

**Call for inputs: UN Questionnaire on Academic Freedom and Freedom of Expression in Educational Institutions**

**Submission of Ireland, January 2024**

**The Questions:**

1. **How is academic freedom defined and protected in the constitution or laws of your country, and what are possible limitations or restrictions? Please provide the original citation and source, as well as a summary of relevant judicial practice, if any.**

The Academic Freedom of Universities, Technological Universities, Institutes of Technology and the National College of Art and Design and the academic staff in these higher education institutions is protected under the relevant sectoral legislation and under the Higher Education Authority Act 2022 (HEA Act 2022).

The sectoral legislation governing these institutions is the:

*-* [*Universities Act 1997,*](https://www.irishstatutebook.ie/eli/1997/act/24/enacted/en/html)

*-* [*Technological Universities Act 2018,*](https://www.irishstatutebook.ie/eli/2018/act/3/enacted/en/html)

*-* [*Institutes of Technology Act 1992 – 2006*](https://revisedacts.lawreform.ie/eli/1992/act/16/revised/en/html)*, and the*

*-* [*National College of Art and Design Act 1971*](https://www.irishstatutebook.ie/eli/1971/act/28/enacted/en/html)*.*

The [Higher Education Authority Act 2022](https://www.irishstatutebook.ie/eli/2022/act/31/enacted/en/html), sets out the objects and functions of the Higher Education Authority (HEA), which is the funding, planning and oversight body for the higher education sector in Ireland. Section 8 of the HEA Act 2022 which sets out the Objects of the HEA, includes provisions relating to the academic freedom of higher education providers and academic staff in those providers and also acknowledge the responsibility of designated institutions of higher education for the performance and governance of those institutions.

The specific provisions in the HEA Act 2022 are as follows:

*Objects of An tÚdarás*

*8. (1) An tÚdarás shall have regard to the following objects in performing its functions:*

 *(f) to respect the academic freedom of higher education providers and academic staff in those providers;*

*(g) to acknowledge the responsibility of designated institutions of higher education for the performance and governance of those institutions.*

There is a specific provision that addresses academic freedom of HEIs and the academic freedom of the academic staff in those HEIs in each of the relevant pieces of sectoral legislation as follows:

* Section 14(2) of the Universities Act 1997,
* Section 10(2) of the Technological Universities Act 2018
* Section 5A(2) of the Regional Technical Colleges Act 1992 and
* Section 5A(2) of the National College of Art and Design Act 1971.

These provisions are set out below.

Universities Act 1997 – Section 14 (2)

*“Academic freedom.*

*14.—(1) A university, in performing its functions shall—*

*(a) have the right and responsibility to preserve and promote the traditional*

*principles of academic freedom in the conduct of its internal and external affairs, and*

*(b) be entitled to regulate its affairs in accordance with its independent ethos and traditions and the traditional principles of academic freedom, and in doing so it shall have regard to—*

*(i) the promotion and preservation of equality of opportunity and access,*

*(ii) the effective and efficient use of resources, and*

*(iii) its obligations as to public accountability,*

*and if, in the interpretation of this Act, there is a doubt regarding the meaning of any provision, a construction that would promote that ethos and those traditions and principles shall be preferred to a construction that would not so promote.*

*(2) A member of the academic staff of a university shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the university, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the university, for the exercise of that freedom.”*

Technological Universities Act 2018 – Section 10

*“Academic freedom, ,*

*10. (1) A technological university, in performing its functions, shall—*

*(a) have the right and responsibility to preserve and promote the principles of academic freedom in the conduct of its internal and external affairs, and*

*(b) without prejudice to the generality of paragraph (a), be entitled to regulate its affairs in accordance with its independent ethos and the principles of academic freedom, and in doing so shall have regard to—*

*(i) the promotion and preservation of equality of opportunity and access to higher education,*

*(ii) resources, wherever originating, that are available to the technological university for the purpose of performing its functions, and*

*(iii) the need to secure the most beneficial, effective and efficient use of those resources.*

*(2) A member of the academic staff of a technological university shall not, subject to the provisions of any enactment or rule of law, be disadvantaged, or subject to less favourable treatment by the technological university, arising from his or her questioning and testing received wisdom, putting forward new ideas or stating controversial or unpopular opinions in his or her teaching, research and any other activities either in or outside the technological university.”*

Regional Technical Colleges Act 1992 (Institutes of Technology Acts 1992-2006) – Section 5A

*“Academic freedom.*

*5A.—* *(1) A college, in performing its functions, shall have the right and responsibility to preserve and promote the traditional principles of academic freedom in the conduct of its internal and external affairs.*

*(2) A member of the academic staff of a college shall have the freedom, within the law, in his or her teaching, research and any other activities either in or outside the college, to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and shall not be disadvantaged, or subject to less favourable treatment by the college, for the exercise of that freedom.”.“*

National College of Art and Design Act 1971 – Section 5A

*“5A****.*** *(1) An Bord, in performing its functions, shall—*

*(a) have the right and responsibility to preserve and promote the principles of academic freedom in the conduct of its internal and external affairs, and*

*(b) without prejudice to the generality of paragraph (a), be entitled to regulate its affairs in accordance with its independent ethos and the principles of academic freedom, and in doing so shall have regard to—*

*(i) the promotion and preservation of equality of opportunity and access to higher education,*

*(ii) resources, wherever originating, that are available to An Bord for the purpose of performing its functions, and*

*(iii) the need to secure the most beneficial, effective and efficient use of those resources.*

*(2) A member of the academic staff of the College shall not, subject to the provisions of any enactment or rule of law, be disadvantaged, or subject to less favourable treatment by An Bord, arising from his or her questioning and testing received wisdom, putting forward new ideas or stating controversial or unpopular opinions in his or her teaching, research and any other activities either in or outside of the College.”.*

1. **Are academic staff, teachers, students all entitled to academic freedom? Does this differ by level of education? Please explain.**

For academic staff in Higher Education Institutions please see response to question 1 above.

1. **What do you consider to be (a) the main challenges to academic freedom, and (b) gaps in the legal framework for protecting academic freedom?**

We do not consider that there are any gaps in the legal framework in relation to protecting the academic freedom of HEIs in Ireland. Academic freedom for HEIs is protected under legislation.

1. **Please explain the autonomy and self-governance enjoyed by educational institutions at the different tiers of education. Please explain what autonomy and self-governance entail. Are there restrictions on police or military personnel entering educational institutions? If so, please share the rules.**

The Governing Bodies of Universities, Technological Universities, Institutes of Technology and the National College of Art and Design are responsible for the governance of their respective institution and for performing the functions as set out in the relevant sectoral legislation. It is also important to note that each of these institutions is required under legislation to have an academic council which controls academic affairs, including the curriculum of, and instruction and education provided by the institution. The functions of the governing bodies of the HEIs are provided for as follows:

* Section 18 of the Universities Act, 1997
* Section 11 of the Technological Universities Act, 2018
* Section 7 of the Regional Technical Colleges Act, 1992 (Institutes of Technology Acts 1992-2006)
* Section 5 of the National College of Art and Design Act, 1971

The relevant sectoral legislation also provides for 19 member Governing Bodies, with the following composition:

* External Chairperson
* 9 other external members (including 3 nominated by the Minister)
* The President of the HEI
* 5 other Internal Members (election or selection for universities, election for TUs and IoTs) and
* 3 Student Union Representatives.
1. **How is funding, including for research, regulated? Is the process transparent, and are there any guarantees put in place to ensure respect for academic freedom?**

Higher education institutions (HEIs) are autonomous bodies as set out in legislation and receive funding from a variety of sources. In this regard effective and efficient use of such resources for the purpose of performing its functions are a matter for the respective institution within the context of its overall budget.

In relation to State core funding the internal allocation of funds between teaching, research and supporting activities is a matter for each institution. Thus, there is full institutional autonomy to deploy State core grant funding in the most effective manner across teaching, research and supporting activities.

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**Human Rights Unit, Department of Foreign Affairs**

**International Cooperation Unit, Department of Further and Higher Education, Research, Innovation and Science**

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