



Submission to the Minister for Higher Education on reform of the Higher Education Authority Act 1971

September 2019

About the Irish Council for International Students (ICOS)

This submission is made on behalf of the Irish Council for International Students (ICOS). ICOS' is an independent advocacy organisation whose mission is to protect the rights of international students, and to contribute to a healthy and vibrant international education sector in Ireland which has the quality of the student experience at its centre.

ICOS has more than thirty institutional members, including all eight universities in the Republic of Ireland, many of the Institutes of Technology and all the major independent third level colleges. Our membership also includes the Union of Students in Ireland (USI).

ICOS' values include consultation, professionalism, collaboration and learning and our goals are to influence policy and standards in international education; build the capacity of our members; empower international students to pursue their rights and support and showcase the important contribution of international education to international development.

Introduction

ICOS welcomes the opportunity to make a submission in relation to the reform of the Higher Education Act 1971. The Act has been in place for almost 50 years and the reforms envisaged in the legislation are welcome and overdue as the function of the Higher Education Authority are not limited to those envisaged 5 decades ago.

The reforms proposed are important as they seek to balance the accountability and the autonomy of higher education institutions. When the transition from the Higher Education Authority (HEA) to the Higher Education Commission (HEC) is carried out the new entity must be equipped and resourced to carry out its functions. It is essential that the legislation that underpins the regulatory functions of the HEC is robust.

ICOS believes that the rights of the student should be central to the functions of the HEC and although the objects of the HEC do refer to needs, equality of access and opportunity, there is the potential to strengthen this still further.

ICOS offers some observations below as well as some key recommendations.

The Rights of the Student

There is a stated government target to grow the value of international students to €2.1bn per annum by 2020. It is essential that a strategy to grow the numbers of international students, is accompanied by an inclusion strategy to ensure that the rights and welfare of these students are protected. There is a role within the HEC to ensure that the rights of these students are protected through the development of regulations and codes of practice with that aim.

ICOS notes that the proposed legislation is not 'rights-based' legislation. Although the "needs of the students" are stated as a "primary consideration" for the HEC, these needs

are only to be provided for “as far as practicable and having regard to resources available”. ICOS recommends that this language is strengthened to include rights and welfare.

It is welcome that Section 66 identifies the importance of student engagement. The provision that the HEC ‘may’ engage with students could be strengthened to ensure that the HEC engages, particularly in the development of strategic plans, codes of practice and other essential processes. Care should be taken to ensure that the engagement is representative and includes all students that are engaged in learning in Ireland, including international students.

The HEC should ensure equality of access and opportunity, rather than simply “promoting” equal treatment. The equality of access plan¹ should explicitly refer to the ‘Public Sector Equality and Human Rights Duty’ which places a statutory obligation² on public bodies, to eliminate discrimination, promote equality of opportunity and protect the human rights of those to whom they provide services and staff when carrying out their daily work. The HEC should work collaboratively with the Irish Human Rights and Equality Commission (IHREC) to ensure the duty is implemented.

The public sector duty applies equally to a university, institute of technology or an education and training board and the guidelines envisaged in Section 60 should be consistent with the IHREC guidance in this matter.

The Role of the HEC

Today, the HEA’s remit covers more than 200,000 students and an increasing number of these students are international students. The HEA is involved in allocating of funding, ensuring accountability, regulating outcomes, provides policy advice to the Minister for Education, and data analysis. These are wide and varied powers and responsibilities and it is essential that the organisation is constructed and resourced to carry out these functions to a high standard.

The HEC, as provided for under the new legislation, will have similar functions with priority given to developing and implementing education and research policy, promoting excellence in learning, advising the Minister on matters relating to investment and measuring the performance of higher education systems.

Additionally, and of particular interest to ICOS, the HEC will promote links between the Irish higher education system and the international higher education system to ensure improved learning, research and mobility.

ICOS welcomes the explicit mention of co-operation with other bodies from Section 14 onwards and in particular Section 15 which refers to Quality and Qualifications Ireland

¹ Section 60

² Under Section 42 of the Irish Human Rights and Equality Act 2014

(QQI). The existing memorandum of understanding between the two bodies shows how the roles of the QQI and HEA intersect.

The recently enacted Qualifications and Quality Assurance (Amendment) Act 2019 gave the power to QQI to issue the International Education Mark (IEM) to providers who have demonstrated that they have statutory quality assurance arrangements in place and they are compliant with the Code of Practice for Provision of Programmes of Education and Training to International Learners.

Given the importance of this quality mark for international students, it is essential that the HEC and QQI collaborate on the quality assurance aspects of this mark. ICOS welcomes that it is proposed that the HEC may link compliance with the IEM to a decision on funding³ and we strongly encourage the inclusion of this condition.

Similarly, the Learner Protection Fund which is provided for under the 2019 Act and provides students with a reassurance in the event of a college closure. It is proposed that the HEC would require membership of the Learner Protection Fund (for those bodies not excluded from membership) as a condition for funding and this would further strengthen the rights of international students.

Institutional Autonomy

As already mentioned, the reforms proposed are very welcome, particularly the reforms in relation to the scope of the regulatory responsibilities and the powers of the HEA. In Ireland, third-level education receives approximately €1.5 billion in public funding, so accountability is essential, but so too is institutional autonomy.

In 2017, the HEA issued a statement outlining how it interprets its role in the governance and regulation of the higher education system. This statement was in response to a number of concerns about the regulatory role of the HEA.

One of the core principles set out by the HEA at that time was that HEIs should operate within the context of institutional autonomy in managing their internal affairs and with guarantees of academic freedom and that is reflected in the objects of the HEC which reads “to respect institutional autonomy while holding institutions to account for high performance”.

The development of a performance framework for institutions of higher education will allow for the HEC to measure performance while continuing to respect autonomy. It is essential that the institutions and students are consulted on the framework in advance of its establishment and the framework takes the IEM into consideration.

³ Section 15 of the consultation document

Conclusion & Recommendations

ICOS welcomes the proposed reform to the Higher Education Authority Act. Clarity as to the scope of the powers of the HEA/HEC is to be welcomed and should ensure that the parameters are understood by all parties.

It is welcome that the student experience is central to the objects of the proposed HEC, however it is concerning that this is resource dependent. Basic rights for students should be ensured and not dependent on resources.

Similarly, it is welcome that a focus on equality is central to the reform, with institutions required to put forward an equality statement. Co-ordination with the Irish Human Rights and Equality Commission is crucial on this matter.

Inter-agency cooperation is also crucial and important reforms such as the International Education Mark and Learner Protection Fund must be included in the reform. The establishment of the performance framework should include the IEM and students and academic institutions should be widely consulted on this framework.

ICOS recommends the following;

1. Removal of “having regard to resources available” from object 1 of the HEC.
2. The strengthening of Section 66 to ensure that the HEC *must* consult on key documents or policies.
3. The requirement to promote ‘equality of access’ could be strengthened by ‘ensuring’ equality and by referring to the requirements of the public sector duty.
4. The interaction of the HEC and other agencies is essential.
5. The proposed requirements that membership of the Learner Protection Fund and the International Education Mark be linked to funding is welcomed.
6. The need to balance institutional autonomy and regulation is important and further consultation should be carried out to ensure this balance is struck.

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