



***Protocol Underpinning the Exercise of
Legislative Provisions available to the
HEA***

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1. Introduction

This Protocol considers the legislative provisions available to the HEA to request a review of a Higher Education Institution (“HEI”) where a concern may have arisen or could arise; and the processes which the HEA shall adopt to ensure the fair and transparent use of such provisions.

This Protocol also considers the broader legislative provisions available to the HEA to gather data and request information and the provisions concerning the ability of HEIs to self-initiate reviews or to request the assistance of the HEA where a concern may have arisen.

The HEA may request that a HEI conducts a review if it becomes concerned that a HEI may have governance or financial management issues, non-compliance with a funding condition, or where for some other reason(s) the HEA has a concern.

The HEA was established under the Higher Education Authority Act, 1971 which was repealed and replaced with the Higher Education Authority Act, 2022 (the “HEAA 2022”). In addition to the HEAA 2022, there are provisions available to the HEA under sector specific, and institution specific legislation. This Protocol document considers these provisions relating to the HEA as set out in the following legislation:

1. Higher Education Authority Act, 2022;
2. Universities Act 1997 (as amended);
3. Institutes of Technology Acts, 1992 – 2006 (as amended);
4. Technological Universities Act, 2018 (as amended);
5. National College of Art and Design Act, 1971 (as amended).

It is important to note that there are provisions that are available to the HEA under sector specific, and institution specific legislation, and where relevant it may be advisable for the HEA to exercise relevant provisions under all applicable legislation.

These legislative provisions are set out in **Section 4** of this document and, in broad terms, may be considered under two non-exhaustive, categories which as follows:

Category 1

Provisions that directly relate to a request for review by the HEA

In circumstances where the HEA may have a concern regarding a HEI it may request the conduct of a review by a HEI to establish the existence, nature, and magnitude of any issues. This may lead to the adoption of appropriate actions by the HEA including, but not limited to, the imposition of remedial measures. Such actions may be subject to appeal by the affected HEI in accordance with the terms of the HEAA 2022.

The provisions that are directly relevant to the HEA requesting a review and the adoption of appropriate actions are colour coded in red throughout this document

Category 2

Provisions on the gathering of information and data that may be relevant to a review

These provisions are part of the HEA’s ongoing policy formation, data gathering and monitoring responsibilities. These responsibilities will include those set out in Oversight Agreement, the Governance Oversight Framework and the Performance Development Agreement. Data collection

includes the Annual Governance Statements, Financial reports, SRS returns and information to support terms and conditions of funding. The HEA is committed to reviewing these reporting requirements on an ongoing basis to ensure they are appropriate and do not place an undue burden on HEIs.

In the case of some of these legislative provisions, the relevant provisions are focused on the gathering of information rather than strict review provisions. However, the information gleaned, and how it is assessed, may point to the need for the conduct of a review and are included for completeness. In effect, information provided to or obtained by the HEA may indicate that further examination of a HEI is merited, or that a review may need to be conducted, using the other provisions under the HEAA 2022.

Provisions relating to the ability for HEIs to conduct reviews and request assistance

HEIs can also conduct reviews and can request the support/assistance of the HEA as required on matters of concern. This will include active engagement between HEA and HEI to agree a suitable form of support and the sharing of information between the HEI and the HEA.

The provisions that are relevant to the HEIs conducting a review, or requesting the assistance of the HEA, are colour coded in blue throughout this document.

Protocol Document Structure

Section 2 of the Protocol document sets out the circumstances whereby the HEA may become aware of a concern and that may lead to HEA exercising legislative provisions in relation to a review of a HEI.

Section 3 of the Protocol sets out how the HEA will proceed in accordance with the principles of fairness and natural justice when exercising legislative provisions in relation to a review of a HEI.

Section 4 of the Protocol sets out the legislative provisions that are available to the HEA under the HEAA 2022 and which relate to the ability for the HEA to request a review of a HEI and take appropriate actions.

Section 4 also sets out the legislation provisions that are available under the HEAA 2022 or under sectoral legislation which may be relevant to a review.

Section 5 sets out proposed next steps on the Protocol, including arrangements for publication.

2. Exercise of Provisions by the HEA

The HEA may become aware of an issue of concern as regards a HEI in a variety of ways. This could include a direct approach from the HEI itself, from an individual or through the HEA's ongoing engagement and monitoring programme, through a protected disclosure made to the HEA¹ or other forms of information gathering. Once concerns are identified, consideration will be given as to how best to examine and address those concerns. The HEA will consider whether there is a reasonable basis for any concerns and whether there is a need to gather or analyse more information to determine if a review may be required.

The HEA will then determine whether a matter warrants the formal exercise of provisions open to the HEA or a less formal approach. A first stage to resolve the concerns could include engagement and dialogue with the HEI. If appropriate, the HEA may also refer the issue to the Department or another agency. As appropriate, the HEA would aim to work directly with the HEI, for instance by asking them for an explanation of the issue or gathering more information. Requesting additional information does not necessarily mean that the HEA will request the conduct of review.

Whether from information available to the HEA through its continuous monitoring programme, or from information the HEA obtains from information gathering, it is possible that the HEA may form the view that a review of a specific issue or issues in a given HEI, or the practices and/or procedures of a given HEI is merited.

A review may vary in size, scope and complexity depending on the concerns of the HEA, the size of the HEI and a range of other factors.

The HEA may request the conduct of a review by a given HEI if it becomes concerned that a HEI may have governance or financial management issues, where there may be non-compliance with a funding condition, or where for some other reason(s) the HEA has a concern.

A review may be a detailed examination of the HEI's activities and may focus on one or several issues. The use of information gathering provisions, or the issuance of a request for a review, is not an indication that a significant issue has necessarily occurred, and it is important that this is made clear in the interests of fairness to the HEI concerned as that view should only be formed when all necessary information is available.

The HEA may request that a review be conducted by recourse to the governing body under s64 of the HEAA 2022, and only following that process and in defined circumstances, by the appointment of a reviewer under s68 of the HEAA 2022. Any such reviewer will have appropriate qualifications, knowledge and/or expertise relevant to the issue(s) concerned and may obtain advice in respect of such matters as may be necessary and/or advisable as required.

The approach adopted by the HEA will vary based on the nature and complexity of the HEA's concerns.

When a reviewer is appointed by the HEA under s68 of the HEAA 2022 they will carry out a review in accordance with s68 into any matter specified in writing by the HEA and will provide the HEA and the Governing Body with a draft report. Both the HEA and the Governing Body will then be given 28 days to make observations on the draft report which report will then be finalised by the reviewer who may take such observations into account. The final report will be submitted to the HEA which shall provide a copy of the Minister. The HEA may publish a copy of the final report.

Following on from any such review and report, the HEA may form the view that appropriate actions, including the imposition of a remedial measure(s), should be taken by the HEA if it has established that there is an issue(s) of concern in respect of a given HEI. The HEA may decide on an action where it forms the view that a HEI may have governance or financial management issues, not be

¹ Protected disclosures may be made to the HEA under the Protected Disclosures Act, 2014 (as amended) and under Statutory Instrument 367/2020.

using funding for the purposes intended, or for where for some other reason(s) the HEA has a concern.

The nature of any action may vary in size, scope and complexity depending on the concerns of the HEA, the size of the HEI and/or the issue(s) of concern and a range of other factors and the HEA should consider a range of factors before deciding whether to act, and if so, which form that action may take.

Factors to be considered in determining appropriate actions may include, but are not limited to, the following:

- The role of the Governing Body (“**GB**”), and the actions being taken by the GB and Senior Executive of a HEI to address the concern that has arisen.
- How significant the concern is, based on the severity of the impact of the issue.
- The severity of the impact of the issue (either from a single instance or several instances). An action is more likely where: the impact on students is significant; the financial interests of the State as ultimate funder have been severely affected or there is reputational or potential damage to the sector.
- The nature of the issue and whether a particular action would be effective in mitigating the risk or remedying the breach.
- How the HEA became aware of the issue. An action may be more likely where a HEI has not notified the HEA and the HEA has become aware from other sources, such as through its own monitoring activity, protected disclosures, or media reporting.
- How long the underlying causes of the issue have existed and the extent to which these occurred deliberately or recklessly, or whether there is dishonesty or possible criminal action involved.
- An action is more likely where the issues are longstanding, the HEI has been deliberate or reckless or where issues have been concealed. e.g., where steps may have been taken by the HEI to mitigate the increased risk or remedy the breach. An action is more likely to be used where a HEI has not provided sufficient evidence that it has taken reasonable steps to mitigate an increased risk or prevent or remedy a breach.
- The likelihood that a breach could happen again, including the HEI’s history of regulatory compliance. An action is more likely to be used where a HEI has a history of non-compliance, or the HEA has concerns that a breach could happen again.
- The extent to which the HEI cooperates with the HEA’s requests and enquiries. An action is more likely where a HEI does not fully cooperate with the HEA.
- The HEI’s behaviour. An action is more likely when increased risk of a breach or a breach is because of the HEI acting deliberately or recklessly; failing to act or acting dishonestly or seeking to cover-up information.
- The action that the HEA has taken in previous similar cases. An action is more likely where the HEA has acted in a previous similar case.
- Any action taken by any other body to remedy the increased risk or breach. An action is more likely to be used where an increased risk or a breach is not being remedied by the actions of any other body or regulator.
- The extent to which any increased risk or breach has created a lack of confidence in the higher education sector. An action is more likely where action taken by a HEI or a group of HEIs has undermined confidence in the higher education sector and therefore affected HEIs that have complied.

Following an assessment of these factors, if the HEA forms the view that action is warranted, the CEO may take a variety of actions including but not limited to the issuance of remedial actions under the terms of s42, of the HEAA 2022 which deals with issues relating to funding, compliance with conditions of funding and the imposition of remedial measures if there is non-compliance with conditions of funding, or under s64, which deals with issues relating to governance which may include issues relating to funding as set out below.

The action(s) selected would be assessed and be fair, appropriate and proportionate as against the concern(s) established by the HEA. Any action would be imposed in accordance with the principles of fairness and natural justice as outlined below.

3. Principles of Fairness and Natural Justice

Any request by the HEA that a HEI conducts a review, or the conduct of any review under the terms of s68, and the adoption of any appropriate action, would be conducted in accordance with the principles of fairness and natural justice to ensure the integrity of any findings and any determinations or actions that may be taken because of any such findings and in this respect the following guiding principles may be of assistance:

- **Principle 1: Objectivity, Fairness and Impartiality**

The HEA will act fairly and in accordance with the law at all times and have regard to the principles of natural justice in making any decisions including a request that a HEI conducts a review. The HEA, and any person appointed by it, shall carry out any reviews under s68 with integrity and professionalism. The HEA will seek all reasonably available relevant information and base any decisions, including the imposition of any remedial measure(s), on the information before it. If it is necessary to gather information, the HEA will exercise its provisions to request information in accordance with the HEAA 2022 and the funding conditions of the HEI. The HEA recognises that a request to conduct a review and/or any reviews carried out under s68 and/or remedial measures can have important consequences for affected parties and for this reason it will consider all information thoroughly and with an open mind.

- **Principle 2: Openness and Transparency to the extent possible**

In a situation or situations where this is required, the HEA will be as open and transparent as possible in respect of any request to conduct a review and/or any reviews carried out under s68, or the taking of any appropriate action including the imposition of any remedial measure(s), taking into consideration that it is a statutory entity with important public functions relating to the higher education sector. There may be limits to this ability to be open and transparent whether to ensure a fair review or process or because of statute or otherwise.

The HEA will make affected parties aware, as soon as it is reasonably able to do so, of the nature of concerns that it has, what is likely to be required of them, and the timeframes that are likely to apply.

The HEA will provide notice to parties of its concerns and/or or the taking of any appropriate action including the imposition of any remedial measure(s), with as much detail as reasonably possible. The HEA will also take reasonable steps to provide parties with a chance to comment and that affected parties also understand the process and what is likely to be required of them.

- **Principle 3: Accountability for HEA governance and decisions**

Under the terms of the HEAA 2022, the HEA is accountable for its own performance and expenditure to the Minister and should model best practice in its own governance and financial management. The HEA will take accountability for any decisions it makes.

- **Principle 4: Timely Reviews**

The HEA will conduct itself as efficiently as its resources permit as a means of avoiding unnecessary uncertainty and delay which can be contrary to the interests of affected parties.

- **Principle 5: Responsible Management of Information**

The HEA will use and protect information provided to it in accordance with the law. The HEA recognises that much of the information it receives is of a private, commercially sensitive, or confidential nature. The HEA will take steps to preserve the confidentiality of such information and to provide the appropriate protections against disclosure save where it may be required to share this in accordance with the law.

In addition, where a request to conduct a review and/or any reviews carried out under s68 may disclose or has disclosed an issue(s) of concern which may merit a review the gathering of information is the first step in a process which may have significant consequences for the HEI concerned and the HEA needs to be aware of this as the information gathered may constitute evidence which supports the imposition of an appropriate action including the imposition of a remedial measure(s). As such, the HEA needs to be sure that its actions are supported by the evidence and that the evidence is clearly and comprehensively recorded taking into consideration the possibility of challenges and appeals to any action which the HEA may take.

The HEA will conduct itself in accordance with the principles of fairness and natural justice in its dealings and actions with all relevant parties.

4. Legislative Provisions

The provisions that are available to the HEA are set out under sector specific, and institution specific legislation, and where relevant it may be advisable for the HEA to exercise relevant provisions under all applicable legislation. The following sections consider provisions relating to the HEA as follows:

4.1 Legislative Provisions under the Higher Education Authority Act, 2022

4.2 Legislative Provisions Specific to Universities

4.3 Legislative Provisions Specific to Institutes of Technology

4.4 Legislative Provisions Specific to Technological Universities

4.5 Legislative Provisions Specific to the National College of Art and Design

These legislative provisions may be considered under two categories as follows:

Category 1

Provisions that directly relate to a request for review by the HEA

In circumstances where the HEA may have a concern regarding a HEI it may request the conduct of a review by a HEI to establish the existence, nature and magnitude of any issues. This may lead to the adoption of appropriate actions by the HEA including, but not limited to, the imposition of remedial measures. Such actions may be subject to appeal by the affected HEI in accordance with the terms of the HEAA 2022.

The provisions relevant to the HEA requesting a review and the adoption of appropriate actions are colour coded in red in this document.

Category 2

Provisions on the gathering of information and data that may be relevant to a review

These provisions are part of the HEA's ongoing data gathering and monitoring responsibilities. These responsibilities will include those set out in Oversight Agreement and the Governance Oversight Framework. Data collection includes the Annual Governance Statements, Financial reports, SRS returns and information to support terms and conditions of funding. The HEA is committed to reviewing these reporting requirements on an ongoing basis to ensure they are appropriate and do not place undue onus on HEIs.

In the case of some of these legislative provisions, the relevant provisions are focused on the gathering of information rather than strict review provisions. However, the information gleaned, and how it is assessed, may point to the need for the conduct of review so these are included for completeness. In effect, they may indicate that further examination, or that review may need to be conducted, using the other provisions is required. **These provisions are in black font in this document.**

Provisions relating to the ability for HEIs to conduct reviews and request assistance

HEIs can also conduct reviews and can request the support/assistance of the HEA as required on matters of concern. This will include active engagement between HEA and HEI to agree a suitable form of support and the sharing of information between the HEI and the HEA. **These provisions are colour coded in blue in this document.**

4.1. Legislative Provisions under the HEAA 2022

4.1.1. Category 1: Ability for the HEA to request a review and take appropriate actions

4.1.1.1. Compliance with conditions of funding – Sections 40 to 42

Under s40 of the HEAA 2022, the CEO shall assess information from the funded body to determine whether the funded body is in compliance with funding conditions and if the CEO is of the opinion that there are serious deficiencies in continued compliance the CEO shall inform the body in writing.

How this section may be implemented

Following receipt of the requested information, an assessment will be made by the CEO regarding compliance based on the relevant criteria and terms and conditions. Should a determination be made that there are serious deficiencies in continued compliance or non-compliance HEA will inform the institution in writing.

4.1.1.2. Direction of CEO following an assessment of compliance with conditions of funding

Under s41 of the HEAA 2022, where the CEO has carried out an assessment s/he may, following consultation with the funded body, issue directions to the funded body in writing in relation to the continued compliance with the conditions of funding.

How this section may be implemented

The CEO will consult with the relevant body, following which written notification will be provided regarding the assessment of compliance with the conditions of funding.

4.1.1.3. Remedial Measures under s42

If the CEO considers that directions issued by him under s41 have not been complied with or if the CEO is of the opinion that there are serious deficiencies in continued compliance by the funded body with the conditions under which funding was provided under s37, the CEO may take a variety of actions including but not limited to the issuance of remedial actions under the terms of s42.

The remedial measures that may be imposed by the CEO under s42 are as follows:

- the exclusion of that body for a specified period from the provision of some or all categories of funding from An tÚdarás under *section 37*;
- the application to that body of revised conditions subject to which funding is, or has been, provided;
- the controlled release to that body of funding by An tÚdarás under *section 37*;
- the withholding of funding due to be paid to that body by An tÚdarás under *section 37*;
- the refund by that body of funding paid to it by An tÚdarás under *section 37*;
- the appointment by the Chief Executive Officer of a person or persons, or of a body, to provide advice or assistance of a specialist nature to the funded body concerned;
- the issuing of guidance to the funded body concerned regarding a particular matter or matters relating to funding;
- an admonishment or censure in writing of the funded body concerned, considering any professional regulatory requirements or obligations that may be thereby impacted;
- the requirement for members of the governing body of the funded body concerned to undertake a course of training on matters related to governance, management or funding;
- the requirement for a plan to be put in place by the funded body concerned providing for the rectification or resolution of an issue of concern to the Chief Executive Officer with specified targets to be met and monitoring requirements to ensure the implementation of the plan;
- the provision to such other bodies as the Chief Executive Officer considers appropriate, including but not limited to the Qualifications and Quality Assurance Authority of Ireland, of information relating to funding as respects the funded body concerned.

How this section may be implemented

This provision allows the HEA to make a variety of decisions in respect of a given HEI including the managed release, refund or withholding of funding to the HEI. It allows for the issuance of a censure and a variety of constructive measures including the provision of specialist help, the issuance of guidance or a requirement for training or the implementation of plans to address issues of concern. Each instance will be considered in line with the available relevant information before a determination of next steps is made.

4.1.1.4. Review Request and Report to HEA - Sections 64 to 68

Under s64 of the HEAA 2022, the CEO may, if there are significant concerns about governance, performance of functions or compliance with obligations, request the governing body of a designated institution to undertake a review.

This report should be provided to the HEA within 60 days, but this may be extended by 30 days.

The CEO may, following consideration of a report, determine that no further action is required or make a determination in accordance with section 65.

The CEO shall provide a copy of the report to the Minister and **may, with the approval of the Board, publish a report in such form and manner as the Board considers appropriate.**

How this section may be implemented

Following the identification of significant concerns about governance, performance of functions or compliance with obligations, in a HEI, the CEO may request the governing body of a designated institution to undertake a review.

- The HEA will make this request in writing to the HEI GB.*
- The HEI will be obliged to provide a report to the HEA within 60 days of such a request. If additional time is sought this will be considered objectively and an extension of up to 30 days may be provided for.*
- The CEO may, following consideration of a report, determine that no further action is required or make a determination in accordance with section 65.*
- The CEO shall provide a copy of the report to the Minister and **may, with the approval of the Board, publish a report in such form and manner as the Board considers appropriate.***

4.1.1.5. Determination of matter by the CEO

Under s65 of the HEAA 2022, following receipt of a report, or where a review is not conducted or a report is not provided to the CEO under s64, the CEO can determine to apply a remedial measure or measures in circumstances where the CEO makes the determination that there are concerns in respect of the HEI. Remedial measures may include the furnishing of information under s67 of the HEAA 2022 and the appointment of a reviewer under s68 in accordance with that section along with the use of the following measures under the terms of s66.

Remedial Measures under s66

The remedial measures that may be imposed by the CEO under s66 are as follows:

- an admonishment or censure in writing of the institution, considering any professional regulatory requirements or obligations that may be thereby impacted. This measure would require HEA Board approval;**

- the requirement for members of the governing body of the institution or members of its staff to undertake a course of training on matters related to governance. This measure would require HEA Board approval;
- the requirement for a plan to be put in place by the institution providing for the rectification or resolution of an issue of concern to the CEO with specified targets to be met and monitoring requirements to ensure the implementation of the plan;
- the review of the strategic development plan of the institution. This measure would require HEA Board approval;
- the temporary exclusion of the institution from categories of funding payable by An tÚdarás;
- the application to the institution of revised conditions of funding;
- the controlled release of funding by An tÚdarás to the institution;
- the withholding by An tÚdarás of funding due to be paid to the institution;
- the refund by the institution of funding paid by An tÚdarás to it.

How this section may be implemented

This allows the HEA to make a variety of decisions in respect of a given HEI including the managed release, refund or withholding of funding to the HEI. It allows for the issuance of a censure and a variety of constructive measures including the provision of specialist help, the issuance of guidance or a requirement for training or the implementation of plans to address issues of concern. Each instance will be considered in line with the available relevant information before a determination of next steps is made.

4.1.1.6. Appeals

A HEI can appeal a determination by the CEO to apply remedial measures whether under s42(6) or s66, to undertake a review under s. 65(4) of the HEAA 2022 or to appoint a reviewer under s68.

How this section may be implemented

In accordance with fair procedures an appeal would be possible from a determination, and this would need to be set against the risks that may continue to exist whilst an appeal is in progress including in the most serious situations where the delayed imposition of a remedial measure could place State funds and resources at risk

It is possible that an affected HEI may apply for a stay on the remedial measure coming into effect pending the outcome of an appeal noting that the HEAA 2022 does not legislate for a suspension on the operation of the remedial or other measure automatically taking effect where the CEO refuses an application for a stay under section 42(8) or 65(6) of the HEAA 2022. As a consequence, where an application for a stay is denied by the HEA CEO any remedial or other measure may take effect until an appeal is determined.

In the case of an appeal of the decision to appoint a reviewer (under section 68) under the terms of section 65(3)(c), an appeal shall have the effect of creating an automatic stay on such appointment until the appeal is determined or discontinued under section 65(8).

Appeals procedures have been put in place under s71 of the HEAA 2022 and are as set out in the Higher Education Authority Act 2022 (Appeals) Regulations 2024².

² Statutory Instrument 132/2024

4.1.1.7. Furnishing of Information to Other Bodies

Under s67 of the HEAA 2022, the CEO may inform a relevant body of actions taken under s65(3) including the imposition of remedial measures. In some cases, the imposition of certain remedial measures or the use of certain provisions will require the approval of the HEA Board, and these are highlighted in green font where relevant throughout this Protocol.

How this section may be implemented

As required, the CEO may inform a relevant body of actions taken under s65(3).

4.1.1.8. Appointment of a Reviewer

Following on from a review by a HEI under s64 and a determination under s65, under s68 of the HEAA 2022, the CEO may appoint a reviewer to carry out a review of the HEI in accordance with s.68. Any such reviewer will have appropriate qualifications, knowledge and/or expertise relevant to the issue(s) concerned and may obtain advice in respect of such matters as may be necessary and/or advisable as required. The appointment of a reviewer under s68 requires HEA Board approval.

How this section may be implemented

Following engagement and the identification of significant issues the CEO may appoint a reviewer, after obtaining HEA Board approval, to obtain information and a perspective through the process of a review of the relevant HEI. Clarity will be provided in advance as to the scope and objectives of the review and any such appointment would be made in accordance with relevant procurement procedures. Any such reviewer will have appropriate qualifications, knowledge and/or expertise relevant to the issue(s) concerned and may obtain advice in respect of such matters as may be necessary and/or advisable as required. Any such review shall be conducted in a timely fashion and in accordance with the principles of fairness and natural justice as set out in Section 3 of this Protocol.

4.1.2. Category 2: Provisions on the gathering of information and data relevant to a review

<p>The following legislative provisions in the HEAA 2022 and in the sectoral legislation relate to the HEA's continuous oversight, data gathering and monitoring responsibilities. These provisions are focused on the gathering of information rather than strict review provisions. However, the information gleaned, and how it is assessed, may point to the need for the conduct of review so these are included for completeness. In effect, they may indicate that further examination, or that review may need to be conducted, using the other provisions is required.</p>

Consultants and Advisers

Under s10 of the HEAA 2022, the HEA may appoint such consultants and advisers as it considers necessary for the performance of its functions.

How this section may be implemented

On an as needs basis the HEA will engage consultants/advisors to provide professional assistance or advice as required. Terms of reference would be agreed for each assignment. Any such appointment would be made in accordance with relevant procurement procedures. Where any such

consultant or adviser appointed under section 10 will engage with a HEI, terms of reference and timeline shall be agreed between the consultant or adviser or the HEA and the HEI.

4.1.2.1. Reports and Advice to Minister

Under s13 of the HEAA 2022, the HEA shall provide such reports and information to the Minister in such form and manner and at such times as the Minister may specify on any matter related to the performance of the functions of the HEA.

Under s14 of the HEAA 2022, the HEA may provide advice to the Minister on any matter related to the performance of its functions.

How this section may be implemented

Regarding s13, on an as requested basis the HEA will provide to the Minister reports pertaining to matters related to the performance of the functions of the HEA. In so doing the HEA will ensure clarity of scope and objectives of such reports.

Regarding s14, as needs arise the HEA may provide advice to the Minister on any matter related to the performance of its functions.

4.1.2.2. Performance Framework

Under s35 of the HEAA 2022, the HEA shall, in consultation with the Minister, prepare and establish a performance framework for the higher education and research system not less than every five years. The HEA will consult with amongst, others, HEIs or their representative bodies and shall take the performance objectives of HEIs and the implementation, monitoring, assessment, and reporting processes to be followed by HEIs into account in the preparation of this framework. The first performance framework under HEAA 2022 came into effect in October 2023.

How this section may be implemented

The preparation of the performance framework allows the HEA to consult with HEIs, amongst others, to define a performance framework for the sector which takes account of national strategy and policy with respect to the higher education sector and the performance objectives and reporting obligations of the HEIs into account. This framework is agreed every 5 years in consultation with key stakeholders including HEIs, the Minister and DFHERIS resulting in a five yearly System Performance Framework and Performance Agreement Process.

4.1.2.3. Performance Agreement

Under s36 of the HEAA 2022, the HEA may, after engagement with the relevant HEI, agree a performance agreement for the HEI for a period of not more than five years. This agreement shall take account of the strategic development plan of the HEI concerned and shall be in accordance with the strategic framework then in place. The performance agreement shall include the performance objectives of the relevant HEI and the implementation, monitoring, assessment, and reporting processes to be followed by the relevant HEI.

How this section may be implemented

Following the establishment of the System Performance Framework and Performance Agreement Process, performance agreements are put in place with each HEI. The preparation of the performance agreement allows the HEA to define, and document expected performance on the

part of the relevant HEI and to set expectations for performance over the term which the HEA may then monitor in accordance with relevant provisions.

4.1.2.4. Review of Performance Agreement

Under s36(5) of the HEAA 2022, the HEA shall, in consultation with a relevant body or a designated institution of higher education that is not a relevant body, review annually the performance agreement with that body and agree any amendments of the performance agreement arising from that review with that body or institution.

How this section may be implemented

The HEA will follow the Strategy and Performance Dialogue process, which includes:

- *Consultation with HEIs regarding the preparation and submission of HEI Performance agreements.*
- *Submission, consideration, and publication of finalised HEI Performance Agreements.*
- *Annual review of progress on implementation of HEI Performance Agreements.*

4.1.2.5. Information from other Bodies

Under s39 of the HEAA 2022, the CEO may request information from other bodies as appropriate, in respect of bodies seeking funding or a funded body to establish whether the body meets the criteria, terms and conditions in the funding framework or to ensure that a funded body continues to comply with the conditions.

How this section may be implemented

The CEO will apply the relevant criteria and terms and conditions of the funding framework when considering the requirement to request information from other bodies.

4.1.2.6. Strategic Development Plan

Under s61 of the HEAA 2022, a relevant designated HEI (which does not, for the purposes of this section, include a University, Institute of Technology, Technological University or the National College of Art and Design) is required to consult with the HEA in the preparation of its strategic plan, prepare its plan in the form specified by the HEA and must deliver a copy of the plan to the HEA. The strategic plan must deal with matters of funding compliance and governance.

How this section may be implemented

The HEA regularly engages with HEIs on the development of their strategic plans. The HEA as part of its Strategy and Performance Dialogue process also provides a framework to HEIs to document future plans and commitments. HEI strategic plans underpin the performance agreements and the Strategy and Performance process.

4.1.2.7. Maintenance of Prescribed Accounts

Under s63 of the HEAA 2022, a relevant designated HEI (which does not, for the purposes of this section, include a University, Institute of Technology, Technological University or the National College of Art and Design) must prepare accounts in the manner specified by the HEA including any specific accounts required by the HEA. In addition, the HEI must provide a copy of the audited accounts, and the report of the auditor, to the HEA.

How this section may be implemented

HEIs prepare accounts in accordance with Financial Reporting Standards and are audited by the Comptroller and Auditor General. The HEA requires HEIs to provide a copy of their audited accounts, and the report of the auditor, in a timely manner.

Ability of HEIs to conduct reviews or to request assistance

HEIs also can request the support or assistance of the HEA as required on matters of concern. This will include active engagement between HEA and HEI to agree a suitable form of support and the sharing of information between the HEI and the HEA. These provisions are colour coded in blue in this document.

4.1.2.8. Request for Assistance

Under s142 of the HEAA 2022, a HEI may request assistance from the HEA.

Such assistance may include the HEA appointing a person to provide advice or the issuing of guidance on a particular matter.

Section 142 (3)(b) provides that the person appointed may:

“carry out an assessment of particular reports, financial plans, governance practices or the undertaking of particular functions and may, following such an assessment, make recommendations to the designated institution of higher education concerned with regard to the changes or improvements required to be made by it.”

How this section may be implemented

As in the case of s64 and s68, this should allow the HEA a perspective from within an institution through the conduct of a review. The request for assistance derives from the HEI itself and the scope and objectives of this review would be agreed through consultation between the HEA and the HEI. Any such appointment would be made in accordance with relevant procurement procedures.

4.2. Legislative Provisions Specific to Universities

4.2.1. Review by the Governing Body

Under s18A of the Universities Act, 1997 (“**UA 1997**”), if the governing body has concerns in respect of the governance, or the performance of the functions of the University, it may arrange for a review of the matter. The governing body must retain a copy of the report produced and provide a report to the HEA annually or, more frequently, if requested by the HEA, on the outcome of any review undertaken by the governing body under that subsection, including any measures taken as recommended by that review.

How this section may be implemented

This is an important provision, and it is the responsibility of the Governing Body to ensure that any such action if required is carried out in a timely manner.

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.
- should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.

4.2.2. Employee Remuneration, Fees and Expenses

Under s25 of the UA 1997, each university can appoint employees according to such terms as it considers appropriate but any departure of remuneration, fees and expenses from the agreed statutes must be in accordance with a framework agreed between the university and the HEA and subject to approval by the Departments

How this section may be implemented

The HEA exercises this provision in accordance with provisions of Section 25 of the UA 1997 and the terms of the Framework for Departures (2009) as agreed with the Universities and the Department.

4.2.3. Strategic Development Plan

Under s34(1A) of the UA 1997, University is required to consult with the HEA in the preparation of its strategic plan and must deliver a copy of the plan to the HEA.

How this section may be implemented

The HEA regularly engages with Universities on the development of their strategic plans. The HEA as part of its Strategy and Performance Dialogue process also provides a framework to HEIs to document future plans and commitments. University strategic plans underpin the performance agreements and the Strategy and Performance process.

4.2.4. Budgetary Oversight, Funding and Deviations

Under s37(2) of the UA 1997, each University must provide the HEA with a statement of the proposed expenditure and expected income of the university for the financial year in the agreed form on or before 1 April of that year.

Under s37(1) the HEA will notify the University of the annual allocation for that university having regard to the proposed budget statement and under s37(4) may increase the allocation on request but is under no obligation to increase this allocation. Under s37(6) a governing body which decides to proceed with a course of action that will result in a material deviation from the budget is required to inform the HEA as soon as practicable.

How this section may be implemented

Each University is required to submit an annual budget to the HEA following which budget and accountability meetings are held with senior management from each HEI on an annual basis.

Following the budget meeting where a deficit is forecast the HEI President/Provost is required to provide this notification in writing and this should include the following:

- *Confirmation of the amount of the deficit.*
- *An outline of the reason for this deficit*
- *Confirmation that the HEI has sufficient reserves to cover the deficit.*
- *Confirmation that the Governing Body approves the deficit.*

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- *inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- *should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risks that may arise for the Institution.*

4.2.5. Borrowing and Guarantees

Under s38 of the UA 1997, each University may borrow, guarantee or underwrite borrowing and this must be done in accordance with a borrowing framework agreed with the HEA under s38(2).

How this section may be implemented

A borrowing framework is in place for the universities.

4.2.6. Accounts

Under s39 of the UA 1997, each University must keep accounts in a form as approved by the HEA. Where such accounts are audited by the Comptroller and Auditor General a copy must be submitted to the HEA along with any report of the Comptroller and Auditor General.

How this section may be implemented

HEIs prepare accounts in accordance with Financial Reporting Standards and are audited by the Comptroller and Auditor General. HEIs are required to provide a copy of same to the HEA.

4.2.7. Fees

Under s40(2) of the UA 1997, the HEA may review the fees to be charged by the universities for student registration and courses, and for lectures and examinations relating to those courses and after such a review, and after consultation with the Minister, may advise the universities of the fees that in its opinion should be charged.

How this section may be implemented

This would be carried out in conjunction with the DFHERIS and the Minister.

4.2.8. Reports

Under s49 of the UA 1997, the HEA shall be empowered to assist the Universities to achieving their objectives and may as part of that process may review:

- strategic development plans:
- equality policies; and
- staffing numbers and how the budget of the university may be applied to different activities.

On foot of any such review, the HEA may then publish a report, in consultation with the university, on the matters reviewed by it.

How this section may be implemented

The HEA would consult with the relevant university on these matters and the publication of a report.

4.2.9. Information on staffing

Under s51 of the UA 1997, the HEA may from time-to-time request, and the university must provide, any information relating to the number of employees employed by the university, their composition by grade, their terms and conditions of employment (including their remuneration, fees, allowances, expenses and superannuation) and any other related matters.

How this section may be implemented

The DFHERIS may request the HEA from time-to-time to gather such detailed information.

Each quarter, as mandated by the provisions of the Employment Control Framework 2011-2014 (ECF), staff data is submitted by the HEIs to the HEA. The HEA collates the data provided and remits onward to Higher Education Funding & Funding Reform DFHERIS.

4.2.10. Superannuation

Under the fifth schedule of the UA 1997, a university has to submit details of a pension scheme, or an amendment to the pension scheme, to the HEA for approval and this must detail the scheme or schemes for the granting of pensions, gratuities and other allowances to or in respect of each of its employees (including the chief officer) as it thinks fit consequent on their retirement or death as the case may be and this may only be carried out by the university if approved by the HEA with the consent of the Minister and the Minister for Finance.

How this section may be implemented

The relevant institution engages with the Pensions section of DoE and as required following consultation with the DFHERIS and DPENDPR, and consent provided by MPENDPR, MFHERIS, a request is made to the HEA Board to consider for approval.

4.3. Legislative Provisions Specific to Technological Universities

4.3.1. Staff

Under s14 of the Technological Universities Act, 2018 (“**TUA 2018**”), a technological university (“**TU**”) may appoint such staff as it from time to time considers appropriate subject to the approval of the HEA given with the concurrence of the Minister and the Minister for Finance.

The staff of a TU shall be employed on such terms and conditions, including as may be determined by the technological university, subject to the approval of the HEA given with the consent of the Minister and the Minister for Public Expenditure and Reform

A TU must provide information to the HEA on request relating to the number of persons employed by the TU, their composition by grade, their terms and conditions of employment (including their remuneration, fees, allowances, expenses and superannuation), any company in which the technological university has a proprietary interest and any other related matters.

How this section may be implemented

Currently each quarter, as mandated by the provisions of the Employment Control Framework 2011-2014 (ECF), staff data is submitted by the HEIs to the HEA. The HEA collates the data provided and remits onward to Higher Education Funding & Funding Reform DFHERIS.

Should additional staffing data be required, this section will be exercised, and requests will be made in writing to the HEI.

4.3.2. Strategic Development Plan

Under s18 of the TUA 2018, a TU is required to consult with the HEA in the preparation of its strategic development plan and must deliver a copy of the plan to the HEA.

How this section may be implemented

The HEA regularly engages with HEIs on the development of their strategic plans. The HEA as part of its Strategy and Performance Dialogue process also provides a framework to HEIs to document future plans and commitments. HEI strategic plans underpin the performance agreements and the Strategy and Performance process.

4.3.3. Budget

Under s20 of the TUA 2018, the president of a TU, shall, on or before 1 April each year, or by such later date as agreed by the HEA, prepare, in a HEA approved format, a statement of the proposed expenditure and, other than allocated funding, expected income of the TU for that year which, together with the allocated funding, shall be the budget of the TU.

How this section may be implemented

TUs are required to prepare and submit an annual budget and engage with the HEA in an annual budget and accountability meeting.

4.3.4. Excess

Under s20 of the TUA 2018, the president of a TU, where a budget has been determined and the president of a TU forms the opinion that there is likely to be a material departure from the budget, they will inform the TU and if the TU chooses not to take appropriate action, the president of a TU shall inform the HEA.

How this section may be implemented

Following the annual budget meeting should a deficit arise; the TU President is required to provide notification in writing, and this should include the following:

- *Confirmation of the amount of the deficit.*
- *An outline of the reason for this deficit*
- *Confirmation that the HEI has sufficient reserves to cover deficit.*
- *Confirmation that the Governing Body approved the deficit.*

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- *inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- *should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.*

4.3.5. Borrowing

Under s21(1) of the TUA 2018, a TU is permitted to borrow or guarantee but this is subject to s21(2) which requires that rules shall be created which should require the prior approval of the

HEA in circumstances where the potential for any such proposed borrowing, guaranteeing, or underwriting to give rise to additional costs for the State.

How this section may be implemented

No rules have been put in place under s21(2) and as such TUs cannot borrow, guarantee or underwrite. In exceptional circumstances borrowing may be permitted with the prior approval of DFHERIS and DPENDPR.

4.3.6. Accounts

Under s22 of the TUA 2018, a TU must prepare accounts in the manner specified by the HEA including any specific accounts required by the HEA. In addition, the HEI must provide a copy of the audited accounts, and the report of the auditor, to the HEA.

How this section may be implemented

HEIs prepare accounts in accordance with Financial Reporting Standards and are audited by the Comptroller and Auditor General. The HEA requires HEIs to provide a copy of their audited accounts, and the report of the auditor, in a timely manner.

4.3.7. Fees

Under s24 of the TUA 2018, a TU may determine and charge fees of such amounts as it considers appropriate for student registration, courses, lectures, examinations, exhibitions or any other event, service or publication held or provided at or by, or produced by, the TU. The HEA may review the fees charged and, after consultation with the Minister, advise the TU of the fees that in its opinion should be charged.

How this section may be implemented

This would be carried out in conjunction with the DFHERIS and the Minister.

4.3.8. Review by the Governing Body

Under s27A of the TUA 2018, if the governing body has concerns in respect of the governance, or the performance of the functions of the college, it may arrange for a review of the matter. The governing body must retain a copy of the report produced and provide a report to the HEA annually or, more frequently, if requested by the HEA, on the outcome of any review undertaken by the governing body under that subsection, including any measures taken as recommended by that review.

How this section may be implemented

This is an important provision and it is the responsibility of the Governing Body to ensure that any such action if required is carried out in a timely manner.

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- *inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- *should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.*

4.4. Legislative Provisions Specific to Institutes of Technology

4.4.1. Research, consultancy, and development conditions

Under s5(1)(c) of the Institutes of Technology Acts, 1992 – 2006 (“**IOTA 1992 – 2006**”), a college may engage in research, consultancy and development work and to provide such services in relation to these matters as the governing body of the college considers appropriate, but these activities may be subject to conditions set down by the HEA.

How this section may be implemented

The HEA issues the HEA Principles of Good Practice in Research within Irish Higher Education Institutions. Awareness of, and a commitment to adherence to, these principles is included in the Annual Governance Statement of the HEIs. Compliance for same is reviewed through the Annual Governance Statements Process.

4.4.2. Accountability for Funding

Under s7(1B) of the IOTA 1992 - 2006, the governing body of a college is required to account to the HEA for funding provided to the college by the HEA.

How this section may be implemented

Designated HEIs are required to submit regular reports, an annual budget, and projections, and engage with the HEA in an annual budget and accountability meeting. In addition, on an as required basis, information or reports may be requested by the HEA to account for funding.

Following the budget meeting where a deficit is forecast the HEI President/Provost is required to provide this notification in writing and this should include the following:

- *Confirmation of the amount of the deficit.*
- *An outline of the reason for this deficit*

- Confirmation that the HEI has sufficient reserves to cover deficit.
- Confirmation that the Governing Body approves the deficit.

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- *inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- *should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.*

4.4.3. Dissolution of the Governing Body

Under s8(1) of the IOTA 1992 - 2006, if the Minister is satisfied that the functions of a governing body are not being properly discharged or where a governing body fails to comply with an order, direction or regulation of the Minister or a college fails to comply with any judgment or order of any court of competent jurisdiction then the Minister may dissolve the governing body after consultation with the HEA.

How this section may be implemented

As required, the Minister will consult with the HEA on such matters.

4.4.4. Appointment of Director and Interim Director

Under s9 of the IOTA 1992 - 2006, the governing body may appoint a director, but this is to be undertaken in accordance with a selection board determined by the HEA and any interim appointment is to take place after consultation between the governing body and the HEA.

How this section may be implemented

Institutes of Technology consult with the DFHERIS on such matters and the HEA would work in conjunction with DFHERIS.

4.4.5. Payments to staff from related companies

Under s11(1) of the IOTA 1992 - 2006, the payment of any remuneration, fees, allowances, or expenses by a company or undertaking associated with the college must be in accordance with arrangements made between the college and the HEA.

How this section may be implemented

No such arrangements are in place, and this would be carried out in conjunction with the DFHERIS.

Section 11 (2) of the IOTA 1992 - 2006 provides that "Subject to section 12, there shall be paid by a college to its staff, such remuneration, fees, allowances and expenses as may be approved from time to time by the Minister with the consent of the Minister for Finance."

4.4.6. Recruitment, appointment, and details of staff

Under s11A of the IOTA 1992 - 2006, colleges may appoint such staff of the college (in addition to the Director) as the governing body from time to time thinks proper subject to the approval of the HEA given with the concurrence of the Minister and the Minister for Finance.

In addition, the recruitment of staff must be done in accordance with the policies notified to them by the Minister, or at the Minister's request, the HEA, and the college must ensure that any recruitment procedures comply with these policies.

Under s14(3) of the IOTA 1992 – 2006, a college must provide information to the HEA on request relating to the number of persons employed by the college, their composition by grade, their terms and conditions of employment (including their remuneration, fees, allowances, expenses and superannuation) and any other related matters.

How this section may be implemented

- *Designated HEI's are required to comply with Government Policy on pay and pensions.*
- *Designated HEIs are required to comply with the requirements of government circulars and policies on staff numbers, recruitment, pay, fees, expenses, allowances, pensions, travel and subsistence and leave.*
- *Government circulars are notified by DFHERIS and/or the HEA to designated HEIs.*
- *Designated HEIs are required to seek the necessary approvals and consents specified in circulars and policies.*
- *Designated HEIs should ensure that they are applying the most recent government circular/policy and to keep themselves aware of any changes and updates by checking relevant websites.*
- *Designated HEIs are required to seek the relevant sanctions where these are specified in circulars and policies.*
- *The HEA may request data relating to persons employed by the HEI.*
- *Currently each quarter, as mandated by the provisions of the Employment Control Framework 2011-2014 (ECF), staff data is submitted by the HEIs to the HEA. The HEA collates the data provided and remits onward to Higher Education Funding & Funding Reform DFHERIS.*
- *Should additional staffing data be required, this section will be exercised and requests will be made in writing to the HEI.*

4.4.7. Budget

Under s13 of the IOTA 1992 – 2006, the Director shall, shall, on or before 1 April each year, or by such later date as agreed by the HEA, prepare, in a HEA approved format, a statement of the proposed expenditure and, other than allocated funding, expected income of the college for that year which, together with the allocated funding, shall be the budget of the college.

How this section may be implemented

IOTs are required to submit an annual budget and engage with the HEA in an annual budget and accountability meeting.

4.4.8. Excess

Under s13 of the IOTA 1992 – 2006, where a budget has been determined and the Director forms the opinion that there is likely to be a material departure from the budget, they will inform the governing body and if the governing body chooses not to take appropriate action, the Director shall inform the HEA.

How this section may be implemented

Following the annual budget meeting where a deficit is forecast, the HEI President is required to provide notification in writing of this deficit including the following:

- *Confirmation of the amount of the deficit.*
- *An outline of the reason for this deficit*
- *Confirmation that the HEI has sufficient reserves to cover the deficit.*
- *Confirmation that the Governing Body has approved the deficit.*
- *In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:*
- *inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- *should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.*

4.4.9. Borrowing

Under s13(8) of the IOTA 1992 – 2006, a college is permitted to borrow or guarantee but this is subject to s13(9) which requires that rules shall be created which should require the prior approval of the HEA in circumstances where the potential for any such proposed borrowing, guaranteeing or underwriting to give rise to additional costs for the State.

How this section may be implemented

No rules have been put in place under s13(9) and as such Institutes of Technology cannot borrow.

4.4.10. Governing Body Report and Information

Under s14 of the IOTA 1992 – 2006, the governing body of a college must prepare and produce a report, in a form approved by the HEA, on its actions during the year no later than 3 months from the end of the academic year and a copy must be given to the HEA and the Minister.

In addition, the governing body must provide such information regarding the performance of its functions as the HEA may from time to time require.

How this section may be implemented

IOTs submit a copy of their Annual report within three months from the end of the Academic Year. On request the HEA will clearly state what information and how a Governing Body is required to provide pertaining to the performance of the HEIs function.

4.4.11. Maintenance of Prescribed Accounts and Audit by the Comptroller and Auditor General

Under s16 of the IOTA, 1992 – 2006, a college must keep accounts in the manner specified by the HEA. In addition, a college must, where directed, submit a copy of accounts to the Comptroller and Auditor General, for audit, and the accounts and the report of Comptroller and Auditor General must be provided to the HEA.

How this section may be implemented

IOTs prepare accounts in accordance with Financial Reporting Standards and the accounts are audited by the Comptroller and Auditor General. IOTs are required to submit a copy of their audited accounts to the HEA.

4.4.12. Information from the Director

Under s21B(4) of the IOTA 1992 – 2006, the director of a college must provide such information regarding the performance of his functions as the HEA may from time to time require.

How this section may be implemented

On request the HEA will clearly state what information is required from the Director.

4.4.13. Strategic Development Plan

Under s21C of the IOTA 1992-2006, a college is required to consult with the HEA in the preparation of its strategic development plan and must deliver a copy of the plan to the HEA.

How this section may be implemented

The HEA regularly engages with HEIs on the development of their strategic plans. The HEA as part of its Strategy and Performance Dialogue process also provides a framework to HEIs to document future plans and commitments. HEI strategic plans underpin the performance agreements and the Strategy and Performance process.

Review of Strategic Development Plan

Under s21F of the IOTA 1992 – 2006, the HEA may review the strategic development plan of a college and may, following consultation with the college, publish a report, in such form and manner as it thinks fit, on the outcome of any such review.

How this section may be implemented

The HEA regularly engages with IOTs on the development of their strategic plans and reviews progress on these plans via the Strategy and Performance Dialogue process.

4.4.14. Review by the Governing Body

Under s21G of the Institutes of Technology Acts, 1992 – 2006, if the governing body has concerns in respect of the governance, or the performance of the functions of the college, it may arrange for a review of the matter. The governing body must retain a copy of the report produced and provide a report to the HEA annually or, more frequently, if requested by the HEA, on the outcome of any review undertaken by the governing body under that subsection, including any measures taken as recommended by that review.

How this section may be implemented

As for s14 and s21B(4), this is an important provision and it is the responsibility of the Governing Body to ensure that any such action if required is carried out in a timely manner.

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.*

4.5. Legislative Provisions Specific to the National College of Art and Design

4.5.1. Accountability for funding

Under s5(2B)(i) of the National College of Art and Design Act 1971 as amended (“NCADA 1971”), An Bord is required to account to the HEA for funding provided to the college by the HEA.

How this section may be implemented

Designated HEIs are required to submit regular reports, an annual budget and projections, and engage with the HEA in an annual budget and accountability meeting. In addition, on an as required basis, information or reports may be requested by the HEA to account for funding.

Following the budget meeting where a deficit is forecast the HEI President/Provost is required to provide this notification in writing and this should include the following:

- *Confirmation of the amount of the deficit.*
- *An outline of the reason for this deficit*
- *Confirmation that the HEI has sufficient reserves to cover deficit.*
- *Confirmation that the Governing Body approves the deficit.*

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- *inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- *should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.*

4.5.2. Accounts and Audit by the Comptroller and Auditor General

Under s15(2)(a) of the NCADA 1971, the college must submit a copy of accounts to the Comptroller and Auditor General, for audit, and the report of Comptroller and Auditor General must be provided to the HEA.

How this section may be implemented

The College will prepare accounts in accordance with Financial Reporting Standards and the accounts are audited by the Comptroller and Auditor General. The College is required to submit the report of Comptroller and Auditor General to the HEA.

4.5.3. Review by An Bord

Under s16A of the NCADA 1971, if An Bord has concerns in respect of the governance, or the performance of the functions of the college, it may arrange for a review of the matter. An Bord must retain a copy of the report produced and provide a report to the HEA annually or, more frequently, if requested by the HEA, on the outcome of any review undertaken by An Bord under that subsection, including any measures taken as recommended by that review.

How this section may be implemented

This is an important provision, and it is the responsibility of An Bord to ensure that any such action if required is carried out in a timely manner.

In accordance with the HEA – HEI Oversight agreement the Chief Officer of the Institution must:

- *inform the HEA, without delay, of any circumstance that is having, or is likely to have, a material adverse effect on the financial position of the Institution or its ability to maintain its capacity to deliver education programmes, research, or related activities.*
- *should keep the HEA informed, on a timely basis, of any governance issues, concerns, financially significant events or major risk that may arise for the Institution.*

4.5.4. Strategic Development Plan

Under s20C of the NCADA 1971, the college is required to consult with the HEA in the preparation of its strategic plan, prepare its plan in the form specified by the HEA and must deliver a copy of the plan to the HEA.

How this section may be implemented

The HEA regularly engages with HEIs on the development of their strategic plans. The HEA as part of its Strategy and Performance Dialogue process also provides a framework to HEIs to document future plans and commitments. HEI strategic plans underpin the performance agreements and the Strategy and Performance process.

5. Conclusion and Next Steps

The overarching purpose of this Protocol is to clearly articulate the processes that the HEA will adopt to ensure the fair and transparent use of the provisions available to it under the HEAA 2022 where the HEA needs to request a review of a HEI.

Section 2 of the Protocol articulates circumstances under which the HEA may become aware of a concern and that may lead to HEA exercising legislative provisions in relation to a review of a HEI. This may be where the HEA becomes aware that a HEI may have governance or financial management issues, non-compliance with a funding condition, or where for some other reason(s) the HEA has a concern

Section 3 of the Protocol also sets out how the HEA will proceed in accordance with the principles of fairness and natural justice when exercising legislative provisions in relation to a review of a HEI.

Finally, **Section 4** sets out the legislative provisions that are available to the HEA under the HEAA 2022 and which relate to the ability for the HEA to request a review of a HEI and take appropriate actions. This section also sets out the legislative provisions that are available under the HEAA 2022 or under sectoral legislation which may otherwise be relevant to a review where the HEA may gather data or request information that may become relevant to a review.

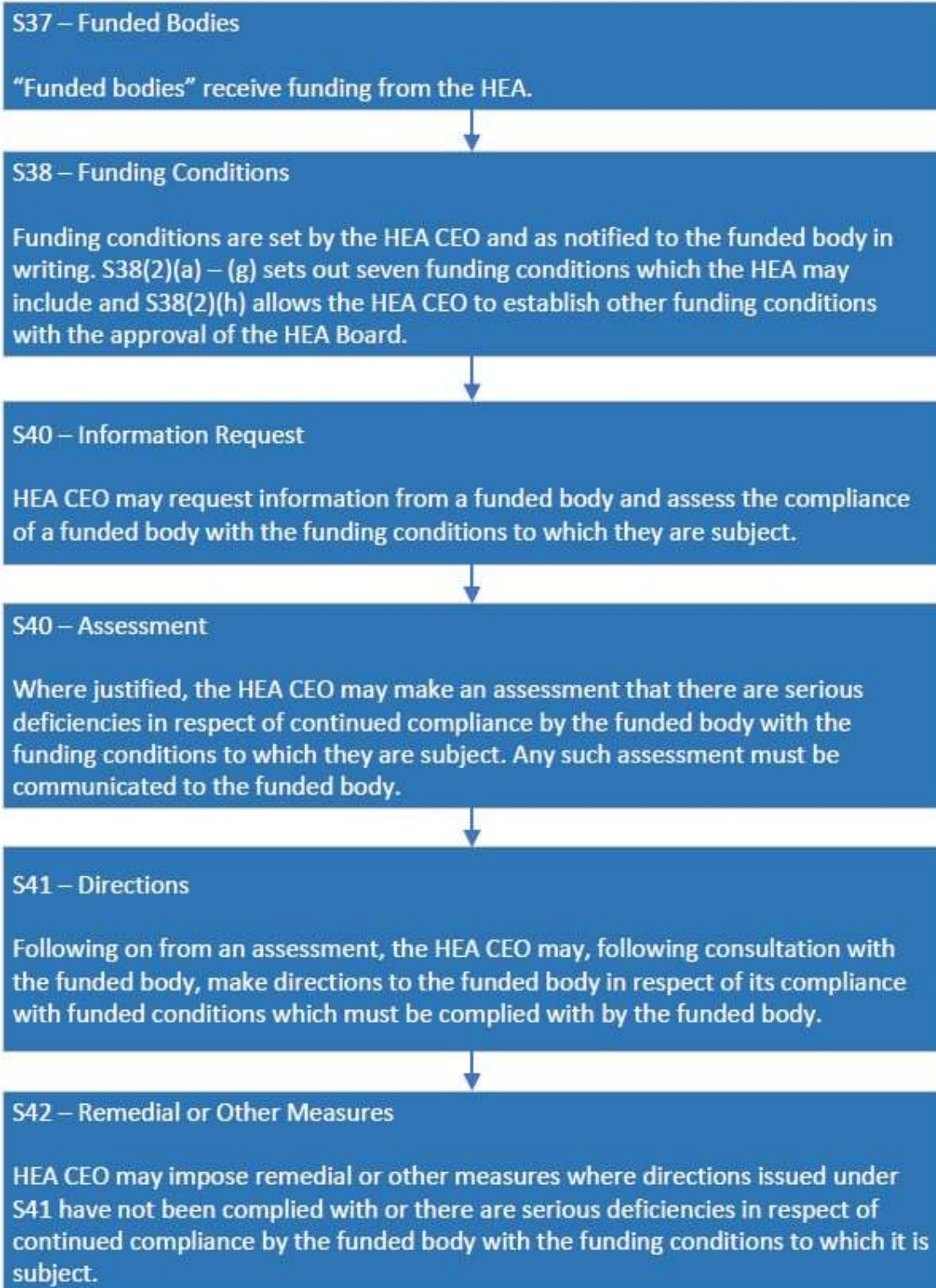
Next Steps

One of the priorities of the HEA Corporate Strategic Plan 2023-2026 is to develop policies and procedures and guidance for the use of the powers of intervention provided by the HEAA 2022.

The Protocol represents a first stage in delivery of this objective; it is intended that further guidance will be developed on the HEAA 2022, sectoral legislation and relevant secondary legislation, guidelines, codes and policies as may be required.

6. Appendix

6.1. Infographic – HEAA 2022 - SS37 – 42 Process



6.2. Infographic – HEAA 2022 – SS64 – 68 Process

S64 – Review and Report to HEA

If the HEA CEO is of the opinion that there are significant concerns regarding the governance of a designated HEI, or the performance by a designated HEI of its functions or compliance by it with its obligation, the HEA CEO may request the GB of the designated HEI to undertake a review. This must be produced within 60 days and this period may be extended to up to 90 days.

S64 – Receipt and Consideration of Report by HEA CEO

The HEA CEO will consider the report once received and will provide a copy of the report to the DFHERIS Minister and may publish the report with the approval of the HEA Board.

S64 – Determination by HEA CEO

Following consideration of the report, the HEA CEO may decide that no further action is necessary or decide to make a determination under S65.

S65 – Determination by HEA CEO

The HEA CEO may decide to take any or all of the following steps to address their concerns:

(i) to impose remedial measures under S66; (ii) to provide certain information as the CEO considers appropriate under S67; (c) to appoint a reviewer to undertake a review of a matter concerning the designated HEI under S68. The appointment of a reviewer under S68 would require board approval.

S66 – Remedial and Other Measures

HEA CEO may decide to impose remedial or other measures under the terms of S68. Certain of these require HEA Board approval.

S68 – Appointment of a Reviewer

HEA CEO may decide to appoint a reviewer to undertake a review of the concerning the designated HEI under S68. The appointment of a reviewer under S68 would require board approval. The reviewer must consult with the HEA and the designated HEI on a draft report before finalising the report. The final report shall be provided to the DFHERIS Minister and may be published. The HEA CEO make a determination under S65 after considering the S68 report.