

Governance of Irish Universities

Foreword		1
Introduction		2
Part 1	University Legislation and Related Legislative Frameworks	4
1.1	The 1997 Act	5
1.2	Governing Authority	5
1.3	Role of Chairperson and Chief Officer in relation to Governing Authority	9
1.4	Policies on Quality Assurance and Equality	13
1.5	Disposal of Assets and Access to Assets by Third Parties	13
1.6	Remuneration	14
1.7	Reporting Arrangements	14
1.8	Strategic Planning	15
1.9	Borrowing	15
Appendix 1A	Full Relevant Extracts From 1997 Act	16
Appendix 1B	Agreed Framework between the Universities and the HEA for Departures from Approved Levels of Remuneration, Fees, Allowances and Expenses for University Employees	22
Appendix 1C	Framework for Borrowing and Loan Guarantees	26
Part 2	Universities Code: Principles and Best Practice	29
2.1	Code of Governance	30
2.2	Code of Conduct for Members and Employees	31
2.3	Internal Control and Risk Management	32
2.4	Audit Committee	33
2.5	Internal Audit Functions	34
2.6	Remuneration	35
2.7	Procurement and Tax Clearance	35
2.8	Travel	36
2.9	Disposal of Assets and Access to Assets by Third Parties	37
2.10	Investment Appraisal and Value for Money	37
2.11	Reporting Arrangements	38
2.12	Tax Compliance	39
2.13	Diversification and Establishment of Subsidiaries	40
2.14	Strategic Planning	40
2.15	Legal Disputes	40

Part 3	More Detailed Governance Guidelines	41
3.1	Guidelines for Governance	42
3.2	Code of Conduct Guidelines	57
3.3	Guidelines in respect of Quality Customer Service for Customers and Clients of Universities	61
3.4	Format of Statement of Internal Control	63
3.5	Guidelines for Best Practice in Asset Disposal and Access to Assets by Third Parties	64
	References	66

Foreword

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. 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.

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 University Code, important new areas were also addressed.

This 2012 revised "*Governance of Irish Universities*" now reflects the provisions of the 2009 Code of Practice for the Governance of State Bodies.

Governance of Irish Universities

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. 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.

The governance arrangements are set out in three separate parts as outlined below:

- (1) University Legislation and Related Legislative Frameworks;
- (2) Universities Code: Principles and Best Practice;
- (3) More Detailed Governance Guidelines.

(1) University Legislation and Related Legislative Frameworks

This primarily deals with the governance requirements arising from the provisions of the 1997 Act and the agreed frameworks under that Act. These are obligatory requirements.

(2) 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 regarding the internal practices and 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 (as set out in **Part 1** of this document) and any other legislation applicable to it or its activities.

(3) More Detailed Governance Guidelines

These are a set of illustrative guidelines to inform the implementation of the Universities Code: Principles and Best Practice 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 authorities¹, 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, faculties, schools, departments.

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.

¹ “A governing authority... shall be known by whatever name the governing authority decides.” [1997 Act, s. 15 (1)]. Currently, the names “Governing Authority”, “Governing Body”, “Údarás na hOllscoile” or “Board” are in use in the respective universities.

Part 1 University Legislation and Related Legislative Frameworks

1.1	The 1997 Act	5
1.2	Governing Authority	5
1.3	Role of Chairperson and Chief Officer in relation to Governing Authority	9
1.4	Policies on Quality Assurance and Equality	13
1.5	Disposal of Assets and Access to Assets by Third Parties	13
1.6	Remuneration	14
1.7	Reporting Arrangements	14
1.8	Strategic Planning	15
1.9	Borrowing	15
Appendix 1A	Full Relevant Extracts From 1997 Act	16
Appendix 1B	Agreed Framework between the Universities and the HEA for Departures from Approved Levels of Remuneration, Fees, Allowances and Expenses for University Employees	22
Appendix 1C	Framework for Borrowing and Loan Guarantees	26

1.1 The 1997 Act

1.1.1 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.

1.2 Governing Authority

1.2.1 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 1A**], 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 1A**] 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.”*

1.2.2 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.”*

1.2.3 The operation of the governing authority is governed by the Third Schedule of the 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 [see **Paragraph 1.3**], 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 [see **Appendix 1A**], 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.*

1.3 Role of Chairperson and Chief Officer in relation to Governing Authority

Role of Chairperson

- 1.3.1 The roles of the Chairperson and Chief Officer are governed by the 1997 Act. The role of the Chairperson² is governed in particular by Section 17, which is reproduced below and by the Third Schedule of the Act (see **paragraph 1.2.3** above).

“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.*
- (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.*

² 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.

- (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

1.3.2 The role of the Chief Officer³ 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.

“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 President or Provost or by such other title as the governing authority determines, and the person so appointed shall be the accounting officer for the university.*
- (2) *For the purposes of section 19 of the Comptroller and Auditor General (Amendment) Act, 1993⁴, the expression "accounting*

³ The Chief Officer “shall be called the President or Provost or by such other title as the Governing Authority determines.” [1997 Act, Third Schedule, Section 2 (1).]

⁴ Please see <http://www.irishstatutebook.ie/1993/en/act/pub/0008/index.html>.

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 Schedule⁵ **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.*
6. *A person who, immediately before the commencement of Part III, was employed as the President 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 President of a constituent college or as Master of the Recognised College of St. Patrick's College, Maynooth before*

⁵ As amended by the Institutes of Technology Act, 2006.

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 DailEireann established under the Standing Orders of DailEireann to examine and report to DailEireann 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 DailEireann.*
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."*

1.4 Policies on Quality Assurance and Equality

1.4.1 Section 35 of the 1997 Act deals with Quality Assurance.

1.4.2 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."

1.4.3 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 ..."

1.4.4 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.”

1.4.5 The full provisions of Section 35 of the 1997 Act are set out in **Appendix 1A**.

1.4.6 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.

1.4.7 The full provisions of 36 of the 1997 Act are set out in **Appendix 1A**.

1.5 Disposal of Assets and Access to Assets by Third Parties

1.5.1 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”.

1.5.2 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 President of the High Court and any arbitration shall be conducted in accordance with the Arbitration Acts, 1954 and 1980.”

1.6 Remuneration

1.6.1 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 1B**.

1.7 Reporting Arrangements

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

1.7.2 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.*”

1.7.3 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.*”

1.7.4 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.

1.8 Strategic Planning

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

- 1.8.2 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.
- 1.8.3 In accordance with Section 34(3) a copy of the strategic development plan is provided to the Minister and to the HEA.
- 1.8.4 The full provisions of Section 34 of the 1997 Act are set out in **Appendix 1A**.
- 1.8.5 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.
- 1.8.6 In accordance with Section 41(2) the governing authority shall publish the report at 1.8.5 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.
- 1.8.7 The full provisions of Section 41 of the 1997 Act are set out in **Appendix 1A**.

1.9 Borrowing

- 1.9.1 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 1C**.

Appendix 1A Full Relevant Extracts From 1997 Act

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)⁶, 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 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

⁶ 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.”

- (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)⁷ 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—

⁷ 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.”

(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

(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.*

Appendix 1B

The Universities Act 1997 – Agreed Framework between the Universities and the Higher Education Authority for Departures from Approved Levels of Remuneration, Fees, Allowances and Expenses for University Employees

1B.1 Introduction

1B.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.”

1B.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.”

1B.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”.

1B.1.4 For the purposes of the framework set out hereunder the term remuneration shall cover all forms of remuneration including fees, allowances and expenses.

1B.2 Provisions of the Framework

1B.2.1 General Provisions

1B.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.

1B.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).

1B.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.

1B.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.

1B.2.2 Specific provisions and criteria

1B.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.

1B.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.

1B.2.2.3 In the case of all departures under this framework the Chief Officer, as Accounting 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).

1B.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.

1B.2.2.5 The framework shall not apply to the senior academic posts above the grade of Professor.

1B.2.3 Duration and Review

1B.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.

1B.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.

1B.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.

Appendix 1C

Framework for Borrowing and Loan Guarantees

1C.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”.

1C.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.

1C.3 Understanding

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

1C.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.

1C.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.

1C.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 Accounting 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.

1C.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.

1C.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.

Part 2 Universities Code: Principles and Best Practice

2.1	Code of Governance	30
2.2	Code of Conduct for Members and Employees	31
2.3	Internal Control and Risk Management	32
2.4	Audit Committee	33
2.5	Internal Audit Functions	34
2.6	Remuneration	35
2.7	Procurement and Tax Clearance	35
2.8	Travel	36
2.9	Disposal of Assets and Access to Assets by Third Parties	37
2.10	Investment Appraisal and Value for Money	37
2.11	Reporting Arrangements	38
2.12	Tax Compliance	39
2.13	Diversification and Establishment of Subsidiaries	40
2.14	Strategic Planning	40
2.15	Legal Disputes	40

2.1 Code of Governance

2.1.1 In implementing this Code each university shall put in place a code of governance and in doing so shall have regard to the more detailed guidelines for governance set out at **Part 3.1**. These guidelines cover:

- The governing authority;
- Role of Chairperson and Chief Officer in relation to governing authority;
- Briefing for new governing authority members;
- Disclosure of interests by members of the governing authority;
- Risk management;
- Audit Committee;
- Sample terms of reference for Audit Committee;
- Sample charter for Internal Audit.

2.1.2 The role of university Secretary shall include the duty to keep governing authority members briefed in respect of all relevant developments in governance and accountability.

2.1.3 Universities, including their subsidiaries⁸, should adopt this Universities Code: Principles and Best Practice and, in accordance with **paragraph 2.11** confirm to the HEA that this has been done.

2.1.4 It is not feasible to have a code of best practice which will specifically provide for all situations that may arise. Members of the governing authority and employees of universities and their subsidiaries should bear in mind, therefore, that it is primarily their responsibility to ensure that all of their activities, whether covered specifically or otherwise in this document, are governed by the ethical and other considerations implicit in the Code.

⁸The Companies Act (section 155) provides that a company is deemed to be the subsidiary of another if, but only if,

(a) that other—

(i) holds a majority of the shareholders' or members' voting rights in the undertaking, or

(ii) is a shareholder or member of it and controls the composition of its board of directors, or

(iii) is a shareholder or member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the shareholders' or members' voting rights; or

(b) that other has the right to exercise a dominant influence over it—

(i) by virtue of provisions contained in its memorandum or articles, or

(ii) by virtue of a control contract; or

(c) that other has the power to exercise, or actually exercises, dominant influence or control over it, or

(ca) that other and the subsidiary undertaking are managed on a unified basis, or

(d) the undertaking is a subsidiary of any undertaking which is that other's subsidiary undertaking.

2.2 Code of Conduct for Members and Employees

2.2.1 It is strongly recommended that all universities have 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. Suggested guidelines for such a code are contained in **Part 3.2** of this document. The Code for employees, a copy of which should be made available to all members of the governing authority and employees, 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.

The Code should refer to the need for members and employees to comply with any relevant legislative and regulatory requirements. The Code 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.

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.

2.2.2 As part of the Annual Governance and Internal Control reporting requirements set out in **paragraph 2.11** that are to be supplied to the HEA, the Chairperson and the Chief Officer should affirm to the HEA that codes of conduct for members of the governing authority and employees have been put in place.

2.2.3 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, 2001⁹.

⁹In brief, the Act requires *inter alia* that persons in public bodies who hold designated directorships and designated positions of employment must make an annual statement or declaration of those interests (as defined in the Act) which could materially influence them in the performance of their functions and refrain from exercising such functions in accordance with the Act. The annual statement, which may be updated if interests change, must be made to a designated person within the Public body, in accordance with the provisions of the Act, and, in the case of those who hold designated directorships, to the Public Offices Commission established under the Act. The Commission will provide advice and publish mandatory procedures concerning steps to be taken by designated directors and holders of designated positions (among others) to ensure compliance with the Act. Where a person who holds a designated directorship or designated position of employment in a Public

- 2.2.4 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 **Part 3.3**.
- 2.2.5 The requirements specified in this Code should in general be applied in all operating subsidiaries of universities. Subsidiaries should formally report to the governing authority in accordance with the procedures determined by the governing authority and taking account of **paragraph 2.1.3** above. This report should be received prior to the Chairperson of the governing authority of the university and Chief Officer reporting to the HEA.

2.3 Internal Control and Risk Management

- 2.3.1 A system of internal control has a key role in the management of risks that are significant to the fulfilment of institutional objectives. A sound system of internal control contributes to safeguarding the interests of all relevant parties and the university’s assets. Internal control facilitates the effectiveness and efficiency of operations; helps ensure the reliability of internal and external reporting and assists compliance with laws and regulations.
- 2.3.2 Effective financial controls, including clear delineation and separation of functions and the maintenance of proper accounting records, are an important element of internal control. They help ensure that the university is not unnecessarily exposed to avoidable financial risks and that financial information used and published is reliable. They also contribute to the safeguarding of assets, including the prevention and detection of fraud.
- 2.3.3 A university’s objectives, its internal organisation and the environment in which it operates are continually evolving and, as a result, the risks it faces are continually changing. A sound system of internal control therefore depends on a thorough and regular evaluation of the nature and extent of the risks to which the university is exposed.
- 2.3.4 A sound system of internal control reduces, but cannot eliminate, the possibility of poor judgement in decision-making, human error, control processes being deliberately circumvented by employees and others, management overriding controls and the occurrence of unforeseeable circumstances.

body is advised by the Commission, or it appears from guidelines published by the Commission that his/her interest or the interest of a connected person should be disclosed, that person must make an appropriate statement to the relevant authority in the Public body.

- 2.3.5 A sound system of internal control therefore provides reasonable, but not absolute, assurance that the university will not be hindered in achieving its objectives, or in the orderly and legitimate conduct of its business, by circumstances which may reasonably be foreseen. A system of internal control cannot provide protection with certainty against failing to meet objectives or prevent all material failures, errors, losses, fraud, or breaches of laws or regulations.
- 2.3.6 Systematic assessment and management of risk is becoming an increasingly important part of internal control. Risk identification and management is seen as necessary to maximise the likelihood of achieving an institution's desired objectives and outcomes.
- 2.3.7 It is the responsibility of the governing authority to ensure that a robust system of internal control and risk management is in place in the university, taking account of the detailed guidelines in **Part 3**.
- 2.3.8 The governing authority should ensure that the risk assessment and management process is integrated into existing management systems. It should be kept as simple as possible. Roles and responsibilities should be clearly assigned and a person at a senior level with overall responsibility for it should be nominated who ensures a direct reporting line to the governing authority. Risk management expertise should also be included in the membership of the Risk Management Committee or Audit Committee as appropriate.

2.4 Audit Committee

- 2.4.1 There should be an Audit Committee established by the governing authority¹⁰ with written terms of reference which deal clearly with its authority and duties.
- 2.4.2 The constitution and terms of reference of the Audit Committee should be reviewed regularly by the governing authority and updated as appropriate.
- 2.4.3 Members of the governing authority who hold executive responsibility within the university should not be members of the Audit Committee. Neither the Chief Officer nor Chairperson should be a member of the Audit Committee.¹¹ Consideration should be given to having a number of members external to the university.
- 2.4.4 The Audit Committee should monitor and review the effectiveness of the university's internal audit activities.

¹⁰ All seven universities have established such audit committees.

¹¹ While the 1997 Act provides that the Chief Officer is entitled to be chairperson of any committee appointed by the governing authority, it obviously would not be good governance practice for a Chief Officer or Chairperson to chair or to be a member of the Audit Committee.

- 2.4.5 The Committee should meet sufficiently regularly to enable it to fulfil its duties.
- 2.4.6 The Committee should report annually to the governing authority.
- 2.4.7 The 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.
- 2.4.8 The Committee should keep under review and advise on the operation and effectiveness of the university's risk management systems and report annually thereon to the governing authority.
- 2.4.9 The Committee should advise on the selection and appointment of the external auditors engaged by the governing authority.
- 2.4.10 At least once a year the Committee will meet separately with each of the following: (a) the external auditors, (b) the Head of Internal Audit and (c) the Director of Risk Management, without members of management being present. The Committee will meet regularly with a representative of the Office of the Comptroller & Auditor General.
- 2.4.11 The Head of Internal Audit should have ongoing access to the Chairperson of the Audit Committee.
- 2.4.12 The Committee should meet with the nominated person with overall responsibility for Risk Management at least once a year.

2.5 Internal Audit Functions

- 2.5.1 There should be a properly constituted and functioning internal audit service in each university, whether provided in-house or out-sourced.
- 2.5.2 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 or its equivalent.
- 2.5.3 The Head of Internal Audit shall have direct access to the Chief Officer, to the Chairperson of the Audit Committee and to the Chairperson of the governing authority.
- 2.5.4 The objective of Internal Audit should be to provide assurance that the university has a sound system of internal control.

- 2.5.5 The functional reporting structure for Internal Audit within the organisation should be clear and formally recorded.
- 2.5.6 The Internal Audit function should be adequately resourced with the necessary skills including the ability to deal with non-financial aspects.
- 2.5.7 The Internal Audit function should liaise frequently with the external auditors engaged by the governing authority so that the potential for cooperation between the two is maximised. In planning, executing and reporting its work, the Internal Audit function should ensure that value-for-money auditing receives adequate attention.
- 2.5.8 The Audit Committee should periodically consult with the Comptroller and Auditor General regarding best practice in the operation of the internal audit function.
- 2.5.9 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 Committee and the governing authority.

2.6 Remuneration

- 2.6.1 Governing authorities are required to implement Government pay policy as expressed from time to time. These arrangements cover total remuneration. 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 1B**.

2.7 Procurement and Tax Clearance

- 2.7.1 Competitive tendering should be the standard procedure in the procurement process of universities subject to **paragraph 2.7.2** below. In addition to the national guidelines, set out by the Department of Finance, the relevant EU Directives, which have the force of law in this and all Member States, apply. It is the responsibility of the governing authority and management to ensure that appropriate systems and procedures are implemented 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 Chairperson and the Chief Officer should, in their report to the HEA (see **paragraph 2.11** below), affirm that such systems and procedures are in place and that to the best of their knowledge and belief the university has been compliant with the procurement procedures outlined above.

- 2.7.2 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 (including non-discrimination, equal treatment, transparency, mutual recognition, freedom to provide service and freedom of establishment) must be observed.
- 2.7.3 Contracts for supplying a research and development service and certain research and development supply contracts as specified in Article 31 (2) (a) of Directive 2004/18/EC may be exempt from the scope of Procurement Directives where their benefits are for the greater public good, not confined to the contracting authority, on condition that the service supplied is wholly paid for by the authority. In this context, where a university enters into research collaborations, joint ventures with industry or other external parties, or other arrangements where Intellectual Property may be brought to a university, and where a decision has been taken that competitive tendering is not required, such cases should be reported to the governing authority with evidence of a valid and informed basis for the decision and evidence that the principle of obtaining best value for public funding has been followed.
- 2.7.4 All universities must ensure that the Tax Clearance requirements set out in Department of Finance Circular *44/2006 of 21 December 2006* (which deals with payment of grants, subsidies and similar type payments), and Department of Finance Circular 43/2006, as regards Public Sector Contracts, are adhered to fully.
- 2.7.5 Information on procurement policy and competitive tendering and general guidance on procurement matters, including in relation to construction, is published by the National Public Procurement Policy Unit. This can be viewed or downloaded from the national public procurement website www.etenders.gov.ie.

2.8 Travel

- 2.8.1 Universities should adopt and comply in all respects with the circulars issued or amended from time to time by the Department of Finance regarding travel and subsistence. These are available on the Department of Finance website.
- 2.8.2 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.

- 2.8.3 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.
- 2.8.4 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.
- 2.8.5 Governing authority members and staff should be advised of the details of the policy applying.

2.9 Disposal of Assets and Access to Assets by Third Parties

2.9.1 In addition to the relevant statutory provisions of the 1997 Act as set out in **Part 1.5** of this document, universities should adhere to best practice for the disposal of assets or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties, 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 or in circumstances set out in **paragraph 2.7.2** above). The method used should be both transparent and likely to achieve a fair market-related price. Suggested guidelines for best practice are outlined in **Part 3.5** of this document.

2.9.2 Regard should also be had to the guidelines on Intellectual Property entitled “Funding Agency Requirements & Guidelines for Managing Research Generated Intellectual Property”, a joint publication of Enterprise Ireland, Forfás, Health Research Board, HEA, Industrial Development Authority, IRCSET and Science Foundation Ireland, 2006. This document is available at:

http://www.hrb.ie/fileadmin/Staging/Documents/RSF/PEER/Policy_Docs/Grant_policies/Intellectual-Property-Guidelines.pdf

2.10 Investment Appraisal and Value for Money

2.10.1 “Guidelines for the Appraisal and Management of Capital Expenditure Proposals in the Public Sector” were issued by the Department of Finance in February 2005. These procedures outline best practice for the management of significant capital expenditure proposals in the public sector. The governing authority and the relevant management staff of the university should have regard to these guidelines in the planning, appraisal and management of significant expenditure projects. This document is available at:

<http://www.finance.gov.ie/documents/publications/other/capappguide05.pdf>.

- 2.10.2 The HEA's letter of 4 May 2006 to the President of each university regarding Capital Appraisal Guidelines and other Value for Money measures refers. This requires confirmation that necessary arrangements have been made to ensure full compliance with these requirements. Details of these requirements can be found at: <http://www.finance.gov.ie/viewdoc.asp?DocID=3561>

2.11 Reporting Arrangements

- 2.11.1 In addition to the reporting requirements set out in the relevant legislation universities shall provide to the HEA an annual Statement of Governance and Internal Control which will be signed by the chief officer and accompanied by a covering letter from the chairperson of the governing authority confirming that the Statement has been approved by the governing authority.
- 2.11.2 This statement 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.
- 2.11.3 The annual financial statements of universities should reflect all post-balance sheet events, in accordance with generally accepted accounting principles (GAAP).
- 2.11.4 In addition to these requirements, the following information should be included in the Statement of Governance and Internal Control:
- (i) A statement affirming that the governing authority is responsible for and is satisfied that the university is in compliance with all statutory obligations applicable to the university that may be set out in legislation governing the establishment of the university or in other relevant legislation;
 - (ii) A statement confirming that a code of Governance and a Code of Conduct for Members and Employees have been put in place and implemented;
 - (iii) Financially significant developments affecting the university in the past year, including the establishment of subsidiaries or joint ventures and acquisitions, and major issues likely to arise in the short to medium term;
 - (iv) A statement affirming that Government policy on pay is being complied with (see **paragraph 2.6.1**);

- (v) A statement affirming that all appropriate procedures for financial reporting, internal audit, procurement and asset disposals are being carried out;
- (vi) Confirmation that the Guidelines for the Appraisal and Management of Capital Proposals are being adhered to where appropriate;
- (vii) Certification that Government travel policy requirements are being implemented in all respects
- (viii) Confirmation that the Guidelines on Achieving Value for Money in Public Expenditure as set out in the address by the Minister for Finance of 20 October 2005 and communicated to the universities are being followed;
- (ix) A statement affirming the university's compliance with tax laws;
- (x) Confirmation that a child protection policy is in place;
- (xi) 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.
- (xii) Confirmation that a 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.

The suggested format for the remainder of the Statement of Governance and Internal Control insofar as it relates to the university's system of internal control is set out in **Section 3.4**.

2.11.5 In the event that a university fails to comply with any of the above the university shall report such matters of non-compliance to the HEA as part of the Statement of Governance and Internal Control, providing an explanation for same and stating any corrective action taken or contemplated.

2.12 Tax Compliance

2.12.1 As major beneficiaries of State funding, 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.

2.12.2 Universities, while availing of all legitimate taxation arrangements, should not engage in 'offensive' 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 concerned should consult the Revenue Commissioners.

2.13 Diversification and Establishment of Subsidiaries

2.13.1 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.*”

2.13.2 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.

2.14 Strategic Planning

2.14.1 In addition to the requirements of Section 34 of the 1997 Act (see **paragraph 1.8.2**), 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.

2.14.2 In addition to the requirements of Section 41(1) of the 1997 Act (**see paragraph 1.8.5**), 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.

2.14.3 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.

2.15 Legal Disputes

2.15.1 Where a legal dispute involving other public bodies arises every effort should be made to mediate, arbitrate or otherwise before expensive legal costs are incurred.

Part 3 More Detailed Governance Guidelines

3.1	Guidelines for Governance	42
3.2	Code of Conduct Guidelines	57
3.3	Guidelines in respect of Quality Customer Service for Customers and Clients of Universities	61
3.4	Format of Statement of Internal Control	63
3.5	Guidelines for Best Practice in Asset Disposal and Access to Assets by Third Parties	64

3.1 Guidelines for Governance

3.1.1 The Governing Authority

3.1.1.1 The 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 1A**) sets out the functions of the governing authority. The Third Schedule of the Act (see **paragraph 1.2.3**) in particular governs the operation of the governing authority.

3.1.1.2 The governing authority should meet regularly, exercise effectively its strategic governance role and monitor the executive management and performance.

3.1.1.3 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.

3.1.1.4 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 fully to contribute to governing authority deliberations.

3.1.1.5 All members of the governing authority should have independent access to the advice and services of the Secretary of the university who must ensure that governing authority members are fully aware of the appropriate rules, regulations and procedures.

3.1.1.6 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 consider

making provision for the seeking in exceptional circumstances of independent legal or other professional advice by an individual member of group of members 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.

- 3.1.1.7 Any business or other interests, which could affect a member's independence, should be dealt with as outlined in **paragraph 3.1.4** below.
- 3.1.1.8 Fees and expenses paid to members of governing authority will be in accordance with guidelines from the Department of Finance and a statement certifying this to be the case will be included in the annual Statement of Governance and Internal Control. The schedule of fees and aggregate expenses paid to members will be presented in the university's annual report.
- 3.1.1.9 The attendances of each member at governing authority meetings will be included in the university's annual report and members should be informed accordingly.
- 3.1.1.10 Non-executive members of the governing authority should also take care not to become involved in the day-to-day executive management of the institution. This also applies to the staff and student members of a governing authority, except that in the course of their employment or in their activities as students, they may have executive responsibilities within the institution.
- 3.1.1.11 It should be noted that the 1997 Act provides as follows, "*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.*" (Third Schedule of 1997 Act, Section 8 (3)).
- 3.1.1.12 It is the governing authority's duty to ensure that a balanced and understandable assessment of the university's position is made in presenting its annual accounts to the Minister for Education and Skills, and to the HEA.
- 3.1.1.13 The governing authority should state in the annual accounts that they are responsible for approving the accounts. There should also be a statement by the external auditors engaged by the governing authority about their reporting responsibilities.
- 3.1.1.14 The governing authority should ensure 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.

3.1.1.15 The governing authority should review on a periodic basis the effectiveness of the university's system of internal controls, including financial, operational and compliance controls and risk management.

3.1.1.16 The Committees of the governing authority should have their constitution and terms of reference reviewed regularly by the governing authority and updated as appropriate.

3.1.1.17 The governing authority should be supplied, in a timely fashion, with information which is of a suitable quality to enable governing authority members satisfactorily to discharge their duties.

3.1.1.18 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 Chairperson should advise the HEA accordingly.

3.1.1.19 The governing authority has a responsibility to establish procedures for maintaining an appropriate relationship with the external auditors engaged by the governing authority.

3.1.1.20 In line with legislation, the governing authority should put in place procedures for Good Faith 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.

3.1.2. Role of Chairperson and Chief Officer in relation to Governing Authority

3.1.2.1 The roles of the Chairperson and Chief Officer are governed by the 1997 Act. The role of the Chairperson¹² is governed in particular by

¹² 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.

Section 17 and by the Third Schedule of the Act. The role of the Chief Officer¹³ 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. These and other relevant sections of the Act are set out in **Part 1.3**.

Role of the Chairperson

3.1.2.2 The Chairperson is responsible for the leadership of the governing authority. As chairperson of its meetings he/she should promote its wellbeing and efficient operation, ensuring that its members work together effectively and have confidence in the procedures laid down for the conduct of business.

3.1.2.3 A Chairperson should take particular care that the governing authority observes the principles of good governance, and that committees which play a central role in the proper conduct of the governing authority's business report back appropriately. The Chairperson should also ultimately be responsible for ensuring that the governing authority operates effectively, discusses those issues which it needs to discuss, and dispatches its responsibilities in a business-like way. The Chairperson should lead a periodic review by the governing authority of its own effectiveness.

3.1.2.4 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 the 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.

Role of the Chief Officer

3.1.2.5 The Chief Officer is responsible for the executive management of the institution and its day-to-day direction. He or she must not seek to determine matters reserved for the governing authority.

3.1.2.6 The specific responsibilities of the Chief Officer in relation to governing authority business include:

- Implementing the decisions of the governing authority or ensuring that they are implemented through the relevant part of the institution's management structure;

¹³ The Chief Officer "shall be called the President or Provost or by such other title as the Governing Authority determines." [1997 Act, Third Schedule, Section 2 (1).]

- Initiating discussion and consultation including, where appropriate, consultation with the staff and the academic council/board on proposals concerning the institution's future development, and ensuring that such proposals are presented to the governing authority.

3.1.2.7 It is noted that the 1997 Act provides as follows: *“Where the chief officer of a university is of the opinion that a proposed course of action of the governing authority will or is likely to result in expenditure in excess of the budget ... a ‘material departure from the budget’, the chief officer shall so inform the governing authority. Where a governing authority... decides to proceed with its course of action, the chief officer shall, unless satisfied that a material departure from the budget will not occur, as soon as practicable, inform An tÚdarás of the decision of the governing authority.”* [Section 37(5) and 37(6).]

3.1.3. Briefing for new Governing Authority Members

3.1.3.1 Governing authority members of universities have duties under the 1997 Act and it is the responsibility of each governing authority member to act in conformity with the applicable provisions of this Act.

3.1.3.2 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 preparation/approval of the accounts, 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.

3.1.4. Disclosure of Interests by members of the Governing Authority

3.1.4.1 It is central to the conduct of the business of the governing authority that members should act, and be perceived to act, impartially and not to be influenced in their roles as members by business or social relationships.

3.1.4.2 The requirements of the Ethics in Public Office Act 1995, and the Standards in Public Office Act 2001 have been referred to at **paragraph 2.2.3** of the Universities Code: Principles and Best Practice.

3.1.4.3 It should be noted that in relation to contracts the 1997 Act (Third Schedule, 8(1)) provides that, *“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 deliberations or decision of the governing authority relating to the contract, and the disclosure shall be recorded in the minutes of the governing authority”*.

3.1.4.4 The provisions of 8(2) of the Third Schedule deal with the obligations of a member of a governing authority who is related to a candidate for appointment by the governing authority as an employee in the university, *“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.”*

3.1.4.5 In addition to the statutory requirements, the governing authority should set down a broader code for the disclosure of all relevant interests (pecuniary, family¹⁴, financial or other) by members of the

¹⁴For this purpose, persons and bodies connected with a member should include:

- (a) a spouse, parent, brother, sister, child or step-child;
- (b) a body corporate with which the member is associated;
- (c) a person acting as the trustee of any trust, the beneficiaries of which include the member or the persons at (a) above or the body corporate at (b) above; and
- (d) a person acting as a partner of the member or of any person or body who, by virtue of (a) - (c) above, is connected with the member.

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 broader 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. A member for whom a relevant interest arises in relation to matters for decision by the governing authority should not take part in any deliberation or decision of the governing authority in relation to those matters.

- 3.1.4.6 Former members of a governing authority should treat commercial information received while acting in that capacity as confidential.
- 3.1.4.7 Former members of the governing authority should not retain documentation obtained during their terms of office as members.
- 3.1.4.8 The procedures in this section should also be applied in subsidiaries of universities.

3.1.5. Risk Management

- 3.1.5.1 Systematic assessment and management of risk is becoming an increasingly important part of internal control. Risk identification and management is seen as necessary to maximise the likelihood of achieving an institution's desired objectives and outcomes.
- 3.1.5.2 Risks fall into a variety of categories, some of the most common being:
 - Strategic risks;
 - Operational risks;
 - Financial risks;
 - Reputation risks.
- 3.1.5.3 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:
 - 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 identification of 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 and monitoring its effectiveness.
- 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
- requiring an external review of the effectiveness of the risk management framework on a periodic basis.

3.1.5.4 The governing authority should ensure that the risk assessment and management process is integrated into existing management systems. It should be kept as simple as possible. Roles and responsibilities should be clearly assigned and a person at a senior level with overall responsibility for it should be nominated.¹⁵

3.1.6. Audit Committee

3.1.6.1 There should be an Audit Committee established by the governing authority¹⁶ of at least three members with written terms of reference which deal clearly with its authority and duties. In appointing members, consideration should be given to appointing individuals external to the staff and members of the university.

3.1.6.2 The constitution and terms of reference of the Audit Committee should be reviewed regularly by the governing authority and updated as appropriate.

3.1.6.3 The Committee should meet at least four times each year.

3.1.6.4 The Committee should report annually to the governing authority.

3.1.6.5 The 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.

3.1.6.6 The Committee should keep under review and advise on the operation and effectiveness of the university's risk management systems and report annually thereon to the governing authority.

¹⁵ Reference may be made to "Risk Management Guidance for Government: Departments and Offices" issued by the Department of Finance in March 2004 as well as the State Body Code of May 2009.

¹⁶ All seven universities have established such audit committees.

- 3.1.6.7 The Committee should advise on the selection and appointment of the external auditors.
- 3.1.6.8 The Committee should meet the external auditors at least once a year in the absence of executive members of the governing authority and other executive management.
- 3.1.6.9 The Head of Internal Audit should have ongoing access to the Chairperson of the Audit Committee and the Committee should meet the Head of Internal Audit at least once a year.
- 3.1.6.10 The Committee should meet with the nominated person with overall responsibility for Risk Management at least once a year.
- 3.1.6.11 A sample overall Terms of Reference for the Audit Committee, which can be adapted to cater for individual circumstances, is given below.

3.1.7. Sample Terms of Reference for Audit Committee

Constitution

3.1.7.1 The governing authority has established a committee of the governing authority known as the Audit Committee which shall have a major role in relation to assuring proper financial management, effectiveness of internal control and risk management systems and economy, efficiency and effectiveness of the university's activities.

Membership

3.1.7.2 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.¹⁷ Members of the governing authority who hold responsibility within the university should not be members of the Committee.

3.1.7.3 The Chairperson of the Committee shall be appointed by the governing authority on the nomination of the Chief Officer of the university.

3.1.7.4 The Committee shall draw up its own working procedures.

Frequency of meetings

3.1.7.5 The Committee shall meet at least four times a year.

Attendance at Meetings

3.1.7.6 The Chief Financial Officer, Head of Internal Audit, Director of Risk Management, a representative of the external auditors engaged by the governing authority and any employee or external person relevant to the work of the Committee may attend for all or part of meetings at the invitation of the Committee.

3.1.7.7 At least once a year the Committee will meet separately with each of the following: (a) the external auditors, (b) the Head of Internal Audit and (c) the Director of Risk Management, without members of

¹⁷ While the 1997 Act provides that the Chief Officer is entitled to be chairperson of any committee appointed by the governing authority, it obviously would not be good governance practice for a Chief Officer or Chairperson to chair or to be a member of the Audit Committee.

management being present. The Committee will meet regularly with a representative of the Office of the Comptroller & Auditor General.

Mandate

3.1.7.8 The Committee is authorised by the governing authority to investigate any activity within its terms of reference and to seek any information it may require on that activity from any employee of the university or its subsidiaries and all such employees are directed to co-operate with the Committee. The Committee shall be given the necessary resources for this purpose.

3.1.7.9 The Committee is authorised by the governing authority to obtain outside legal or other independent professional advice, if it considers this necessary.

Terms of Reference

3.1.7.10 The terms of reference of the Committee are as follows-

Financial Statements

- To review the draft annual financial statements of the university and consolidated statements, and their format, taking account of all relevant considerations and of accounting standards and legal requirements, before they are submitted to the governing authority;
- To recommend to the governing authority whether they should approve any accounts so reviewed by the Committee;
- To determine at least annually whether, in the Committee's opinion, the university has kept proper books of account.

External Audit

- To advise the governing authority on the appointment of the external auditors, the audit fee and any questions of resignation or dismissal of the external auditors;
- To discuss with the external auditor, before the audit commences, the nature and scope of the audit;
- To discuss problems and reservations arising from the audit and any other matters requested by the external auditors;
- To review the external auditor's Management Letter and all other audit letters from the external auditors and to consider management's response;
- To monitor the performance and quality of the external auditor's work and the auditor's independence from the university;
- To obtain from the external auditor up- to- date information to enable the Committee to monitor the university's relationship with the auditor, including but not limited to information relating to the auditor's affiliates;

- To recommend, taking account of the legal provisions, whether or not to award contracts to an auditor or an affiliate for non-audit or audit-related work.

Internal Controls and Risk Management

- To satisfy itself that the arrangements made for and resources available to Internal Audit are suitable, and to monitor performance of Internal Audit;
- To consider the system of internal financial controls and to satisfy itself that the control environment is adequate and that controls are operating effectively;
- To keep under review and advise on the operation and effectiveness of the university's risk management systems;
- To provide an opinion annually on the proposed statement of internal controls and on any legal compliance requirements;
- To consider the Internal Audit annual audit programme, to review reports of the Head of Internal Audit and to consider major findings and management's response.

Other

- To consider reports by the Comptroller and Auditor General and management's response;
- To satisfy itself that arrangements are in place to promote economy, efficiency and effectiveness;
- To consider other topics, as requested by the governing authority or initiated by the Committee;
- To promote co-ordination between the university's internal and external auditors.

Reporting Arrangements

3.1.7.11 The Committee 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.

3.1.7.12 Minutes or reports of meetings of the Committee shall be circulated to each member of the governing authority.

3.1.8 Sample Charter for Internal Audit

Introduction

3.1.8.1 The Internal Audit service is responsible for conducting an independent appraisal of all of the university's activities, financial and otherwise. It should provide a service to the whole organisation, including the governing authority and all levels of management.

3.1.8.2 The Internal Audit service is responsible for assurance to the university's governing authority and Chief Officer on the entire system of controls. It assists management by evaluating and reporting to them on the effectiveness of the controls for which they are responsible. It remains the duty of the management, not the auditor, to operate an adequate system of internal control.

Mission of Internal Audit

3.1.8.3 The general aim is to help the university to accomplish its objectives by conducting a systematic and disciplined review of the effectiveness of risk management, control, governance processes and performance. As part of this it helps to ensure the reliability of internal and external reporting and assists compliance with laws and regulations. Each assignment undertaken by Internal Audit is intended to provide an independent, objective assurance as well as recommendations designed to add value and improve the operations of the university.

Scope

3.1.8.4 All the university's activities, funded from whatever source, fall within the remit of Internal Audit, which is not confined solely to financial matters. Internal Audit will consider the adequacy of controls necessary to secure propriety, economy, efficiency and effectiveness in all areas. It will seek to confirm that management have taken the necessary steps to achieve these objectives.

3.1.8.5 Internal Audit may also conduct any special reviews requested by the governing authority, Chief Officer or Audit Committee provided such reviews do not compromise its objectivity or independence or achievement of the approved audit plan. Internal Audit should review compliance with procurement and disposal procedures, from time to time, and report on the outcome to the audit Committee and governing body.

Responsibilities

3.1.8.6 The Head of Internal Audit is required to give an annual opinion to the Audit Committee, on the adequacy and effectiveness of the whole system of internal controls within the university, and the extent to which the governing authority may rely on it.

3.1.8.7 To provide the required assurance the Internal Audit service will undertake medium-term and annual programmes of work. These will be drawn up by the Head of Internal Audit and then forwarded to the governing authority following the approval of the Audit Committee. The programmes will be designed to:

- Appraise progressively the soundness, adequacy and application of the entire control system;
- Ascertain the extent to which the entire system of internal control ensures compliance with established policies and procedures;
- Ascertain the extent to which the assets of the university are properly controlled and safeguarded from losses arising from fraud, irregularity or corruption;
- Ascertain that accounting and other information is reliable as a basis for producing accounts, and for financial, statistical and other returns;
- Confirm the reliability of management information;
- Confirm compliance with laws, regulations, Government Guidelines and EU requirements.

Standards and Approach

3.1.8.8 Internal Audit will, in general, and taking account of the control environment, adopt a systems-based approach to its audits supplemented, by the use of traditional transaction testing and verification methods on a sample basis on all specific areas covered by the charter.

3.1.8.9 The Internal Audit function should carry out its work professionally and ethically and having regard to the Standards for the Professional Practice of Internal Auditors, published by the Institute of Internal auditors, and the Auditing Practices Board.

3.1.8.10 In order to demonstrate that due professional care has been taken in performing its work, it is necessary to have comprehensive records of activity showing that the work has been performed in accordance with accepted standards of best practice.

Authority and Access

3.1.8.11 The governing authority and the Chief Officer hereby authorise Internal Audit to act on their behalf in carrying out its work.

3.1.8.12 The Internal Audit service has rights of access to all of the university's records, information and assets which it considers necessary to fulfil its responsibilities. Rights of access to other bodies controlled or funded by the university should also be guaranteed.

3.1.8.13 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 in the performance of his or her duties.

Independence

3.1.8.14 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.

Liaison

3.1.8.15 The Internal Audit service will liaise closely with the external auditors appointed by the governing authority.

Follow- Up

3.1.8.16 On completion of an audit, findings will be relayed to the management and employees of the audited area for their views. These views will be considered and incorporated in the final report. Copies of the final report will go to the Chief Officer, the Audit Committee and the governing authority.

3.1.8.17 There will be periodic follow-up action by Internal Audit to ascertain if findings and recommendations have been acted upon by management.

Annual report

3.1.8.18 The Head of Internal Audit should provide an annual report on Internal Audit activities. This report shall be forwarded, within three months after the end of the financial year, to the Audit Committee, the Chief Officer and the governing authority. The report should comment, inter alia, on the adequacy of the resources available to it to carry out its approved programmes.

3.2 Code of Conduct Guidelines

Code of Conduct

3.2.1. 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.

Introduction

3.2.2 [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.

Intent and scope

3.2.3 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.

Objectives

3.2.4 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 and employees of [name of university];
- To prevent the development or acceptance of unethical practices;
- To promote the highest legal, management and ethical standards in all the activities of [name of university];
- To promote compliance with best current governance and management practices in all the activities of [name of university].

General Principles

3.2.5 All members of the governing authority and employees are required to observe the following fundamental principles as set out in the guidelines for the Code of Conduct.

Integrity

- Members of the governing authority 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 3.1.4.3** 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 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 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.

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 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.

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 and employees of [name of university] acknowledge the duty of all to conform to the highest standards of business ethics.

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;

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.

Work/External Environment

- The governing authority and employees 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.

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.

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Review

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

3.3 Guidelines in respect of Quality Customer Service for Customers and Clients of Universities

In their dealings with the public, universities shall have regard to the following:

Quality Service Standards

- 3.3.1 Publish a statement that outlines the nature and quality of service which customers can expect and, where appropriate, display it prominently at the point of service delivery.

Equality/Diversity

- 3.3.2 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 Traveller 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

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

Information

- 3.3.4 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 university web sites follows the guidelines on web publication.

Continue the drive for simplification of rules, regulations, forms, information leaflets and procedures.

Timeliness and Courtesy

- 3.3.5 Deliver quality services with courtesy, sensitivity and the minimum delay, fostering a climate of mutual respect between provider and customer.
Give contact names in all communications to ensure ease of ongoing transactions.

Complaints

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

Appeals

- 3.3.7 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

- 3.3.8 Provide a structured approach to meaningful consultation with, and participation by, the customer in relation to the development, delivery and review of services. Ensure meaningful evaluation of service delivery.

Choice

- 3.3.9 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

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

Better Co-ordination

- 3.3.11 Foster a more co-ordinated and integrated approach to delivery of services.

Internal Customer

- 3.3.12 Ensure staff are recognised as internal customers and that they are properly supported and consulted with regard to service delivery issues.

3.4 Format of Statement of Governance and Internal Control

- 3.4.1 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.
- 3.4.2 An explanation that such a system can provide only reasonable and not absolute assurance against material error.
- 3.4.3 Description of the key procedures, which have been put in place by the governing authority, designed to provide effective internal control including:
- 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); and
 - v) 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.
- 3.4.4 Confirmation that there has been a review of the effectiveness of the system of internal control.
- 3.4.5 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.
- 3.4.6 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.

Signed

Chief Officer

3.5 Guidelines for Best Practice in Asset Disposal and Access to Assets by Third Parties

- 3.5.1 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.
- 3.5.2 Universities should adhere to best practice for the disposal of assets or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties. It should be standard practice that the disposal of assets of universities or the granting of access to property or infrastructure for commercial arrangements e.g. joint ventures with third parties, with an anticipated value at or above a threshold level of €150,000, should be by auction or competitive tendering process, other than in exceptional circumstances. 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 or by a formal sign-off in accordance with university policy, as agreed by the governing authority. Regard should be had to accounting standards best practice in Ireland.
- 3.5.3 The exceptional circumstances mentioned at **3.5.2** could include a sale to a charitable body or where universities believe that competitive tendering is not appropriate due to the sensitive nature of particular arrangements in respect of research collaborations, joint ventures with industry or other external parties or in respect of arrangements where Intellectual Property may be brought to a university. Where in such circumstances a decision has been taken that competitive tendering is not appropriate such cases should be reported to the governing authority. In all cases, the method used should be both transparent and likely to achieve a fair market-related price.
- 3.5.4 If an auction or competitive tendering process takes place and the highest bid is not accepted, it is desirable that specific governing authority approval be required before the disposal of the asset, or granting of access to property or infrastructure for commercial arrangements with third parties, can be completed. For reasons of transparency, such approval together with the reason why a lower bid was permitted to be accepted should be noted in the minutes of the governing authority.
- 3.5.5 If an auction or competitive tendering process does not take place, and the agreed price is €150,000 or more, then it is desirable that specific governing authority approval be required before negotiations start and also before the disposal of the asset or granting of access to property or infrastructure for commercial joint venture arrangements with third parties can be completed.

- 3.5.6 No disposal of an asset or 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 therefor, or (ii) governing authority approval, where necessary, has been obtained.
- 3.5.7 In accordance with best practice, it is desirable that disposal of assets to members of governing authorities, employees or their families or connected persons, should, as with all disposals, be by a transparent method and at a fair market-related price. 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 a threshold approved by the governing authority may be omitted from the register). This register should be available for inspection, if requested, by the governing authority or by any member of the governing authority. The governing authority may retain a requirement that any disposal above an approved threshold may not be made without having been formally endorsed by the governing authority which may impose specific restrictions with regard to any such disposal.
- 3.5.8 In accordance with best practice, details of all disposals of assets or grants of access to property or infrastructure for commercial arrangements with third parties (save for connected third parties which is dealt with in **paragraph 3.5.4**) with an individual or combined material value (i.e. in excess of €10K) below the threshold value of €150,000, without auction or competitive tendering process, should be formally reported, with the price paid and the name of the buyer, to the governing authority, or a governing authority committee, on an annual basis.
- 3.5.9 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 the subject of auction or competitive tendering process should be included in the combined Annual Governance Statement and Statement of Internal Control.
- 3.5.10 The Chief Officer in his report to the HEA (see **paragraph 2.11**) should affirm that the disposal procedures, as outlined above, have been complied with.

References

The Working Group reviewed a number of seminal documents on governance and took account of new developments in the area, particularly in regard to the university sector. A number of these documents are listed below.

The Financial Governance of Irish Universities, Balancing Autonomy and Accountability; HEA; 2001 (“The O’Higgins Report”)

Office of the Director of Corporate Enforcement (ODCE): Draft ODCE Guidelines on Audit Committees; ODCE; April 2006

Code of Practice for Governance of State Bodies; Department of Finance; 2001

Code of Practice for Governance of State Bodies; Department of Finance; 2009

The Role and Responsibilities of Accounting Officers – A Memorandum for Accounting Officers; Department of Finance; December 2003

Public Procurement Guidelines: Competitive Process; Department of Finance; July 2004

Guidelines on Compliance with the Provisions of the Ethics in Public Office Acts 1995 and 2001 – Public Servants; Standards in Public Office Commission; June 2006

Funding Agency Requirements and Guidelines for Managing Research-Generated Intellectual Property; Commercialisation Steering Group; February 2006

Local Government Act 2001 - Code of Conduct for Councillors; Department of the Environment, Heritage and Local Government; June 2004

Report of the Working Group on the Accountability of Secretaries General and Accounting Officers, July 2002 (“The Mullarkey Report”)

The Combined Code on Corporate Governance; Financial Reporting Council; June 2006 (Update of “The Turnbull Report”)

Internal Control – Revised Guidance for Directors on the Combined Code; Financial Reporting Council; October 2005

Guide for Members of Higher Education Governing Bodies in the UK; Committee of University Chairmen; November 2004.

OECD Review of Higher Education in Ireland: Examiner’s Report; OECD; September 2004

OECD Principles of Corporate Governance; OECD; 2004

Review of Quality Assurance in Irish Universities: Sectoral Report; EUA; February 2005

Issues in Australian University Governance; Coaldrake, Stedman and Little; August 2003

University Resourcing: Australia in an International Context; Productivity Commission (Australia); December 2003.