



Number 11 of 2015

Education (Miscellaneous Provisions) Act 2015



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EDUCATION (MISCELLANEOUS PROVISIONS) ACT 2015

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ACTS REFERRED TO

Companies Acts

Education (Miscellaneous Provisions) Act 2007 (No. 9)

Education Act 1998 (No. 51)

Education Acts 1878 to 2012

Education and Training Boards Act 2013 (No. 11)

Freedom of Information Act 2014 (No. 30)

Interpretation Act 2005 (No. 23)

Qualifications and Quality Assurance (Education and Training) Act 2012 (No. 28)

Student Support Act 2011 (No. 4)

Universities Act 1997 (No. 24)

Universities Acts 1997 and 2006



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EDUCATION (MISCELLANEOUS PROVISIONS) ACT 2015

An Act to enable an education provider to describe itself in certain circumstances as a university; to amend the Universities Act 1997; to amend the Education Act 1998; to amend the Student Support Act 2011 and to provide for related matters.

[5th May, 2015]

Be it enacted by the Oireachtas as follows:

Interpretation

1. In this Act—

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

“Appeals Board” shall be construed in accordance with *section 5*;

“authorised provider” has the meaning assigned to it by *section 2(5)*;

“education provider” means a person in the State who provides a programme of education and training;

“enactment” has the same meaning as it has in the Interpretation Act 2005;

“Minister” means the Minister for Education and Skills;

“specified purpose” means a purpose specified under *section 2(3)*;

“university authorisation” has the meaning assigned to it by *section 2(1)*;

“Act of 1997” means the Universities Act 1997.

Authorisation to describe education provider as university

2. (1) Subject to *subsection (2)*, an education provider authorised by or under an enactment to make awards to at least doctoral degree level in the State, where those awards are recognised at that level within the National Framework of Qualifications, may apply to the Minister for authorisation (in this Act referred to as a “university authorisation”) to describe the provider as a university outside the State for specified purposes.
- (2) *Subsection (1)* shall not apply to an education provider which has delegated authority to make an award in accordance with section 53 of the Qualifications and Quality Assurance (Education and Training) Act 2012.
- (3) The specified purposes are—

- (a) marketing—
 - (i) programmes of education and training provided by the authorised provider, or
 - (ii) research services of the authorised provider,or
 - (b) to enter into an arrangement with any person outside the State for the purposes of participating in a collaborative project relating to—
 - (i) the provision of a programme of education and training where the programme is provided in whole or in part by the authorised provider, or
 - (ii) research services of the authorised provider.
- (4) An education provider which is granted a university authorisation under this section shall not describe itself, or cause itself to be described, as a university otherwise than—
- (a) outside the State, and
 - (b) for a specified purpose.
- (5) The Minister shall, following consultation with an tÚdarás, within 3 months of receipt of an application from an education provider under *subsection (1)*, determine that application by—
- (a) subject to *subsection (6)*, granting the university authorisation to the provider (in this Act referred to as an “authorised provider”) where that provider satisfies the requirements for authorisation specified in *subsection (8)*, or
 - (b) refusing to grant the university authorisation to the provider where that provider does not satisfy the requirements for authorisation specified in *subsection (8)*.
- (6) The Minister may, at the time of granting a university authorisation to an education provider, by notice in writing to that provider, impose such conditions (if any) as he or she considers appropriate in relation to the use by that provider of that university authorisation.
- (7) An education provider shall comply with conditions imposed under *subsection (6)*.
- (8) The requirements for authorisation referred to in *subsection (5)* are—
- (a) that the Minister is satisfied that the education provider is authorised by or under an enactment to make awards to at least doctoral degree level in the State and that those awards are recognised at that level within the National Framework of Qualifications, and
 - (b) that at least 40 per cent of the total number of students in programmes of education and training provided by that education provider in the State are—
 - (i) from outside the Member States, and
 - (ii) lawfully in the State primarily to receive education and training.

- (9) Where the Minister refuses to grant a university authorisation to an education provider under *subsection (5)(b)*, the Minister shall inform the provider by notice in writing of his or her refusal and state the reasons for that refusal.
- (10) An education provider may appeal against—
- (a) the imposition of one or more conditions imposed under *subsection (6)*, or
 - (b) a refusal to grant university authorisation to the provider under *subsection (5)(b)*, within 30 days of the service of the notice under *subsection (6)* or *subsection (9)* as the case may be.
- (11) An appeal under *subsection (10)* shall be made by notice in writing to the Minister who shall, on receipt of that appeal, cause an Appeals Board to be appointed in accordance with *section 5* to determine that appeal.
- (12) Subject to *subsection (13)*, the Minister may apply to the High Court for an injunction to restrain an education provider—
- (a) which does not have a university authorisation under this section, or
 - (b) from which a university authorisation has been withdrawn under *section 4*, from describing itself, or causing itself to be described, as a university for any purpose.
- (13) *Subsection (12)* shall not apply in respect of an education provider—
- (a) referred to in any of paragraphs (a) to (e) of subsection (1) of section 4 of the Act of 1997, or
 - (b) which in accordance with section 52(1) of the Act of 1997—
 - (i) is established and described as a university before the 30th July 1996, or
 - (ii) has obtained the approval of the Minister under that section.
- (14) In this section, “student”, in relation to an education provider, means a person registered as a student by the education provider.

Review of authorisation

3. (1) An tÚdarás may, by notice in writing, request information from an authorised provider in relation to the use by that provider of the university authorisation.
- (2) An authorised provider shall provide the information requested by an tÚdarás under *subsection (1)* within such time period as an tÚdarás shall specify in the notice.
- (3) An tÚdarás may at any time review an authorised provider to ensure that the provider is—
- (a) not describing itself, or causing itself to be described, as a university in the State or for a purpose other than a specified purpose, and
 - (b) complying with any conditions imposed under *section 2(6)*.

- (4) Where, upon consideration of information received under *subsection (2)* or following a review under *subsection (3)*, an tÚdarás considers that an authorised provider is—
- (a) describing itself, or causing itself to be described, as a university in the State or for a purpose other than a specified purpose, or
 - (b) not complying with a condition imposed under *section 2(6)*,
- it shall inform the Minister by notice in writing of its opinion and the reasons for its opinion.
- (5) Where in relation to an authorised provider—
- (a) the Minister receives a notice from an tÚdarás under *subsection (4)*, or
 - (b) it otherwise comes to the notice of the Minister that the provider is, or may be—
 - (i) describing itself, or causing itself to be described, as a university in the State or for a purpose other than a specified purpose, or
 - (ii) failing to comply with a condition imposed under *section 2(6)*,
- the Minister may give a direction in writing to the provider concerned to cease such use or to comply with such condition as the case may be.
- (6) An authorised provider shall comply with a direction given to it under *subsection (5)*.

Withdrawal of authorisation

4. (1) An tÚdarás may at any time review an authorised provider to ensure that the provider—
- (a) complies with a direction given under *section 3(5)*,
 - (b) continues to meet the requirements for authorisation specified in *section 2(8)*.
- (2) An tÚdarás may, by notice in writing, request information from an authorised provider in relation to any of the matters specified in *subsection (1)* and the provider shall provide the information requested by an tÚdarás within such time period as an tÚdarás shall specify in the notice.
- (3) Where following a review under *subsection (1)*, or upon consideration of information received from an authorised provider under *subsection (2)*, an tÚdarás considers that an authorised provider—
- (a) has failed to comply with a direction given under *section 3(5)*, or
 - (b) has ceased to meet any of the requirements for authorisation specified in *section 2(8)*,
- it shall inform the Minister by notice in writing of its opinion and the reasons for its opinion.
- (4) Subject to *subsections (5), (6) and (7)*, where in relation to an authorised provider—
- (a) the Minister receives a notice from an tÚdarás under *subsection (3)*, or

- (b) it otherwise comes to the notice of the Minister that the provider—
- (i) has failed to comply with a direction given under *section 3(5)* or
 - (ii) has ceased to meet any of the requirements for authorisation specified in *section 2(8)*,
- the Minister may, following consultation with an tÚdarás, withdraw a university authorisation from that provider.
- (5) Where the Minister proposes to withdraw a university authorisation under *subsection (4)* he or she shall, by notice in writing to the authorised provider concerned, inform the provider that he or she proposes to withdraw that authorisation and state the reasons for the proposed withdrawal.
- (6) A notice under *subsection (5)* shall state that the authorised provider may make representations in writing to the Minister in relation to the reasons for the proposed withdrawal set out in the notice not later than one month after the service of the notice on the provider.
- (7) Where, after consideration of representations (if any) made to the Minister in accordance with *subsection (6)*, the Minister considers for the reasons stated in the notice that university authorisation should be withdrawn, the Minister shall withdraw that authorisation by notice in writing to the provider concerned from such date as he or she considers appropriate and as is specified in the notice which date shall not be earlier than the end of the period within which an appeal may be brought under *subsection (8)*.
- (8) Where the Minister withdraws a university authorisation under *subsection (7)* the education provider concerned may appeal against that decision within 30 days of the service of the notice under that subsection.
- (9) An appeal under *subsection (8)* shall be made by notice in writing to the Minister who shall, on receipt of that appeal, cause an Appeals Board to be appointed in accordance with *section 5* to determine that appeal.
- (10) The withdrawal of authorisation under *subsection (7)* shall take effect—
- (a) where no appeal is made under *subsection (8)*, on the date specified in the notice under *subsection (7)*, or
 - (b) where an appeal is made under *subsection (8)*, on the date specified by the Appeals Board under *section 5(14)*.

Appeals Board

5. (1) The Minister shall, within 7 days of receipt of a notice of appeal under *section 2(11)* or *section 4(9)*, request nominations from Quality and Qualifications Ireland for persons to appoint to an Appeals Board.
- (2) As soon as practicable, and in any event not later than 42 days after the Minister's request under *subsection (1)*, Quality and Qualifications Ireland shall nominate the following persons for appointment:

- (a) 2 persons having a special interest or expertise in, or knowledge of, matters relating to higher education, one of whom shall be the chairperson of and one of whom shall be an ordinary member of the Appeals Board; and
 - (b) one person to be an ordinary member of the Appeals Board who is either a practising solicitor with not less than 10 years' experience or a practising barrister with not less than 10 years' experience.
- (3)
 - (a) An employee or member of Quality and Qualifications Ireland shall not be appointed under *subsection (2)(a)*.
 - (b) A solicitor or barrister who is in the full-time service of the State shall not be appointed under *subsection (2)(b)*.
- (4) The Minister shall appoint the persons nominated under *subsection (2)* to an Appeals Board for the purposes of hearing the appeal which is the subject of the notice of appeal under *subsection (1)*.
- (5) The chairperson and ordinary members of an Appeals Board shall be paid such fees and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine.
- (6) The Minister may furnish such support of an administrative nature to an Appeals Board as the Minister in his or her opinion determines is necessary to enable the Board to perform its functions.
- (7) An Appeal Board—
 - (a) shall establish procedures to be followed regarding the making of submissions to the Board and the form of those submissions, and
 - (b) may establish procedures to be followed regarding—
 - (i) the holding of a hearing,
 - (ii) the examination by the Board of parties to an appeal,
 - (iii) requests for information for the purposes of an appeal and for the provision of such information, and
 - (iv) any other matter which the Board considers appropriate for the proper performance of its functions.
- (8) For the purposes of an appeal for which the Appeals Board is appointed, the Board shall request written submissions from the education provider making the appeal and the Minister and the provider and the Minister shall furnish the submissions to the Board within the time period specified in the request.
- (9) An Appeals Board shall consider written submissions made by the education provider making the appeal and made by the Minister in relation to the appeal and, where the Board considers it appropriate to do so, it may hold such hearings as it considers necessary for the determination of an appeal.
- (10) An Appeals Board may request such information from an tÚdarás, the Minister or the provider making an appeal as the Board considers necessary to assist it in determining

an appeal and an tÚdarás, the Minister or the provider concerned, as the case may be, shall provide that information within the time period specified in the request.

- (11) If a hearing is held under *subsection (9)*—
- (a) each of the parties to the appeal is entitled to be heard at the hearing, and
 - (b) the Appeals Board may adjourn the hearing of a matter at any stage in the proceedings until a date specified by the Board.
- (12) A decision of a majority of the members of an Appeals Board shall suffice for any purpose.
- (13) The Appeals Board shall determine an appeal as soon as practicable after the Board has completed its consideration of the appeal which shall be a determination to—
- (a) affirm the Minister’s refusal or withdrawal, as the case may be, or
 - (b) quash the decision of the Minister and direct the Minister, for stated reasons, to reconsider his or her decision.
- (14) Where the Appeals Board makes a determination under *subsection (13)(a)* to affirm the Minister’s withdrawal of authorisation, it shall at the same time specify the date from which the withdrawal shall take effect.
- (15) An Appeals Board shall notify the education provider which brings the appeal and the Minister of its determination under *subsection (13)*, and of the date specified under *subsection (14)* (if applicable), as soon as practicable after the Board makes its determination.
- (16) Where the Appeals Board makes a determination under *subsection (13)(b)* the Minister shall reconsider his or her decision within 30 days of receipt of notification from the Appeals Board under *subsection (15)*.
- (17) An Appeals Board shall be independent in the performance of its functions.
- (18) In this section, “Quality and Qualifications Ireland” means the Qualifications and Quality Assurance Authority of Ireland.

Amendment of section 52 of Universities Act 1997

6. Subsection (1) of section 52 of the Act of 1997 is amended by the substitution of “Subject to *section 2* of the *Education (Miscellaneous Provisions) Act 2015* or except” for “Except”.

Refusal of access to certain information

7. The Education Act 1998 is amended by the substitution of the following section for section 53 (amended by section 5 of the Education (Miscellaneous Provisions) Act 2007)—
- “53. (1) Notwithstanding any other enactment, the Minister may refuse access to information specified in subsection (4) (in this section referred to as the ‘specified information’).

- (2) The Minister may, following consultation with the Minister for Public Expenditure and Reform, by regulations prescribe a public body for the purposes of this section.
- (3) Notwithstanding any other enactment, where a public body stands prescribed for the time being under subsection (2) that public body shall refuse access to the specified information unless the Minister—
 - (a) consents to the public body granting access to that information, or
 - (b) directs the public body to grant access to that information.
- (4) The specified information is any information—
 - (a) which would enable the compilation of information (that is not otherwise available to the general public) in relation to the comparative performance of—
 - (i) recognised schools in respect of the academic achievement of students, or
 - (ii) education or training facilities in respect of the academic achievement of learners,
including, without prejudice to the generality of the foregoing—
 - (I) the overall results or outcomes in any period of time of students in a recognised school or learners in an education or training facility in an examination or assessment, or
 - (II) the comparative overall results or outcomes in any period of time of students in different recognised schools or learners in different education or training facilities in an examination or assessment,
 - or
 - (b) relating to the identity of examiners.
- (5) In this section—

‘Act of 2013’ means the Education and Training Boards Act 2013;

‘education or training facility’ has the same meaning as it has in the Act of 2013;

‘learner’ has the same meaning as it has in the Act of 2013;

‘public body’ has the same meaning as it has in the Freedom of Information Act 2014.’.

Amendment of section 7 of Student Support Act 2011

8. Section 7(1)(d) of the Student Support Act 2011 is amended by the deletion of “, pursuant to a scheme administered by the Minister.”.

Service of documents

9. (1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:
- (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
 - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address.
- (2) For the purposes of this section, a company within the meaning of the Companies Acts shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Expenses

10. The expenses incurred by the Minister in the administration of this Act shall, to such an extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Short title, collective citations and commencement

11. (1) This Act may be cited as the Education (Miscellaneous Provisions) Act 2015.
- (2) The Universities Acts 1997 and 2006 and *section 6* may be cited together as the Universities Acts 1997 to 2015.
 - (3) The Education Acts 1878 to 2012 and *section 7* may be cited together as the Education Acts 1878 to 2015.
 - (4) The Student Support Act 2011 and *section 8* may be cited together as the Student Support Acts 2011 and 2015.
 - (5) This Act, other than *section 7* and *section 8*, 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 provisions.