



AN BILLE UM THACAÍOCHT DO MHIC LÉINN 2008
STUDENT SUPPORT BILL 2008

Mar a leasaíodh sa Roghchoiste um Oideachas agus Scileanna
As amended in the Select Committee on Education and Skills

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[No. 6a of 2008]

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AN BILLE UM THACAÍOCHT DO MHIC LÉINN 2008
STUDENT SUPPORT BILL 2008

BILL

entitled

5 AN ACT TO PROVIDE FOR THE MAKING OF GRANTS IN
CERTAIN CASES BY AWARDING AUTHORITIES TO
ENABLE PERSONS TO ATTEND CERTAIN COURSES
OF HIGHER OR FURTHER EDUCATION, TO ESTAB-
10 LISH AN APPEALS BOARD TO BE KNOWN AS AN
BORD ACHOMHAIRC I LEITH DEONTAS MAC LÉINN
OR, IN THE ENGLISH LANGUAGE, THE STUDENT
GRANTS APPEALS BOARD, TO REPEAL THE LOCAL
AUTHORITIES (HIGHER EDUCATION GRANTS) ACTS
15 1968 TO 1992 AND TO PROVIDE FOR RELATED
MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Student Support Act 2008. Short title and commencement.

20 (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.

2.—In this Act— Interpretation.

25 “Appeals Board” shall be construed in accordance with *section 25(2)*;

“appeals officer” means a person designated under *section 20(1)*;

“applicant” means a student who applies for a grant;

“appointed awarding authority” shall be construed in accordance with *section 9*;

30 “approved course” has the meaning given to it by *section 8*;

“approved institution” has the meaning given to it by *section 7*;

“awarding authority” means—

- (a) a vocational education committee,
- (b) a local authority, or
- (c) an appointed awarding authority;

“civil partner” shall be construed in accordance with section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; 5

“course” means a course of study or training;

“dependent child” shall be construed in accordance with *section 16(7)*; 10

“dependent student” means an applicant or class of applicant specified as a dependent student in a scheme made by the Minister under *section 16*;

“educational disadvantage” means the impediments to education arising from social or economic disadvantage which prevent students from deriving appropriate benefit from education; 15

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as amended for the time being;

“enactment” has the meaning given to it by section 2 of the Interpretation Act 2005; 20

“grant” means money paid by an awarding authority to a student or to an approved institution on behalf of the student for the purpose of assisting the student to pursue an approved course at the approved institution; 25

“independent student” means an applicant or class of applicant specified as an independent student in a scheme made by the Minister under *section 16*;

“inquiry officer” means a person appointed pursuant to *section 22*;

“local authority” means a county council or city council within the meaning of the Local Government Act 2001; 30

“Minister” means the Minister for Education and Skills;

“parent” includes a guardian appointed under the Guardianship of Children Acts 1964 to 1997, and, in the case of a child who has been adopted under the Adoption Acts 1952 to 1998 or, where the child has been adopted outside of the State, means the adopter or adopters or the surviving adopter; 35

“prescribed” means prescribed by regulations made by the Minister under this Act;

“progression” means— 40

- (a) the process by which learners may progress from year to year within a course following the successful completion of part of the course as required during the previous year, or
- (b) the process by which learners may transfer from one course to another course where the award that may be 45

made on the successful completion of the second mentioned course is of a higher level than the award that may be made on the successful completion of the first mentioned course;

5 “reckonable income” shall be construed in accordance with *section 16(4)(a)(iv)*;

“relevant Minister” shall be construed in accordance with *section 9(8)*;

10 “spouse” includes, if an applicant is living with another person as husband and wife, the other person with whom the applicant is living;

“student” shall be construed in accordance with *section 14(1)*;

“transferring awarding authority” shall be construed in accordance with *section 9(1)*;

15 “tuition fees” means fees and charges that a student is required to pay in order to participate in and complete a course and includes examination fees, student service charges, registration fees and lecture fees;

“tuition student” has the meaning given to it by *section 14(8)*;

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

3.—The expenses incurred by the Minister in the administration Expenses.
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.

25 4.—(1) Subject to this Act, the Minister may make regulations Regulations.
prescribing any matter or thing referred to in this Act as prescribed or to be prescribed.

30 (2) Regulations 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 the regulations or for giving effect to this Act.

35 5.—Every order, regulation or scheme under this Act (other than an order under *section 1(2)* or *25(1)*) 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, regulation or scheme is passed by either such House within the next 21 days on which that House has sat after the order, regulation or scheme is laid before it, the order, regulation or scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

40 6.—(1) The enactments specified in *column (2)* of *Schedule 1* are Repeals and transitional arrangements.
repealed.

(2) A person attending a course who was, prior to the coming into operation of this section, awarded a grant to attend the course pursuant to—

(a) the enactments referred to in *subsection (1)*, or

- (b) schemes administered by a vocational education committee whereby grants were provided to students to assist them in attending courses in higher or further education,

shall, subject to the terms of the enactments or schemes, continue to receive the grant concerned until the person has completed that course and he or she shall not apply for a grant other than the grant of which he or she is in receipt. 5

(3) The enactments referred to in *subsection (1)* and schemes referred to in *subsection (2)(b)* shall continue in force and apply to grants made pursuant to those enactments and schemes before the coming into operation of this section to the same extent as if this Act had not been passed. 10

Approved institution.

7.—(1) In this Act, “approved institution” means—

- (a) an educational institution to which, pursuant to section 4 of the Universities Act 1997, that Act applies, 15
- (b) an educational institution established under section 3 of the Regional Technical Colleges Act 1992 as a regional technical college to which the Institutes of Technology Acts 1992 to 2006 apply,
- (c) the Dublin Institute of Technology, 20
- (d) an educational institution in the State that receives a grant out of moneys provided by the Oireachtas, pursuant to a scheme administered by the Minister, for the provision of courses of education and training known for the time being as post-leaving certificate courses, 25
- (e) an educational institution that provides higher education and training which is situated in a Member State other than the State which is maintained or assisted by recurrent grants from public funds of that or any other Member State including the State, or 30
- (f) an educational institution in the State that provides higher education and training and which stands prescribed for the time being pursuant to *subsection (2)*.

(2) Where the Minister is satisfied to do so, having—

- (a) regard to any of the matters specified in *subsection (3)*, 35
- (b) consulted with the Higher Education Authority, and
- (c) obtained the consent of the Minister for Finance,

he or she may prescribe an educational institution as being an approved institution for the purposes of this section.

(3) Each of the following are the matters mentioned in *subsection (2)*: 40

- (a) whether the institution receives one or more than one payment out of moneys made available by the Oireachtas and the amount of the payment;

- 5 (b) the policy of the institution in relation to access to education in the institution by economically or socially disadvantaged persons, by persons who have a disability and by persons from sections of society significantly under represented in the student body;
- (c) the courses and facilities offered or intended to be offered to students by the institution;
- 10 (d) whether prior to the commencement of this section, the institution was an institution which, in respect of its courses, grants were made available pursuant to a scheme administered by a local authority or a vocational education committee whereby grants were provided to students to assist them in attending those courses;
- 15 (e) whether the institution is established for the principal purposes of higher education, training and research and operated and managed on a basis other than for financial gain;
- 20 (f) the requirement for the development of skills and knowledge in sectors of the economy or employment identified as requiring such development of skills and knowledge following advice received by the Minister from such person who has an interest or expertise in educational matters or the development of skills and knowledge as the Minister considers appropriate to consult for that advice;
- 25 (g) resources available for the provision of student support;
- (h) any other matters which in the opinion of the Minister are proper matters to be taken into account having regard to the objective of enabling persons to attend courses of higher or further education, the need to maintain educational standards and the contribution that the institution is making to higher education in the State.
- 30

8.—(1) In this Act “approved course” means a course which— Approved course.

- (a) is provided by an approved institution,
- 35 (b) subject to *subsection (3)*, requires attendance by a student on a full-time basis, and
- (c) has been prescribed as an approved course.

(2) The following matters or any of them are the matters to which the Minister shall have regard for the purposes of prescribing a course pursuant to *subsection (1)(c)*:

40

- (a) the nature and level of the qualification to be awarded to the student on the successful completion by him or her of the course;
- 45 (b) whether prior to the coming into operation of this Act the course was a course in respect of which, pursuant to a scheme administered by a local authority or a vocational education committee, grants were provided to students to assist them in attending the course;

- (c) the requirement for the development of skills and knowledge in sectors of the economy or employment identified as requiring such development of skills and knowledge following advice received by the Minister from such person who has an interest or expertise in educational matters or the development of skills and knowledge as the Minister considers appropriate to consult for that advice; 5
 - (d) the educational institution which provides the course;
 - (e) the duration of the course; 10
 - (f) whether the course is an undergraduate or postgraduate course;
 - (g) whether publicly funded moneys are being used by that educational institution to provide the course;
 - (h) whether the course leads to a higher education and training award or further education and training award; 15
 - (i) resources available for the provision of student support;
 - (j) the number of hours that a student is required to spend attending the course;
 - (k) whether the course leads to a qualification that is recognised— 20
 - (i) in the case of a qualification awarded following the successful completion of a course at an institution other than an institution mentioned at *section 7(1)(e)*, pursuant to arrangements, procedures and systems that constitute for the time being the framework of qualifications established and maintained pursuant to section 7 of the Qualifications (Education and Training) Act 1999, 25
 - (ii) in the case of a qualification awarded following the successful completion of a course at an institution mentioned at *section 7(1)(e)*— 30
 - (I) if such recognition is provided for by those laws in that manner, in a manner provided for by the laws of that Member State that corresponds to the arrangements, procedures and systems referred to in *subparagraph (i)*, or 35
 - (II) if such recognition is not provided for by those laws in that manner, then otherwise in accordance with the laws of that Member State; 40
 - (l) any other matters which in the opinion of the Minister are proper matters to be taken into account having regard to the objective of enabling persons to attend courses of higher or further education, the need to maintain educational standards and the contribution that provision of the course would make to higher education in the State. 45
- (3) (a) Notwithstanding *subsection (1)(b)*, the Minister, with the consent of the Minister for Finance, may prescribe a

course that does not require attendance by a student on a full-time basis to be an approved course.

(b) A course prescribed pursuant to this subsection shall be a course that—

- 5 (i) is provided in the State, and
(ii) is an undergraduate course.

(c) The Minister, in prescribing a course pursuant to *paragraph (a)*, shall have regard to the following matters:

- 10 (i) the matters referred to in *subsection (2)* (other than *paragraph (k)(ii)* of that subsection);
(ii) the extent to which the prescribing of the course would assist in addressing educational disadvantage;
15 (iii) the extent to which the prescribing of the course would assist and encourage participation by persons from sections of society significantly under-represented in the student body availing of higher education;
(iv) the number of modules that may be completed and the extent of educational attainment in each
20 academic year of the course;
(v) the amount of work and contact with teachers and tutors in relation to the course required of a student;
(vi) the period of time required to complete the course when compared to a course that requires attendance
25 by a student on a full-time basis;
(vii) whether the course takes place on the premises of the approved institution;
(viii) any other matters which in the opinion of the Minister are proper matters to be taken into account having
30 regard to available resources and the need to promote access to higher education by persons who suffer educational disadvantage.

(4) For the purposes of this Act, and subject to *subsection (5)*, any postgraduate course that may be prescribed pursuant to *subsection (1)* shall only be a postgraduate course that is provided in the State.
35

(5) Notwithstanding *subsection (4)*, where the Minister is satisfied to do so because he or she considers that it is necessary having regard to any of the relevant purposes mentioned in *subsection (9)*, he or she may prescribe a postgraduate course that is provided in Northern
40 Ireland as an approved course.

(6) Where a grant is awarded to attend a postgraduate course prescribed pursuant to *subsection (5)*, the grant awarded may include a grant in respect of tuition fees arising in respect of the course.

(7) Where a grant is awarded to attend a postgraduate course prescribed pursuant to *subsection (5)*, then the Minister shall, no less
45 than once a year, conduct a review of the course for the purpose of satisfying himself or herself that it continues to fulfil any one of the

relevant purposes mentioned in *subsection (9)* and, if as a result of such review, the Minister is not so satisfied, he or she shall—

- (a) immediately withdraw the grant, and
- (b) as soon as may be, make regulations revoking or otherwise causing the cesser of the regulations that comprise the prescribing of the postgraduate course pursuant to *subsection (5)*. 5

(8) Nothing in *subsection (7)* shall prevent a student who was in receipt of a grant which was withdrawn pursuant to that subsection from continuing, subject to this Act and the scheme of grants pursuant to which the grant was awarded, to receive the grant concerned until he or she has completed the course in respect of which he or she was awarded the grant. 10

(9) The following are the relevant purposes to which the Minister shall have regard when prescribing any postgraduate course pursuant to *subsection (5)* or conducting a review pursuant to *subsection (7)*: 15

- (a) promoting greater tolerance and understanding between the people of the State and Northern Ireland;
- (b) promoting the exchange of ideas between the people of the State and Northern Ireland; 20
- (c) promoting a greater understanding of, and respect for, the diversity of cultures on the island of Ireland;
- (d) promoting greater integration and cooperation between the people of the State and Northern Ireland.

Minister may appoint awarding authority.

9.—(1) The Minister may— 25

- (a) having taken account of the matters referred to in *subsection (4)*,
- (b) having consulted with the relevant Minister, and
- (c) with the consent of the Minister for Finance,

by order appoint a body (in this section referred to as an “appointed awarding authority”) to perform any or all of the functions of an awarding authority (in this section referred to as a “transferring awarding authority”). 30

(2) Notwithstanding the generality of *subsection (1)*, an order of the Minister under that subsection may provide for one or more than one of the following: 35

- (a) different appointed awarding authorities to perform different functions;
- (b) different transferring awarding authorities for the purposes of transferring those different functions; 40
- (c) the coming into operation on different days for different purposes or different provisions.

(3) An appointed awarding authority may be one or more than one of the following:

- (a) a vocational education committee;
- (b) a local authority;
- (c) a board, authority or other body established by or under an enactment (other than the Companies Acts) whose functions include the support of, or the promotion of participation in, higher or further education or the administration of schemes of payments;
- (d) a company under the Companies Acts, in which all the shares are held by or on behalf of or jointly with—
 - (i) the Minister or a relevant Minister, or
 - (ii) directors appointed by the Minister or a relevant Minister, or
 - (iii) a board, authority or other body referred to in *paragraph (c)*,
and whose functions are conferred by or under an enactment and include the support of, or the promotion of participation in, higher or further education, or the administration of schemes of payments.

(4) Before making an order under *subsection (1)*, the Minister, taking account of the need for efficiency, effectiveness and economy, shall have regard to following matters:

- (a) capacity of and resources available to awarding authorities for the purposes of performing functions conferred on them by or under this Act;
- (b) the resources available for provision of student support;
- (c) administration costs;
- (d) the desirability of uniformity of standards;
- (e) where applicable, any report furnished to the Minister under *section 12(4)*.

(5) Where a function of a transferring awarding authority is transferred pursuant to an order under *subsection (1)*, the function shall no longer be under the direction, control or supervision of that transferring authority after the order is made.

(6) Nothing in *subsection (5)* shall prevent the Minister from directing by order under *subsection (1)* that a transferring awarding authority shall do one or both of the following after the order is made:

- (a) perform a function referred to in *section 10(2)* and contained in the order;
- (b) continue to pay grants, specified by the Minister in the order, to students or a class of students so specified and for a period so specified.

(7) An appointed awarding authority and a transferring awarding authority shall be such appointed awarding authority and transferring awarding authority for the purposes of each order made under *subsection (1)* and nothing in this section shall prevent—

- (a) a transferring awarding authority in an order made under *subsection (1)* from being an appointed awarding authority in any subsequent order made under that subsection, or 5
- (b) an appointed awarding authority in an order made under *subsection (1)* from being a transferring awarding authority in any subsequent order made under that subsection. 10

(8) In this section “relevant Minister” means—

- (a) in the case of an appointed awarding authority that is a local authority, the Minister for the Environment, Heritage and Local Government, and 15
- (b) in the case of any other appointed awarding authority, each Minister of the Government who performs functions in relation to that body.

Order appointing an awarding authority.

10.—(1) An order under *section 9(1)* may provide for— 20

- (a) such matters as appear to the Minister to be necessary or expedient for the transfer of functions from the transferring awarding authority to the appointed awarding authority, and
- (b) such other matters as may be incidental to or consequential on such transfer. 25

(2) Notwithstanding the generality of *subsection (1)* an order under *section 9(1)* may provide for one or more than one of the following:

- (a) a direction to the transferring awarding authority to provide to the appointed awarding authority such records, data or information as relate to a function referred to in the order, or a class of such records, data or information, and within such period, as is specified in the direction; 30 35

(b) in relation to land and property—

- (i) that such land (or a part thereof) as relates to a function referred to in the order which, immediately before the order is made was vested in the transferring awarding authority and all rights, powers and privileges relating to or connected with that land shall without conveyance, transfer or assignment stand vested in the appointed awarding authority for all the estate and interest for which it was vested in the transferring awarding authority but subject to all trusts and equities affecting that land subsisting and capable of being performed, 40 45

- (ii) that some or all of such property other than land (including choses-in-action), as relates to a function

referred to in the order which, immediately before the order is made, was the property of the transferring awarding authority shall, without any transfer or assignment, stand transferred to the appointed awarding authority,

(iii) that a chose-in-action referred to in *subparagraph (ii)* may after the order is made, be sued on, recovered or enforced by the appointed awarding authority in its own name and it shall not be necessary for the appointed awarding authority to give notice to the person bound by any such chose-in-action of the transfer effected by the order, or

(iv) that moneys, stocks, shares or securities referred to in *subparagraph (ii)* and which, immediately before the order is made are in the name of the transferring awarding authority shall be transferred, at the request of the appointed awarding authority, to the name of the appointed awarding authority;

(c) that some or all of such of the rights or liabilities as relate to the function referred to in the order may, on or after the date of the order, be sued on, recovered or enforced by or against the appointed awarding authority without the necessity for the appointed awarding authority to give notice of the order to the person whose right or liability is transferred;

(d) in relation to some or all of such contracts or agreements as relate to a function referred to in the order—

(i) the continuance in force of the contract or agreement made between the transferring awarding authority or any trustee or agent of the authority acting on its behalf, and any other person which is in force immediately before the day of the making of the order, or

(ii) the construction of the contract or agreement as if the appointed awarding authority were substituted therein for the transferring awarding authority without the necessity for the appointed awarding authority to give notice of the order to the person whose right or liability is transferred;

(e) the continuance of some or all of such legal proceedings as relate to a function referred to in the order and pending in a court or tribunal before the making of the order to which the transferring awarding authority is a party, by the substitution of the name of the appointed awarding authority for the name of the transferring awarding authority and that the proceedings shall not abate by reason of such substitution;

(f) the preparation by the transferring awarding authority of such final accounts of that authority as relate to a function referred to in the order within a specified period and submission of same to such persons as may be specified in the order including the Minister, the Minister for Finance, the Minister for the Environment, Heritage and Local Government, a relevant Minister, the Comptroller

and Auditor General or the appointed awarding authority;

(g) subject to *section 11*—

(i) the transfer of an employee who, immediately before the making of the order is an employee of the transferring awarding authority performing duties related to a function referred to in the order, to the appointed awarding authority; 5

(ii) the transfer of the contract of employment of a person who, immediately before the making of the order is a fixed-term employee of the transferring awarding authority performing duties related to a function referred to in the order, to the appointed awarding authority. 10

(3) In this section “fixed-term employee” has the meaning given to it by the Protection of Employees (Fixed-Term Work) Act 2003. 15

Employee or fixed term employee of appointed or transferring awarding authority.

11.—(1) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *section 10(2)(g)* shall not, on the making of an order under *section 9(1)*, be brought to less beneficial conditions of remuneration than the conditions of remuneration to which he or she was subject immediately before the coming into operation of this section. 20

(2) The previous service of a person referred to in *section 10(2)(g)* shall be reckonable for the purposes of, but subject to any exceptions or exclusions in the following enactments: 25

(a) the Redundancy Payments Acts 1967 to 2007;

(b) the Protection of Employees (Part-Time Work) Act 2001;

(c) the Protection of Employees (Fixed-Term Work) Act 2003; 30

(d) the Organisation of Working Time Act 1997;

(e) the Terms of Employment (Information) Acts 1994 and 2001;

(f) the Minimum Notice and Terms of Employment Acts 1973 to 2005; 35

(g) the Unfair Dismissals Acts 1977 to 2007;

(h) the Maternity Protection Acts 1994 and 2004;

(i) the Parental Leave Acts 1998 and 2006;

(j) the Adoptive Leave Acts 1995 and 2005;

(k) the Carer’s Leave Act 2001. 40

(3) Any superannuation benefits awarded to or in respect of a person referred to in *section 10(2)(g)* and the terms relating to those benefits shall be no less favourable than those applicable to or in

respect of that person immediately before the making of an order under *section 9(1)*.

5 (4) The pension payments and other superannuation liabilities of the transferring awarding authority in relation to a person referred to in *section 10(2)(g)* who is given a position in the appointed awarding authority under an order under *section 9(1)* become, on the making of the order, the liabilities of the appointed awarding authority.

10 (5) In this section “recognised trade union or staff association” means a trade union or staff association recognised by the Minister for the purposes of negotiations which are concerned with the remuneration or conditions of employment, or the working conditions of employees.

12.—(1) In addition to performing any other functions conferred on it by or under this Act, an awarding authority shall—

15 (a) assess and review resources required by it for the purposes of performing its functions under this Act,

(b) furnish to the Minister and to any other persons specified in the request any information so specified with respect to applications and how they are processed when requested to do so by the Minister,

20 (c) keep all proper and usual accounts of moneys received by it or expenditure of such moneys incurred by it in relation to student grants,

25 (d) carry out an audit of accounts and furnish an auditor’s report to the Minister when requested to do so by the Minister,

(e) review the report of an inquiry officer furnished to it under *section 22(4)* and act as it considers appropriate having regard to its functions under this Act, and

30 (f) furnish to the Minister any specified information in relation to the institution of proceedings for recovery of debt under *section 24(3)*.

(2) An awarding authority has all such powers as are necessary for or incidental to the performance of its functions under this Act.

35 (3) The Minister may from time to time formulate policies and issue directions to an awarding authority as respects grants, and, in performing any functions conferred on it by or under this Act, an awarding authority shall implement those policies and directions.

40 (4) The Minister shall from time to time appoint persons to carry out periodic inspections, reviews and audits in relation to the performance by awarding authorities of their functions under this Act and to furnish a report in relation to such inspections, reviews and audits to the Minister and the persons so appointed shall carry out such inspections and reviews and furnish such reports accordingly.

45 13.—(1) Subject to *subsection (7)*, an awarding authority may by an agreement in writing entered into with any person, upon such terms and conditions as may be specified in the agreement, provide

Agreements relating to performance of certain functions.

for the performance by such person, subject to such terms and conditions (if any) as may be so specified, of such functions conferred on the awarding authority by or under this Act as may be so specified.

(2) An agreement under this section may include provision for the payments (if any) to be made to and the disposal of such payments by the person concerned for the purpose of the performance of a function specified in the agreement. 5

(3) An agreement under this section shall operate, so long as it continues in force, to confer on and vest in the person concerned, to the extent and subject to the terms and conditions specified in the agreement, the function so specified. 10

(4) A function conferred on a person by an agreement under this section shall be performable by the person in his or her own name but subject to the general superintendence and control of the awarding authority. 15

(5) A function conferred on a person by an agreement under this section shall, notwithstanding the agreement concerned, continue to be vested in the awarding authority but shall be so vested concurrently with the person on whom it is conferred by that agreement and so as to be capable of being performed by either of those persons. 20

(6) The conferral on a person by an agreement under this section of a function of the awarding authority shall not remove or derogate from the authority's responsibility to the Minister for the performance of the function.

(7) Before entering an agreement under *subsection (1)* an awarding authority shall, in relation to the agreement and any terms and conditions contained therein— 25

(a) consult with the relevant Minister, and

(b) obtain the prior approval of the Minister and the Minister for Finance. 30

Student —
interpretation.

14.—(1) In this Act “student” means a person who is ordinarily resident in the State, who has been accepted to pursue, or is pursuing, an approved course at an approved institution and is—

(a) a national of—

(i) a Member State, 35

(ii) a state which is a contracting state to the EEA Agreement,

(iii) the Swiss Confederation,

(b) a refugee or other person entitled for the time being to the rights and privileges specified in section 3 of the Refugee Act 1996, 40

(c) a person, pursuant to the European Communities (Eligibility for Protection) Regulations 2006 (S.I. No. 518 of 2006)—

- (i) who the Minister for Justice and Law Reform has determined is eligible for the time being for subsidiary protection pursuant to Regulation 4 of those Regulations, or
- 5 (ii) to whom the Minister for Justice and Law Reform has granted permission for the time being in writing to enter and reside in the State pursuant to Regulation 16 of those Regulations,
- 10 (d) a person who, in relation to a person referred to in *paragraph (a)*, is a family member prescribed, subject to *subsection (2)* for the purposes of this paragraph, or
- (e) a person, other than a person to whom *paragraph (a), (b), (c)* or *(d)* refers, who—
- 15 (i) has been granted permission to reside within the State by the Minister for Justice, Equality and Law Reform pursuant to such laws as are for the time being in force, and
- (ii) is of a class of persons prescribed by the Minister, subject to *subsection (3)* and with the consent of the Minister for Finance, for the purposes of this sub-paragraph.
- 20

(2) Where the Minister is prescribing a class of persons as a family member for the purposes of *subsection (1)(d)*, he or she shall have regard to all or any of the following matters:

- 25 (a) the relationship that the family member has to the person referred to in *subsection (1)(a)*;
- (b) whether the family member depends on the person referred to in *subsection (1)(a)*;
- 30 (c) whether the family member has a right of residence in the State by virtue of being the spouse, civil partner or a child of a person referred to in *subsection (1)(a)*.

(3) Where the Minister is prescribing a class of persons for the purposes of *subsection (1)(e)(ii)* he or she shall have regard to all or any of the following matters:

- 35 (a) the period for which they have been ordinarily resident in the State;
- (b) the basis on which they were granted permission to reside within the State;
- 40 (c) the conditions pursuant to which they were granted permission to reside within the State;
- (d) the degree of connection that they are likely to have to the State;
- 45 (e) their entitlement to benefits or services provided by a Minister of the Government, a local authority, the Health Service Executive or the holder of any office or a body established—

(i) by or under any enactment (other than the Companies Acts), or

(ii) under the Companies Acts in pursuance of powers conferred by or under any other enactment,

and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government or a subsidiary of any such body;

(f) whether they have access to education in their state of origin;

(g) resources available for the provision of student support.

(4) For the purposes of *subsection (1)*, a person shall be ordinarily resident in the State if the person—

(a) has been resident in the State for at least 3 years out of the period of 5 years ending on the day before the relevant date, or

(b) if not resident as described in *paragraph (a)*—

(i) is temporarily resident outside of the State by reason of pursuing a course of study or post-graduate research at an educational institution outside of the State but within a Member State leading to a qualification that is recognised in accordance with the laws of the Member State concerned for the recognition of qualifications that correspond to the arrangements, procedures and systems referred to in *section 8(2)(k)(i)*, or if such recognition is not provided by those laws in that manner then otherwise in accordance with the laws of that Member State, and

(ii) was resident in the State for at least 3 years out of the period of 5 years ending on the day before he or she commenced such course of study or post-graduate research.

(5) For the purposes of *subsection (4)*, in the determination by an awarding authority of a question relating to whether a person mentioned in *subsection (6)* is ordinarily resident in the State, the person shall not be entitled to derive any benefit from a period of unlawful presence in the State.

(6) The determination of the question referred to in *subsection (5)* shall not relate to a person who is either—

(a) an Irish citizen, or

(b) a person who has established a right to enter and be present in the State under the European Communities (Free Movement of Persons) (No. 2) Regulations 2006 (S.I. No. 656 of 2006), the European Communities (Aliens) Regulations 1977 (S.I. No. 393 of 1977) or the European Communities (Right of Residence for non-Economically Active Persons) Regulations 1997 (S.I. No. 57 of 1997).

5 (7) In this Act, “tuition student” means a student who may receive a grant in respect of tuition fees, is ordinarily resident in one of the states referred to in *subsection (1)(a)*, has been accepted to pursue and is pursuing an approved course (other than a course known for the time being as a post leaving certificate course) of higher education at an approved institution in the State and to whom *paragraph (a), (b), (c), (d) or (e) of subsection (1)* applies.

10 (8) For the purposes of *subsection (7)*, a tuition student shall be ordinarily resident in one of the states referred to in *subsection (1)(a)* if the student was resident in any of the states for a period of not less than 3 years out of the period of 5 years ending on the day before the relevant date.

15 (9) In this section, in relation to an approved course in respect of which a person referred to in *subsection (4)* or a tuition student may apply for a grant, “relevant date” means the date on which a year of study commences on the approved course.

PART 2

GRANTS

20 **15.—(1)** The Minister may, subject to such conditions as he or she considers appropriate, in each financial year advance to an awarding authority such sum as may be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas and which is not greater than the sum required for the purpose of defraying expenditure incurred by the awarding authority in the payment of a grant. Advances to awarding authorities.

25 (2) The Minister may, subject to such conditions as he or she considers appropriate, in each financial year advance to an awarding authority, where the awarding authority is a vocational education committee, such sum as may be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas and which is not greater than the sum required for the purpose of defraying expenditure incurred by the awarding authority in the performance of any of its functions (other than the payment of a grant).

35 (3) The Minister for the Environment, Heritage and Local Government may, subject to such conditions as he or she considers appropriate, in each financial year advance to an awarding authority, where the awarding authority is a local authority, such sum as may be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas and which is not greater than the sum required for the purpose of defraying expenditure incurred by the awarding authority in the performance of any of its functions (other than the payment of a grant).

45 (4) The relevant Minister may, subject to such conditions as he or she considers appropriate, in each financial year advance to an awarding authority, where the awarding authority is an appointed awarding authority, such sum as may be sanctioned by the Minister for Finance out of moneys provided by the Oireachtas and which is not greater than the sum required for the purpose of defraying expenditure incurred by the awarding authority in the performance of any of its functions (other than the payment of a grant).

50 **16.—(1)** The Minister, with the consent of the Minister for Finance, may make a scheme or schemes of grants. Schemes of grants.

- (2) A scheme may:
- (a) specify grants or classes of grants that may be awarded under it;
 - (b) specify a class or classes of applicants who may include dependent students, independent students, mature students, and tuition students; 5
 - (c) specify an awarding authority or classes of awarding authorities who shall perform functions conferred by or under this Act in relation to specified grants or classes of grants;
 - (d) specify criteria to be considered by an awarding authority in determining whether an applicant is a student of a particular class; 10
 - (e) specify criteria to be considered by an awarding authority in determining whether an applicant is eligible for a grant including the following: 15
 - (i) conditions to be complied with by an applicant, his or her parents, spouse or civil partner as the case may be, in order that the applicant may be so eligible;
 - (ii) the manner in which the income of an applicant, his or her parents, spouse or civil partner as the case may be, shall be determined; 20
 - (f) specify the amount of moneys to be provided to or on behalf of an applicant in respect of a grant for which he or she is eligible;
 - (g) specify conditions the continued compliance with which is required in order that an applicant shall remain eligible to receive a grant awarded to him or her; 25
 - (h) specify the period of time during which an applicant may receive a grant for which he or she is eligible;
 - (i) specify the period of time during which moneys shall be made available to fund a class of grants; 30
 - (j) provide for the manner in which an application for a grant is to be made and the information to be furnished by an applicant in relation thereto.

(3) Without prejudice to the generality of *subsection (2)(a) or (b)*, in specifying a class or classes of applicants, or criteria to be considered in determining whether an applicant is a student of a particular class, the Minister shall have regard to the following matters or any of them, namely: 35

- (a) the age of the applicant; 40
- (b) his or her family or personal circumstances;
- (c) whether he or she has family members who might reasonably be expected to support the applicant;
- (d) whether he or she has been or is self supporting;

- (e) whether or to what extent he or she has previously been in full-time education or employment;
- (f) previous educational attainment of the applicant;
- (g) any other matters which in the opinion of the Minister are proper matters to be taken into account having regard to the resources available and the objective of enabling persons to attend courses of higher or further education.

5

(4) Without prejudice to the generality of *subsection (2)*, criteria that may be specified by the Minister in a scheme as criteria to be considered by an awarding authority in order that it may determine whether an applicant is eligible for a grant, may include, but shall not be limited to—

10

(a) as respects income:

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(i) income limits which, if an applicant is in receipt of income that exceeds the limit specified, then, he or she is not eligible for a grant;

20

(ii) requiring, where the applicant is a dependent student, that the income of the applicant and his or her parents, as appropriate, shall be taken into account in calculating whether the limit specified is exceeded;

25

(iii) requiring, where the applicant is an independent student, that the income of the applicant and his or her spouse or civil partner, as appropriate, shall be taken into account in calculating whether the limit specified is exceeded;

30

(iv) the proportion or type of income of an applicant, his or her parents, spouse or civil partner, as appropriate, to be considered by the awarding authority in calculating whether the limit specified is exceeded (and that proportion or type of income shall be called, in a scheme, “reckonable income”);

35

(v) requiring, when specifying income limits, that reckonable income may be taken to include means or a proportion of means of an applicant, his or her parents or spouse, as appropriate;

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(vi) where the parents of a dependent student or other dependent children reside in separate households, the manner in which and purposes for which account shall be taken of arrangements in place relating to the dependent student or other dependent children;

45

(vii) requiring, as a condition of receiving a grant that an applicant is in receipt of a benefit or services provided by a Minister of the Government, a local authority, the Health Service Executive or the holder of any office or a body established—

(I) by or under any enactment (other than the Companies Acts), or

50

(II) under the Companies Acts in pursuance of powers conferred by or under any other enactment,

and financed wholly or partly by means of moneys provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government or a subsidiary of any such body;

5

- (b) whether the applicant is a student in progression;
- (c) whether the applicant is already in receipt of or likely to receive funding, an award or stipend, for the purposes of assisting him or her in pursuing his or her education;
- (d) whether the applicant is already in receipt of or likely to receive funding from a state other than the State under the law of that state which provides for payments to students that correspond to grants; 10
- (e) previous academic attainment of the applicant;
- (f) previous attendance by the applicant on higher or further education courses including, (but not limited to) approved courses; 15
- (g) whether the applicant is an economically or socially disadvantaged person, a person who has a disability or a person from a section of society that is significantly under represented in the student body; 20
- (h) whether the applicant wishes to attend a course that has been identified as necessary for the development of skills and knowledge in sectors of the economy or employment identified as requiring such development by such person who has an interest or expertise in educational matters or the development of skills and knowledge as the Minister considers appropriate to consult in that behalf; 25
- (i) any other criteria recommended to be specified by the Minister pursuant to advice received by the Minister from such person who has an interest or expertise in educational matters as the Minister considers appropriate to consult for that advice; and 30
- (j) any other criteria which in the opinion of the Minister are proper matters to be taken into account having regard to the resources available and the objective of enabling persons to attend courses of higher or further education. 35

(5) The Minister may specify, in the scheme concerned, criteria additional to criteria referred to in *subsection (3) or (4)* to be considered by an awarding authority in order that it may determine whether an applicant is eligible for a grant to attend an approved course prescribed under *section 8(3)*, and the criteria may include all or any of the following: 40

- (a) the employment status of the applicant, including the level of his or her remuneration or that he or she— 45
 - (i) has involuntarily been made redundant,
 - (ii) is involuntarily unemployed, or
 - (iii) has involuntarily had his or her working hours reduced;

- (b) the inability of the applicant to attend higher education on a full-time basis by virtue of being wholly or mainly responsible for the care of a person requiring full-time care and attention;
- 5 (c) that the applicant suffers from a disability (within the meaning of the Disability Act 2005) and by reason of the disability is unable to attend higher education on a full-time basis;
- (d) that the applicant has suffered educational disadvantage;
- 10 (e) the previous academic attainment of the applicant including previous pursuit of third level education;
- (f) any other matters which in the opinion of the Minister are proper matters to be taken into account having regard to the resources available and the objective of enabling persons to attend courses of higher education.
- 15

(6) For the purposes of specifying criteria or providing for matters to be specified or provided for under *subsection (2), (3), (4) or (5)* different criteria may be specified or matters provided for by the Minister as respects different classes of grants or applicants.

- 20 (7) (a) In this section “dependent child” means a child, including a foster child, of a person referred to in *paragraph (b)* which child, on a day to be prescribed—
- (i) has not attained the age of 16 years, or
- 25 (ii) has attained the age of 16 years or more, resides with a person referred to in *paragraph (b)*, and
- (I) is pursuing a full-time course of education, or
- (II) is certified by a registered medical practitioner (within the meaning of section 2 of the Medical Practitioners Act 2007) as being permanently unfit to work by reason of a medical condition.
- 30
- (b) A dependent child shall be the child of and, shall reside with one or, as the case may be, more than one of the following:
- (i) an independent student;
- 35 (ii) the spouse of an independent student;
- (iii) a dependent student;
- (iv) one parent or both parents of the dependent student.
- (c) A day prescribed for the purposes of *paragraph (a)* shall be a day that is not earlier than 12 months before the day on which a student, in relation to whose application for a grant a dependent child is relevant, commences a year of study in any year at an approved course.
- 40

17.—(1) The Minister, with the consent of the Minister for Finance, shall provide by regulations for such matters of procedure and Regulations regarding applications.

administration as appear to the Minister to be necessary or expedient in respect of applications by students for grants.

(2) Without prejudice to the generality of the foregoing, regulations under *subsection (1)* may provide for one or more than one of the following matters: 5

- (a) the awarding authority to whom an applicant shall make an application;
- (b) the date by which an application shall be made;
- (c) the information to be made available by an awarding authority to an applicant in relation to an application for a grant, schemes of grants, obligations including those arising under *section 19(2)* or *19(4)*, the circumstances in which, pursuant to this Act payment, in whole or in part, of a grant may cease, penalties for offences under this Act and liability, under *section 24*, to repay a grant; 10 15
- (d) the submission of information required by or under this Act to an awarding authority by an applicant in respect of an application for a grant;
- (e) the submission, by an applicant, of further information that may be required by an awarding authority; 20
- (f) the production of evidence to verify particulars of information given to an awarding authority by an applicant;
- (g) the periods of time within which the information, further information or evidence shall be submitted or produced to the awarding authority; 25
- (h) the manner of notification of its decision by an awarding authority;
- (i) any other matter that appears to the Minister to be necessary or expedient.

Application for and award of grant.

18.—(1) An applicant shall apply to an awarding authority for a grant. 30

(2) An applicant may not apply for, or receive more than one grant at any one time.

(3) An applicant shall furnish an awarding authority with the personal, family, financial and other information that the authority may seek in relation to the applicant, the applicant's spouse or civil partner, each parent of the applicant, and any dependent child and shall produce evidence, in such form as may be prescribed, to verify the information, in order that the authority may determine whether or not the applicant is eligible to receive a grant. 35 40

(4) An awarding authority shall determine whether an applicant is eligible to receive a grant, having regard to—

- (a) information furnished by the applicant pursuant to this section,
- (b) any other information in relation to the application, as appropriate, and 45

(c) such criteria as are specified in the relevant scheme of grants.

5 (5) An awarding authority shall make a grant to an applicant in respect of whom it has determined that he or she is eligible for the grant of such moneys and in respect of such a period of time as may be specified in the relevant scheme.

(6) Where the awarding authority determines—

10 (a) that the applicant is eligible for the grant for which he or she has applied, it shall give notice in writing informing the applicant of the determination and arrange to pay the grant, or

15 (b) that the applicant is not eligible for the grant for which he or she has applied, it shall give notice in writing to the applicant of the determination and the reasons therefor and of the applicant's right to appeal the determination to an appeals officer.

20 **19.—**(1) An awarding authority shall consider information relating to a student who is in receipt of or is to receive payment in respect of a grant in relation to which a determination was made under *section 18(6)(a)* and shall determine, having regard to such criteria as are specified in the relevant scheme of grants, if the student remains eligible for the grant in any of the following circumstances: Change of circumstances.

(a) the awarding authority is notified under *subsection (2)*,

25 (b) the student has furnished information under *subsection (4)* or has, without a satisfactory explanation, failed to furnish that information under that subsection,

(c) the authority is furnished with a report of an inquiry officer under *section 22*, or

30 (d) relevant information relating to the student comes into the possession of the authority.

(2) A student shall immediately notify the awarding authority in writing—

35 (a) if the student becomes aware that, by reason of any material change in the circumstances of the student or, as the case may be, spouse, civil partner or parent of the student—

40 (i) any information furnished by the student in his or her application, under *section 18*, for the grant concerned, which could reasonably be considered to have a bearing on the award of the grant to the student is no longer correct, or

45 (ii) it is no longer possible to comply with conditions the continued compliance with which is required in order that the student remains eligible to receive the grant concerned,

or

- (b) if the student becomes aware that any information furnished by him or her in relation to himself or herself or, as the case may be, spouse, civil partner or parent of the student, which could reasonably be considered to have a bearing on the award of the grant to the student was incorrect, 5

of the material change in circumstances or incorrect information.

(3) An awarding authority may at any time give a notice in writing to a student who is in receipt of or is to receive payment in respect of a grant requiring the student to furnish such information specified in the notice as the authority considers appropriate, within the period so specified, for the purpose of determining if the student remains eligible for the grant concerned. 10

(4) A student shall furnish the information required by the authority within the period specified in the notice. 15

(5) An awarding authority may, where it considers it appropriate in all the circumstances, cease payment, in whole or in part, in respect of a grant notwithstanding that it has not yet made a determination of the kind referred to in *subsection (6)*.

(6) In making a determination under *subsection (1)* an awarding authority may determine that a student— 20

- (a) remains eligible for the grant in relation to which a determination was made under *section 18(6)(a)*, and accordingly shall continue to pay the grant and arrears, if any, due to the student in respect of any period under *subsection (5)* during which payment ceased, 25

- (b) is not eligible for the grant in relation to which a determination was made under *section 18(6)(a)* but is eligible for another grant and accordingly shall, as appropriate—

- (i) pay the grant for which the awarding authority determines the student is eligible, if necessary taking into account moneys paid to or on behalf of the student in respect of the grant for which it determines the student is not eligible and paid to the student while he or she was so eligible, and arrears if any, due to the student in respect of any period under *subsection (5)* during which payment ceased, or 30 35

- (ii) request from the student return of any moneys paid to or on behalf of the student in relation to the grant for which it determines the student is not eligible during the period the student was not so eligible, where the grant in respect of which the student is not eligible exceeds the grant for which the student is eligible, taking into account arrears, if any due to the student in respect of any period under *subsection (5)* during which payment ceased, 40 45

or,

- (c) is not eligible for the grant in relation to which a determination was made under *section 18(6)(a)*, and accordingly if the authority has not already done so under *subsection (5)* shall immediately cease paying the grant and request from the student return of any moneys paid to or on 50

behalf of the student in respect of the grant during the period while the student is not so eligible.

5 (7) The awarding authority shall as soon as practicable, give notice in writing to the student of the determination under this section and the reasons therefor and shall inform the student of his or her right to appeal the determination to an appeals officer.

(8) A determination of an awarding authority under this section shall come into effect on the giving of a notice under *subsection (7)*.

10 **20.**—(1) An awarding authority shall designate such and so many members of the staff of the authority as it considers appropriate to be appeals officers under this section and a person so designated shall be an appeals officer for such period as the authority may determine. Appeals to appeals officers.

(2) Where—

15 (a) an applicant is dissatisfied with a determination of an awarding authority under *section 18(6)*,

(b) a student is aggrieved by a notice from an awarding authority under *section 19(3)* requiring information or a determination of an awarding authority under *section 19(6)*,

20 then the applicant or student, as the case may be, may, not later than 30 days after receipt of the notice of the determination or request, as the case may be, appeal to the appeals officer against that determination or request.

25 (3) The period referred to in *subsection (2)* may be extended by the appeals officer (at the request in writing of the applicant or student, as the case may be) for a further period not exceeding 30 days if the appeals officer is satisfied that the person has given reasonable cause for the extension.

30 (4) The appeals officer shall determine an appeal under this section within 45 days from the making thereof and such determination may be one either to affirm, vary or set aside the determination or request, as the case may be, of the awarding authority concerned and, as appropriate, give a direction to the awarding authority to comply with his or her determination.

35 (5) The appeals officer shall notify in writing the applicant or student, as the case may be, and the awarding authority of the determination and the reasons therefor.

40 (6) When giving notice to the applicant or student, as the case may be, the appeals officer shall advise him or her of his or her right to appeal the determination to the Appeals Board and that only payments pursuant to that determination may be made by the awarding authority to the applicant or student, as the case may be, pending the outcome of his or her appeal to the Appeals Board.

45 (7) The awarding authority shall comply with a direction given to it under *subsection (4)*.

(8) The appeals officer, in determining an appeal under this section, shall do so in accordance with procedures that may have been prescribed by the Minister for that purpose pursuant to *subsection (9)*.

(9) The Minister may prescribe procedures in respect of the determination of an appeal by an appeals officer pursuant to this section and may provide for such matters as—

- (a) information to be furnished to the officer and by what parties, and 5
- (b) ensuring that the determination is made with a minimum of formality consistent with giving a fair hearing to the person making the appeal.

Appeals to Appeals Board.

21.—(1) Where an applicant is dissatisfied with the determination of an appeals officer under *section 20(4)*, he or she may appeal to the Appeals Board against that determination. 10

(2) An appeal shall be made not later than 30 days after the notification of the determination of the appeals officer to the applicant.

(3) The period mentioned in *subsection (2)* may be extended by the Appeals Board (at the request in writing of the applicant) for a further period not exceeding 30 days if the Appeals Board is satisfied that the person has given reasonable cause for the extension. 15

(4) The Appeals Board shall consider and determine an appeal under this section within 90 days from the making thereof and such determination may be one either to affirm, vary or set aside the determination of the appeals officer concerned and, as appropriate, give a direction to the awarding authority to comply with the determination. 20

(5) The Appeals Board shall notify in writing the applicant or student, as the case may be, and the awarding authority of the determination and the reasons therefor. 25

(6) The awarding authority shall comply with a direction given to it under *subsection (4)*.

Inquiry officer.

22.—(1) An awarding authority may appoint a member of its staff or, with the consent of another awarding authority, a member of staff of that other awarding authority to be an inquiry officer for the purposes of this section. 30

(2) Every inquiry officer appointed under this section shall be furnished with a warrant of appointment and shall, when exercising any power conferred on him or her by this section, if requested by a person affected, produce to that person the warrant of appointment or a copy of it and a form of personal identification. 35

(3) An appointment under this section as an inquiry officer shall cease—

- (a) if the awarding authority revokes the appointment, 40
- (b) if the appointment is for a fixed period, on the expiry of that period, or
- (c) if the person appointed ceases to be an officer of the awarding authority.

(4) An inquiry officer shall investigate and may, and if so directed by the awarding authority shall, make interim reports, and, on the 45

conclusion of the inquiry shall make a final report to the awarding authority in relation to—

- (a) an application for a grant, or
- (b) any question arising on or in relation to a grant,

5 which may be referred to him or her by the awarding authority.

(5) Notwithstanding anything contained in *subsection (4)* an inquiry officer may, at any time in the course of the investigation, without the necessity of making an interim report, inform the awarding authority of matters coming to his or her knowledge as a result of the inquiry tending to show that an offence has been committed.

(6) A student who receives or is to receive a payment in respect of a grant, or an applicant shall—

- 15 (a) produce to an inquiry officer all books, documents and other records concerning any question arising on or in relation to the grant or application for a grant that are in his or her possession, under his or her control or within his or her procurement,
- (b) attend before an inquiry officer, and
- 20 (c) give to an inquiry officer all assistance in connection with the investigation which he or she is reasonably capable of giving,

when required to do so by an inquiry officer.

(7) If an inquiry officer considers that a person (other than a student who receives or is to receive a payment in respect of a grant or an applicant) is or may be in possession of information concerning any question arising on or in relation to the grant or the application for the grant concerned the inquiry officer may require that person to—

- 30 (a) produce to him or her all books, documents and other records relating to the grant or application concerned that are in his or her possession, under his or her control or within his or her procurement,
- (b) attend before him or her, and
- 35 (c) give to him or her all assistance in connection with the investigation which he or she is reasonably capable of giving.

(8) An inquiry officer may examine on oath an applicant, a student who receives or is to receive a grant, or a person referred to in *subsection (7)*, in relation to an application for a grant and may administer an oath accordingly.

(9) A person who contravenes this section or who fails to comply with a requirement under this section is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or to both.

45 (10) A statement or admission made by a person pursuant to a requirement under this section shall not be admissible in evidence in

proceedings brought against that person for an offence (other than for an offence under this section).

(11) In proceedings brought against a person for an offence under this section consisting of a failure by him or her to produce a book, document or other record it shall be a defence for the person to prove that the book, document or other record was not in his or her possession, under his or her control or within his or her procurement when he or she was required to produce it and that at that time it was not reasonably practicable for him or her to comply with the requirement.

(12) Nothing in this section shall operate to require a person to produce to an inquiry officer books, documents or other records, or to provide any information, that he or she would be entitled to refuse to produce or provide on the grounds of legal professional privilege or authorise the taking of possession of any such books, documents or records.

(13) The expenses of and incidental to an investigation by an inquiry officer shall be paid by the awarding authority concerned.

(14) Where a person is—

- (a) convicted on indictment of an offence in proceedings for an offence, or
- (b) ordered to pay sums to an awarding authority in proceedings under *section 24(3)*,

brought as a consequence of an investigation under this section the court in those proceedings may order the person to pay to the awarding authority such sum as it shall specify not exceeding any amount paid by the awarding authority under *subsection (13)* in respect of that investigation.

Offences and penalties.

23.—(1) A person who—

- (a) furnishes information to an awarding authority, inquiry officer, appeals officer or the Appeals Board which is false or misleading, knowing it to be false or misleading in a material respect or being reckless as to whether it is so false or misleading,
- (b) fails to comply with *section 19(2)(a)* or *19(2)(b)*, or
- (c) furnishes information in purported compliance with *section 19(2)(a)* or *19(2)(b)* knowing it to be false or misleading in a material respect or being reckless as to whether it is so false or misleading,

is guilty of an offence.

(2) A person who is guilty of an offence under this section is liable—

- (a) on summary conviction to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both,

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years or both.

5 (3) Notwithstanding anything else contained in this Act or in regulations or an order made under it, a person is not eligible to apply for a grant at any time during the period of 10 years following the person's being convicted of an offence under this Act.

10 **24.**—(1) Where a person, whether or not he or she is a student, has received moneys from an awarding authority that are in respect of a grant that the person is not entitled to receive, the person is liable to repay to the awarding authority on demand a sum not exceeding the amount of money received. Recovery of debt.

15 (2) Where the awarding authority pays moneys in respect of a grant to an approved institution, the student on whose behalf they have been paid is deemed to have received the moneys.

20 (3) All sums due to an awarding authority under this Act shall be recoverable as debts due to the State and may, without prejudice to any other remedy, be recovered by the awarding authority as a debt under statute or simple contract debt in any court of competent jurisdiction.

25.—(1) The Minister shall within 12 months from the commencement of *section 18* by order appoint a day to be the establishment day for the purposes of *subsection (2)*. Student Grants Appeals Board.

25 (2) On the establishment day referred to in *subsection (1)*, there shall stand established a body to be known as an Bord Achomhairc i Leith Deontas Mac Léinn, or, in the English language, the Student Grants Appeals Board (to be known and referred to in this Act as the “Appeals Board”) to consider and determine appeals made pursuant to this Act.

30 (3) The Appeals Board may sit in divisions of itself to consider appeals.

35 (4) In considering and determining an appeal under this Act, the Appeals Board shall act in accordance with such procedures as may be determined from time to time by it with the consent of the Minister, and such procedures shall ensure that proceedings are conducted in a manner consistent with treating all parties in a fair manner.

(5) The Appeals Board shall be independent in the performance of its functions.

40 (6) Subject to *section 26*, the Appeals Board shall consist of a chairperson and such number of ordinary members as may be determined by the Minister but which in any case shall not exceed 11 persons.

45 (7) The chairperson and ordinary members of the Appeals Board shall be appointed by the Minister from among persons who have a special interest or expertise in or knowledge of matters regarding education or administration of schemes of payments.

(8) The term of office of the chairperson and the ordinary members of the Appeals Board shall be for such period as shall be

determined by the Minister but which period shall not exceed 5 years unless the chairperson or other member sooner dies or retires.

(9) No person shall hold office as a chairperson or ordinary member of the Appeals Board for more than 2 consecutive terms of office.

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(10) The chairperson or an ordinary member of the Appeals Board may—

(a) resign by letter addressed to the Minister,

(b) at any time be removed from office by the Minister if, in the opinion of the Minister, he or she has become incapable through ill-health of effectively performing his or her functions or has committed stated misbehaviour.

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(11) Where the term of office of a member of the Appeals Board terminates otherwise than by reason of the passage of time, the period of office of the person appointed to fill the vacancy occasioned by that other's ceasing to hold office shall be specified to be the unexpired period of that other's term of office.

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(12) The chairperson and ordinary members of the Appeals Board shall be paid such fees and allowances for expenses as the Minister, with the consent of the Minister for Finance, may determine.

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(13) The Minister may furnish such support of an administrative nature to the Appeals Board as in the opinion of the Minister is necessary in order that the Board may properly perform its functions.

Temporary
appointment to
Appeals Board.

26.—(1) The Minister may by order increase the number of ordinary members of the Appeals Board where he or she is of the opinion that the number of appeals made under *section 21* necessitates the appointment of one or more than one member to enable the Appeals Board to perform its functions under that section subject to the Appeals Board consisting, at any time, of not more than 15 persons including the chairperson.

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(2) Notwithstanding *section 5*, where the Minister proposes to make an order under *subsection (1)* a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving the draft has been passed by each such House.

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(3) *Section 25(7)* shall apply to the appointment of a person by order under *subsection (1)* as it applies for the purposes of that section.

(4) An order made under *subsection (1)* shall have effect for such a period not exceeding 5 years as shall be specified in the order.

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Report of Appeals
Board.

27.—The Appeals Board shall submit a report of its activities to the Minister at such intervals and in such manner and form, as the Minister directs.

PART 3

MISCELLANEOUS

28.—(1) Notwithstanding anything contained in the Data Protection Acts 1988 and 2003 or any other enactment, the data controller of a person listed in *Schedule 2*, or of a person prescribed for the time being under *subsection (2)* (in this subsection called “the first named person”) shall on being requested to do so by the data controller of a person so listed or prescribed, process personal data kept by the first named person, or information extracted from such data, to the data controller of the other person so listed or prescribed for the time being, if the data controller of the first named person is satisfied that it will be used for a relevant purpose only.

Processing of personal data.

(2) If a person (not being a person listed in *Schedule 2*, or prescribed for the time being under this subsection) keeps personal data that is relevant to any of the functions of an awarding authority, inquiry officer, appeals officer or the Appeals Board, and the Minister considers that such supply by the person not so listed or prescribed to a person so listed or prescribed will further the attainment of a relevant purpose, then the Minister, following consultation with the Data Protection Commissioner, may prescribe that person for the purposes of *subsection (1)*.

(3) Any processing of personal data for the purposes of *subsection (1)* shall go no further than is reasonably necessary for the attainment of the relevant purpose.

(4) A data controller may refuse a request under *subsection (1)* if he or she is satisfied that it would be unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

(5) In this section—

“data controller” has the meaning given to it by the Data Protection Acts 1988 and 2003;

“personal data” has the meaning given to it by the Data Protection Acts 1988 and 2003;

“processing” has the meaning given to it by the Data Protection Acts 1988 and 2003;

“relevant purpose” means the purpose of—

(a) obtaining information to determine whether an applicant is eligible for a grant,

(b) verifying data supplied as part of the application process,

(c) providing data to assist in an inquiry under *section 22* or the prosecution of an offence under *section 23*,

(d) assisting in the processing of an application for a grant by a student and assisting in the payment of grants to students, and

- (e) verifying that a student is enrolled or registered, in accordance with the rules of an approved institution, and continuing to attend an approved course at an approved institution.

Confirmation of schemes of grants.

29.—(1) All instruments purporting to be schemes to have been in force prior to the coming into operation of this section and approved by the Minister under section 5 of the Local Authorities (Higher Education Grants) Act 1968 prior to the passing of this Act are hereby confirmed. 5

(2) All schemes (other than schemes to which instruments referred to in *subsection (1)* relate) for the purposes of the provision and administration of grants to enable persons to attend courses of higher and further education approved by the Minister and purporting to have been in force prior to the coming into operation of this section are hereby confirmed. 10
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(3) If this section would, but for this subsection, conflict with a constitutional right of any person, the operation of this section shall be subject to such limitation as is necessary to secure that it does not so conflict but shall otherwise be of full force and effect.

Access plans and equality policy.

30.—(1) This section applies to approved institutions operating in the State other than— 20

(a) those to which, pursuant to section 4 of the Universities Act 1997, that Act applies,

(b) the Dublin Institute of Technology,

(c) those to which, pursuant to section 3(1) (as amended by the Institutes of Technology Act 2006) of the Regional Technical Colleges Act 1992, that Act applies. 25

(2) An approved institution to which this section applies shall, as soon as practicable but no later than 90 days after this section is commenced, and not less than once every 3 years thereafter, require its chief officer to prepare a draft access plan of the policies of the institution in respect of— 30

(a) access to the institution by economically or socially disadvantaged people, by people who have a disability and by people from sections of society significantly under-represented in the student body, and 35

(b) equality, including gender equality, in all activities of the institution,

and the chief officer, in preparing the statement, shall have regard to such policies on those matters as may from time to time be determined by the Minister. 40

(3) The governing authority of an approved institution to which this section applies shall, having regard to the resources available to it, within one month of the preparation of the draft access plan referred to in *subsection (2)*, either approve of it without modification or, following consultation with the chief officer, approve of it with such modifications as it thinks fit. 45

(4) An approved institution to which this section applies shall implement the policies set out in its access plan as approved under *subsection (3)*.

5 (5) For the purposes of this section the terms “chief officer” and “governing authority” shall have a meaning as respects an institution to which this section applies that corresponds to the meaning given to those terms under the Universities Act 1997 as respects a university to which that Act applies.

SCHEDULE 1

Section 6.

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| Number and Year (1) | Short Title (2) |
|------------------------|--|
| No. 24 of 1968 | Local Authorities (Higher Education Grants) Act 1968 |
| No. 26 of 1978 | Local Authorities (Higher Education Grants) Act 1978 |
| No. 19 of 1992 | Local Authorities (Higher Education Grants) Act 1992 |

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SCHEDULE 2

Section 28.

1. The Minister.
2. The Minister for the Environment, Heritage and Local Government.
3. The Minister for Justice and Law Reform.

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4. The Minister for Social Protection.
5. The Revenue Commissioners.
6. An awarding authority.
7. The Appeals Board.
8. An approved institution.

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9. The Health Service Executive.
10. An tÚdarás um Ard-Oideachas.
11. A local authority.
12. The National Qualifications Authority of Ireland.

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13. A person with whom an awarding authority has an agreement under *section 13*.