of members, rounded up to the nearest whole number, plus one members (section 10(3) of the Third Schedule of the 1997 Act). A duly convened meeting of the Governing Authority at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Governing Authority.

### **4. Voting**

- As provided for by section 12 of the Third Schedule of the 1997 Act, every question at a meeting of a governing authority shall be determined by consensus, but where in the opinion of the chairperson, or other person presiding, consensus is not possible, the question shall be decided by a majority of the votes of members present and voting on the question and, in the case of an equal division of votes, the chairperson or other person presiding shall have a second or casting vote.

### **5. Frequency of Meetings**

- The Governing Authority shall hold such and so many meetings, and at such times, as the chairperson may determine, as per Section 10(1) of the Third Schedule of the Universities Act, 1997.

### **6. Notice of Meetings**

- Meetings of the Governing Authority shall be summoned by the Secretary of the Governing Authority at the request of the Chairperson of the Governing Authority
- Unless otherwise agreed, notice of each meeting confirming the venue, time and date together with an agenda shall be forwarded to each member of the Governing Authority and any other person required to attend no later than five working days before the date of the meeting. Supporting papers shall be sent to Governing Authority members and to other attendees as appropriate, or be made available electronically, at the same time.

### **7. Minutes of Meetings**

- The Secretary of the Governing Authority shall minute the proceedings and resolutions of all meetings of the Governing Authority, including recording the names of those present and in attendance.



- Minutes of Governing Authority meetings shall be circulated to all members of the Governing Authority other than where specific exclusions apply e.g Conflict of Interest items

## 8. Duties

The duties of the Governing Authority are set out in the Reserved Functions (see Appendix B) and the Governing Authority must operate in accordance with the Third Schedule of the 1997 Act.

In addition to the duties set out in legislation, the following duties apply to the Governing Authority:

- Monitoring of performance – the Governing Authority shall receive regular reports from the University and Governing Authority sub-committees, as appropriate.
- The Governing Authority shall advise and support the Chairperson, and Chief Officer.
- The Governing Authority shall satisfy themselves that financial controls and systems of risk management are robust and defensible.
- The Governing Authority shall keep itself up to date and fully informed about strategic issues and changes affecting the University and the environment in which it operates.
- The Governing Authority shall ensure that on appointment to the Governing Authority, non-executive Governing Authority members receive a formal letter of appointment setting out clearly what is expected of them in terms of time commitment, committee service and involvement outside Governing Authority meetings.
  - The Governing Authority may, from time to time, establish such committees of the Governing Authority as are necessary to assist it in the performance of its duties. Universities will provide the detail for the operation of such committees in their internal statutes and policies. They may include members who are not members of the Governing Authority if specialist skills are required. Where a committee is put in place:
    - the terms of reference shall be specified in writing and approved by the Governing Authority and reviewed as appropriate;
    - the Governing Authority, on the nomination of the Chairperson, shall appoint its members;
    - the Governing Authority shall receive regular reports from the committee;
    - all protocols concerning the operation of the Governing Authority shall be applied to a committee;
    - reports of committee meetings shall be circulated to all Governing Authority members.
- The Governing Authority shall review the results of the Governing Authority performance evaluation process and corporate governance generally.
- The Governing Authority shall keep under review corporate governance developments (including ethics-related matters) that might affect the University, with the aim of ensuring

that the Universities corporate governance policies and practices continue to be in line with best practice.

- The Governing Authority shall ensure that the principles and provisions set out in the Code of Governance for Universities are adhered to.

#### **9. Reporting Responsibilities**

The Chief Officer shall keep the Minister/HEA informed of matters arising within the University in accordance with the reporting arrangements set out.

The Governing Authority shall review its own performance and commission an external review at least once during the Governing Authority's term of office.

#### **10. Authority**

The Governing Authority is authorised to seek the information it requires from the University in order to perform its duties.

The Governing Authority is authorised to obtain, at the University's reasonable expense, outside legal or other professional advice where it judges it necessary to discharge its responsibilities as a Governing Authority.

### Schedule of matters for Governing Authority decision

#### A. Reserved functions must be exercised only by resolution of the Governing Authority

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**B. OTHER STATUTORY REQUIREMENTS**

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**C. MATTERS DERIVED FROM CODE OF GOVERNANCE/BEST PRACTICE**

37.	Approval of risk management policies. (Code of Governance, Section 7.1)
38.	Approval for the operation of bank accounts (Banking Requirement).
39.	Approval of bank authorised signatories (executive / management) authority (Banking Requirement).
40.	Approval of significant disposals and retirement of assets (including land) of the University or any of its subsidiaries (value at or above €150,000 per annum) (Code of Governance, Section 8.25)
41.	Approval for granting of access to property or infrastructure for commercial arrangements with third parties with an anticipated value at or above €150,000 per annum (Code of Governance, Section 8.28)
42.	Approval where competitive tendering for disposal of assets have taken place and the highest bid was not accepted. (Code of Governance, Section 8.26)

43.	The disposal of assets over €150,000 to a charitable organisation or which are not put to a competitive tendering process (Code of Governance, Section 8.28)
44.	Approval for disposals to staff or persons connected (Code of Governance, Section 8.30)
45.	Approval of all significant financial procedures (Code of Governance, Section 1.7)
46.	Approval for the establishment of subsidiaries and any diversification from teaching and research (Code of Governance, Section 8.21)
47.	To put in place appropriate arrangement that ensures that management and employees are not involved in outside employment/ business that is in conflict with business of the University. (Code of Governance, Section 3.2)
48.	Approval of the Universities' financial statements and accounts (Code of Governance, Section 2.6)
49.	Annual governance statement to be approved prior to the being signed by the chairperson
50.	Statement on the system of internal control to be approved prior to the being signed by the chairperson

### Obligations under the Ethics Legislation

All those who hold designated directorships (Governing Authority memberships) or occupy designated positions of employment in public bodies, prescribed by regulation for the purposes of the Ethics legislation (i.e. the Ethics in Public Office Acts 1995 and 2001), must comply with the relevant provisions of the legislation. Compliance with the Ethics Acts is deemed to be a condition of appointment or employment. While the summary below is provided for information, detailed guidelines on compliance with the Ethics Acts has been published by the Standards in Public Office Commission (the Standards Commission) on their [website](#).

All persons who have obligations under the Acts are obliged to act in accordance with the guidelines and any advice given by the Standards Commission, unless by so doing they would be contravening another provision of the legislation.

This Code further requires all Individuals who occupy designated positions to make an Annual Return including a nil return where applicable.

### Disclosure of Registrable Interests

The Ethics in Public Office Act 1995 provides for the disclosure of registrable interests by holders of designated Board memberships and occupiers of designated positions of employment in public bodies prescribed for the purposes of the Ethics legislation. Briefly, the requirements are:

**Designated Governing Authority Members:** Are required in each year, during any part of which they hold or held a designated Governing Authority membership of a public body prescribed by regulations made by the Minister for Public Expenditure and Reform, to prepare and furnish, in a form determined by that Minister, a statement in writing of their registrable interests, and the interests, of which a person has actual knowledge, of his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, which could materially influence the person in, or in relation to, the performance of the person's official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the person, his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, a substantial benefit. The statement must be furnished to the Standards Commission and to such an officer of the body as determined by the Minister for Public Expenditure and Reform.

**Designated Positions of Employment:** Are required in each year, during any part of which they occupy or occupied a designated position of employment in a public body, prescribed by regulations made by the Minister for Public Expenditure and Reform, to prepare and furnish, in a form determined by that Minister, a statement

in writing of their registrable interests, and the interests, of which a person has actual knowledge, of his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, which could materially influence the person in, or in relation to, the performance of the person's official functions by reason of the fact that such performance could so affect those interests as to confer on, or withhold from, the person, his or her spouse or civil partner, a child of the person or a child of the person's spouse or civil partner, a substantial benefit. The statement must be furnished to the relevant authority for the position as determined by the Minister for Public Expenditure and Reform.

**Material Interests:** The holder of a designated Governing Authority membership or the occupier of a designated position of employment is required to furnish a statement of a material interest where a function falls to be performed, and where the Governing Authority member or the employee or a "connected person" (e.g. a relative or a business associate of the Governing Authority member or employee) has a material interest in a matter to which the function relates. Such a statement must be furnished to the other Governing Authority members of the public body by a designated Governing Authority member or to the relevant authority by the occupier of a designated position of employment. The function must not be performed unless there are compelling reasons to do so. If a designated Governing Authority member or the occupier of a designated position of employment intends to perform the function, he or she must, either before doing so, or if that is not reasonably practical, as soon as possible afterwards, prepare and furnish a statement in writing of the compelling reasons to the other Governing Authority members and to the Standards in Public Office Commission if a designated Governing Authority member, or to the relevant authority if an employee. This obligation applies whether or not the interest has already been disclosed in a statement of registrable interests.

### **Tax Clearance Obligations of Appointees to "Senior Office"**

The tax clearance provisions of the Standards in Public Office Act 2001 apply to persons appointed to "senior office", i.e. to a designated position of employment or to a designated Governing Authority membership in a public body under the 1995 Ethics Act, in relation to which the remuneration is not less than the lowest remuneration of a Deputy Secretary General in the civil service. All persons appointed to a designated Governing Authority membership "senior office" must provide to the Standards in Public Office Commission not more than nine months after the date on which he or she is appointed:

- a tax clearance certificate that is in force and was issued to the person not more than nine months before, and not more than nine months after, the appointment date; or
- an application statement that was issued to the person and was made not more than nine months before, and not more than nine months after, the appointment date; and
- a statutory declaration, made by the person not more than one month before, and not more than one month after, the date of appointment, that he or she, to the best of his or her knowledge and belief, is in compliance with the obligations imposed on him or her by the Tax Acts and is not aware of any impediment to the issue of a Tax Clearance Certificate.



## **Investigations**

The Governing Authority and employees of public bodies can be subject to investigation by the Standards Commission, either where it considers it appropriate to do so, or following a complaint, or where there is contravention of the tax clearance requirements, and there is nothing that precludes the Standards Commission from taking into account this Code in such an investigation.

## **Additional Information and Advice**

This appendix is provided for information purposes only and does not constitute a legal interpretation of the Ethics Acts. Regard should be had in the first instance to the Standards Commission's guidelines. Requests for advice on compliance with the legislation should be referred to the Standards Commission.

These are suggested guidelines for a Code of Conduct for all members of the Governing Authority and employees. The Code should be prepared via a participative approach, and should be approved by the Governing Authority, taking into account the implications of the Ethics in Public Office Act, 1995 and the Standards in Public Office Act 2001 and the 1997 Act. The Governing Authority has a key role in setting the ethical tone of the university, not only by its own actions but also in setting an example for senior management and staff. High ethical standards are in the long-term interests of the university and a key means to help maintain a high level of credibility and trustworthiness. The Governing Authority should lead by example and ensure that good standards of governance and ethical behaviours permeate all levels of the organisation.

### **1. Introduction**

1.1. [Name of university] has developed this Code of Conduct for members of the Governing Authority and employees. This Code of Conduct takes account of the implications of the Ethics of Public Office Acts, 1995 and the Standards in Public Office Act 2001 as well as the 1997 Act. A copy of the Code will be circulated to all members and employees and it will also be available upon request through the university's website.

### **2. Intent and scope**

The purpose of the Code is to provide guidance to the Chairperson and members of the Governing Authority and employees of [name of university] in performing their duties as members of the Governing Authority and employees as set down in the relevant legislation (insert name of Act as appropriate) Copies of the Act have been provided to all members of the Governing Authority and employees.

### **3. Objectives**

3.1. The objectives of the Code are

- To set out an agreed set of ethical principles;
- To promote and maintain confidence and trust in the Governing Authority of the University;
- To prevent the development or acceptance of unethical practices;
- To promote the highest legal, management and ethical standards in all the activities of the University;
- To promote compliance with best current governance and management practices in all the activities of the University.

**4. General Principles:** All Governing Authority members and employees are required to observe the following fundamental principles as set out in the guidelines for the Code of Conduct.

**4.1. Integrity**

- Members of the Governing Authority and employees are required to disclose outside employment/business interests which they consider may be in conflict or in potential conflict with the business of [name of university], or may be perceived as such - see Section 5.5 for further details of disclosure requirements;
- The Governing Authority will not allow management or employees to be involved in outside employment/business interests in conflict or in potential conflict with the business of [name of university]. It will put in place appropriate arrangements to give effect to this;
- Members of the Governing Authority and employees will avoid giving or receiving gifts, corporate hospitality, preferential treatment or benefits which might affect or appear to affect the ability of the donor or the recipient to make independent judgement on business transactions;
- Members of the Governing Authority and employees must be committed to having [name of university] compete vigorously and energetically but also ethically and honestly with other educational institutions, commercial and other providers of research and advisory services;
- [Name of university] is committed to conducting its purchasing activities of goods/services in accordance with public policy and best business practice and its purchasing regulations reflect this;
- [Name of university] is also committed to ensuring that its engagement of consultancy and other services is in compliance with public policy guidelines;
- [Name of university] is also committed to ensuring a culture of claiming expenses only as appropriate to official needs and in accordance with good practice in the public sector;
- [Name of university] is committed to ensuring that the accounts/reports accurately reflect the operating performance of the university and are not misleading or designed to be misleading;
- Members of the Governing Authority and employees are required to avoid the use of [name of university] resources or time for personal gain, for the benefit of persons/organisations unconnected with the institutions or its activities or for the benefit of competitors; and
- [Name of university] is committed not to acquire information or business secrets by improper means.

#### 4.2. **Information**

Name of university] is committed to providing access to general information relating to its activities in a way that is open and enhances its accountability to the general public;

Members of the Governing Authority and employees are required to respect the confidentiality of sensitive information held by [name of university] This would constitute material such as:

- personal information;
- information received in confidence by [name of university];
- any commercially sensitive information or other information sensitive to the reputation of [name of university] including future plans or details of major organisational or structural changes. These obligations do not cease when membership of the Governing Authority or employment in the institution concerned has ended;

[Name of university] will observe appropriate prior consultation procedures with third parties where, exceptionally, it is proposed to release sensitive information in the public interest;

[Name of university] will comply with all relevant statutory provisions (e.g. data protection legislation, the Freedom of Information Act, 1997);

Members of the Governing Authority and staff will observe due confidentiality in relation to all discussions and decisions taken at meetings of the Governing Authority.

#### 4.3. **Obligations**

- [Name of university] will fulfil all regulatory and statutory obligations imposed on the [university] by (insert title of relevant Act);
- [Name of university] will comply with detailed tendering and purchasing procedures, as well as complying with prescribed levels of authority for sanctioning any relevant expenditure;
- [Name of university] has introduced measures to prevent fraud and to ensure compliance with the prescribed levels of authority for sanctioning any relevant expenditure;
- Members are required to use their reasonable endeavours to attend all governing authority meetings;
- It is acknowledged that the acceptance of positions following employment and/or engagement by a third level institution can give rise to the potential for conflicts of interest and to confidentiality concerns. The Governing Authority of [name of university] will consider any cases in which such conflicts of interest or confidentiality concerns may arise and will take appropriate steps to deal with such matters in an effective manner during a reasonable period

following employment by a third level institution. The Governing Authority will also ensure that any procedures that it may put in place in this regard are monitored and enforced.

- The Governing Authority of [name of university] acknowledge the duty of all to conform to the highest standards of business ethics.

#### 4.4. **Loyalty**

- The Governing Authority and employees of [name of university] acknowledge the responsibility to be loyal to [name of university] and to be fully committed to all its activities, with due respect to the tenets of academic freedom, while mindful that [name of university] itself must at all times take into account the interests of its students and providers of funds including taxpayers;

#### 4.5. **Fairness**

- [Name of university] is committed to complying with employment equality and equal status legislation;
- [Name of university] is committed to fairness in all business dealings; and
- [Name of university] values its students, suppliers, employees and customers and treats all its students, suppliers, employees and customers equally.

#### 4.6. **Work/External Environment**

- The Governing Authority of [name of university] place the highest priority on promoting and preserving the health and safety of its employees and students;
- [Name of university] will ensure that community concerns are fully considered in its activities and operations;
- [Name of university] will minimise any detrimental impact of its operations on the environment.

#### 4.7. **Responsibility**

- [Name of university] will circulate this Code of Conduct (and a policy document on disclosure of interests) to all members of the Governing Authority and employees for their retention;
- [Name of university] will ensure that all members of the Governing Authority and employees receive a copy of the Code and understand its contents;

- [Name of university] will provide practical guidance and direction as required on such areas as gifts and entertainment and on other ethical considerations which arise routinely.

4.8. **Review**

- [Name of university] will review this Code of Conduct as appropriate.

### Introduction

Internal Auditing is an independent and objective assurance and consulting activity that is guided by a philosophy of adding value to improve the operations of the [insert name of entity]. It assists [insert name of entity] in accomplishing its objectives by bringing a systematic and disciplined approach to evaluate and improve the effectiveness of the University's governance, risk management, internal control.

The Internal Audit function is outsourced to an appropriately qualified professional services firm, [insert name of firm], hereafter referred to as the Internal Audit Service Provider. The Appointment of the Internal Audit Service Provider is a sectoral collaboration performed through public procurement processes.

### Governing Authority Policy Statement

The University recognises the significant contribution to good governance and effective internal control made by an efficient and effective internal audit function.

The University pledges its full support to the Internal Audit Service Provider in discharging the authorities and responsibilities contained in this Charter and undertakes to provide adequate resources to the Internal Audit Service Provider to properly discharge its function.

### Role

The Internal Audit activity is established by the Governing Authority, Audit and/or Risk Management Committee, or highest level of Governing Authority. The Internal Audits activity's responsibilities are defined by the Governing Authority as part of their oversight role.

### Authority

The Internal Audit activity, with strict accountability for confidentiality and safeguarding records and information, is authorised full, free, and unrestricted access to any and all of [insert name of entity] records, physical properties, and personnel pertinent to carrying out any engagement. All employees are requested to assist the Internal Audit Service Providers activity in fulfilling its roles and responsibilities. The Internal Audit Service Providers activity will also have free and unrestricted access to the Governing Authority.

### Organisation

The Internal Audit Service Provider reports functionally to the Audit and/or Risk Management Committee and administratively (i.e. day to day operations) to the Chief Officer or their designate. The Internal Audit Service

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<sup>34</sup> Adapted from The Institute of Internal Auditors – Model Internal Audit Activity Charter

Provider should also have direct access to the Chairperson of the Governing Authority and the Chairperson of the Audit and/or Risk Management Committee.

The Audit and/or Risk Management Committee will:

- Approve the internal audit charter.
- Approve the risk based internal audit plan.
- Approve the internal audit budget and resource plan.
- Receive communications from the Internal Audit Service Provider on the internal audit activity's performance relative to its plan and other matters.

### **Independence and Objectivity**

The Internal Audit Service Provider will remain free from interference by any element in the organisation, including matters of audit selection, scope, procedures, frequency, timing, or report content to permit maintenance of a necessary independent attitude.

The Internal auditor Service Provider will have no direct operational responsibility or authority over any of the activities audited. Accordingly, they will not implement internal controls, develop procedures, install systems, prepare records, or engage in any other activity that may impair the internal auditor's judgement.

The Internal Auditor Service Provider will exhibit the highest level of professional objectivity in gathering, evaluating, and communicating information about the activity or process being examined. The Internal Audit Service Provider will make a balanced assessment of all the relevant circumstances and not be unduly influenced by their own interests or by others in forming judgements.

### **Responsibility**

The scope of audit activities will be determined using appropriate risk assessment tools to ensure adequate coverage of risks and exposures, and will consider the special needs of management. Specifically, Internal Audit Service Providers scope of activities is to ascertain that the processes for controlling operations, as they have been designed and represented by management, are adequate and functioning. The Internal Audit Service Provider has responsibility to:

- Develop and maintain a strategic audit plan covering a three-year period based on significant exposures to loss or failure and submit that plan to the Audit and/or Risk Management Committee for approval.
- Develop annual audit plans based on significant exposures identified in the strategic audit plan and submit such annual plans to the Audit and/or Risk Management Committee for approval.
- Consider the scope of work and liaise with external auditors for the purpose of providing optimal audit coverage.



- Implement the audit plans as approved, including any value for money auditing and special projects assigned by the Audit and/or Risk Management Committee or requested by senior management.
- Disseminate Best Practice Guidelines.
- Report significant issues relating to the processes for controlling the activities of the University arising from the internal audit work undertaken.
- Issue reports to the Audit and/or Risk Management Committee addressing the results of audits conducted summarising observations and recommendations made.
- As part of findings follow-up reviews, Internal Audit will monitor and report to management and the Audit and/or Risk Management Committee on progress towards the implementation of agreed audit recommendations.
- Meet with the Audit and/or Risk Management Committee twice a year, first to obtain approval for the annual audit plan and secondly to present reports to the Audit and/or Risk Management Committee on audits carried out.
- Evaluate and assess controls coincident with the introduction of major changes to systems.
- Provide technical assistance to management to assist in the investigation of suspected fraudulent activity within the University.

#### **Internal Audit Plan**

At least annually, the Internal Audit Service Provider will submit to the Audit and/or Risk Management Committee an internal audit plan for review and approval. The internal audit plan will consist of a work schedule as well as budget and resource requirements for the next fiscal/calendar year.

The internal audit plan will be developed based on a prioritisation of the audit universe using a risk-based methodology, including input of senior management and the Governing Authority. The Internal Audit Service Provider will review and adjust the plan, as necessary, in response to changes in the University's business, risks, operations, programs, systems, and controls. Any significant deviation from the approved internal audit plan will be communicated to senior management and the Audit and/or Risk Management Committee through periodic activity reports.

#### **Reporting and Monitoring**

A written report will be prepared and issued by the Internal Audit Service Provider or designee following the conclusion of each internal audit engagement and will be distributed as appropriate. Internal audit results will also be communicated to the Audit and/or Risk Management Committee.

The internal audit report may include management's response and corrective action taken or to be taken in regard to the specific findings and recommendations. Management's response, whether included within the original audit report or provided thereafter (i.e. within thirty days) by management of the audited area should include a timetable for anticipated completion of action to be taken and an explanation for any corrective

action that will not be implemented.

The Internal Audit Service Provider will periodically report to senior management and the Audit and/or Risk Management Committee on the internal audit activity's purpose, authority, and responsibility, as well as performance relative to its internal audit plan. Reporting will also include significant risk exposures and control issues, including fraud risks, governance issues, and other matters needed or requested by senior management and the Governing Authority.

### Quality Assurance

The Internal Audit Service Provider is fully committed to quality and conducts its business within the framework of applicable professional standards, laws, regulations and internal policies. It also recognise that these standards, laws, regulations and policies cannot govern all types of behaviour. As a result, it also has its own Code of Conduct which applies to all of its people and all of its work. This code provides a broad range of guidance about the standards of quality, integrity and professional behaviour it continually strives to deliver. In performing its Internal Audit work the Internal Audit Service provider take into account the following standards:

- The University of Internal Auditors' (IIA) International Standards for the Professional Practice of Internal Auditing (Standards); and
- Applicable International Auditing Standards and the supporting University of Chartered Accountants Ireland (ICAI) bulletins.

### Internal Audit Activity Charter

Approved this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

Internal Audit Service Provider

\_\_\_\_\_

Chairperson of the Governing Authority /Chief Officer

\_\_\_\_\_

Audit and/or Risk Management Committee

# Appendix I Principles of Quality Service for Customers and Clients of the University

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In their dealings with the public, the University will:

## **Quality Service Standards**

Publish a statement setting out the quality of education learners can expect and the level of service the general public and other stakeholders can expect of the organisation.

## **Equality/Diversity**

Ensure the rights to equal treatment, established by equality legislation, and accommodate diversity, so as to contribute to equality for the groups covered by the equality legislation (under the grounds of gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the Traveler Community). Identify and work to eliminate barriers to access to services for people experiencing poverty and social exclusion, and for those facing geographic barriers to services.

## **Physical Access**

Provide clean, accessible public offices that ensure privacy, comply with occupational and safety standards and, as part of this, facilitate access for people with disabilities and others with specific needs.

## **Information**

Take a proactive approach in providing information that is clear, timely and accurate, is available at all points of contact and meets the requirements of people with specific needs. Ensure that the potential offered by Information Technology is fully availed of and that the information available on the University's websites follows the guidelines on web publication. Continue the drive for simplification of rules, regulations, forms, information leaflets and procedures.

## **Timeliness and Courtesy**

Deliver quality services with courtesy, sensitivity and the minimum delay, fostering a climate of mutual respect between the University and the learner/ stakeholder. Give contact names in all communications to ensure ease of on-going transactions.

## **Complaints**

Maintain a well-publicised, accessible, transparent and simple-to-use system of dealing with complaints about the quality of service provided.

The University may be subject to complaints at both the level of the official and the organisation. These may relate to the quality of the service itself or the manner in which the service was delivered. The scope for student

or other stakeholder dissatisfaction can be reduced by provision of appropriate information to the student or other stakeholder regarding the available service and training to staff in how to deliver the service.

In setting up systems to deal with student or other stakeholder dissatisfaction, organisations should ensure that all complaints are dealt with objectively in a consistent, open and fair manner.

Some elements to be included in Comments/Complaints systems include:

- information regarding complaints procedures should be freely available to the public at all points of service delivery and should be publicised by organisations;
- complaints procedures should be straightforward and access should be conveniently available to student or other stakeholder and clients at no cost wherever possible;
- all complaints should be directed to, and acknowledged, by a named officer of appropriate grade;
- appropriate training should be provided to all staff dealing with complaints. complaints should be addressed as quickly as possible and the customer should be kept informed of progress;
- complaints procedures should be subjected to regular review; and
- provisions should be made for speedy correction of errors and, where required, the making of appropriate redress to the complainant.

### **Appeals**

Similarly, maintain a formalised, well-publicised, accessible, transparent and simple-to-use system of appeal/review for customers who are dissatisfied with decisions in relation to services.

### **Consultation and Evaluation**

Provide a structured approach to meaningful consultation with, and participation by, the student or other stakeholder in relation to the development, delivery and review of services. Ensure meaningful evaluation of service delivery.

### **Choice**

Provide choice, where feasible, in service delivery including payment methods, location of contact points, opening hours and delivery times. Use available and emerging technologies to ensure maximum access and choice and quality of delivery.

### **Official Languages Equality**

Provide quality services through Irish and/or bilingually and inform student or other stakeholder of their right to choose to be dealt with through one or other of the official languages.

**Better Co-ordination**

Foster a more co-ordinated and integrated approach to delivery of University's services.

**Internal Customer**

Ensure that employees are recognised as internal stakeholders and that they are properly supported and consulted with regard to service delivery issues.

## Appendix J Annual Report/Financial Statements

### Reporting requirements for the Annual Report and Financial Statements include the following:

Note: The Department of Education and Skills/HEA may choose to seek additional information at more frequent intervals than those outlined here.

1. Each University should note the agreement reached with the HEA in its annual report, in the form of the financial statements, regarding their level of compliance with this Code. This should explain whether certain requirements are to be phased-in over a longer period of time, or otherwise varied in some way. **(Compliance Requirements)**
2. The Governing Authority of each University should approve an Annual Programmes and Budgets and should formally undertake an evaluation of actual performance by reference to the plan and/or budget on an annual basis and reflect this, as appropriate, in the annual report, in the form of the financial statements. **(1.18 –Code of Governance)**
3. It must be stated in the annual report, in the form of the financial statements, that the Governing Authority are responsible for preparing the annual report, in the form of the financial statements, and whether they consider the financial statements to be a true and fair view of the University's financial performance and its financial position at the end of the year. **(1.19 – Code of Governance)**
4. The Governing Authority should state in the annual report, in the form of the financial statements, how the performance evaluation of the Governing Authority and its committees has been conducted. An external evaluation proportionate to the size and requirements of the Universities should be carried out at least once during the term of every Governing Authority. **(4.6 – Code of Governance)**
5. The annual report, in the form of the financial statements, should include a statement of how the Governing Authority operates, including a high-level statement of which types of decisions to be taken by the Governing Authority and which are to be delegated to management. **(4.7 Code of Governance)**
6. The Audit and/or Risk Management Committee should meet at least four times a year and invite outsiders with relevant experience to attend meetings if necessary. In the event that four meetings is not considered necessary the Chairperson of the University should make a statement in the University's annual report, in the form of the financial statements, that the he/she is satisfied that the Audit and/or Risk Management Committee discharged its role with fewer than four meetings in a year. **(1.13 – Audit and/or Risk Management Committee Requirements)**

7.	The names of the Chairperson, the deputy Chairperson (if any), the Chief Officer and members of the Governing Authority and its committees. <b>(6.3 Code of Governance)</b>
8.	The number of meetings of the Governing Authority and its committees and the attendance of each Governing Authority member at Governing Authority meetings should be reported in the annual report, in the form of the financial statements. <b>(6.4(iv) Code of Governance)</b>
9.	Confirmation that the Governing Authority has ensured that an appropriate assessment of the University's principal risks has been carried out, including a description of these risks, where appropriate and associated mitigation measures or strategies. <b>(7.2 – Code of Governance)</b>
10.	The Chairperson of each University should confirm in the annual report, in the form of the financial statements, that the Universities are adhering to the relevant aspects of the Public Spending Code. <b>(8.20 – Code of Governance)</b>
11.	The Statement of Internal Control (see Appendix L) should be included in the annual report, in the form of the financial statements, of the university. This statement should be reviewed by the Comptroller and Auditor General to confirm that it is consistent with the information of which they are aware from their audit work on the financial statements. The Comptroller and Auditor General should include their report on this matter in their audit report on the financial statements. <b>(6.6-- Code of Governance)</b>
12.	Draft unaudited financial statements for each University should be furnished to the Comptroller and Auditor General in a timeframe determined by them, currently not later than three months after the end of the relevant financial year. <b>(6.4(i) - Code of Governance)</b>
13.	The University should publish its annual report, in the form of the financial statements, not later than one month following completion of the audit of the financial statements of the said body by the Comptroller and Auditor General. <b>(6.4(ii) – Code of Governance)</b>
14.	The University should submit to the HEA its annual report, in the form of the financial statements, not later than one month following completion of the audit of the financial statements of the said body by the Comptroller and Auditor General. <b>(6.4(ii) – Code of Governance)</b>
15.	In the interests of transparency and good governance, the Universities are required to publish in their annual report, in the form of the financial statements, details of non-salary-related fees paid in respect of external Governing Authority members analysed by category, and the salary of the Chief Officer. <b>(6.4(iii) – Code of Governance)</b>

16. University should disclose details of expenditure on external consultancy/adviser fees in their annual report, in the form of the financial statements, for each accounting year for any given entity.

For this purpose consultancy fees mean fees paid to external parties providing advisory services of any nature. Such fees should be itemised by category as stated below or as the University considers appropriate having regard inter alia to its size and competitive position and to the extent to which information is already disclosed:

- Legal (legal fees across all areas to be included here e.g. for pension, HR etc.);
- Tax and financial advisory (e.g. due diligence, accounting, corporate finance);
- Public relations/marketing;
- Pensions and human resources; and
- Other. (6.5 – Code of Practice)

17. Employee Benefits: In addition to disclosing the aggregate pay bill and total number of employees, the Universities should publish details of the number of employees whose total employee benefits (excluding employer pension costs) for the reporting period fell within each pay band of €10,000 from €60,000 upwards and an overall figure for total employer pension contributions in their annual report, in the form of the financial statements. **(6.4(vi) – Code of Governance)**

18. The Universities should disclose in their annual report, in the form of the financial statements, aggregate details of the compensation of their key management level broken down by the following categories:

- a. Salaries and short term employee benefits by reference to salary grades and scales
- b. Post-employment benefits; and
- c. Termination benefits.

University shall also disclose key management personnel compensation in total. **(6.4(v) –Code of Governance)**

19. Termination/severance payments and agreements - The financial statements should disclose details of payments and agreements with an aggregate value in excess of €10,000 made in the reporting period, in a format to be agreed with the HEA and the Department of Education and Skills. This includes severance/ termination payments, granting of added years for pension purposes or early retirement without normal actuarial reductions. The value of the latter can be determined in accordance with guidance to be issued by the Department of Public Expenditure and Reform from time to time. Given the policy underlying the Freedom of Information Acts, in concluding settlements the University should not enter into confidentiality agreements which preclude it from disclosing details of the settlement reached in the financial statements, save in exceptional circumstances and on foot of legal advice that they are necessary in the circumstances of the case. When, in those circumstances, confidentiality agreements are entered into, parties to the agreements should be given prior notice that they may be subject to disclosure in any case when required by law.



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| <p><b>20.</b> Travel and subsistence - The financial statements should disclose the total costs incurred in relation to travel and subsistence for the university.</p>   |
| <p><b>21.</b> Hospitality expenditure - The financial statements should disclose the expenditure incurred in relation to hospitality in the period.</p>  |
| <p><b>22.</b> Legal Costs/settlements – in cases where cumulative legal costs incurred in the year of account exceed €50,000, a note should be included in the financial statements, where appropriate, and in a format agreed with the HEA/Department of Education and Skills</p> |

It should be noted that the Annual Governance Statement is a living document and may be subject to change following agreement between the HEA and the IUA.

Items for inclusion in the Annual Governance Statement to the HEA include the following:

**1. Code of Conduct for Members**

A statement confirming that a Code of Conduct for Members has been put in place and implemented and includes clear conflict of interest and ethics in public office policies.

**2. Code of Conduct for Employees**

A statement confirming that a Code of Conduct for Employees has been put in place and implemented and includes clear conflict of interest and ethics in public office policies.

**3. Financially Significant Developments**

- (i) Financially significant developments affecting the University in the past financial year including the establishment of subsidiaries or joint ventures and acquisitions and major issues likely to arise in the short to medium term.
- (ii) Details of the engagement and associated costs of external consultancy firms and investigators contracted to carry out investigations and enquiries on internal matters.
- (iii) Details of expenditure on external consultancy/adviser fees paid to external parties providing advisory services of any nature (including legal, tax and financial advisory, PR/Marketing, pensions, HR and any other advisory/consultancy services)
- (iv) Details of significant commercially sensitive developments in the past financial year.
- (v) Confirmation of financial position of the University.

**4. Pay**

- (i) A statement affirming that Government policy on pay is being complied with.
- (ii) Confirmation that no severance payments have been made without the consent of the Department of Education and Skills.

**5. Financial Reporting**

A statement affirming that all appropriate procedures for financial reporting are being carried out

**6. Off Balance Sheet Transactions**

Summary details of all off-balance sheet financial transactions of the institution that are not disclosed in the annual report and financial statements, including information on the nature, purpose and financial impact of the off-balance sheet financial transactions.<sup>35</sup>

**7. Trusts and Foundations**

Confirmation that foundations and trusts have been or will be incorporated into the financial statements of the institution or included in an extended accounting policy note summarising the transactions between the university and the foundation and trust or included as an appendix to the financial statements.

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<sup>35</sup> Off-balance sheet transactions are arrangements that give rise, or may give rise, to an asset or liability in excess of €10m, or 2% of the total assets of the University, whichever is the smaller that is not recognised on the University's own balance sheet (or the University's consolidated group balance sheet), including, for example, leases, letters of credit, guarantees, derivatives, sale of receivables, debt or debt-like instruments of non-consolidated equity interests or joint ventures.

**8. Internal Audit**

A statement affirming that all appropriate procedures for internal audit are being carried out and a comprehensive internal audit plan is in place.

**9. Procurement**

- (i) **Procurement Procedures:** Confirmation that the University is in compliance with current procurement legislation and rules and all appropriate procedures for procurement have been developed, published to all relevant staff and are being carried out including confirmation that the University is using the services and frameworks of the OGP, and of the EPS, whenever applicable.
- (ii) **Procurement Non-Compliance:** Confirmation that procedures are in place to detect non-compliance with procurement procedures including confirmation that a contracts database/listing for all contracts/payments in excess of €25,000 with monitoring systems is in place to flag non-compliant procurement.
- (iii) **Details of Non-Compliant Procurement:** Details of non-compliant procurement (aggregate total).
- (iv) **Corporate Procurement Plan:** Confirmation that the relevant procurement policy and procedures and the development and implementation of the Corporate Procurement Plan are being adhered to where appropriate.

**10. Asset Disposals**

A statement affirming that all appropriate procedures for asset disposals are being carried out and details of and explanations for the disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties above the threshold of €150,000 which have not been subject to auction or competitive tendering process.

**11. Guidelines for the Appraisal and Management of Capital Proposals**

Confirmation that the Guidelines for the Appraisal and Management of Capital Proposals are being adhered to where appropriate.

**12. Travel Policy**

Certification that Government travel policy requirements are being implemented in all respects.

**13. Guidelines on Achieving Value for Money in Public Expenditure**

Confirmation that the Guidelines on Achieving Value for Money in Public Expenditure as set out in the Department of Public Expenditure and Reform Public Spending Code are being followed.

**14. Tax Laws**

A statement affirming the university's compliance with tax laws.

**15. Legal Disputes**

Details of all legal disputes involving other State bodies.

Please note, details of legal disputes involving other State bodies incurring expenditure of €25,000 or over must be provided to the HEA, once a year by the 30<sup>th</sup> of June of each year including an estimate of the legal costs incurred up to the date of such information.

**16. Confidential Disclosure Reporting – Protected Disclosures Act 2014**

In line with legislation, the Governing Authority should put in place procedures for Confidential Disclosure Reporting whereby employees may, in confidence, raise concern about possible irregularities in financial reporting or other matters and for ensuring meaningful follow-up of matters raised in this way.

- (i) Confirmation that a Protected Disclosures policy in line with the Protected Disclosures Act 2014 is in place.
- (ii) Confirmation that the annual report required under section 22(1) of the Act has been published.
- (iii) Confirmation of the number of protected disclosures received during the year and the broad nature of these disclosures.

**17. Governing Authority meetings**

Confirmation of the number of Governing Authority meetings held during the financial year in question and attendance record of members. Confirmation if the Governing Authority conducted private sessions without the executive members or management present, during the financial year in question to discuss any agenda items deemed relevant.

**18. Audit and/or Risk Management Committee meetings**

- (i) Confirmation of the number of Audit and/or Risk Management Committee meetings held during the financial year in question and attendance record of members.
- (ii) The Audit and/or Risk Management Committee should meet at least four times a year. In the event that four meetings are not considered necessary, please confirm that the Chairperson of the Governing Authority is satisfied that the Audit and/or Risk Management Committee discharged its role with fewer than four meetings in a year.

**19. Review of Governing Authority performance**

- (i) Confirmation that the Governing Authority reviews its own performance and that it commissions an external review at least once during the Governing Authority's term of office.
- (ii) Confirmation should also be provided on when both internal and external reviews were last carried out and when both will be carried out again.

**20. Salary of President**

Confirmation of salary paid to President for financial year in question.

**21. Data provided to HEA**

- (i) Confirmation that the university has satisfied itself as to the integrity and robustness of any data on student numbers provided to the HEA for the purpose of calculating and allocating the core grant.
- (ii) Confirmation that the university has satisfied itself as to the integrity and robustness of staff numbers provided to the HEA as required.

**22. Child Protection Policy**

Confirmation that an appropriate child protection policy is in place in compliance with the requirements of the Children First legislation and rules.

**23. Fees and Expenses**

Confirmation that fees and/or expenses paid to members of Governing Authority are in accordance with the guidelines from the Department of Finance and are presented in the University's Annual Report. A note on the schedule of fees and aggregate expenses payable to external Governing Authority members should be included.

**24. Subsidiaries and interests in external companies**

- (i) **Compliance with terms and conditions of consent of establishment:** Statement confirming that any subsidiary of the University (or subsidiary thereof) continues to operate solely for the purpose as approved by the Governing Authority, remains and continues to remain in full compliance with the terms and conditions of the consent under which it was approved.
- (ii) **Code of governance for trading subsidiaries:** Confirmation that an appropriate code of governance is in place in respect of trading subsidiaries (i.e. subsidiaries with annual turnover

and employees), with annual statements provided to the Governing Authority and the Governing Authority has received a formal report of compliance from the Chairperson of the Board of each subsidiary.

(iii) **Details of any shareholdings and interests** held by the University in external companies.

**25. Intellectual Property (IP) and Conflict of Interest**

(i) A statement confirming that the University has in place a single IP policy, published on its website, which:

- Reflects the requirements of the national IP Protocol
- Clearly sets out all IP processes and researcher obligations
- Includes a clear description of IP commercialisation decision-making processes
- Includes a clear dispute resolution process
- Describes revenue share mechanisms
- Describes potential for conflicts of interest and directs researchers to the relevant sections of the HEI's Conflict of Interest Policy

(ii) A statement confirming that the University has in place a single IP Conflict of Interest Policy, published on its website.

(iii) Confirmation that the Governing Authority is made aware of all IP commercialisation and IP conflicts of interest on an annual basis.

(iv) Summary details of all major commercialisation of intellectual property, including spin-out companies.

**26. General governance and accountability issues**

Description of other governance and accountability issues that the university may wish to bring to the attention of the HEA.

**27. Governing Authority responsibility for System of Internal Control**

Acknowledgment by Chief Officer that the Governing Authority is responsible for the body's system of internal control, which statement requires the formal approval of the Governing Authority.

**28. Reasonable assurance against material error**

An explanation that such a system can provide only reasonable and not absolute assurance against material error.

**29. Review of the Statement of Internal Control (Governing Authority and Audit and/or Risk Management Committee)**

Confirmation that the statement on the System of Internal Controls will be reviewed by the Audit and/or Risk Management Committee and the Governing Authority to ensure it accurately reflects the control system in operation during the reporting period.

**30. Review of the Statement of Internal Control (External Auditors)**

Confirmation that the statement on the System of Internal Controls will be reviewed by the external auditors to confirm that it is consistent with the information of which they are aware from their audit work on the financial statements and where this is not the case, the external auditor should report on this in the audit report on the relevant financial statement.

**31. Key procedures put in place designed to provide effective internal control**

(i) **Appropriate Control Environment:** The steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities and evidence of reaction to control failures).

(ii) **Business Risks:** Processes used to identify business risks, evaluate their implications and manage them within the University's risk management framework.

- (iii) **Information Systems:** Details of the major information systems in place such as budgets and means of comparing actual results with budgets during the financial year.
- (iv) **Financial Implications of Major Business Risks:** The procedures for addressing the financial implications of major business risks (such as financial instructions and notes of procedures, delegation practices such as authorisation limits, segregation of duties and methods of preventing and detecting fraud).
- (v) **Monitoring the Effectiveness of the Internal Control System:** The procedures for monitoring the effectiveness of the internal control system which may include: audit committees, management reviews, consultancy, inspection and review studies, the work of internal audit, quality audit reviews and statements from the heads of internal audit.

**32. Review of the Effectiveness of the System of Internal Control**

Confirmation that there has been a review of the effectiveness of the system of internal control and when this was carried out or where such a review was not conducted, a statement that it was not conducted.

**33. Weaknesses in Internal Control. Disclosure of details regarding instances where breaches in control occurred:**

Details of any material breaches in internal control (e.g. non-compliance with procurement rules, instances where elements of the control system were not operational, information of weaknesses that have resulted in material losses or fraud, contingencies or uncertainties which require disclosure in the financial statements or the auditor’s report on the financial statements etc.)

**34. Description of the action taken to correct weaknesses**

A description of the action taken, or intended to be taken, to correct any non-compliance or weaknesses in internal control identified in sections 1-33 above together with the timeframes within which this will be done, or an explanation of why no action is considered necessary should be reported in the template below to be signed by the Chief Officer and Chairperson.

Area of non-compliance or weaknesses in internal control	Actions to be taken to attain compliance or correct weaknesses	Due date

<b>Chairperson:</b>	
<b>President:</b>	
<b>Name of Institution:</b>	
<b>Date:</b>	

## Appendix L – Statement on the System of Internal Controls

### A statement on the system of internal controls should include the following items:

1. Acknowledgement by the Chairperson that the Governing Authority is responsible for the University's system of internal control which statement requires the formal approval of the
2. An explanation that such a system can provide only reasonable and not absolute assurance against material error.
3. Description of the key control procedures tailored to reflect the size and complexity of the University in order to provide a full understanding of the procedures, which have been put in place by the Governing Authority, to provide effective internal control.
  - i) A statement in relation to when the annual review of the effectiveness of control was conducted or where such a review was not conducted, a statement that it was not conducted.
  - ii) Disclosure of details regarding instances where breaches in control occurred – such breaches might include non-compliance with procurement rules or instances where other elements of the control system (e.g. internal audit, Audit and/or Risk Management Committee or other committees) were not operational.
  - iii) Disclosure of details of any material losses or frauds.
  - iv) Statement on System of Internal Controls is to be reviewed by the Audit and/or Risk Management Committee and the Governing Authority to ensure it accurately reflects the control system in operation during the reporting period.
  - v) Statement on System of Internal Controls is to be reviewed by the Comptroller and Auditor General to confirm that it reflects the University's compliance with the requirements of paragraph 6.10 (v) and is consistent with the information of which they are aware from their audit work on the financial statements and where this is not the case, the Comptroller and Auditor General should report on this in the audit report on the relevant financial statement.
  - vi) the steps taken to ensure an appropriate control environment (such as clearly defined management responsibilities);
  - vii) processes used to identify business risks and to evaluate their financial implications;
4. Confirmation that there has been a review of the effectiveness of the system of internal control.
5. Information (if appropriate) about the weaknesses in internal control that have resulted in material losses, contingencies or uncertainties which require disclosure in the financial statements or the auditor's report on the financial statements.
6. The information relating to weaknesses in internal control should be a description of the action taken, or intended to be taken, to correct the weaknesses, or an explanation of why no action is considered necessary.

7. Confirmation that the University is in compliance with current procurement legislation and rules, including confirmation that the University is using the services and frameworks of the Office of Government Procurement and of the Education Procurement Service, whenever applicable.



### Financial Memorandum between the HEA and Higher Education Institutions

The financial memorandum has an effective date of XXX.

#### **Preamble**

1. This memorandum sets out the formal relationship between the Higher Education Authority ('the Authority') and each higher education institution ('the institution'). The foundation of the relationship is provision of funding by the Authority to the institution, in accordance with relevant legislation and public policy and accountability for this funding within statutory and other agreed accountability frameworks detailed in the covering statement from the HEA (Appendix)
2. The basis for the relationship is laid down in relevant legislation, statutes, charters, articles and instruments of governance, particularly those which establish the Authority and the institution and regulate their governance, and those which establish the degree of their autonomy and set out their powers and duties.
3. For these arrangements to be effective the Authority and the institution have to work in partnership to achieve agreed objectives for higher education and to secure best value for funds provided by the State.
4. The Authority recognises that the Institution may also undertake activities and have to comply with legislation and regulation which fall outside the scope of this partnership.

#### **Purpose of the memorandum**

Accordingly, this memorandum sets out the agreed expectations which the institution, in the spirit of constructive partnership, has a right to have of the Authority. It also sets out the Authority's expectations of the institution and the requirements which are a condition of the Authority's funding.

#### **What the Institution can expect of the Authority**

1. The Authority will conduct its affairs at all times to the highest accepted standards for public sector bodies and in accordance with principles set out in the Code of Practice for the Governance of State Bodies. It will act reasonably on the basis of the fullest available evidence and objective analysis. Subject to any legal requirement to observe confidentiality, it will be open and transparent with the institutions it funds and other stakeholders, and will give or be prepared to give a public justification of all its decisions.
2. The Authority in line with the Code of Practice for State Bodies will maintain a policy of openness and transparency in relation to the work of the Authority and the services it aims to provide.

3. The Authority will maintain regular and frequent dialogue with institutions and their representative bodies where it seems appropriate In order to:
  - promote a shared understanding of the aspirations, needs and concerns of the various stakeholders;
  - support the beneficial impact of institutions' collaborative activities; and
  - better enable it to provide the information, advice and assistance required by the Department of Education and Skills, other government departments or agencies.
4. The Authority will not substitute its judgements for those which are properly at the discretion of institutions. In particular, the Authority will seek to maximise the autonomy of institutions to use block grants provided by the Authority.
5. In discharging its duty to monitor and publish the performance of the institution generally and on specific projects, the Authority will, as far as possible, rely on the data and information used by the institution for its own purposes or in formats that are most useful and most easily provided by the institutions, consistent with requirements. The Authority will not seek to collect the same data and information more than once from the institution.
6. The Authority will allocate and pay grants in a timely manner to the institution in accordance with current policies and procedures. The institution will be consulted in advance and given as much notice as possible of any significant change to these policies and procedures and of significant changes in overall funding levels.
7. The Authority needs to be satisfied that the institution has put in place the structures and procedures necessary to ensure compliance with this memorandum, including delivery on agreed outputs as specified in the compact agreed between the HEA and the institution and the achievement of best value from recurrent funding provided by the State.
8. The Authority will obtain evidence from the institution, which will include undertaking reviews as required (but only by prior arrangement), to provide the assurances required to discharge this responsibility as laid out in point 7 above.
9. Where the Authority has insufficient information to provide the assurance required, the Authority will in the first instance, seek to resolve matters with the Chief Officer of the institution. Where this has not proved possible, the Authority will inform the chair of the Governing Authority and the institution's Chief Officer in writing and without delay of any significant concern of the Authority about the conduct of the institution. Only after such notification and where the circumstances warrant it, the Authority may consider whether It is appropriate to hold back or suspend the payment of any or all grants to the institution. The Minister for Education and Kkills will be kept informed.

#### **What the Authority can expect of the Institution**

The following paragraphs state the Authority's expectations of the institution and the requirements which are a condition of the Authority's funding.

1. The Authority must be able to rely on the whole system of governance, management and conduct of the Institution to safeguard all funds of the Institution deriving from the Exchequer and to achieve the purposes for which those funds are provided. As a recipient of public funds, the institution will strive to achieve at all times good practice in the governance, management and conduct of the institution.
2. The Governing Authority/ authority will ensure that it has in place and effectively implemented the proper arrangements for governance, leadership and management of the institution as required by statute, charter, its instrument and articles of governance and the agreed Codes of Governance in place for the universities and Universities .
3. Respecting the primacy of the institution's own statutory obligations, the Governing Authority/ authority will ensure that:
  - I. public funds are used in accordance with relevant legislation and only for the purposes for which they are given;
  - II. the institution strives to achieve best value from its use of public funds from all sources;
  - III. annual financial statements are provided in a timely manner for audit by the C &AG;
  - IV. there is effective planning and delivery of the institution's education programmes, research and related activities, which is consistent with the institution's mission and takes account of potential for collaboration with relevant partner Institutions/clusters;
  - V. the institution obtains sufficient data and information of a quality to enable it to determine how well the Institution is achieving its goals. Such information will be made available to the Authority on request as necessary for the exercise of its statutory functions;
  - VI. the institution takes appropriate account of the national objectives set out for the sector in the Higher Education System Performance Framework.
  - VII. the institution is actively engaged in seeking continuously to enhance the quality of its programmes and services and to involve students, students unions, employers, partner institutions/clusters and other stakeholders in these processes;
  - VIII. there are in place up-to-date and readily accessible procedures for handling complaints by students, staff and others;
  - IX. the Governing Authority's and the institution's activities are conducted in an appropriately open, transparent and fully accountable manner;
  - X. the institution plans and manages the deployment of its resources in an efficient way
  - XI. the Governing Authority and the institution adheres to the Authority's mandatory requirements (as notified to the institution and set out below) and the institution takes account of relevant public policy and good practice in the management of all its activities and resources Including its:
    - XII. staff, human resources and industrial relations practices;
    - XIII. estates and equipment; and

XIV. finances, and risk and internal control procedures.

4. The Chief Officer of the institution must inform the Authority without delay of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the institution or its ability to maintain its capacity to deliver relevant education programmes, research and related activities.
5. The Chief Officer of the institution shall, when required, give evidence to the Committees of Dáil Éireann on
  - The regularity and propriety of the institution's accounts
  - The economy and efficiency of the institution in the use of its resources
  - The systems, procedures and practices employed by the institution for the purpose of evaluating the effectiveness of its operations
6. Mandatory requirements (as appropriate) -
  - Agreement of compact with HEA specifying agreed outputs
  - Agreement on budgets/financial plans
  - Provision of required RGAM returns
  - Compliance with public pay policy
  - Compliance with relevant Codes of Governance and provision of Annual Statements of Governance and Internal Control
  - Compliance with the requirements of the Protected Disclosures Act
  - Adherence to Borrowing Framework
  - Adherence to Departures Framework
  - Compliance with public sector Capital Expenditure requirements
  - Compliance with public sector Procurement requirements
  - Adherence to approved Format of Accounts
  - Compliance with process for Land Purchases in the IoTs

In signing this memorandum, you are confirming on behalf of your institution

- (i) that the funds provided by the HEA as outlined in the grant allocation letter will be used for the purposes intended; and
- (ii) that the institution will comply with the Statement of Principles for Grantees (Appendix 2 of Circular 13/2014).

**Chief Executive, HEA**

**Date:**

**Chief Officer /Provost**

**Date:**

# Appendix N Travel Policy Framework

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## Introduction

The University should certify that Government travel and subsistence policy requirements are being implemented in all respects.

The University's Governing Authority should satisfy itself that the principles of its travel policy are adhered to and that the internal audit process is effective in ensuring that the University is fully complying with the policy.

Governing Authority members should be advised of the details of the University's travel policy. Governing Authority members and employees must only claim travel and subsistence allowances in respect of official travel and must not make a claim from more than one State body for the same journey.

## Intent and Scope

The purpose of the travel policy should be to ensure that value for money is obtained in respect of each official trip undertaken, consistent with the requirements of official business. Alternatives to frequent travel, such as use of video conferencing facilities, should also be considered.

### Domestic Travel

1.8.1.1 Maximum use to be made of public transportation options for official travel; the use of taxi services should be rationalised as much as possible.

### Air Travel

1.8.1.2 A statement of the practice to be followed e.g. the criteria to be applied in choosing either restricted internet fares or fully-flexible economy class fares, where this approach is cost-effective.

1.8.1.3 Outline of the exceptional circumstances in which more expensive Business Class options may be considered (the use of premium rates can rarely be justified).

1.8.1.4 Frequent flyer points should not influence decisions taken in relation to the carriers used for official business.

### Accommodation

1.8.1.5 A statement to the effect that if an employee is not required to stay in a particular hotel for business reasons, the standard of hotel used should not be extravagant e.g. that three or four-star hotels should be used.

# Appendix O Audit and/or Risk Management Committee Guidance

## Introduction

The purpose of this document is to set out Audit and/or Risk Management Committee best practice guidance under the *Code of Practice for the Governance of State Bodies*, to provide guidance to Universities in making appropriate arrangements for their Audit and/or Risk Management Committee, and to assist the Audit and/or Risk Management Committee in carrying out their role and responsibilities.

Best practice requires that the Governing Authority should ensure that the Audit and/or Risk Management Committee arrangements in place are suited to the particular circumstances of the Universities.

In general Audit and/or Risk Management Committees should be combined, however in some larger entities there may be requirement to have separate Audit and/or Risk Management Committees.

## Audit and/or Risk Management Committee

### Guiding Principles

While the Governing Authority has a duty to act in the University's interest, the Audit and/or Risk Management Committee has a particular role, acting independently of the University's Management, to ensure that the interests of Government and other stakeholders are fully protected in relation to business and financial reporting and internal control.

### Code Provisions

- 1.1 Internal Controls:** The Governing Authority should ensure that there are effective arrangements in place in the University for governance, risk management and internal control. The Governing Authority should be supported by:
- an Audit and/or Risk Management Committee; and
  - an Internal Audit Function operating to the International Standards of the University of Internal Auditors or equivalent professional standards, save for outsourced functions.
- 1.2 Audit and/or Risk Management Committee:** The Governing Authority should establish an Audit and/or

Risk Management Committee of at least 3 independent non-executive Governing Authority members (excluding the Chair of the Governing Authority) with written terms of reference which deals clearly with authority and duties.

The Governing Authority should have due regard for the benefits of diversity on the Audit and/or Risk Management Committee including gender.

In general, the Audit and/or Risk Management Committees should be combined, however, in some Universities it may be agreed that these are kept separate.

**1.3 Terms of Reference:** The roles and responsibilities of the Audit and/or Risk Management Committee should be set out in a written terms of reference which should be communicated to all members of the Committee.

The terms of reference for the Audit and/or Risk Management Committee should be set by the Governing Authority and should include provisions regarding:

- membership;
- reporting requirements;
- authority to investigate;
- meetings – timing, conduct and frequency;
- information requirements;
- value for money;
- governance; and
- responsibilities regarding:
  - risk management;
  - internal control;
  - internal audit;
  - external audit; and
  - reviewing its own effectiveness.

The Audit and/or Risk Management Committee should review on an annual basis their terms of reference and recommend any necessary changes to the Governing Authority. It is important that a balance is struck during Audit and/or Risk Management Committee meetings between governance, risk management, internal control, and financial reporting items.

## Exhibit A: Sample Terms of Reference for Audit and Risk Committees

- 1.4 Chairperson of the Governing Authority:** The Audit and/or Risk Management Committee may invite appropriate persons (including the Chair of the Governing Authority) to attend an Audit and/or Risk Management Committee for a specific purpose.
- 1.5 Appointments:** Members of the Governing Authority who hold executive responsibility within the university should not be members of the Audit Committee and/or Risk Management Committee. Appointments to the Audit and/or Risk Management Committee should be made by the Governing Authority in consultation with the Chairperson of the Audit and/or Risk Management Committee. The Governing Authority should satisfy itself that at least one member of the Audit and/or Risk Management Committee has recent and relevant financial experience.
- 1.6 Duration of Appointment:** The duration of appointment of Audit and/or Risk Management Committee members should be clearly set out at time of appointment. It is recommended that the first appointment be for the term of the Governing Authority, which can be renewed for one further term.
- 1.7 Relevant Skills and Experience:** The Audit and/or Risk Management Committee should collectively possess an appropriate range of skills to perform its functions to the required standard. At least one member of the Audit and/or Risk Management Committee should have recent, relevant financial experience and other members should have recognised competency in the core areas of the audit committee business including risk management, internal audit and governance.
- 1.8 Appointment Criteria:** The Governing Authority should assess the terms of reference and the work programme of the Audit and/or Risk Management Committee when considering the appointment of members. Members should have, or acquire as soon as possible after their appointment, an understanding of:
- organisational culture, objectives and challenges;
  - organisational structure including key relationships e.g. the University's relationship with the Minister, Department of Education and Skills and the HEA; and
  - relevant legislation or other rules governing the University. Audit and/or Risk Management Committee Guidance
- 1.9 Letter of Appointment:** There should be a standard letter of appointment for each new Audit and/or Risk Management Committee member, where appropriate, including:
- role of the Audit and/or Risk Management Committee;



- duration of appointment and renewal provisions;
- support and training to be provided;
- the time commitment involved;
- level of remuneration (where appropriate);
- rules regarding conflict of interests;
- evaluation of the committee; and
- termination arrangements.

## Exhibit B: Sample Letter of Appointment for an Audit & Risk Committee Member

- 1.10 Conflict of Interest:** The process for recording declarations of conflicts of interest in the Audit and/or Risk Management Committee should be the same used at Governing Authority level. Each member of the Committee should take personal responsibility to declare any potential conflict of interest arising in relation to any items on the agenda for Audit and/or Risk Management Committee meetings.
- 1.11 Register of Members Interests:** Details of interests disclosed under this Code should be kept by the Secretary of the Governing Authority or other nominated person in a special confidential register. Access to the register should be restricted to the Chairperson and Secretary of the Governing Authority and other members of the University on a strictly need to know basis. Each member of the Committee should take personal responsibility to declare any potential conflict of interest arising in relation to any items on the agenda for Audit and/or Risk Committee Management meetings. Members should be required to declare any potential conflict of interest with any of the business items on the agenda for the Audit and/or Risk Management Committee meeting. The Committee should specify its procedures where a conflict of interest arises including the requirement that the relevant member brings this to the attention of the Chairperson and, where necessary, leaves the room for the duration of the discussion and not take part in any decisions relating to the discussion. Similar arrangements should apply in relation to meeting documentation, where such documentation is not made available to the member. This should be noted in the minutes of the meeting.
- 1.12 Training and Development:** There should be a formal induction process in place (including individually tailored training) for new Audit and/or Risk Management Committee members. The Audit and/or Risk Management Committee and Chairperson should make recommendations to the Governing Authority on the Committee's training needs. The Audit and/or Risk Management Committee should keep up to date with best practice and developments in corporate governance.
- 1.13 Frequency of Meetings:** The Audit and/or Risk Management Committee should meet at least four

times a year and invite outsiders with relevant experience to attend meetings if necessary. In the event that four meetings is not considered necessary the Chairperson of the University should make a statement in the annual report, in the form of the financial statements, of the University that they are satisfied that the Audit and/or Risk Management Committee discharged its role with fewer than four meetings in a year.

- 1.14 Authority to Investigate:** The Audit and/or Risk Management Committee should have explicit authority to investigate any matters within its terms of reference and should be given the resources needed for this purpose including outside professional advice as necessary, and full access to information. Any internal audit /audit items that relate to the Governing Authority's areas of responsibility should be communicated to the Governing Authority as soon as possible.
- 1.15 Relationships:** As the business of the Audit and/or Risk Management Committee requires, the Chief Officer, Secretary/ Financial Controller, Head of Internal Audit and the Comptroller and Auditor General should attend for specific meetings or agenda items at the Committee's request. Executive members of the University should be invited to attend Audit and/or Risk Management Committee meetings to participate in discussions and provide information as required. Executive members of the University should maintain an appropriate relationship with the Audit and/or Risk Management Committee.
- 1.16 Communications:** The Audit and/or Risk Management Committee should ensure that it communicates effectively with the Governing Authority, the Head of Internal Audit, the Comptroller and Auditor General and other stakeholders. Any internal audit or audit items that relate to the Governing Authority's areas of responsibilities should be communicated to the Governing Authority as soon as they are identified.
- 1.17 Draft Financial Statements:** The Audit and/or Risk Management Committee should review the draft financial statements recognizing the role of the HEA and financial reporting standards, before recommending their adoption by the Governing Authority and where possible, before submission for audit taking account of public accountability and the special considerations which attach to Universities in relation to their management and operation, consider whether the annual report, in the form of the financial statements, taken as a whole, provide a true and fair view of the university at the balance sheet date..<sup>36</sup>

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<sup>36</sup> Adapted from the Financial Reporting Council's "UK Corporate Governance Code" (2016) page 1

**1.18 Comptroller and Auditor General:** The Audit and/or Risk Management Committee should annually consult with the Comptroller and Auditor General, and/or external auditors as appropriate, regarding the operation of the Internal Audit Function with particular reference to the staffing of the Unit, the audit work programme being applied and the testing carried out in relation to the University's compliance with the requirements set out in this document.

The Audit and/or Risk Management Committee should meet with or otherwise engage with the Comptroller and Auditor General, and/or external auditors as appropriate, at least once a year without executive Governing Authority members present to ensure there are no unresolved issues of concern and to make the Comptroller and Auditor General, and/or external auditors as appropriate, aware of any emerging risks or governance issues.

**1.19 Annual Report:** The Audit and/or Risk Management Committee's annual report, in the form of the financial statements, to the Governing Authority should present its opinion on the adequacy of risk management and internal control systems, and the adequacy of sources of assurance to the Governing Authority.

The Audit and/or Risk Management Committee's report should include:

- governance issues;
- financial reporting; and
- quality of internal and external audit.

The Committee should also report its view of its own effectiveness with advice on how it can be strengthened and developed.

**1.20 Chairperson of the Audit and/or Risk Management Committee:** The Chairperson of the Audit and/or Risk Management Committee has particular responsibility for ensuring:

- that the Audit and/or Risk Management Committee is appropriately resourced;
- the Committee reviews Internal Audit Reports and management responses and ensures that actions are followed up;
- reports to the Committee contain relevant information and are provided at the right time in an appropriate format;
- absent Committee members are briefed on meetings and attendance records are maintained and reviewed annually;
- they report at Board meetings and submit regular written reports to the Governing Authority containing relevant information;
- matters arising are reported on at each subsequent meeting; and

- they are involved in the appointment of new Committee members.

**1.21 Appraisal:** Appraisal of the Chairperson of the Audit and/or Risk Management Committee should be overseen by the Chairperson of the Governing Authority.

**1.22 Audit and/or Risk Management Committee Secretariat:** The secretariat to the Audit and/or Risk Management Committee should:

- commission papers as necessary and support the Chairperson in preparing reports;
- circulate documents and keep and circulate minutes of meetings to Committee members and to internal and external audit as necessary in good time for meetings;
- for any agreed actions, document the owner, deadline and any advice given by stakeholders and monitor between meetings;
- keep the Committee abreast of development in the University; and
- maintain a record of members' appointments and termination/renewal dates and ensure that appropriate appointment procedures are initiated when necessary.

# Sample Audit and/or Risk Management Committee Work Programme

## Code Provisions

- 1.1 Audit and/or Risk Management Committee Work Programme:** The Audit and/or Risk Management Committee's work programme should include:
- i) **Internal Audit Function:** Monitoring and reviewing the effectiveness of the University's internal audit activities and consideration of the Internal Audit Function's independence, expertise, experience and adherence to professional standards.
  - ii) **Scope of Work:** The Audit and/or Risk Management Committee should consider the scope of the Internal Audit Function's work and consider whether the available resources and access to people and information allow the Unit to address significant risks within the University.
  - iii) **Audit Plan:** The Audit and/or Risk Management Committee should have an approval role in relation to the Internal Audit Function audit plan, including the Committee making suggestions regarding risk and problem areas the audit plan should address. The Audit and/or Risk Management Committee should also receive regular progress reports from the Internal Audit Function.
  - iv) **External Auditors:** The Audit and/or Risk Management Committee should review Management Letters and Letter of Representations and should be given sight of the organisational responses to the Comptroller and Auditor General , and/or external auditor as appropriate, management letters and reports.
  - v) **Views of the External Auditors:** The Audit and/or Risk Management Committee should request the views of the Comptroller and Auditor General, and/or external auditor as appropriate, on the work and effectiveness of the Audit and/or Risk Management Committee. The Audit and/or Risk Management Committee should engage with the Comptroller and Auditor General, and/or external auditor as appropriate, at least annually without executive Board members being present to ensure that there are no unresolved issues of concern and should make the external auditors aware of the corporate governance issues outlined in the 2018 Code of Governance for the Universities with which the University is required to comply.

- vi) **Co-operation between the Comptroller and Auditor General and Internal Audit Function:** The Audit and/or Risk Management Committee should encourage co-operation between the Comptroller and Auditor General, and/or external auditor as appropriate, and Internal Audit Function and receive confirmation from the Comptroller and Auditor General, and/or external auditor as appropriate, and the Internal Audit Function of the effectiveness of their working relationship. This involves a sharing of audit plans to prevent duplication of effort and Internal Audit Function should provide the external auditor with copies of all completed Internal Audit Function reports.
- vii) **Draft Financial Statements:** The Audit and/or Risk Management Committee should review draft financial statements before recommending their adoption by the Governing Authority and consider whether:
- accounting policies, completeness of financial statements, protected disclosure/anti-fraud policy are properly recorded and accounted for;
  - suitable processes are in place to ensure regularity, probity and propriety is achieved;
  - issues raised by the Comptroller and Auditor General have been comprehensively and appropriately dealt with;
  - the financial statements present fairly the University's financial position;
  - the comprehensiveness and meaningfulness of the University's Statement on Internal Control and review of the Letter of Representation before issue by the University.
- viii) The Committee should also consider:
- the effectiveness and adequacy of the University's anti-fraud, anti-corruption and protected disclosure policies and staff awareness of them;
  - whether financial control, including the delegation structure, enables the University to achieve its objectives on a value for money basis; and`
  - whether the procedures for investment appraisal are fit for purpose and comply with best practice including the principles and relevant requirements of the Department of Public Expenditure and Reform [Public Spending Code](#).
- ix) **Statement on Internal Control:** The Committee should also satisfy itself that the University's system of internal control operated effectively during the reporting period and that the system of internal reporting gives early warning of internal control failures and emerging risks.

# Exhibit A Sample Terms of Reference for Audit and/or Risk Management Committees

The Governing Authority has established an Audit and/or Risk Management Committee as a Committee of the Governing Authority to support them in their responsibilities for issues of risk, control and governance by reviewing the comprehensiveness of assurances in meeting the Governing Authority's and Chief Officer's assurance needs and reviewing the reliability and integrity of these assurances.

## Membership

The membership of the committee shall be appointed by the Governing Authority. The Committee shall consist of at least three members. In appointing members consideration should be given to the skills and independence of members and in particular it may be appropriate that at least two members be external members of the Governing Authority and that at least one of the members need not be a member of the Governing Authority but may be external to the University. At least one member should have recent and relevant financial experience. The Chief Officer and Chairperson of the Governing Authority should not be a member of the Committee. Members of the Governing Authority who hold responsibility within the University should not be members of the Committee.

The Chairperson of the Committee shall be appointed by the Governing Authority on the nomination of the Chief Officer of the university.

The Committee shall draw up its own working procedures.

## Reporting

- the Audit and/or Risk Management Committee will formally report in writing to the Governing Authority; and
- Shall make an annual written report on its activities to the Governing Authority within three months after the conclusion of the financial year. The report will include the Committee's opinion on the adequacy of the systems of internal controls and risk management. The Committee will report to meetings of the Governing Authority on such other occasions as requested.
- Minutes or reports of meetings of the Committee shall be circulated to each member of the Governing Authority.

## Responsibilities

The Audit and/or Risk Management Committee will advise the Governing Authority on:

- the strategic processes for risk, internal control and governance;

- the accounting policies, and the University's annual report, in the form of the financial statements, and the annual operating programmes and budgets, including the process for review of the financial statements prior to submission for audit, levels of error identified, and management's letter of representation to the Comptroller and Auditor General;
- the planned activity and results of both internal and external audit;
- adequacy of management response to issues identified by audit activity, including Comptroller and Auditor General's management letter of representation;
- assurances relating to the management of risk and corporate governance requirements for the University;
- proposals for tendering for internal audit services or for purchase of non-audit services from contractors who provide audit services;
- anti-fraud policies, protected disclosure processes, and arrangements for special investigations; and
- the Audit and/or Risk Management Committee will also periodically review its own effectiveness and report the results of that review to the Governing Authority.

### Rights

The Audit and/or Risk Management Committee may:

- co-opt expertise to provide specialist skills, knowledge and experience; and
- procure specialist ad-hoc advice at the reasonable expense of the University, subject to budgets agreed by the Governing Authority.

### Access

The Head of Internal Audit and/or the Internal Audit Service Provider and the representative of the Comptroller and Auditor General, and/or external auditor as appropriate, will have free and confidential access to the Chairperson of the Audit and/or Risk Management Committee.

### Meetings

- The Audit and/or Risk Management Committee will meet at least four times a year. The Chairperson of the Audit and/or Risk Management Committee may convene additional meetings, as they deem necessary;
- a minimum of [number] members of the Audit and/or Risk Management Committee will be present for the meeting to be deemed quorate;
- as the business of the Audit and/or Risk Management Committee requires the Chief Executive, the Chief Finance Officer, Head of Internal Audit, and a representative of the Comptroller and Auditor General should attend for specific meetings or agenda items at the Committee's request [add any others who may routinely attend];
- the Audit and/or Risk Management Committee may ask any other officials of the University to attend to assist it with its discussions on any particular matter;
- the Audit and/or Risk Management Committee may ask any or all of those who normally attend but



who are not members to withdraw to facilitate open and frank discussion of particular matters; and

- The Governing Authority may ask the Audit and/or Risk Management Committee to convene further meetings to discuss particular issues on which they seek the Committee's advice.

### Information Requirements

For each meeting, the Audit and/or Risk Management Committee will be provided, in accordance with Governing Authority standing order provisions, with:

- a report summarising any significant changes to the University's strategic risks and a copy of the strategic/corporate Risk Register;
- a progress report from the Head of Internal Audit summarising:
  - work performed (and a comparison with work planned);
  - key issues emerging from the work of internal audit;
  - management response to audit recommendations;
  - changes to the agreed internal audit plan; and
  - any resourcing issues affecting the delivery of the objectives of internal audit.
- a progress report (written/verbal) from the Comptroller and Auditor General representative summarising work done and emerging findings (this may include, aspects of the wider work carried out by the Comptroller and Auditor General, for example, Value for Money reports and good practice findings);
- management assurance reports; and
- reports on the management of major incidents and lessons learned.

As and when appropriate the Committee will also be provided with:

- proposals for the terms of reference of internal audit / the internal audit charter;
- the internal audit strategy;
- Internal Audit Reports;
- quality assurance reports on the Internal Audit Function;
- the draft financial statements of the organisation;
- the draft governance statement;
- a report on any changes to accounting policies;
- Comptroller and Auditor General's management letter;
- a report on any proposals to tender for audit functions, where appropriate;
- a report on co-operation between internal and external audit; and
- the University's risk management strategy.

The list provided suggests minimum requirements for the inputs which should be provided to the Audit and/or Risk Management Committee. In some cases more may be provided. For instance, it might be agreed that Audit and/or Risk Management Committee members should be provided with a copy of the report of every internal audit assignment.

# Exhibit B Sample Letter of Appointment for an Audit & Risk Committee Member

It is recommended that the following issues be included in the Letter of Appointment of an Audit and/or Risk Management Committee member:

## Appointment and Purpose

You are hereby appointed by the [Governing Authority] as a member of the Audit and/or Risk Management Committee of [Insert name of entity]. As a member of the Audit and/or Risk Management Committee you are accountable to the [Governing Authority] through the Chairperson of the Committee. Your appointment is for [number] years from (date)]. This appointment may be renewed [number] times (by mutual agreement) after the duration of this appointment.

The Audit and/or Risk Management Committee is a Committee of the Governing Authority of [Insert name of entity] and the purpose of the Audit and/or Risk Management Committee is set out in the attached terms of reference.

A copy of the Audit and/or Risk Management Committee's terms of reference is enclosed. The Committee is chaired by [name] and the other members are [names]. [It is recommended that the new member be provided with a list of their contact details]

## Support and Training

The Secretary of the Audit and/or Risk Management Committee is [name / contact details] and they will shortly be in touch with you to discuss and arrange appropriate induction training.

To help you understand the governance arrangements and the role of the Audit and/or Risk Management Committee in the University, a copy of the suite of documents entitled the "2018 THEA Code of Governance for Universities" is enclosed with this letter of appointment.

## Commitment and Remuneration

The Committee normally meets [number] times each year, but additional meetings may be required from time to time. [Include, if appropriate, details of amount of remuneration].

Your duties as an Audit and/or Risk Management Committee member include time to read papers in preparation for meetings and a programme of activity to keep you in touch with the organisation's activities and priorities.

### **Conflicts of Interest**

If during your period of appointment to the Audit and/or Risk Management Committee your personal circumstances change in any way that may provide a conflict of interest for you in your Audit and/or Risk Management Committee role, you are to declare the circumstances to the Chairperson of the Audit and/or Risk Management Committee.

### **Appraisal**

As a member of the Audit and/or Risk Management Committee you may be subject to appraisal by the Audit and/or Risk Management Committee Chairperson [\[include brief details of the appraisal process\]](#).

### **Conduct**

As a person appointed to the Audit and/or Risk Management Committee you are expected to conduct yourself in your role in the University in accordance with the [Code](#) of Conduct for Governing Authority Members adopted by the University.

## Exhibit C Sample Checklist for the Effectiveness of Audit and/or Risk Management Committees

<b>The Role of the Audit and/or Risk Management Committee</b>				
The Audit and/or Risk Management Committee fulfils an important role in the governance framework of an entity by assisting the Governing Authority monitor the internal control environment, risk	<b>Y</b>	<b>N</b>	<b>N/A</b>	<b>Comment / Action Required</b>
1. Is there a written terms of reference, setting out the roles and responsibilities of the Audit and/or Risk Management Committee and its members, and has it been communicated to all members?				
2. Do the terms of reference include the provisions as set out in paragraph 1.3 of this document?				
3. Do the terms of reference require the Audit and/or Risk Management Committee to regularly review its own effectiveness? If so, when was the last time such a review was carried out?				
4. Does the Audit and/or Risk Management Committee meet at least four times a year?				
<b>Membership, Independence, Objectivity and Understanding</b>				
The Audit and/or Risk Management Committee should be independent and objective. In addition, each member should have a good understanding of the objectives and priorities of the University and of their role as a Committee member.	<b>Y</b>	<b>N</b>	<b>N/A</b>	<b>Comment / Action Required</b>
<b>Membership and Terms of Appointment</b>				

5. Does the Audit and/or Risk Management Committee have at least three, or in the case of smaller entities such as subsidiaries of the Universities, two, independent non-executive Governing Authority/Board members?				
6. For what duration are Audit and/or Risk Management Committee members appointed?				
7. Is there a standard letter of appointment for new Audit and/or Risk Management Committee members and does it include: <ul style="list-style-type: none"> <li>▪ role of Audit and/or Risk Management Committee?</li> <li>▪ duration of appointment and renewal provisions?</li> <li>▪ the support and training to be provided?</li> <li>▪ the time commitment involved?</li> <li>▪ level of remuneration (where appropriate)?</li> <li>▪ rules regarding conflicts of interest?</li> <li>▪ performance management arrangements</li> <li>▪ termination arrangements?</li> </ul>				
<b>Independence</b>	<b>Y</b>	<b>N</b>	<b>N/A</b>	<b>Comment / Action Required</b>
8. What is the breakdown of Audit and/or Risk Management Committee members and Chairperson in terms of executive Governing Authority members, non-executive Governing Authority members and external members?				
9. Is the Audit and/or Risk Management Committee Chairperson different to the Chairperson of the Governing Authority?				
<b>Relationship with the Executive and Other Participants</b>	<b>Y</b>	<b>N</b>	<b>N/A</b>	<b>Comment / Action Required</b>

10. Are the executive members of the organisation invited to attend Audit and/or Risk Management Committee meetings, participate in discussions and provide information to the Audit and/or Risk Management Committee as required?				
11. Do the Chief Officer, Secretary /Financial Controller, Head of Internal Audit and the Comptroller and Auditor General routinely attend all Audit and/or Risk Management Committee meetings? If not, do they attend for specific meetings or specific agenda items, at the request of the Committee?				
<b>Managing Conflicts of Interest</b>	<b>Y</b>	<b>N</b>	<b>N/A</b>	<b>Comment / Action Required</b>
12. Is there a register of Audit and/or Risk Management Committee members' interests?				
13. Are members regularly required to declare any potential conflict of interest with any of the business items on the agenda for Audit and/or Risk Management Committee meetings?				
14. In instances where a member declares an interest in an agenda item, what action is taken?				
<b>Skills and Experience</b>				<b>Comment / Action</b>
The Audit and/or Risk Management Committee should collectively possess an appropriate range of skills (skills mix) to perform its functions to the required standard.	<b>Y</b>	<b>N</b>	<b>N/A</b>	<b>Required</b>
15. Are there formal assessment criteria for the appointment of the Audit and/or Risk Management Committee				
Does the assessment criteria for Audit and/or Risk Management Committee members include (or expect members to acquire as soon as possible after appointment) an understanding of:  <ul style="list-style-type: none"> <li>▪ the University's culture, objectives and challenges?</li> <li>▪ the University's structure, including key relationships such as that with the Minister</li> </ul>				

<p>17. Does the Audit and/or Risk Management Committee corporately possess knowledge, skills and experience of:</p> <ul style="list-style-type: none"> <li>▪ accountancy/finance – with at least one member having recent and relevant financial experience?</li> <li>▪ governance, assurance and risk management?</li> </ul>				
<p>18. Is the Audit and/or Risk Management Committee empowered to co-opt members on a short-term basis to provide specialist skills needed at a particular time? When was the last time this</p>				
<p>19. Can the Audit and/or Risk Management Committee procure specialist advice (at reasonable and approved expense to the University) on an ad-hoc basis, to assist the members with specific areas of Committee business? When was this last done?</p>				
<p>20. Is there a formal induction process (including individually tailored training) for new Audit and/or Risk Management Committee members?</p>				
<p>21. Does the Audit and/or Risk Management Committee and the Chairperson make recommendations to the Governing Authority on the Committee’s and individual members</p>				
<p>22. Does the Audit and/or Risk Management Committee keep up to date with best practice and developments in corporate governance? How is this done?</p>				
<p>23. Does the Audit and/or Risk Management Committee monitor and review the effectiveness of the Internal Audit Function?</p>				
<p>24. Does the Audit and/or Risk Management Committee consider that the independence, experience, expertise and professional standard of the internal audit team are appropriate for the University?</p>				

25. Does the Audit and/or Risk Management Committee consider whether the scope of internal audit work, the resources at its disposal and their access to information and people allow it to address significant risks within the University?				
26. Does the Audit and/or Risk Management Committee receive regular progress reports on work undertaken by the Internal Audit Function?				
27. Does the Audit and/or Risk Management Committee review internal audit reports and management responses to issues raised, and monitor the progress made on internal audit recommendations?				
28. Does the Head of Internal Audit have direct access to the Chairperson of the Audit and/or Risk Management Committee?				
29. Does the Audit and/or Risk Management Committee periodically request the views of the Comptroller and Auditor General on the work and effectiveness of the Audit and/or Risk Management Committee?				
30. Does the Audit and/or Risk Management Committee consider the Comptroller and Auditor General management letter and other relevant reports and the management response, and monitor the progress made on the recommendations?				
31. Does the Audit and/or Risk Management Committee meet the Comptroller and Auditor General at least once a year, without executive Governing Authority members being present, to discuss any issues of concern?				
32. Does the Audit and/or Risk Management Committee seek confirmation from internal audit and the Comptroller and Auditor General on the effectiveness of their relationship?				
33. Does the Audit and/or Risk Management Committee consider whether anti-fraud and corruption policies and procedures are in place and operating effectively?				



34. Does the Audit and/or Risk Management Committee consider whether there is an anti-fraud policy and code of conduct and its distribution to employees?				
35. Does the Audit and/or Risk Management Committee satisfy itself that the system of internal control has operated effectively throughout the reporting period and that the system of internal reporting gives early warning of control failures and emerging risk?				
36. Does the Audit and/or Risk Management Committee consider whether the Statement on Internal Control is sufficiently comprehensive and meaningful?				
37. Does the Audit and/or Risk Management Committee consider whether financial control, including the structure of delegations, enables the University to achieve its objectives and achieve good value for money?				
38. Does the Audit and/or Risk Management Committee review the draft of the financial statements?				
39. Before the Chief Officer signs off the financial statements, does the Audit and/or Risk Management Committee consider whether:				
<ul style="list-style-type: none"> <li>▪ there has been a robust process in preparing the financial statements to ensure completeness and whether appropriate processes are in place to ensure accurate accounting records are maintained?</li> <li>▪ suitable processes are in place to ensure regularity, probity and propriety are achieved?</li> <li>▪ issues raised by the Comptroller and Auditor General have been given appropriate attention?</li> <li>▪ the comprehensiveness and meaningfulness of the University's Statement on Internal Control and review of the Letter of Representation before issue by the University?</li> </ul>				

40. Does the Audit and/or Risk Management Committee provide an annual report to the Governing Authority?				
41. Does the annual report of the Audit and/or Risk Management Committee present the Committee's opinion about: <ul style="list-style-type: none"> <li>▪ the adequacy of risk management and internal control systems?</li> <li>▪ the adequacy of sources of assurance for same?</li> <li>▪ governance issues and concerns?</li> <li>▪ financial reporting for the year?</li> </ul>				
42. Does the Chairperson of the Audit and/or Risk Management Committee have open lines of communication with the Governing Authority, the Head of Internal Audit and the Comptroller and Auditor General?				
43. Do reports to the Audit and/or Risk Management Committee communicate relevant information at the right frequency, time and format to be effective?				
44. Does the Chairperson of the Audit and/or Risk Management Committee ensure that members who have missed a meeting are appropriately briefed on the business conducted in their absence?				
45. Are records of attendance maintained and reviewed annually by the Governing Authority? What was average attendance over the three preceding years?				
46. Does the Audit and/or Risk Management Committee Chairperson ensure that Committee members are provided with an appraisal of their performance as a Committee member?				
47. Does the Audit and/or Risk Management Committee Chairperson seek appraisal of their performance from the Chairperson of the Governing Authority?				

<p>48. Is the Chairperson involved in the appointment of new Audit and/or Risk Management Committee members, including providing advice on the skills and experience required of the new individual?</p>				
<p>49. Is the Audit and/or Risk Management Committee supported by a secretariat?</p>				
<p>50. Does the Audit and/or Risk Management Committee secretariat:</p> <ul style="list-style-type: none"> <li>▪ commission papers as necessary to support agenda items?</li> <li>▪ circulate meeting documents and meeting minutes to all Committee members, internal audit and C&amp;AG in good time before each meeting?</li> <li>▪ for any agreed actions, document the owner, deadline and any advice given by stakeholders and monitor between meetings?</li> <li>▪ keep the Committee abreast of development in the University?</li> <li>▪ maintain a record of when members' terms of appointment are due for renewal or termination?</li> <li>▪ ensure that appropriate appointment procedures are initiated when required?</li> </ul>				

## Appendix P      Sample Governing Authority Self-Assessment Evaluation Questionnaire

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### **Governing Authority Annual Self-Assessment Evaluation Questionnaire**

**To be completed by the Chairperson and each Governing Authority member of the University**

#### **Instructions for Completion:**

The intention is that each Governing Authority member will complete this self-assessment questionnaire independently. The Chairperson of the Governing Authority, after collating and reviewing the responses, should lead a discussion on the key issues arising from the questionnaire. The focus of the discussion should be on areas where improvement is required or where there is a wider variation in responses to the issues raised in the questionnaire.

The results of the self-assessment questionnaire and any actions arising should be reported to the Governing Authority for further discussion. The University may wish to tailor this self-assessment questionnaire to the particular circumstances of the University giving more weight to certain aspects of the questionnaire depending on the nature, scale and responsibilities of the University. This will be influenced by the following factors:

- The University's governing legislation;
- The Governing Authority's terms of reference;
- The environment within which the University operates.
- The maturity of the Governing Authority; and
- The University's corporate governance arrangements and performance.

#### **Scoring is as follows:**

**1 = Very Dissatisfied 2 = Dissatisfied**

**3 = Neither Satisfied nor Dissatisfied 4 = Satisfied**

**5 = Very Satisfied**

Governing Authority Self-Assessment Evaluation Questionnaire						
Role of the Governing Authority	Score					What could be done differently?
	Dissatisfied			Satisfied		
1. Are you satisfied that the Governing Authority has clearly documented its role and responsibilities, such as compiling a formal schedule of matters specifically reserved to it for decision?	1	2	3	4	5	
2. Are you satisfied that the formal schedule of matters reserved for decision by the Governing Authority is up-to-date and reviewed regularly?	1	2	3	4	5	
3. Are you satisfied that the Governing Authority, as a group, understands its role and responsibilities including its stewardship role?	1	2	3	4	5	
4. Are you satisfied that the Governing Authority has agreed the University's strategic aims with the HEA and Department of Education, to the extent relevant, and ensured optimal use of resources to meet objectives?	1	2	3	4	5	
5. Are you satisfied that the Governing Authority has ensured that the Chairperson keeps the Minister advised of matters arising in respect of the University?	1	2	3	4	5	
6. Are you satisfied that the Governing Authority has fulfilled its key role in setting the ethical tone of the University, not only by its own actions, but also in overseeing senior management and staff at all levels of the University?	1	2	3	4	5	

7.	Are you satisfied that the Governing Authority has reviewed the controls and procedures adopted by the University to provide itself with reasonable assurance that such controls and procedures are adequate to secure compliance by the University with statutory and governance obligations?	1	2	3	4	5	
8.	Are you satisfied that the Governing Authority has taken all necessary steps to make themselves aware of, and accessed all relevant information relating to, the University, Government and the public sector as necessary?	1	2	3	4	5	
9.	Are you satisfied that Governing Authority members have a sufficient understanding of the University and the sector within which it operates?	1	2	3	4	5	
10.	Are you satisfied that the Governing Authority has put in place a formal process for setting strategy including the preparation and adoption of a strategic plan?	1	2	3	4	5	
11.	Are you satisfied that the Governing Authority has approved an annual plan and/or budget and formally undertaken an annual evaluation of actual performance by reference to the plan and/or budget?	1	2	3	4	5	
12.	Are you satisfied that the University's mission and vision have been defined and communicated to all levels within the organisation?	1	2	3	4	5	
<b>Oversight Agreement</b>		<b>Score</b>					<b>What could be done differently?</b>
13.	Are you satisfied that the University has a robust written oversight agreement with the Minister/ Department for Education and Skills which clearly defines the terms of the University's relationship with the Minister/ Department?	1	2	3	4	5	

Division of Responsibilities		Score					What could be done differently?
14.	Are you satisfied that the respective roles of the Chairperson and Chief Officer of the University have been established and documented by the Governing Authority?	1	2	3	4	5	
Board Effectiveness		Score					What could be done differently?
15.	Are you satisfied that Governing Authority members have the time and appropriate skills and knowledge, updated as required and appropriate to the activities of the University, to enable them to discharge their respective duties and responsibilities effectively?	1	2	3	4	5	
16.	Are you satisfied that Governing Authority members are provided with appropriate inductions, mentoring and assistance with ongoing professional development by the Secretary of the Governing Authority, as required?	1	2	3	4	5	
17.	Are you satisfied that a culture of openness and debate is promoted in the University and that all Governing Authority members are afforded the opportunity to fully contribute to Governing Authority deliberations and meetings, including affording non- executive Governing Authority members an opportunity to bring an independent judgement to bear on issues?	1	2	3	4	5	
18.	Are you satisfied that the Governing Authority meets sufficiently regularly, that the duration of meetings is sufficient, and that the meeting format is adequate to enable the Governing Authority to discharge its duties effectively?	1	2	3	4	5	
19.	Are you satisfied that Governing Authority meeting agendas and other related material are circulated in a timely manner to enable full and proper consideration to be given to important issues?	1	2	3	4	5	

20.	Are you satisfied with the quality of the Governing Authority papers and minutes (e.g. not overly lengthy, clearly explain the key issues and priorities, consistent, timely)?	1	2	3	4	5	
21.	Are you satisfied that the Governing Authority spends the majority of its time on strategic issues and not day-to-day management responsibilities?	1	2	3	4	5	
<b>Codes of Conduct and Conflicts of Interests</b>		<b>Score</b>					<b>What could be done differently?</b>
22.	Are you satisfied that updated Codes of Conduct are approved by the Governing Authority and circulated to all Governing Authority members, management and employees?	1	2	3	4	5	
23.	Are you satisfied that the procedures relating to the disclosure of the Governing Authority members interests are complied with?	1	2	3	4	5	
24.	Are you satisfied that the Governing Authority has adequate procedures in place to monitor and manage potential conflicts of interest and confidential information of management and Governing Authority members?	1	2	3	4	5	
<b>Business and Financial Reporting</b>		<b>Score</b>					<b>What could be done differently?</b>
25.	Are you satisfied the Governing Authority ensures that a balanced, true and fair view of the University's financial performance and financial position is made when preparing the annual report, in the form of the financial statements, of the University and when submitting these to the Minister?	1	2	3	4	5	
26.	Are you satisfied that the Governing Authority ensures timely and accurate disclosure is made to the Minister for Education and Skills on all material matters regarding the University?	1	2	3	4	5	



Risk Management, Internal Control, Audit and Risk		Score					What could be done differently?
27.	Are you satisfied that the Governing Authority approves the risk management policies/framework and monitors its effectiveness including reviewing material risk incidents, noting or approving management's actions	1	2	3	4	5	
28.	Are you satisfied that the Governing Authority fulfils its responsibility for ensuring that effective systems of internal control are University and implemented in the University including financial, operational and	1	2	3	4	5	
29.	Are you satisfied that the Governing Authority undertakes a review of the effectiveness of internal control systems	1	2	3	4	5	
Performance Evaluation		Score					What could be done differently?
30.	Are you satisfied that the Governing Authority undertakes a self-assessment evaluation of its own performance and its committees?	1	2	3	4	5	
31.	Are you satisfied that issues arising from the evaluation are followed up and that the evaluation process enhances the Governing Authority effectiveness?	1	2	3	4	5	
The Board's Relationship with Management		Score					What could be done differently?
32.	Are you satisfied that there are appropriate delegation authorities in place for management and that they are regularly reviewed?	1	2	3	4	5	