



Number 26 of 1999

**QUALIFICATIONS (EDUCATION AND TRAINING) ACT,
1999**

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**QUALIFICATIONS (EDUCATION AND TRAINING) ACT,
1999**

AN ACT TO ESTABLISH AN ADMINISTRATIVE STRUCTURE FOR THE DEVELOPMENT, RECOGNITION AND AWARD OF EDUCATION AND TRAINING QUALIFICATIONS IN THE STATE; TO ESTABLISH ÚDARÁS NÁISIÚNTA CÁILÍOCHTAÍ NA hÉIREANN, COMHAIRLE NA nDÁMHACHTAINÍ BREISOIDEACHAIS AGUS OILIÚNA AND COMHAIRLE NA nDÁMHACHTAINÍ ARDOIDEACHAIS AGUS OILIÚNA AND TO DEFINE THEIR FUNCTIONS; TO DISSOLVE THE NATIONAL COUNCIL FOR EDUCATIONAL AWARDS; TO REPEAL THE NATIONAL COUNCIL FOR EDUCATIONAL AWARDS ACT, 1979; TO AMEND THE REGIONAL TECHNICAL COLLEGES ACT, 1992, AND THE LABOUR SERVICES ACT, 1987, AND TO PROVIDE FOR RELATED MATTERS. [13th July, 1999]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

Preliminary and General

1.—(1) This Act may be cited as the Qualifications (Education and Training) Act, 1999.

Short title,
commencement,
collective citation
and construction.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

(3) (a) *Chapter IV of Part IV* and, in so far as they relate to that Chapter, this section and *section 2* shall be construed as one with the Regional Technical Colleges Acts, 1992 to 1999, and shall be included in the collective citation “the Regional Technical Colleges Acts, 1992 to 1999”.

(b) The Dublin Institute of Technology Acts, 1992 and 1994, *Part V* and, in so far as they relate to that Part, this section and *section 2* may be cited together as the Dublin

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Institute of Technology Acts, 1992 to 1999, and shall be construed together as one.

(c) The Universities Act, 1997, *Part VI* and, in so far as they relate to that Part, this section and *section 2* may be cited together as the Universities Acts, 1997 and 1999, and shall be construed together as one.

(d) The Labour Services Act, 1987, *section 62* and, in so far as they relate to that section, this section and *section 2*, may be cited together as the Labour Services Acts, 1987 and 1999, and shall be construed together as one.

Interpretation.

2.—(1) In this Act, unless the context otherwise requires—

“access” means the process by which learners may commence a programme of education and training having received recognition for knowledge, skill or competence acquired;

“Act of 1992” means the Regional Technical Colleges Act, 1992;

“Act of 1997” means the Universities Act, 1997;

“award” means an award which is conferred, granted or given by an awarding body and which records that a learner has acquired a standard of knowledge, skill or competence, and references in this Act to “award” shall include references to a “further education and training award” or to a “higher education and training award”;

“awarding body” means a body which makes awards;

“CERT” means the company entitled “CERT, the State Tourism Training Agency”, incorporated on the 7th day of November, 1963;

“charter” means a charter of a recognised institution referred to in *section 31*;

“chief executive” means the chief executive of the National Qualifications Authority of Ireland, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, appointed under *section 50*, and includes a person acting in that office or performing the duties of a chief executive where he or she has been duly authorised to do so;

“completion rate” means the number of learners who complete a programme of education and training expressed as a percentage of the number of learners who commenced the programme concerned;

“employee”, in relation to the National Qualifications Authority of Ireland, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, means a person employed by any of them in any capacity, and includes an officer of any of them;

“An Foras” means An Foras Áiseanna Saothair;

“framework of qualifications” has the meaning assigned to it by *section 7*;

“functions” includes powers and duties and a reference to the performance of functions includes, with respect to powers and duties, a

reference to the exercise of the powers and the carrying out of the duties; Pt.I S.2

“further education and training” means education and training, other than primary or post-primary education or higher education and training, which is determined by the National Qualifications Authority of Ireland under *section 10* to be further education and training;

“Further Education and Training Awards Council” means the body established under *section 12*;

“higher education and training” means education and training, other than primary or post-primary education or further education and training, which is determined by the National Qualifications Authority of Ireland under *section 10* to be higher education and training;

“Higher Education and Training Awards Council” means the body established under *section 21*;

“interim chief executive” means a person appointed by the Minister to be the interim chief executive of a relevant body under *section 51*;

“learner” means a person who is acquiring or who has acquired knowledge, skill or competence;

“Minister” means the Minister for Education and Science;

“National Council for Vocational Awards” means the *ad hoc* body of that name established by the Minister;

“National Qualifications Authority of Ireland” means the body established under *section 5*;

“National Tourism Certification Board” means the body established by CERT and the Minister for the purposes of making awards in respect of programmes of education and training relating to tourism;

“officer”, in relation to the National Qualifications Authority of Ireland, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, includes—

- (a) the chief executive,
- (b) a person who immediately before the commencement of *Chapter V of Part IV* is an officer of the National Council for Educational Awards, and
- (c) such other employees as the National Qualifications Authority of Ireland, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, may from time to time determine;

“programme of education and training” means any process by which learners may acquire knowledge, skill or competence and includes courses of study or instruction, apprenticeships, training and employment and references to “programme” shall be construed accordingly;

“progression” means the process by which learners may transfer from one programme of education and training to another programme where each programme is of a higher level than the preceding programme;

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“provider of a programme of education and training” means a person who, or body which, provides, organises or procures a programme of education and training and references to “provider” shall be construed accordingly;

“recognised institutions” means the institutions specified in *section 24*;

“special educational and training needs” means the educational and training needs of learners who have a disability;

“Teagasc” means Teagasc — The Agriculture and Food Development Authority;

“transfer” means the process by which learners may transfer from one programme of education and training to another programme having received recognition for knowledge, skill or competence acquired;

“An tÚdarás” means An tÚdarás um Ard-Oideachas;

“university” means a university specified in paragraphs (a) to (d) of section 4(1) of the Universities Act, 1997;

“validation” means the process by which an awarding body shall satisfy itself that a learner may attain knowledge, skill or competence for the purpose of an award made by the awarding body and cognate words shall be construed accordingly;

“vocational education committee” means a committee established under section 7 of the Vocational Education Act, 1930.

(2) In this Act—

- (a) a reference to a section, Chapter or Part is a reference to a section, Chapter or Part of this Act, unless it is indicated that a reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended,
- (c) a reference to a Schedule is a reference to a Schedule to this Act, and
- (d) a reference to any other enactment shall, except where the context otherwise requires, be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

Expenses.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Objects of Act.

4.—(1) The objects of this Act shall be as follows:

- (a) to establish and develop standards of knowledge, skill or competence;

- (b) to promote the quality of further education and training and higher education and training; Pt.I S.4
- (c) to provide a system for co-ordinating and comparing education and training awards;
- (d) to promote and maintain procedures for transfer and progression;
- (e) to facilitate lifelong learning through the promotion of access and opportunities for all learners, including learners with special educational and training needs;
- (f) to promote the recognition of knowledge, skill or competence acquired through research, adult and continuing education and training and employment;
- (g) to contribute to the realisation of national education and training policies and objectives and, in particular, to meeting the education and training requirements of industry, including agriculture, business, tourism, trade, the professions and the public service;
- (h) to promote co-operation between providers of programmes of education and training and industry, including agriculture, business, tourism, trade, the professions and the public service;
- (i) to promote recognition outside the State of awards made by bodies in the State and recognition in the State of awards made by bodies outside the State;
- (j) having regard to the traditions of providers of education and training, to promote diversity in education and training between further education and training and higher education and training and within each of these; and
- (k) to contribute to the realisation of national policy and objectives in relation to the extension of bi-lingualism in Irish society and, in particular, the achievement of a greater use of the Irish language and to contribute to the promotion of the distinctive cultures of Ireland.

(2) Every body and person concerned in the implementation of this Act shall have regard in exercising their functions under this Act to the objects specified in *subsection (1)*.

PART II

National Qualifications Authority of Ireland

5.—(1) There shall stand established a body to be known as *Údarás Náisiúnta Cáilíochtaí na hÉireann* or in the English language as the National Qualifications Authority of Ireland (in this Act referred to as the “Authority”) to perform the functions conferred on it by or under this Act. Establishment of National Qualifications Authority of Ireland.

(2) The Authority shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property.

Pt. II
Membership of
Authority.

6.—(1) The Authority shall consist of 14 members.

(2) The members of the Authority shall be—

- (a) the chairperson of the Authority,
- (b) the chief executive of the Authority,
- (c) two persons nominated by the Minister, one of whom shall be a person who, in the opinion of the Minister, is representative of community and voluntary organisations,
- (d) one person nominated by the Minister for Enterprise, Trade and Employment,
- (e) the chairperson of the Higher Education and Training Awards Council,
- (f) the chairperson of the Further Education and Training Awards Council,
- (g) one person nominated by universities,
- (h) one person who, in the opinion of the Minister after consultation with the Minister for Enterprise, Trade and Employment, is representative of learners,
- (i) one person nominated by Forfás,
- (j) one person nominated by the Irish Business and Employers Confederation,
- (k) one person nominated by the Irish Congress of Trade Unions, and
- (l) two persons nominated in accordance with *subsection (3)*.

(3) Subject to *subsection (1)*, the Authority shall nominate as members two persons who have a special knowledge and experience related to the functions of the Authority, at least one of whom shall be a person with international experience related to those functions.

(4) The *First Schedule* shall apply to the Authority.

(5) The Minister may make regulations for the purposes of nominations to be made under *subsection (2)* or *(3)*.

(6) Where a nomination is made under *subsection (2)* or *(3)*, regard shall be had to the desirability of an appropriate gender balance and where a person or body has more than one nomination under this section, the person or body shall nominate at least one male and at least one female.

Objects of
Authority.

7.—The objects of the Authority shall be as follows:

- (a) to establish and maintain a framework, being a framework for the development, recognition and award of qualifications in the State (in this Act referred to as a “framework of qualifications”), based on standards of knowledge, skill or competence to be acquired by learners;
- (b) to establish and promote the maintenance and improvement of the standards of further education and training awards and higher education and training awards of the Further Education and Training Awards Council, the Higher

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Education and Training Awards Council, the Dublin Institute of Technology and universities established under section 9 of the Act of 1997; and Pt.II S.7

(c) to promote and facilitate access, transfer and progression.

8.—(1) The functions of the Authority are to do all things necessary or expedient in accordance with this Act to further the objects of the Authority. Functions of Authority.

(2) Without prejudice to the generality of *subsection (1)*, the Authority shall—

- (a) establish the policies and criteria on which the framework of qualifications shall be based,
- (b) review the operation of the framework of qualifications having regard to the objects specified in *section 7*,
- (c) establish, in consultation with the Further Education and Training Awards Council and the Higher Education and Training Awards Council, procedures for the performance by them of their functions and shall review those procedures from time to time,
- (d) determine the procedures to be implemented by providers of programmes of education and training for access, transfer and progression and shall publish those procedures in such form and manner as the Authority thinks fit,
- (e) ensure, in consultation with the Dublin Institute of Technology and universities established under section 9 of the Act of 1997, that the procedures referred to in *paragraph (d)* are being implemented by them,
- (f) facilitate and advise universities in implementing the procedures referred to in *paragraph (d)* and from time to time and in any case not less than once in every five years, in consultation with An tÚdarás, review the implementation of those procedures by universities, and publish the outcomes of such a review in such form and manner as it thinks fit,
- (g) consult with and advise the Minister or any other Minister, as the case may be, on such matters in respect of its functions as the Minister or any other Minister may request or as the Authority sees fit, and
- (h) (i) liaise with bodies outside the State which make education and training awards for the purposes of facilitating the recognition in the State of education and training awards made by those bodies, and
(ii) facilitate recognition outside the State of education and training awards made in the State.

(3) The Authority, in the performance of its functions, shall—

- (a) inform itself of the education, training, skills and qualifications requirements of industry, including agriculture, business, tourism, trade, the professions and the public

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service, including the level of knowledge, skill or competence to be acquired by learners and promote practices in education and training which meet those requirements,

- (b) inform itself of practices outside the State in respect of matters relevant to its functions,
- (c) give effect to the policies relating to education and training which from time to time are established, and notified in writing to the Authority, by the Minister, or by any other Minister with the agreement of the Minister, following consultation with the Authority, and
- (d) consult, as it considers appropriate, with universities, the Higher Education and Training Awards Council, the Further Education and Training Awards Council, the Dublin Institute of Technology, recognised institutions, An Foras, CERT, Teagasc, An Bord Iascaigh Mhara, educational or training institutions established by a vocational education committee, other providers of education and training, persons, or bodies of persons, who represent employees of providers of education and training or who represent learners, An tÚdarás, the National Council for Curriculum and Assessment and such other persons or bodies of persons as the Authority considers appropriate, and the Authority shall consider the views, if any, of those bodies for the purpose of determining the procedures referred to in *subsection (2)(d)*.

Review by Authority.

9.—(1) The Authority may from time to time review the performance by the Further Education and Training Awards Council or the Higher Education and Training Awards Council of its functions and may make such recommendations to the Council concerned in respect of that performance, as the Authority thinks fit.

(2) The Further Education and Training Awards Council or the Higher Education and Training Awards Council shall implement recommendations, if any, made by the Authority under *subsection (1)*.

(3) The Authority shall publish in such form and manner as it considers appropriate the results of a review under *subsection (1)*.

Determination by Authority.

10.—(1) Subject to *subsection (3)*, the Authority may determine—

- (a) whether any particular programme of education and training is higher education and training or further education and training, or
- (b) whether the standard of knowledge, skill or competence to be acquired by a learner for the purposes of an award is at the level of a further education and training award or of a higher education and training award.

(2) In making a determination under *subsection (1)* the Authority shall have regard, as the Authority considers appropriate, to—

- (a) the programme of education and training concerned, or
- (b) the standard of knowledge, skill or competence acquired by a learner however acquired, or

(c) the programme of education and training concerned and the standard of knowledge, skill or competence acquired by a learner however acquired. Pt.II S.10

(3) A programme of education and training, which leads to the attainment by learners of a standard of knowledge, skill or competence which is not higher than the level at which, before the 3rd day of March, 1999, the National Council for Vocational Awards has made awards, shall be deemed to be further education and training, unless otherwise determined by the Authority under *subsection (1)*.

11.—(1) In each year there shall be paid by the Minister, out of moneys provided by the Oireachtas, to the Authority, a grant or grants of such amount as the Minister, with the consent of the Minister for Finance, thinks fit. Grants.

(2) In each year there may be paid by the Authority, out of moneys received by it under *subsection (1)*, a grant or grants, of such amount as the Authority thinks fit, to the Higher Education and Training Awards Council and to the Further Education and Training Awards Council.

(3) A payment under *subsection (2)* to the Higher Education and Training Awards Council or to the Further Education and Training Awards Council, as the case may be, shall be made in such manner and subject to such conditions as the Authority thinks fit.

PART III

Further Education and Training Awards Council

Chapter I

The Council: General Provisions

12.—(1) There shall stand established a body to be known as Comhairle na nDámhachtainí Breisoideachais agus Oiliúna or in the English language as the Further Education and Training Awards Council (in this Part referred to as “the Council”) to perform the functions conferred on it by or under this Act. Establishment of Further Education and Training Awards Council.

(2) The Council shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property.

(3) A further education and training award of the National Council for Vocational Awards, the National Council for Educational Awards, An Foras, the National Tourism Certification Board or Teagasc, which was made before the commencement of this Part, shall be deemed to be an award made by the Council.

(4) The Council may, for a period of five years from the commencement of this Part, make or recognise further education and training awards where it is satisfied that the National Council for Vocational Awards, the National Council for Educational Awards, An Foras, the National Tourism Certification Board or Teagasc—

(a) had, before the commencement of this Part, validated, or

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(b) would, but for the commencement of this Part, have validated,

the programme of education and training concerned for the purposes of making or recognising further education and training awards.

Membership of Council.

13.—(1) The Council shall consist of 18 members.

(2) The members of the Council shall be—

- (a) the chairperson of the Council,
- (b) the chief executive of the Council,
- (c) the chief executive of the Higher Education and Training Awards Council,
- (d) two persons nominated by the Minister,
- (e) two persons nominated by the Minister for Enterprise, Trade and Employment,
- (f) two persons who, in the opinion of the Minister, are representative of educational or training institutions established and maintained by a vocational education committee,
- (g) one person who, in the opinion of the Minister after consultation with the Minister for Enterprise, Trade and Employment, is representative of learners participating in programmes of further education and training,
- (h) one person who, in the opinion of the Minister after consultation with the Minister for Enterprise, Trade and Employment, is representative of employees of providers of programmes of further education and training,
- (i) one person nominated by CERT,
- (j) one person nominated by Teagasc,
- (k) one person nominated by An Foras,
- (l) one person nominated by the Irish Business and Employers Confederation,
- (m) one person nominated by the Irish Congress of Trade Unions, and
- (n) two persons nominated in accordance with *subsection (3)*.

(3) Subject to *subsection (1)*, the Council shall nominate as members two persons who have a special knowledge and experience related to the functions of the Council, at least one of whom shall be a person with relevant international experience related to those functions.

(4) The *First Schedule* shall apply to the Council.

(5) The Minister may make regulations for the purposes of nominations to be made under *subsection (2)* or *(3)*.

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(6) Where a nomination is made under *subsection (2) or (3)*, Pt.III S.13 regard shall be had to the desirability of an appropriate gender balance and where a person or body has more than one nomination under this section, the person or body shall nominate at least one male and at least one female.

14.—(1) The functions of the Council shall be as follows:

Functions of Council.

(a) to establish and publish, in such form and manner as it thinks fit, policies and criteria for—

- (i) the making of further education and training awards, and
- (ii) the validation of programmes of further education and training,

and to review such policies and criteria not less than once in every five years;

(b) to determine standards of knowledge, skill or competence to be acquired by learners—

- (i) before a further education and training award may be made by the Council or by a provider of a programme of education and training to which authority to make awards has been delegated under *section 19*, or
- (ii) who request from the Council recognition of an award made by a body other than the Council or a provider to which authority to make awards has been delegated under *section 19*,

(c) to make or recognise further education and training awards given or to be given to persons who apply for those awards and who, in the opinion of the Council, have achieved the standard determined by the Council under *paragraph (b)*;

(d) to monitor and evaluate the quality of programmes of education and training in respect of which awards are made or recognised under *paragraph (c)*;

(e) to ensure that—

- (i) providers of programmes of education and training whose programmes are validated under *section 15*, and
- (ii) providers of programmes of education and training to which authority to make awards has been delegated under *section 19*,

establish procedures for the assessment of learners which are fair and consistent and for the purpose of compliance with standards determined by the Council under *paragraph (b)*;

(f) to promote the further education and training awards of the Council;

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- (g) to facilitate and assist the Authority in carrying out its functions;
 - (h) to consult with and advise the Minister or any other Minister, as the case may be, on such matters in respect of its functions as the Minister or any other Minister may request or as the Council thinks fit, and to inform the Authority of any such consultation and advice, and
 - (i) to do all such acts or things as are necessary or expedient for the purpose of the exercise of its functions.
- (2) The Council, in the performance of its functions, shall—
- (a) consult, as it considers appropriate, with providers of further education and training or other persons or bodies,
 - (b) following consultation with the Authority, inform itself of practices outside the State in respect of matters relevant to its functions,
 - (c) following consultation with the Authority, inform itself of the education, training, skills and qualifications requirements of industry, including agriculture, business, tourism, trade, the professions and the public service, including the level of knowledge, skill or competence to be acquired by learners and promote practices in further education and training which meet those requirements, and
 - (d) ensure that procedures for access, transfer and progression determined by the Authority under *section 8(2)(d)* are implemented by—
 - (i) providers of programmes of education and training whose programmes are validated under *section 15*, and
 - (ii) providers of programmes of education and training to which authority to make awards has been delegated under *section 19*.
- (3) The Council may request—
- (a) a provider of programmes of education and training whose programmes are validated under *section 15*, or
 - (b) a provider of programmes of education and training to which authority to make awards has been delegated under *section 19*,

to assist the Council in forming an opinion as to whether a person has achieved the standard determined by the Council under *paragraph (b)* of *subsection (1)* for the purpose of making or recognising a further education and training award under *paragraph (c)* of that subsection.

- (2) (a) Subject to *paragraphs (b) and (c)* and *subsection (3)*, recognised institutions, An Foras, CERT, Teagasc, An Bord Iascaigh Mhara, any educational or training institution established and maintained by a vocational education committee and any school providing post-primary education, shall apply under *subsection (1)* to the Council to have all programmes of further education and training which they provide, organise or procure validated by the Council, other than those programmes which are provided as a leisure or recreational activity and which are not intended to lead to an award under this Act.
- (b) *Paragraph (a)* shall not apply to a programme of further education and training in respect of which a provider has authority delegated to it under *section 19* to make an award.
- (c) Where a recognised institution has entered into arrangements or made arrangements under *section 5(1)(b)* of the Act of 1992, subject to the agreement of the Council and the Authority, *paragraph (a)* shall not apply to a programme of further education and training provided by such recognised institution for such period, not exceeding five years from the commencement of this Part, as may be determined by the Council with the agreement of the Authority.
- (3) Where a programme of further education and training is organised or procured, in whole or in part, by a provider (“the first mentioned provider”) and is provided, in whole or in part, by another provider (“the second mentioned provider”), the first mentioned provider shall consult with the second mentioned provider before making an application for validation under *subsection (1) or (2)*.
- (4) The Council may, on receipt of an application under *subsection (1) or (2)*—
- (a) subject to such conditions as it thinks fit, validate a programme of education and training where it is satisfied that the programme concerned meets the criteria determined by the Council under *paragraph (a)(ii) of section 14(1)*, or
- (b) refuse validation.
- (5) The conditions referred to in *subsection (4)(a)* shall include, but not necessarily be limited to, conditions requiring the provider concerned to—
- (a) co-operate with and assist the Council, and the Authority where appropriate, in the performance of their functions,
- (b) establish the procedures referred to in *section 14(1)(e)*,
- (c) implement the procedures referred to in *section 14(2)(d)*, and
- (d) provide such information as the Council may from time to time require for the purposes of the performance of the functions of the Council, including information in respect of completion rates.

Pt.III
Withdrawal of
validation.

16.—(1) The Council may, at any time, review a programme of education and training validated under *section 15*.

(2) Following a review under *subsection (1)*, where the Council is of the opinion—

- (a) that a programme of education and training validated under *section 15* no longer meets the criteria determined by the Council under *paragraph (a)(ii)* of *section 14(1)*, or
- (b) that the conditions specified by the Council under *paragraph (a)* of *section 15(4)* are not being complied with, or
- (c) that there are other reasonable grounds for withdrawing its validation,

the Council shall inform the provider of the programme concerned, by notice in writing, of its opinion and the reasons for that opinion and the notice shall state that the provider may make representations to the Council in relation to that opinion not later than one month after the receipt of the notice by the provider.

(3) Where, after the expiration of one month from the service of the notice referred to in *subsection (2)* and after consideration of any representations made to the Council, the Council remains of that opinion, it may withdraw its validation of the programme concerned, by notice in writing addressed to the provider, from such date as it considers appropriate and having regard to the interests of the learners concerned and until such time as it may be satisfied of whichever of the following is appropriate—

- (a) that the programme concerned meets the criteria determined by the Council under *paragraph (a)(ii)* of *section 14(1)*, or
- (b) that the conditions specified by the Council under *paragraph (a)* of *section 15(4)* are being complied with, or
- (c) that the grounds for withdrawing validation referred to in *subsection (2)(c)* no longer exist.

Appeals to
Authority against
refusal or
withdrawal of
validation.

17.—(1) Where the Council refuses to validate a programme of education and training under *section 15* or withdraws its validation of a programme under *section 16*, the provider of the programme concerned may appeal that refusal or withdrawal to the Authority which may, following consultation with the Council—

- (a) confirm the decision of the Council, or
- (b) annul the decision of the Council and substitute its decision for the decision of the Council.

(2) The Council shall comply with a decision made by the Authority under *subsection (1)(b)*.

Quality assurance.

18.—(1) Subject to *subsection (6)*, as soon as practicable after the commencement of this Part and at such other times as the Council after consultation with the provider concerned thinks fit, a provider of a programme of education and training—

(a) whose programme has been validated by the Council under Pt.III S.18 *section 15*, or

(b) to which authority has been delegated under *section 19* to make awards in respect of such programme,

shall, having regard to existing procedures, if any, establish procedures for quality assurance for the purpose of further improving and maintaining the quality of education and training which is provided, organised or procured by that provider as part of the programme concerned and shall agree those procedures with the Council.

(2) Without prejudice to the generality of *subsection (1)*, the procedures established under that subsection shall include—

(a) the evaluation at regular intervals and as directed from time to time by the Council of the programme of education and training concerned, including evaluation by persons who are competent to make national and international comparisons in that respect,

(b) evaluation by learners of that programme, and

(c) evaluation of services related to that programme,

and shall provide for the publication in such form and manner as the Council thinks fit of findings arising out of the application of those procedures.

(3) The Council shall consider the findings arising out of the application of procedures established under *subsection (1)* and may make recommendations to the provider of the programme concerned which that provider shall implement.

(4) The Council shall, from time to time and as directed from time to time by the Authority, in consultation with the provider of a programme of education and training, review the effectiveness of the procedures established under *subsection (1)* and the implementation by the provider concerned of the findings arising out of the application of those procedures.

(5) The Council shall—

(a) report to the Authority on, and

(b) publish in such form and manner as the Authority thinks fit,

the results of a review under *subsection (4)* and shall include in the report and publication the views, if any, of the provider of the programme concerned.

(6) Where a programme of further education and training is organised or procured, in whole or in part, by a provider (“the first mentioned provider”) and is provided, in whole or in part, by another provider (“the second mentioned provider”), the first mentioned provider shall, in addition to the requirements specified in *subsection (1)*, in so far as the procedures to be established under that subsection relate to that part of the programme provided by the second mentioned provider, agree those procedures with the second mentioned provider.

Delegation of Authority

Delegation of authority to make awards.

19.—(1) Subject to *subsection (2)*, An Foras, CERT or Teagasc (in this Chapter referred to as a “relevant provider”), as the case may be, may request the Council to delegate to it the authority to make further education and training awards.

(2) Where a programme of further education and training is organised or procured, in whole or in part, by a relevant provider and is provided, in whole or in part, by any other provider, the relevant provider shall consult with such other provider before making a request under *subsection (1)* for delegation of authority to make awards in respect of that programme.

(3) Upon receipt of a request under *subsection (1)*, the Council shall determine and publish, in such form and manner as it thinks fit, criteria for the purposes of this section and shall, in accordance with *subsection (4)*, review—

- (a) the operation and management of the relevant provider concerned in relation to programmes of further education and training provided, organised or procured by that provider, and
- (b) those programmes.

(4) In carrying out a review under *subsection (3)*, the Council shall implement procedures agreed from time to time with the Authority which procedures shall include—

- (a) evaluation by the relevant provider of—
 - (i) the operation and management of the relevant provider concerned in relation to programmes of further education and training provided, organised or procured by that provider, and
 - (ii) those programmes,
- (b) where the Council, with the agreement of the Authority, is satisfied with the result of the evaluation referred to in *paragraph (a)*, subsequent evaluation by such persons who have a particular knowledge and experience related to further education and training, as the Council considers appropriate, including persons with relevant international experience, and
- (c) publication, in such form and manner as the Council thinks fit, of a report on the findings of those evaluations.

(5) Where the Council is satisfied, with the agreement of the Authority, following a review under *subsection (3)*, that—

- (a) the operation and management of a relevant provider in relation to programmes of further education and training provided, organised or procured by that provider, and
- (b) those programmes,

meet the criteria determined by the Council for the purposes of this section with the agreement of the Authority, then the Council may

delegate to that provider the authority to make such further education and training awards, subject to such conditions as it thinks fit, as the Council specifies by notice in writing to the relevant provider concerned and the Authority. Pt.III S.19

(6) The conditions referred to in *subsection (5)* shall include, but not necessarily be limited to, conditions requiring the relevant provider to—

- (a) co-operate with and assist the Council, and the Authority where appropriate, in the performance of their functions,
- (b) establish the procedures referred to in *section 14(1)(e)*,
- (c) implement the procedures referred to in *section 14(2)(d)*, and
- (d) provide such information as the Council requires for the purposes of the performance of the functions of the Council, including information in respect of completion rates.

(7) The Council shall, for the purpose of determining the conditions referred to in *subsection (5)*, have regard, in particular, to programmes, if any, referred to in *subsection (2)*.

20.—(1) The Council shall from time to time as it thinks fit and in any case not less than once in every five years, or as directed from time to time by the Authority, review, in such manner as it thinks fit—

Review and withdrawal of delegated authority.

- (a) the operation and management of a relevant provider, to which authority to make awards has been delegated under *section 19*, in relation to programmes of further education and training provided, organised or procured by that provider, and
- (b) those programmes.

(2) Where the Council, having carried out a review under *subsection (1)*, is of the opinion—

- (a) (i) that the operation or management of the relevant provider concerned in relation to programmes of further education and training provided, organised or procured by that provider, or
- (ii) that those programmes,
do not meet the criteria determined by the Council under *section 19(5)*, or
- (b) that the conditions specified by the Council under *section 19(5)* are not being complied with, or
- (c) that there are other reasonable grounds for withdrawing the authority to make awards delegated to that provider under *section 19*,

it shall inform the relevant provider concerned, by notice in writing, of its opinion and the reasons for that opinion and the notice shall state that the relevant provider may make representations to the

Council in relation to that withdrawal not later than three months after the receipt of the notice by that provider.

(3) Where, after the expiration of three months from the service of the notice referred to in *subsection (2)* and after consideration of any representations made to the Council, the Council remains of that opinion it may withdraw the authority to make awards delegated to the relevant provider under *section 19*, by notice in writing addressed to that provider, from such date as it considers appropriate and until such time as it may be satisfied of whichever of the following is appropriate—

- (a) (i) that the operation and management of the relevant provider concerned in relation to programmes of further education and training provided, organised or procured by that provider, or
- (ii) that those programmes, meet the criteria determined by the Council under *section 19(5)*, or
- (b) that the conditions specified by the Council under *section 19(5)* are being complied with, or
- (c) that the grounds referred to in *subsection (2)(c)* for withdrawing the authority to make awards no longer exist.

(4) A review under *subsection (1)* shall be carried out in accordance with such procedures as may be determined from time to time by the Council with the agreement of the Authority and those procedures shall provide for an appeal to the Authority against a decision to withdraw the authority to make awards delegated under *section 19*.

PART IV

Higher Education and Training Awards Council

Chapter I

The Council: General Provisions

Establishment of Higher Education and Training Awards Council.

21.—(1) There shall stand established a body to be known as Comhairle na nDámhachtainí Ardoideachais agus Oiliúna or in the English language as the Higher Education and Training Awards Council (in this Part referred to as “the Council”) to perform the functions conferred on it by or under this Act.

(2) The Council shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and, with the consent of the Minister, to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property.

(3) A higher education and training award of the National Council for Educational Awards, the National Council for Vocational Awards, An Foras, the National Tourism Certification Board or Teagasc, which was made before the commencement of this Part, shall be deemed to be an award made by the Council.

[1999.] *Qualifications (Education and Training) Act, 1999.* [No. 26.]

(4) The Council may, for a period of five years from the commencement of this Part, make or recognise higher education and training awards where it is satisfied that the National Council for Educational Awards, the National Council for Vocational Awards, An Foras, the National Tourism Certification Board or Teagasc— Pt.IV S.21

- (a) had, before the commencement of this Part, validated, or
- (b) would, but for the commencement of this Part, have validated,

the programme of education and training concerned for the purposes of making or recognising higher education and training awards.

22.—(1) The Council shall consist of 15 members.

Membership of Council.

(2) The members of the Council shall be—

- (a) the chairperson of the Council,
- (b) the chief executive of the Council,
- (c) the chief executive of the Further Education and Training Awards Council,
- (d) two persons nominated by the Minister, one of whom shall be a person who, in the opinion of the Minister, is representative of providers of education and training, other than recognised institutions,
- (e) one person nominated by the Minister for Enterprise, Trade and Employment,
- (f) three persons nominated by recognised institutions,
- (g) one person who, in the opinion of the Minister, is representative of learners in recognised institutions,
- (h) one person who, in the opinion of the Minister, is representative of employees of recognised institutions,
- (i) one person nominated by the Irish Business and Employers Confederation,
- (j) one person nominated by the Irish Congress of Trade Unions, and
- (k) two persons nominated in accordance with *subsection (3)*.

(3) Subject to *subsection (1)*, the Council shall nominate as members two persons who have a special knowledge and experience related to the functions of the Council, at least one of whom shall be a person with relevant international experience related to those functions.

(4) The *First Schedule* shall apply to the Council.

(5) The Minister may make regulations for the purposes of nominations to be made under *subsection (2)* or *(3)*.

[No. 26.] *Qualifications (Education and Training) Act, 1999.* [1999.]

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(6) Where a nomination is made under *subsection (2)* or *(3)*, regard shall be had to the desirability of an appropriate gender balance and where a person or body has more than one nomination under this section, the person or body shall nominate at least one male and at least one female.

Functions of Council.

23.—(1) The functions of the Council shall be as follows:

- (a) to establish and publish, in such form and manner as it thinks fit, policies and criteria for—
- (i) the making of higher education and training awards, and
 - (ii) the validation of programmes of higher education and training,
- and to review such policies and criteria not less than once in every five years;
- (b) to determine standards of knowledge, skill or competence to be acquired by learners—
- (i) before a higher education and training award may be made by the Council or by a recognised institution to which authority to make awards has been delegated under *section 29*, or
 - (ii) who request from the Council recognition of an award made by a body other than the Council or a recognised institution to which authority to make awards has been delegated under *section 29*,
- (c) to make or recognise higher education and training awards given or to be given to persons who apply for those awards and who, in the opinion of the Council, have achieved the standard determined by the Council under *paragraph (b)*;
- (d) to monitor and evaluate the quality of programmes of education and training in respect of which awards are made or recognised under *paragraph (c)*;
- (e) to ensure that—
- (i) providers of programmes of education and training whose programmes are validated under *section 25*, and
 - (ii) recognised institutions to which authority to make awards has been delegated under *section 29*,
- establish procedures for the assessment of learners which are fair and consistent and for the purpose of compliance with standards determined by the Council under *paragraph (b)*;
- (f) to promote the higher education and training awards of the Council;
- (g) to facilitate and assist the Authority in carrying out its functions;

[1999.] *Qualifications (Education and Training) Act, 1999.* [No. 26.]

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- (h) to consult with and advise the Minister or any other Minister, as the case may be, on such matters in respect of its functions as the Minister or any other Minister may request or as the Council thinks fit, and to inform the Authority of any such consultation and advice, and
- (i) to do all such acts or things as are necessary or expedient for the purpose of the exercise of its functions.
- (2) The Council, in the performance of its functions, shall—
- (a) consult, as it considers appropriate, with providers of higher education and training or other persons or bodies,
- (b) following consultation with the Authority, inform itself of practices outside the State in respect of matters relevant to its functions,
- (c) following consultation with the Authority, inform itself of the education, training, skills and qualifications requirements of industry, including agriculture, business, tourism, trade, the professions and the public service, including the level of knowledge, skill or competence to be acquired by learners and promote practices in higher education and training which meet those requirements, and
- (d) ensure that procedures for access, transfer and progression determined by the Authority under *section 8(2)(d)* are implemented by—
- (i) providers of programmes of education and training whose programmes are validated under *section 25*, and
- (ii) recognised institutions to which authority to make awards has been delegated under *section 29*.
- (3) The Council may request—
- (a) a provider of programmes of education and training whose programmes are validated under *section 25*, or
- (b) a recognised institution to which authority to make awards has been delegated under *section 29*,

to assist the Council in forming an opinion as to whether a person has achieved the standard determined by the Council under *paragraph (b)* of *subsection (1)* for the purpose of making or recognising a higher education and training award under *paragraph (c)* of that subsection.

24.—(1) The recognised institutions of the Council shall be—

Recognised institutions of Council.

- (a) the institutions established by or under section 3 of the Act of 1992, and
- (b) any other institution which is designated as a recognised institution of the Council under *subsection (2)*.

(2) The Minister may, following consultation with recognised institutions and subject to the agreement of the educational or training institution concerned, by order designate an educational or training institution established—

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- (a) by or under an Act of the Oireachtas, or
- (b) by a Minister or by the Government,

as a recognised institution of the Council.

Validation of programmes by Council.

25.—(1) Subject to *subsections (2) and (3)*, a provider of a programme of education and training may apply to the Council for validation of that programme.

(2) (a) Subject to *paragraphs (b) and (c)* and *subsection (3)*, recognised institutions, An Foras, CERT, Teagasc and An Bord Iascaigh Mhara shall apply under *subsection (1)* to the Council to have all programmes of higher education and training which they provide, organise or procure validated by the Council.

(b) *Paragraph (a)* shall not apply to a programme of higher education and training in respect of which a recognised institution has authority delegated to it under *section 29* to make an award.

(c) Where a recognised institution has entered into arrangements or made arrangements under *section 5(1)(b)* of the Act of 1992, subject to the agreement of the Council and the Authority, *paragraph (a)* shall not apply to a programme of higher education and training provided by such recognised institution for such period, not exceeding five years from the commencement of this Part, as may be determined by the Council with the agreement of the Authority.

(3) Where a programme of higher education and training is organised or procured, in whole or in part, by a provider (“the first mentioned provider”) and is provided, in whole or in part, by another provider (“the second mentioned provider”), the first mentioned provider shall consult with the second mentioned provider before making an application for validation under *subsection (1) or (2)*.

(4) The Council may, on receipt of an application under *subsection (1) or (2)*—

(a) subject to such conditions as it thinks fit, validate a programme of education and training where it is satisfied that the programme concerned meets the criteria determined by the Council under *paragraph (a)(ii) of section 23(1)*, or

(b) refuse validation.

(5) The conditions referred to in *subsection (4)(a)* shall include, but not necessarily be limited to, conditions requiring the provider concerned to—

(a) co-operate with and assist the Council, and the Authority where appropriate, in the performance of their functions,

(b) establish the procedures referred to in *section 23(1)(e)*,

(c) implement the procedures referred to in *section 23(2)(d)*, and

- (d) provide such information as the Council may from time to time require for the purposes of the performance of the functions of the Council, including information in respect of completion rates. Pt.IV S.25

26.—(1) The Council may, at any time, review a programme of education and training validated under *section 25*. Withdrawal of validation.

(2) Following a review under *subsection (1)*, where the Council is of the opinion—

- (a) that a programme of education and training validated under *section 25* no longer meets the criteria determined by the Council under *paragraph (a)(ii)* of *section 23(1)*, or
- (b) that the conditions specified by the Council under *paragraph (a)* of *section 25(4)* are not being complied with, or
- (c) that there are other reasonable grounds for withdrawing its validation,

the Council shall inform the provider of the programme concerned, by notice in writing, of its opinion and the reasons for that opinion and the notice shall state that the provider may make representations to the Council in relation to that opinion not later than one month after the receipt of the notice by the provider.

(3) Where, after the expiration of one month from the service of the notice referred to in *subsection (2)* and after consideration of any representations made to the Council, the Council remains of that opinion, it may withdraw its validation of the programme concerned, by notice in writing addressed to the provider, from such date as it considers appropriate and having regard to the interests of the learners concerned and until such time as it may be satisfied of whichever of the following is appropriate—

- (a) that the programme concerned meets the criteria determined by the Council under *paragraph (a)(ii)* of *section 23(1)*, or
- (b) that the conditions specified by the Council under *paragraph (a)* of *section 25(4)* are being complied with, or
- (c) that the grounds for withdrawing validation referred to in *subsection (2)(c)* no longer exist.

27.—(1) Where the Council refuses to validate a programme of education and training under *section 25* or withdraws its validation of a programme under *section 26*, the provider of the programme concerned may appeal that refusal or withdrawal to the Authority which may, following consultation with the Council— Appeals to Authority against refusal or withdrawal of validation.

- (a) confirm the decision of the Council, or
- (b) annul the decision of the Council and substitute its decision for the decision of the Council.

(2) The Council shall comply with a decision made by the Authority under *subsection (1)(b)*.

[No. 26.] *Qualifications (Education and Training) Act, 1999.* [1999.]

Pt.IV
Quality assurance.

28.—(1) Subject to *subsection (6)*, as soon as practicable after the commencement of this Part and at such other times as the Council after consultation with the provider concerned thinks fit—

- (a) a provider of a programme of education and training whose programme has been validated by the Council under *section 25*, or
- (b) a recognised institution to which authority has been delegated under *section 29* to make awards in respect of a programme of higher education and training,

shall, having regard to existing procedures, if any, establish procedures for quality assurance for the purpose of further improving and maintaining the quality of education and training which is provided, organised or procured by that provider as part of the programme concerned and shall agree those procedures with the Council.

(2) Without prejudice to the generality of *subsection (1)*, the procedures established under that subsection shall include—

- (a) evaluation at regular intervals and as directed from time to time by the Council of the programme of education and training concerned, including evaluation by persons who are competent to make national and international comparisons in that respect,
- (b) evaluation by learners of that programme, and
- (c) evaluation of services related to that programme,

and shall provide for the publication in such form and manner as the Council thinks fit of findings arising out of the application of those procedures.

(3) The Council shall consider the findings arising out of the application of procedures established under *subsection (1)* and may make recommendations to the provider of the programme concerned which that provider shall implement.

(4) The Council shall, from time to time and as directed from time to time by the Authority, in consultation with the provider of a programme of education and training, review the effectiveness of the procedures established under *subsection (1)* and the implementation by the provider concerned of the findings arising out of the application of those procedures.

(5) The Council shall—

- (a) report to the Authority on, and
- (b) publish in such form and manner as the Authority thinks fit,

the results of a review under *subsection (4)* and shall include in a report or publication the views, if any, of the provider of the programme concerned.

(6) Where a programme of higher education and training is organised or procured, in whole or in part, by a provider (“the first mentioned provider”) and is provided, in whole or in part, by another provider (“the second mentioned provider”), the first mentioned provider shall, in addition to the requirements specified in *subsection (1)*, in so far as the procedures to be established under that subsection relate to that part of the programme provided by the second

mentioned provider, agree those procedures with the second mentioned provider. Pt.IV S.28

Chapter II

Delegation of Authority

29.—(1) Subject to *subsection (2)*, a recognised institution may request the Council to delegate to it the authority to make higher education and training awards. Delegation of authority to make awards.

(2) Where a programme of higher education and training is organised or procured, in whole or in part, by a recognised institution and is provided, in whole or in part, by any other provider, the recognised institution shall consult with such other provider before making a request under *subsection (1)* for delegation of authority to make awards in respect of that programme.

(3) Upon receipt of a request under *subsection (1)*, the Council shall determine and publish, in such form and manner as it thinks fit, criteria for the purposes of this section and shall, in accordance with *subsection (4)*, review—

- (a) the operation and management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that recognised institution, and
- (b) those programmes.

(4) In carrying out a review under *subsection (3)*, the Council shall implement the procedures agreed from time to time with the Authority which procedures shall include—

- (a) evaluation by the recognised institution of—
 - (i) the operation and management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that institution, and
 - (ii) those programmes,
- (b) where the Council, with the agreement of the Authority, is satisfied with the result of the evaluation referred to in *paragraph (a)*, subsequent evaluation by such persons who have a particular knowledge and experience related to higher education and training, as the Council considers appropriate, including persons with relevant international experience, and
- (c) publication, in such form and manner as the Council thinks fit, of a report of the findings of those evaluations.

(5) Where the Council is satisfied, with the agreement of the Authority, following a review under *subsection (3)*, that—

- (a) the operation and management of a recognised institution in relation to programmes of higher education and training provided, organised or procured by the recognised institution, and

(b) those programmes,

meet the criteria determined by the Council for the purposes of this section with the agreement of the Authority, then the Council may delegate to that recognised institution the authority to make such higher education and training awards, subject to such conditions as it thinks fit, as the Council specifies by notice in writing to the recognised institution concerned and the Authority.

(6) The conditions referred to in *subsection (5)* shall include, but not necessarily be limited to, conditions requiring the recognised institution concerned to—

- (a) co-operate with and assist the Council, and the Authority where appropriate, in the performance of their functions,
- (b) establish the procedures referred to in *section 23(1)(e)*,
- (c) implement the procedures referred to in *section 23(2)(d)*, and
- (d) provide such information as the Council requires for the purposes of the performance of the functions of the Council, including information in respect of completion rates.

(7) The Council shall, for the purpose of determining the conditions referred to in *subsection (5)*, have regard, in particular, to programmes, if any, referred to in *subsection (2)*.

(8) A review which, at the commencement of this Part, has been or is being conducted on the direction of the Minister in relation to the delegation of authority to an institution established by or under section 3 of the Act of 1992 to make higher education and training awards, which following such commencement becomes a recognised institution, shall be a review for the purposes of this section where the Minister so determines and the Minister shall inform the Council, by notice in writing, of any such determination and may give such directions to the Council and the Authority, as he or she considers appropriate.

Review and withdrawal of delegated authority.

30.—(1) The Council shall from time to time as it thinks fit and in any case not less than once in every five years, or as directed from time to time by the Authority, review, in such manner as it thinks fit—

- (a) the operation and management of a recognised institution, to which authority to make awards has been delegated under *section 29*, in relation to programmes of higher education and training provided, organised or procured by that institution, and
- (b) those programmes.

(2) Where the Council, having carried out a review under *subsection (1)*, is of the opinion—

- (a) (i) that the operation or management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that recognised institution, or
- (ii) that those programmes,

do not meet the criteria determined by the Council under Pt.IV S.30 *section 29(5)*, or

- (b) that the conditions specified by the Council under *section 29(5)* are not being complied with, or
- (c) that there are other reasonable grounds for withdrawing the authority to make awards delegated to that recognised institution under *section 29*,

it shall inform the recognised institution concerned, by notice in writing, of its opinion and the reasons for that opinion and the notice shall state that the recognised institution may make representations to the Council in relation to that withdrawal not later than three months after the receipt of the notice by the institution.

(3) Where, after the expiration of three months from the service of the notice referred to in *subsection (2)* and after consideration of any representations made to the Council, the Council remains of that opinion it may withdraw the authority to make awards delegated to the recognised institution under *section 29*, by notice in writing addressed to that recognised institution, from such date as it considers appropriate and until such time as it may be satisfied of whichever of the following is appropriate—

- (a) (i) that the operation and management of the recognised institution concerned in relation to programmes of higher education and training provided, organised or procured by that recognised institution, or
 - (ii) that those programmes,
- meet the criteria determined by the Council under *section 29(5)*, or
- (b) that the conditions specified by the Council under *section 29(5)* are being complied with, or
 - (c) that the grounds referred to in *subsection (2)(c)* for withdrawing the authority to make awards no longer exist.

(4) A review under *subsection (1)* shall be carried out in accordance with such procedures as may be determined from time to time by the Council with the agreement of the Authority and those procedures shall provide for an appeal to the Authority against a decision to withdraw the authority to make awards delegated under *section 29*.

Chapter III

Charters

31.—(1) A recognised institution which has authority to make awards delegated to it under *section 29* shall have a charter which shall not conflict with this Act or with the Regional Technical Colleges Acts, 1992 and 1994. Charters.

(2) The Minister may, from time to time, make regulations for the purposes of specifying the matters to be included by a recognised institution in a charter referred to in *subsection (1)* and without prejudice to the generality of the foregoing such matters may include, but not necessarily be limited to, all or any of the following:

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- (a) its arrangements for consultation and co-operation with the community in the region served by that institution, including commercial and industrial interests in that community;
- (b) its criteria for determining the level of demand for particular programmes of education and training and the levels of such programmes;
- (c) its policy in respect of adult and continuing education and the arrangements established for the provision of such education, including part-time and evening programmes;
- (d) its arrangements for the implementation of procedures for access, transfer and progression determined by the Authority under *section 8(2)(d)*;
- (e) its arrangements for the promotion and use of the Irish language and the promotion of the distinctive cultures of Ireland;
- (f) its procedures in relation to quality assurance of its programmes of education and training; and
- (g) any other matters which the Minister considers appropriate for the purposes of a charter.

(3) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of those regulations.

(4) In preparing a charter, the governing body of a recognised institution—

- (a) shall consult with the Authority and the Council, in such manner as the Authority and the Council think fit,
- (b) shall consult with, in such manner as the governing body thinks fit, the academic council, the academic staff and other employees of the recognised institution, any recognised trade union or staff association, and any recognised student union or other student representative body, and
- (c) may consult with any other person or group, both within and outside of the recognised institution, which the governing body considers appropriate.

(5) A draft of a charter proposed under this section shall be submitted by the governing body of the recognised institution concerned to the Minister with a request that the proposed charter be recognised, and the Minister may, by order, recognise the charter as so drafted where he or she is satisfied that it is not in conflict with this Act or with the Regional Technical Colleges Acts, 1992 and 1994.

(6) An order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(7) The Minister may, following consultation with the recognised institution, by order amend or revoke an order made under this section, including an order made under this subsection. Pt.IV S.31

Chapter IV

Amendment of Act of 1992

32.—The Act of 1992 is hereby amended—

Amendment of Act of 1992.

(a) in section 3, by the substitution for subsection (2) of the following subsection:

“(2) Subject to section 3A (inserted by the *Qualifications (Education and Training) Act, 1999*), the Government may, by order, provide that this Act shall apply to any other educational institution and amend the said First Schedule by inserting in column (1) thereof the name of the institution and any other particulars relevant to the Schedule and, upon commencement of the order, the institution shall stand established as a college to which this Act applies and the college shall, subject to subsection (4), continue to bear and to be known by that name.”,

(b) by the insertion after section 3 of the following section:

“Appointment of committee to advise An tÚdarás.

3A. (1) Before making an order under section 3(2) (as amended by the *Qualifications (Education and Training) Act, 1999*) for the purposes of establishing an educational institution as a college under that section, the Government shall appoint a committee to consider whether an educational institution shall be established under that section and to advise An tÚdarás in that regard.

(2) The membership of a committee appointed under subsection (1) shall be recommended by An tÚdarás following consultation with the National Qualifications Authority of Ireland and the Higher Education and Training Awards Council and shall include persons who have a special knowledge and experience of education in the State and outside the State.

(3) A committee appointed under subsection (1), in considering whether an educational institution shall be established as a college under section 3(2), shall—

(a) examine the provision of higher education and training in the region to be served by the institution concerned and in the State generally,

(b) where the committee is of the opinion that further provision of higher education and training is necessary, consider

other options for achieving such provision other than by the establishment of an educational institution as a college, and

- (c) consult with such bodies and persons as it thinks fit, including any other institution providing higher education and training in the region concerned and the vocational education committee in whose functional area that institution is situated.

(4) Subject to subsection (5), on the advice of a committee appointed under subsection (1) and the recommendation of An tÚdarás, following consultation with the National Qualifications Authority of Ireland and the Higher Education and Training Awards Council, the Government may make an order under section 3(2).

(5) The Government shall not make an order under section 3(2) unless it has first caused to be laid before each House of the Oireachtas a draft of the proposed order and a resolution approving of the draft has been passed by both Houses.”,

and

- (c) in section 5, by the substitution for paragraph (b) of subsection (1) of the following paragraphs—

“(b) (i) to enter into arrangements with the Higher Education and Training Awards Council, or with any other authority approved by the National Qualifications Authority of Ireland, from time to time, for the purpose of having higher education and training awards made, and

- (ii) to make such other arrangements as may be approved by the Higher Education and Training Awards Council and the National Qualifications Authority of Ireland, from time to time, for that purpose and, subject to *sections 29 and 30 of the Qualifications (Education and Training) Act, 1999*, to make higher education and training awards, as appropriate;

(bb) (i) to enter into arrangements with the Further Education and Training Awards Council or with any other authority approved by the National Qualifications Authority of Ireland, from time to time, for the purpose of having further education and training awards made, and

- (ii) to make such other arrangements as may be approved by the Further Education and Training Awards Council and the National Qualifications Authority of Ireland, from time to time, for that purpose;”.

Dissolution of National Council for Educational Awards, etc.

33.—(1) The National Council for Educational Awards is hereby dissolved.

Dissolution of National Council for Educational Awards.

(2) Subject to *subsection (3)*, references to the National Council for Educational Awards in an enactment (other than this Act) or in an instrument made thereunder or in the memorandum or articles of association of any company (within the meaning of the Companies Acts, 1963 to 1990) or any other legal document, shall be construed, on and after the commencement of this Chapter, as references to the Council.

(3) *Subsection (2)* shall not apply to references to the National Council for Educational Awards in regulations made under section 1(1) of the Higher Education Authority Act, 1971.

34.—Where, immediately before the commencement of this Chapter, any legal proceedings are pending in any court or tribunal and the National Council for Educational Awards or any trustee or agent thereof acting on its behalf is a party to the proceedings, the name of the Council shall be substituted in the proceedings for that of the National Council for Educational Awards or, as the case may be, such trustee or agent thereof, or added in those proceedings as may be appropriate, and those proceedings shall not abate by reason of the substitution.

Pending legal proceedings.

35.—(1) The following shall be and hereby are transferred to the Council—

Transfer of assets and liabilities to Council.

- (a) all property and rights relating to such property held or enjoyed immediately before the commencement of this Chapter by the National Council for Educational Awards or any trustee or agent thereof acting on its behalf,
- (b) all liabilities incurred before such commencement by the National Council for Educational Awards or any trustee or agent thereof acting on its behalf that had not been discharged before such commencement,

and, accordingly, without any further conveyance, transfer or assignment—

- (i) the said property, real and personal, shall, on such commencement, vest in the Council for all the estate, term or interest for which, immediately before such commencement, it was vested in the National Council for Educational Awards but subject to all trusts and equities affecting the property and capable of being performed,
- (ii) those rights shall, as and from such commencement, be enjoyed by the Council, and
- (iii) those liabilities shall, as and from such commencement, be liabilities of the Council.

(2) All moneys, stocks, shares and securities transferred to the Council by this section which, on the commencement of this Chapter, are standing in the name of the National Council for Educational

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Awards or any trustee or agent thereof shall, upon the request of the Council, be transferred into its name.

(3) Every right and liability transferred to the Council by this section may, on or after the commencement of this Chapter, be sued on, recovered or enforced by or against the Council in its own name and it shall not be necessary for the Council to give notice to the person whose right or liability is transferred by this section of the transfer.

Preservation of certain continuing contracts and adaptation of references.

36.—Every bond, guarantee or other security of a continuing nature made or given by or on behalf of the National Council for Educational Awards to any person or given by any person to and accepted by or on behalf of the National Council for Educational Awards and every contract or agreement made between the National Council for Educational Awards, or any trustee or agent thereof acting on its behalf, and any other person and in force but not fully executed and completed immediately before the commencement of this Chapter shall continue in force on and after such commencement and shall be construed and have effect as if the name of the Council was substituted therein for that of the National Council for Educational Awards or, as appropriate, any trustee or agent thereof acting on its behalf, and shall be enforceable by or against the Council.

Repeal of National Council for Educational Awards Act, 1979.

37.—The National Council for Educational Awards Act, 1979, is hereby repealed.

PART V

Dublin Institute of Technology

Role of Institute.

38.—(1) In this Part “the Institute” means the Dublin Institute of Technology established under section 3 of the Dublin Institute of Technology Act, 1992.

(2) The Institute shall—

- (a) facilitate and assist the Authority in carrying out its functions,
- (b) implement procedures for access, transfer and progression determined by the Authority under *section 8(2)(d)* in so far as those procedures apply to the Institute, and
- (c) provide such information as the Authority may from time to time require for the purposes of the performance of the functions of the Authority, including information in respect of completion rates.

(3) The Institute may apply to the Further Education and Training Awards Council or the Higher Education and Training Awards Council to have programmes of education and training which it provides, organises or procures validated by either such Council, as appropriate.

Quality assurance.

39.—(1) The Institute shall, as soon as practicable after the commencement of this Part, having regard to existing procedures, if any, establish procedures for quality assurance for the purpose of further improving and maintaining the quality of education and training

which is provided by the Institute and shall agree those procedures with the Authority. Pt.V S.39

(2) Without prejudice to the generality of *subsection (1)*, the procedures established under that subsection shall include—

- (a) evaluation at regular intervals and as directed from time to time by the Authority of the programmes of education and training provided by the Institute, including evaluations by persons who are competent to make national and international comparisons in that respect,
- (b) evaluation by learners of programmes of education and training provided by the Institute, and
- (c) evaluation of services related to the programmes of education and training provided by the Institute,

and shall provide for the publication in such form and manner as the Authority thinks fit of findings arising out of the application of those procedures.

(3) The Authority shall consider the findings arising out of the application of procedures established under *subsection (1)* and may make recommendations to the Institute which the Institute shall implement.

(4) The Authority shall, within five years of the commencement of this Part, and thereafter from time to time as it may determine but in any case not more than once in every three years and not less than once in every seven years, in consultation with the Institute, review the effectiveness of the procedures established under *subsection (1)* and the implementation by the Institute of the findings arising out of the application of those procedures.

(5) The Authority shall publish in such form and manner as it thinks fit the results of a review under *subsection (4)* and shall include in the publication the views, if any, of the Institute.

PART VI

Universities

Chapter I

Role of Universities

40.—(1) Without prejudice to the objects and functions of a university under the Act of 1997, a university shall co-operate with and give all reasonable assistance to the Authority in carrying out its functions. Role of universities.

(2) A university may advise the Authority on the exercise of its functions under *section 8*, in so far as those functions relate to the university.

(3) A university shall provide such information as the Authority may from time to time require for the purposes of the performance of the functions of the Authority.

(4) A university may apply to the Further Education and Training Awards Council or the Higher Education and Training Awards Council to have programmes of education and training which it provides, organises or procures validated by either such Council, as appropriate.

(5) In performing its functions under sections 35 and 49(b) of the Act of 1997, An tÚdarás shall consult with the Authority.

Chapter II

Universities established under section 9 of Act of 1997

Universities established under section 9 of Act of 1997.

41.—(1) This Chapter shall apply only to universities established under section 9 of the Act of 1997 (in this Chapter referred to as a “relevant university”).

(2) A relevant university shall—

(a) co-operate with and give all reasonable assistance to the Authority in carrying out its functions,

(b) implement procedures for access, transfer and progression determined by the Authority under *section 8(2)(d)* in so far as those procedures apply to the relevant university concerned, and

(c) provide such information as the Authority may from time to time require for the purposes of the performance of the functions of the Authority, including information in respect of completion rates.

(3) Where the governing authority of a relevant university approves of a strategic development plan under section 34 of the Act of 1997 it shall—

(a) ensure that the plan provides the means by which that university shall perform its functions under this Act, and

(b) provide a copy of that plan to the Authority.

(4) Where the chief officer of a relevant university prepares a report on the operations and the performance of that university under section 41 of the Act of 1997, he or she shall have regard to the part or parts of the strategic development plan under section 34 of that Act relevant to the performance of the functions of the relevant university concerned under this Act.

(5) Where An tÚdarás, under section 49(a) of the Act of 1997, reviews a strategic development plan prepared by a relevant university in accordance with section 34 of that Act, it shall consult with the Authority with regard to the means by which the relevant university concerned shall perform its functions under this Act.

(6) In determining the amount of money to be allocated for the financial year to a relevant university from moneys provided to An tÚdarás pursuant to section 12 of the Higher Education Authority Act, 1971, and section 37(2) of the Act of 1997, An tÚdarás shall ensure that the range and levels of programmes of education and training in that university and the number of learners participating in those programmes shall be in accordance with such policies as may be determined, from time to time, by the Minister, and An tÚdarás may give directions to a relevant university for those purposes.

(7) A relevant university shall act in accordance with such directions as may be given from time to time by An tÚdarás to that university under *subsection (6)*. Pt.VI S.41

(8) A relevant university may apply to the Further Education and Training Awards Council or the Higher Education and Training Awards Council to have programmes of education and training which it provides, organises or procures validated by either such Council, as appropriate.

42.—(1) A relevant university shall, as soon as practicable after the commencement of this Chapter, having regard to existing procedures, if any, establish procedures for quality assurance for the purpose of further improving and maintaining the quality of education and training which is provided by the relevant university concerned and shall agree those procedures with the Authority. Quality assurance.

(2) Without prejudice to the generality of *subsection (1)*, the procedures established under that subsection shall include—

- (a) evaluation at regular intervals and as directed from time to time by the Authority of the programmes of education and training provided by the relevant university concerned, including evaluations by persons who are competent to make national and international comparisons in that respect,
- (b) evaluation by learners of programmes of education and training provided by that university, and
- (c) evaluation of services related to the programmes of education and training provided by that university,

and shall provide for the publication in such form and manner as the Authority thinks fit of findings arising out of the application of those procedures.

(3) The Authority shall consider the findings arising out of the application of procedures established under *subsection (1)* and may make recommendations to the relevant university which that university shall implement.

(4) The Authority shall, within five years of the commencement of this Chapter, and thereafter from time to time as it may determine but in any case not more than once in every three years and not less than once in every seven years, in consultation with the relevant university concerned, review the effectiveness of the procedures established under *subsection (1)* and the implementation by that university of the findings arising out of the application of those procedures.

(5) The Authority shall publish in such form and manner as it thinks fit the results of a review under *subsection (4)* and shall include in the publication the views, if any, of the relevant university concerned.

(6) Sections 35 and 49(b) of the Act of 1997 shall not apply to a relevant university.

PART VII

Protection for Learners

Arrangements for protection of learners.

43.—(1) The Higher Education and Training Awards Council and the Further Education and Training Awards Council shall not—

- (a) validate a programme of education and training pursuant to *section 15* or *25*, as the case may be, or
- (b) make or recognise any award in respect of a programme of education and training,

being in either case a programme of a duration of three months or more, which is provided by a provider which intends to operate programmes of education and training on a commercial and profit-making basis, unless the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, is satisfied that the provider concerned has arrangements in place which make provision for learners where that provider ceases to provide the programme concerned.

(2) In this Part “arrangements in place” means—

- (a) that the provider of the programme concerned has arrangements in place with at least two other providers which provide that a learner may transfer to similar programmes provided by those other providers, or
- (b) in the case of a provider who considers, subject to the agreement of the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, that it is not practicable to have arrangements in place as specified in *paragraph (a)*, such provider has arrangements in place which enable that provider to refund to a learner, or to the person who paid the moneys concerned on behalf of the learner, the moneys most recently paid to the provider in respect of that programme.

(3) (a) The Higher Education and Training Awards Council and the Further Education and Training Awards Council shall each maintain a register of programmes of education and training in respect of which there are arrangements in place in accordance with *subsection (1)*.

(b) A register referred to in *paragraph (a)* shall be kept in such form and manner as the Authority may from time to time direct and the Authority shall publish, in such form and manner as the Authority considers appropriate, details of the register concerned.

(4) The requirement to provide information in accordance with *section 15(5)(d)* or *25(5)(d)*, as the case may be, may include information in respect of arrangements which a provider is required to have in place in accordance with this section.

(5) References in this Part to a provider ceasing to provide a programme of education and training include ceasing to provide the programme concerned for whatever reason, including—

- (a) the insolvency of the provider, or

- (b) withdrawal of validation of the programme concerned by the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, Pt.VII S.43

before completion of that programme.

44.—(1) Where a provider of a programme of education and training to which *section 43* applies ceases to provide the programme concerned, the relevant body shall make all reasonable efforts to assist the learners concerned to find an appropriate programme of education and training with another provider which will enable them to complete that education and training. Assistance to find alternative programme.

(2) *Subsection (1)* applies without prejudice to the duties and obligations of the provider of a programme of education and training to the learners concerned.

(3) In this section “relevant body” means whichever of the Further Education and Training Awards Council or the Higher Education and Training Awards Council made or recognised an award or was to make or recognise an award in respect of the programme of education and training concerned.

45.—(1) Subject to *subsection (2)*, a provider, before accepting any moneys from or on behalf of a learner (other than moneys paid on behalf of a learner from funds provided by the Oireachtas), in respect of a programme of education and training of a duration of three months or more, shall, by notice in writing, inform the learner by whom or on whose behalf the moneys are to be paid— Information to be furnished by provider: protection.

(a) whether the provider is required under *section 43* to have arrangements in place and the nature of those arrangements, or

(b) of other procedures (if any) that the provider maintains for the protection of the learners concerned if the provider ceases to provide that programme.

(2) *Subsection (1)* shall apply whether or not the Higher Education and Training Awards Council or the Further Education and Training Awards Council make or recognise any award in respect of the programme of education and training concerned.

46.—(1) Subject to *subsection (2)*, a provider which intends to operate a programme of education and training shall, by notice in writing, in respect of a programme of a duration of three months or more, inform the learner— Information to be furnished by provider: access, transfer and progression.

(a) before the commencement of the programme, or

(b) before accepting any moneys from or on behalf of a learner in respect of the programme,

whichever is the earlier—

(i) whether the programme concerned is accommodated through the procedures for access, transfer or progression referred to in *section 8(2)(d)* and the extent of such accommodation, and

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- (ii) of the name of the awarding body which shall make the award where the learner successfully completes the programme concerned and the title of that award.

(2) *Subsection (1)* shall apply whether or not the Higher Education and Training Awards Council or the Further Education and Training Awards Council make or recognise any award in respect of the programme concerned.

Offences and penalties.

47.—A provider of a programme of education and training who—

- (a) falsely claims or represents that the Higher Education and Training Awards Council or the Further Education and Training Awards Council has validated the programme concerned or makes or recognises an award in respect of that programme, knowing or having reason to believe that the claim or representation is false, or
- (b) falsely claims or represents that the provider concerned is a recognised institution of the Higher Education and Training Awards Council, knowing or having reason to believe that the claim or representation is false, or
- (c) fails to furnish the information which the provider concerned is required to furnish under *section 45* or *46*, or
- (d) makes a false representation to a learner in relation to the matters referred to in *section 45* or *46*, knowing or having reason to believe that the representation is false,

shall be guilty of an offence and shall be liable—

- (i) on summary conviction, to a fine not exceeding £1,500 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or both, or
- (ii) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or both.

PART VIII

General Provisions

Definition.

48.—In this Part “relevant body” means the Authority, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be.

Chairperson.

49.—(1) Each relevant body shall have a chairperson who shall be appointed by the Minister, following consultation with the Minister for Enterprise, Trade and Employment, the Minister for Agriculture and Food and the Minister for Tourism, Sport and Recreation.

(2) The chairperson of a relevant body may be removed from office by the Minister for stated reasons.

(3) An appointment under *subsection (1)* shall be on a part-time basis and the person appointed shall exercise no function in respect of the control and management of a relevant body other than the functions of chairperson of that body provided for under this Act.

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50.—(1) Subject to *subsections (2) and (3) and section 51*, each relevant body shall, subject to the approval of the Minister, from time to time appoint a chief executive in a whole-time capacity. Pt.VIII
Chief executive.

(2) A relevant body shall appoint a chief executive under *subsection (1)*, subject to the approval of the Minister, within three years of the establishment of the relevant body concerned.

(3) The chief executive shall be appointed in accordance with procedures determined by the relevant body concerned with the consent of the Minister.

(4) The chief executive shall carry on and manage, and control generally, the administration and business of the relevant body concerned and perform such other functions (if any) as may be determined by that body.

(5) For the purposes of section 19 of the Comptroller and Auditor General (Amendment) Act, 1993, “accounting officer” shall include a chief executive appointed under *subsection (1)*.

(6) The *Second Schedule* shall apply to the chief executive.

51.—(1) The Minister, with the consent of the Minister for Enterprise, Trade and Employment, may appoint a person to be the interim chief executive of a relevant body. Interim chief
executive.

(2) Subject to *subsection (4)*, the interim chief executive, if any, of a relevant body shall hold office for such period (which period shall not in any case exceed three years after the establishment of the relevant body concerned) and on such terms and conditions (including terms and conditions relating to remuneration, fees, allowances and expenses) as may be determined by that body with the consent of the Minister and the Minister for Finance.

(3) Where an interim chief executive appointed under *subsection (1)* ceases to hold office for any reason before the expiration of the period of his or her appointment, the Minister may appoint a person who shall be known as the interim chief executive who shall hold office for such period (which period shall not in any case exceed the remainder of the term of office of the person who occasioned the vacancy he or she is appointed to fill) and on such terms and conditions (including terms and conditions relating to remuneration, fees, allowances and expenses) as may be determined by the relevant body concerned with the consent of the Minister and the Minister for Finance.

(4) When a chief executive is appointed under *section 50*, the interim chief executive of the relevant body concerned, if any, shall cease to hold office.

(5) Until the appointment of a chief executive to the relevant body concerned under *section 50*, the interim chief executive, if any, of that body shall perform all of the functions of a chief executive under this Act.

(6) References in this Act to a chief executive shall, unless the context otherwise requires, include an interim chief executive.

52.—(1) Subject to the consent of the Minister and the Minister for Finance, a relevant body may, from time to time, appoint such and so many persons to be employees of that body as it thinks fit. Employees.

(2) Subject to such conditions as it thinks fit, a relevant body may delegate to the chief executive any of the functions of the relevant body relating to the appointment of employees of that body and the determination of selection procedures.

(3) Except as otherwise provided by this Act, an employee of a relevant body shall be employed on such terms and conditions as that body, subject to the consent of the Minister and the Minister for Finance, may from time to time determine.

(4) Except as otherwise provided by this Act and subject to *subsections (8) and (9)*, there shall be paid by a relevant body to its employees, such remuneration, fees, allowances and expenses as may be determined from time to time by that body with the consent of the Minister and the Minister for Finance.

(5) A relevant body shall determine the terms and conditions of any superannuation scheme for its employees (including a chief executive) in accordance with the *Third Schedule* and that Schedule shall apply to an amendment to an existing scheme in the same way as it applies to a new scheme.

(6) Subject to *subsection (7)*, every person who, immediately before the commencement of this Part and *Chapter V of Part IV*, is an employee of the National Council for Educational Awards shall, on such commencement, become and be an employee of the Higher Education and Training Awards Council.

(7) Subject to *subsection (11)*, a person who, immediately before the commencement of this Part and *Chapter V of Part IV*, is an employee of the National Council for Educational Awards may, by order of the Minister, become and be an employee of the Authority or the Further Education and Training Awards Council.

(8) A person who, immediately before the commencement of this Part, was an employee of An Foras, CERT or Teagasc may, subject to his or her agreement and the agreement of the Minister, on such commencement or such later date as may be agreed with the Minister, become and be an employee of a relevant body and the rights and entitlements in respect of tenure, remuneration, fees, allowances, expenses and superannuation enjoyed on the commencement of this Part by that person shall not, by virtue of the operation of this Act, be any less beneficial than those rights and entitlements enjoyed by that person immediately before such commencement.

(9) For the removal of doubt, the rights and entitlements in respect of tenure, remuneration, fees, allowances, expenses and superannuation enjoyed on the commencement of this Part and *Chapter V of Part IV* by persons who are employees of a relevant body, and in the case of superannuation, former employees of the National Council for Educational Awards, 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, or former employees of the National Council for Educational Awards, immediately before such commencement.

(10) Subject to *subsection (11)*, the Authority may, and shall when directed by the Minister, second an employee to the Further Education and Training Awards Council or the Higher Education and Training Awards Council, or to both, as may be appropriate.

(11) Before making an order under *subsection (7)* or issuing a direction under *subsection (10)*, the Minister shall, by notice in writing, inform the person or employee and any recognised trade union or staff association concerned of his or her intention to make such an order or issue such a direction and the notice shall state that the person or employee concerned may make representations to the Minister, in relation to the proposed order or direction, within such time as may be specified in the notice and the Minister shall consider such representations (if any). Pt.VIII S.52

(12) The Minister may, following consultation with the relevant body concerned, second an officer of the Minister to that body as an employee of that body, subject to the consent of the officer.

53.—(1) Where a member of a relevant body is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament,
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act, 1997, as having been elected to that Parliament, or
- (d) ceases to be a member of the category of person, as provided for in *section 6, 13 or 22*, as the case may be, to which he or she belonged at the time of becoming such member,

Membership of either House of Oireachtas or European Parliament.

he or she shall thereupon cease to be a member of the relevant body.

(2) Where an employee of a relevant body is—

- (a) nominated as a member of Seanad Éireann, or
- (b) elected as a member of either House of the Oireachtas or to be a representative in the European Parliament, or
- (c) regarded pursuant to the said Part XIII, as having been elected to that Parliament,

he or she shall thereupon stand seconded from employment by the relevant body and shall not be paid by, or be entitled to receive from the relevant body any remuneration, fee, allowances or expenses in respect of the period commencing on such nomination or election, or when he or she is so regarded as having been elected, as the case may be, and ending when such person ceases to be a member of either House or such Parliament.

(3) A period referred to in *subsection (2)* shall not, for the purposes of any superannuation benefit, be reckoned as service with the relevant body concerned.

(4) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a representative in the European Parliament shall, while he or she is so entitled or is such a member, be disqualified for membership of a relevant body or for employment in any capacity by a relevant body.

54.—(1) Where a member of a relevant body, an employee of a relevant body, a member of a committee established under *section* Disclosure of interests.

56, or a consultant, adviser or other person engaged by a relevant body, has a pecuniary interest or other beneficial interest in, or material to, any matter which falls to be considered by a relevant body or a committee established under this Act, he or she shall—

- (a) disclose to the relevant body or committee, as the case may be, the nature of his or her interest in advance of any consideration of the matter,
- (b) neither influence nor seek to influence a decision in relation to the matter,
- (c) take no part in any consideration of the matter,
- (d) if he or she is a member of the relevant body, an employee of the relevant body or a member of a committee established under *section 56*, withdraw from the meeting for so long as the matter is being discussed or considered and shall not vote or otherwise act as such member or employee in relation to the matter.

(2) For the purposes of this section, but without prejudice to the generality of *subsection (1)*, a person shall be regarded as having a beneficial interest if—

- (a) he or she or any member of his or her household, or any nominee of his or her or any member of his or her household, is a member of a company or any other body which has a beneficial interest in, or material to, a matter referred to in that subsection,
- (b) he or she or any member of his or her household is in partnership with or is in the employment of a person who has a beneficial interest in, or material to, such a matter,
- (c) he or she or any member of his or her household is a party to any arrangement or agreement (whether or not enforceable) concerning land to which such a matter relates, or
- (d) any member of his or her household has a beneficial interest in, or material to, such a matter.

(3) For the purposes of this section a person shall not be regarded as having a beneficial interest in, or material to, any matter by reason only of an interest of his or her or of any company or of any other body or person mentioned in *subsection (2)* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a person in considering, discussing or in voting on, any question with respect to the matter, or in performing any function in relation to that matter.

(4) Where a question arises as to whether or not a course of conduct, if pursued by a person, would be a failure by him or her to comply with the requirements of *subsection (1)*, the question shall be determined by the relevant body concerned or by a committee established under *section 56*, as the case may be, and particulars of the determination shall be recorded in the minutes of the meeting concerned.

(5) Where a disclosure is made pursuant to *subsection (1)* to a relevant body or to a committee established under *section 56*, particulars of the disclosure shall be recorded in the minutes of the meeting concerned. Pt.VIII S.54

(6) Where a person referred to in this section fails to make a disclosure in accordance with this section, the relevant body concerned or a committee established under *section 56*, as the case may be, shall decide the appropriate action to be taken.

55.—(1) Save as otherwise provided by law and *subsection (3)*, a person shall not, without the consent of the relevant body concerned, disclose any information obtained by him or her while performing (or as a result of having performed) duties as— Disclosure of information.

- (a) a member of that body,
- (b) an employee of that body,
- (c) a member of a committee established under *section 56*, or
- (d) an adviser or consultant to that body or an employee of such person whilst performing duties relating to such advice or consultation.

(2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.

(3) Nothing in *subsection (1)* shall prevent disclosure of information in a report made to a relevant body or by or on behalf of a relevant body to the Minister.

56.—(1) A relevant body may establish a committee consisting either in whole or in part of persons who are members or employees of that body— Committees.

- (a) to advise the relevant body concerned on such matters as that body may from time to time determine, or
- (b) to exercise such functions of that body as may be delegated to the committee from time to time, including such functions as may relate to a particular activity of business, education or training.

(2) The exercise by a committee of functions delegated to it under *subsection (1)(b)* shall be subject to confirmation by the relevant body concerned unless that body otherwise determines.

(3) A relevant body may at any time dissolve a committee established by it under this section or remove a member of a committee from such membership.

(4) A committee established under this section may regulate, by standing orders or otherwise, its procedures and business.

(5) A relevant body may appoint a person to be chairperson of a committee established under this section.

(6) The chairperson and members of a committee (other than an *ex officio* member who is an employee of a relevant body) shall be

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paid out of funds at the disposal of the relevant body concerned such allowances or expenses, if any, as the Minister, with the approval of the Minister for Finance, may determine.

Accounts.

57.—(1) A relevant body shall keep, in such form as may be approved of by the Minister, all proper and usual accounts and records of all moneys received or expended by it.

(2) Accounts kept pursuant to *subsection (1)* shall, to the extent directed by the Comptroller and Auditor General, be submitted annually by a relevant body for audit to the Comptroller and Auditor General, by such date as the Comptroller and Auditor General may from time to time determine 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 relevant body to the Minister, and in the case of the Higher Education and Training Awards Council and the Further Education and Training Awards Council, copies shall also be provided by them to the Authority.

(3) A relevant body shall cause copies of the accounts provided under this section to the Minister, together with copies of the report of the Comptroller and Auditor General on those accounts, to be laid before each House of the Oireachtas.

Plans.

58.—(1) The Authority shall, as soon as practicable after its establishment and at such other times as it thinks fit, require the chief executive of the Authority to prepare a plan which shall set out the proposals of the Authority for carrying out its functions during the period, such period being not less than two years, to which the plan relates.

(2) The Higher Education and Training Awards Council and the Further Education and Training Awards Council shall, by such date as the Authority may from time to time determine, require each of their chief executives to prepare a plan which shall set out the proposals of each such Council for carrying out its functions during the period, such period being not less than two years, to which the plan relates.

(3) A relevant body may, having regard to the resources available to it, either approve of the plan prepared under *subsection (1)* or *(2)* without modification or, after consultation with its chief executive, approve of the plan subject to such modifications as it thinks fit.

(4) As soon as practicable after the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, approves of the plan under *subsection (3)*, the Council concerned shall provide a copy of the plan to the Authority.

(5) The Authority may, having regard to the resources available to it, either approve of a plan provided to it under *subsection (4)* without modification or, after consultation with the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be, approve of the plan subject to such modifications as the Authority thinks fit.

(6) The Authority shall provide a copy of the plan concerned to the Minister as soon as practicable after it approves of that plan under *subsection (3)* or *(5)*.

[1999.] *Qualifications (Education and Training) Act, 1999.* [No. 26.]

59.—(1) Subject to *subsection (2)*, the chief executive of a relevant body shall, having regard to a plan prepared under *section 58*, prepare a report on the operations and the performance of the relevant body during the period referred to in *subsection (2)*. Pt.VIII
Reports.

(2) A report under *subsection (1)* shall be prepared—

(a) in the case of the first such report, at the end of the period of two years after the commencement of this Part, and

(b) thereafter, at the end of the period of two years following the preparation of the preceding report.

(3) A relevant body shall publish a report under *subsection (1)* in such form and manner as it thinks fit.

(4) A relevant body shall provide the Minister with a copy of a report under *subsection (1)* and, in the case of the Higher Education and Training Awards Council and the Further Education and Training Awards Council, shall provide the Authority with a copy.

(5) The relevant body concerned shall cause a copy of a report under *subsection (1)* to be laid before each House of the Oireachtas as soon as practicable after it is published.

(6) Subject to *subsection (7)*, a relevant body shall provide the Minister or either House of the Oireachtas with such information regarding the performance of its functions as the Minister or either House of the Oireachtas, as the case may be, may from time to time determine.

(7) The Higher Education and Training Awards Council and the Further Education and Training Awards Council shall provide the Authority with such information regarding the performance of their functions as the Authority may from time to time determine.

60.—(1) A relevant body may accept gifts of money, land or other property upon such trusts and conditions, if any, as may be specified by the donor. Gifts.

(2) A relevant body shall not accept a gift if the trusts or conditions attached to it by the donor are inconsistent with the objects or functions of the relevant body.

61.—(1) A relevant body shall charge, receive and recover fees, other than from the Minister, in relation to the performance of its functions. Fees.

(2) Subject to *subsection (3)*, the Minister in consultation with the relevant body, with the concurrence of the Minister for Finance, shall determine the level of fees referred to in *subsection (1)*.

(3) The Authority may advise the Minister in respect of the level of fees referred to in *subsection (1)*.

(4) For the purposes of this section, the Authority may review from time to time the level of fees referred to in *subsection (1)*.

62.—Section 4 of the Labour Services Act, 1987, is hereby amended by the substitution for subsection (2) of the following subsection: Amendment of
section 4 of Labour
Services Act, 1987.

[No. 26.] *Qualifications (Education and Training) Act, 1999.* [1999.]

Pt.VIII S.62

“(2) Subject to the *Qualifications (Education and Training) Act, 1999*, An Foras shall also have and enjoy all those functions that were vested in An Chomhairle, the Agency and the Manpower Service immediately before the establishment day and are not specified in subsection (1).”.

Service of notices.

63.—(1) Subject to *subsection (6)*, a notice required to be served or given by or under this Act shall be addressed to the person concerned and served or given in one of the following ways—

- (a) by addressing it to the person by name and delivering it to him or her,
- (b) by leaving it at the address at which the person ordinarily resides,
- (c) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides,
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by prepaid registered post addressed to him or her to, that address, or
- (e) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him or her in respect of any premises, by delivering it to a person over the age of 16 years resident in or employed on the premises, or by affixing it in a conspicuous position on or near the premises.

(2) Where the name of the person concerned cannot be ascertained by reasonable inquiry, a notice under this Act may be addressed to “the occupier”, “the owner” or “the person in charge”, as the case may be.

(3) For the purposes of this section, a company registered under the Companies Acts, 1963 to 1990, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of three months after a notice is affixed under *subsection (1)(e)* remove, damage or deface the notice without lawful authority and a person who contravenes this subsection shall be guilty of an offence.

(5) A person guilty of an offence under *subsection (4)* shall be liable on summary conviction to a fine not exceeding £1,500.

(6) *Subsection (1)* shall not apply to a notice referred to in *section 45* or *46* or in the *First Schedule*.

Provisions in relation to offences.

64.—(1) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent, connivance or approval of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or any other person who was acting or purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded

against and punished as if he or she were guilty of the first-mentioned offence. Pt.VIII S.64

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within 12 months from the date of the offence.

65.—(1) Except in relation to a provider of a programme of education and training established and described as such before the commencement of this Part (in which case it may continue to be so described), a person shall not, without the approval of the Minister, use the words “institute of technology” or “regional technical college” to describe a provider of a programme of education and training. Provider not to be described as institute of technology or regional technical college.

(2) The Minister may apply to the High Court for an injunction to restrain any person from using the words “institute of technology” or “regional technical college” in contravention of *subsection (1)*.

66.—(1) Where the total number of persons whom a person or body may nominate under *sections 6, 13 and 22* is more than one but less than four, the person or body shall nominate at least one male and at least one female. Gender balance.

(2) Where the total number of persons whom a person or body may nominate under *sections 6, 13 and 22* is four or more, the person or body shall nominate at least two males and at least two females.

FIRST SCHEDULE

Membership and Meetings

1. In this Schedule “relevant body” means the Authority, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be.

2. (1) As soon as practicable after its establishment, a relevant body shall provide itself with and retain in its possession a seal.

(2) The seal of a relevant body shall be authenticated by the signature of the chairperson or a member of the relevant body, and by the signature of an employee of that body, authorised by the body to act in that behalf.

(3) Judicial notice shall be taken of the seal of a relevant body and every document purporting to be an instrument made by and to be sealed with the seal of a relevant body (purporting to be authenticated in accordance with *subparagraph (2)*) shall be received in evidence and be deemed to be such instrument without proof unless the contrary is shown.

3. (1) A member of a relevant body (other than the chairperson or an *ex officio* member) may, for stated reasons, be removed from office by resolution of the relevant body.

(2) A member of a relevant body (other than the chairperson or an *ex officio* member) may, at any time, resign from office as a member by notice in writing to the chairperson and the resignation shall take effect on the date on which the chairperson receives the notice.

(3) A member of a relevant body (other than an *ex officio* member), including the chairperson, who is absent from all meetings of the relevant body for a period of six consecutive months, unless the absence was due to illness or was approved by that body, shall at the expiration of that period cease to be a member of the body.

(4) A member of a relevant body (including the chairperson) whose term of office expires by effluxion of time shall be eligible for reappointment to the relevant body.

4. (1) Subject to this Schedule, the term of office of a member of a relevant body (other than an *ex officio* member), including the chairperson, shall be five years from the date of his or her appointment.

(2) Subject to *subparagraph (3)*, a member of a relevant body (other than an *ex officio* member), shall not serve more than two terms of office on that body.

(3) The terms of office referred to in *subparagraph (2)* shall not include any term of office as chairperson of the relevant body.

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

(2) A person who becomes a member of a relevant body pursuant to this paragraph 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 reappointment as a member of the body on the expiry of that period. Sch.1

6. (1) Each relevant body shall have a chairperson, as provided for in *section 49*.

(2) The chairperson may, at any time, resign from office as chairperson by notice in writing to the Minister, a copy of which shall be sent to the relevant body, and the resignation shall take effect on the date on which the Minister receives the notice.

7. Where a person ceases to hold the office of chairperson, he or she shall at the same time cease to be a member of the relevant body concerned.

8. The chairperson of a relevant body shall not hold the office of chairperson of that body for more than two terms of office.

9. (1) Each relevant body shall, from time to time as the occasion requires, appoint from amongst its members a member (other than the chief executive) 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 a relevant body.

10. The chairperson and members of a relevant body (other than an *ex officio* member who is an employee of the relevant body) shall be paid out of funds at the disposal of that body such allowances or expenses, if any, as the Minister, with the approval of the Minister for Finance, may determine.

11. (1) Each relevant body shall hold at least four meetings in any 12 month period, and such and so many other meetings and at such times, as the chairperson may determine.

(2) The chairperson of a relevant body shall convene a meeting of the relevant body 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 relevant body shall be one-third of the total number of members, rounded up to the nearest whole number, plus one.

12. At a meeting of a relevant body—

(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, or

(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 relevant body who are present shall choose one of their number to preside at the meeting.

13. Every question at a meeting of a relevant body 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, including

Sch.1

the chairperson, 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.

14. Subject to *paragraph 11(3)*, a relevant body may act notwithstanding one or more than one vacancy among its members or any deficiency in the appointment of a member which may subsequently be discovered.

15. Subject to this Act, a relevant body may make, from time to time, such rules as it thinks fit for the procedures and business of the relevant body.

Section 50.

SECOND SCHEDULE

Chief Executive

1. In this Schedule “relevant body” means the Authority, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be.

2. The chief executive of a relevant body shall perform his or her functions subject to such policies as may be determined from time to time by the relevant body and shall be answerable to that body for the efficient and effective management of that body and for the due performance of his or her functions.

3. (1) The chief executive of a relevant body may delegate any of his or her functions to an employee of the relevant body, unless they are so delegated to the chief executive subject to the condition that they shall not be sub-delegated, and the employee concerned shall be accountable to the chief executive for the performance of the functions so delegated.

(2) Notwithstanding any such delegation, the chief executive shall at all times remain accountable to the relevant body concerned for the performance of the functions so delegated.

4. The chief executive of a relevant body shall not hold any other office or position without the consent of the relevant body concerned.

5. The chief executive of a relevant body shall hold office on such terms and conditions (including terms and conditions relating to remuneration, fees, allowances and expenses) as may be determined by that body with the consent of the Minister and the Minister for Finance.

Section 52.

THIRD SCHEDULE

Superannuation

1. In this Schedule “relevant body” means the Authority, the Higher Education and Training Awards Council or the Further Education and Training Awards Council, as the case may be.

2. As soon as practicable after the commencement of *Part VIII* a relevant body shall, subject to *section 52*, prepare and submit to the Minister a scheme or schemes for the granting of superannuation benefits to or in respect of such employees of the relevant body as the body thinks fit.

3. Every such scheme shall fix the time and conditions of retirement of all persons to or in respect of whom superannuation benefits are payable under the scheme and different times and conditions may be fixed in respect of different classes of persons.

4. A relevant body may at any time prepare and submit to the Minister a scheme amending a scheme previously submitted and approved under this Schedule.

5. A scheme or amending scheme submitted to the Minister under this Schedule shall, if approved by the Minister with the consent of the Minister for Finance, be carried out by the relevant body in accordance with its terms.

6. If a dispute arises as to the claim of any person to, or the amount of, any superannuation benefit payable pursuant to a scheme under this Schedule, such dispute shall be submitted to the Minister for determination by the Minister, whose decision shall be final, subject to the agreement of the Minister for Finance.

7. No superannuation benefit shall be granted by a relevant body to or in respect of any of its employees who are members of a scheme under this Schedule, nor shall any other arrangement be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than—

- (a) in accordance with such scheme or schemes submitted and approved under this Schedule, or
- (b) with the approval of the Minister subject to the consent of the Minister for Finance.

8. Every scheme submitted and approved under this Schedule shall be laid before each House of the Oireachtas as soon as practicable after it is so approved, and if either House, within the next 21 days on which that House has sat after the scheme is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done under the scheme.

9. Where, in the period between the establishment of a relevant body and the coming into operation of a scheme under this Schedule, a superannuation benefit would have been granted to or in respect of a person accepted into the service of a relevant body under *section 52*, in respect of the person's service in the National Council for Educational Awards, then the superannuation benefit shall be granted and paid to or in respect of that person by the relevant body and, for that purpose, his or her pensionable service with that body shall be aggregated with his or her previous pensionable service.