



**AN BILLE BREISOIDEACHAIS AGUS OILIÚNA, 2013
FURTHER EDUCATION AND TRAINING BILL 2013**

*Mar a tionscnaíodh
As initiated*

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AN BILLE BREISOIDEACHAIS AGUS OILIÚNA, 2013
FURTHER EDUCATION AND TRAINING BILL 2013

BILL

entitled

5 AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A
BODY TO BE KNOWN AS AN tSEIRBHÍS OIDEACHAIS
LEANÚNAIGH AGUS SCILEANNA; TO PROVIDE FOR
THE DISSOLUTION OF AN FORAS ÁISEANNA SAOTH-
10 AIR AND THE TRANSFER OF ITS FUNCTIONS TO THE
SAID BODY; TO PROVIDE FOR THE CONFERRAL OF
OTHER FUNCTIONS ON THE SAID BODY; TO REPEAL
THE LABOUR SERVICES ACT 1987; AND TO PROVIDE
FOR MATTERS CONNECTED THEREWITH.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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PART 1

PRELIMINARY AND GENERAL

1.—(1) This Act may be cited as the Further Education and Train- Short title and
ing Act 2013. commencement.

(2) This Act shall come into operation on such day or days as the
20 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.

“Act of 1995” means the Ethics in Public Office Act 1995;

25 “An tSeirbhís” has the meaning assigned to it by *section 6*;

“chief executive” has the meaning assigned to it by *section 23*;

“dissolved body” has the meaning assigned to it by *section 37*;

30 “further education” includes further education provided for the pur-
pose of obtaining an award within the meaning of the Qualifications
and Quality Assurance (Education and Training) Act 2012 at a level
that is not higher than level 6 specified in the National Framework
of Qualifications, but does not include—

(a) higher education within the meaning of the Higher Education Authority Act 1971, or

(b) further education within the meaning of the Solicitors (Amendment) Act 1994, the Veterinary Practice Act 2005, the Medical Practitioners Act 2007 or the Nurses and Midwives Act 2011; 5

“further education and training strategy” means a strategy approved by the Minister under *section 9*;

“material interest” shall be construed in accordance with section 2(3) of the Act of 1995; 10

“Minister” means the Minister for Education and Skills;

“superannuation benefit” means a pension, gratuity or other allowance payable on resignation, retirement or death;

“training body” means a body established by or under an enactment that— 15

(a) provides for the dissolution of vocational education committees within the meaning of the Vocational Education Act 1930, and

(b) that confers on that body functions that are the same as, or similar to, the functions that, immediately before the day on which the body stands established, vested in a vocational education committee. 20

Expenses.

3.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas. 25

Repeals.

4.—The Labour Services Act 1987 is repealed.

PART 2

AN tSEIRBHÍS OIDEACHAIS LEANÚNAIGH AGUS SCILEANNA

Establishment day.

5.—The Minister shall, by order, appoint a day to be the establishment day for the purposes of this Act. 30

Establishment of An tSeirbhís Oideachais Leanúnaigh agus Scileanna.

6.—(1) There shall stand established on the establishment day, a body which shall be known as An tSeirbhís Oideachais Leanúnaigh Agus Scileanna (in this Act referred to as “An tSeirbhís”), to perform the functions conferred on it by this Act. 35

(2) An tSeirbhís shall be a body corporate with perpetual succession and an official seal and shall have power to sue, and may be sued, in its corporate name, and shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, have power to acquire, hold and dispose of land or an interest in land, and shall have power to acquire, hold and dispose of any other property. 40

(3) The seal of An tSeirbhís shall be authenticated by—

- (a) the signatures of 2 members of An tSeirbhís, or
- (b) the signatures of both a member and a member of the staff of An tSeirbhís,

authorised by An tSeirbhís to act in that behalf.

5 (4) Judicial notice shall be taken of the seal of An tSeirbhís and any document purporting to be an instrument made by, and to be sealed with the seal of, An tSeirbhís shall, unless the contrary is shown, be received in evidence and be deemed to be such instrument without further proof.

10 7.—(1) The general functions of An tSeirbhís shall be— Functions of An tSeirbhís.

- (a) to prepare and submit to the Minister a strategy in respect of the provision of further education and training in accordance with *section 9*,
- 15 (b) to consult with the Minister for Social Protection, the Minister for Jobs, Enterprise and Innovation and employers from time to time for the purpose of determining which, or which classes of, further education and training programmes should be the subject of advances by An tSeirbhís in accordance with *section 21*,
- 20 (c) to advance moneys to training bodies and other bodies engaged in the provision of further education and training programmes as determined in accordance with *paragraph (b)*,
- 25 (d) to provide, or arrange for, the provision of training for employment and to assist in and coordinate the provision of such training by persons other than An tSeirbhís,
- 30 (e) to assess whether or not training bodies, and other bodies engaged in the provision of further education and training programmes, to whom moneys have been advanced under *section 21* perform their functions in an economic, efficient and effective manner,
- 35 (f) in consultation with the Minister for Social Protection, to promote, encourage and facilitate the placement of persons who are in receipt of jobseeker's allowance or jobseeker's benefit in further education and training programmes that are funded, in whole or in part, out of public moneys,
- 40 (g) to promote cooperation between training bodies and other bodies involved in the provision of further education programmes,
- 45 (h) to develop, and facilitate the development, of new and existing further education and training programmes including the establishment of systems designed to monitor the quality of the education and training concerned for the purpose of ensuring that those programmes serve their purpose,

- (i) to provide or assist in the provision of training to persons charged with the delivery of further education and training programmes for the purposes of which moneys have been advanced by An tSeirbhís under *section 21*,
- (j) to conduct, or arrange for the conduct of, research as respects any matters relating to the functions of An tSeirbhís, and 5
- (k) to advise the Minister in relation to any matter connected with the functions of An tSeirbhís.

(2) An tSeirbhís shall have all such powers as are necessary or expedient for the performance of its functions. 10

Conferral of additional functions on An tSeirbhís.

8.—(1) The Minister may, with the consent of the Minister for Public Expenditure and Reform, confer on An tSeirbhís, by order, such additional functions connected with the functions for the time being of An tSeirbhís as he or she thinks fit, subject to such conditions (if any) as may be specified in the order. 15

(2) An order under this section may contain such incidental, supplemental and consequential provisions as may, in the opinion of the Minister, be necessary to give full effect to the order.

Further education and training strategy.

9.—(1) An tSeirbhís shall— 20

- (a) as soon as practicable after the commencement of this section,
- (b) not later than the expiration of such period as is specified in a direction under *subsection (2)*, and
- (c) not later than 5 years after the most recent approval by the Minister of a strategy under this section, 25

prepare, and submit to the Minister, a strategy in relation to the provision in the State of further education and training in respect of the period of 5 years immediately following its approval by the Minister under this section. 30

(2) The Minister may give a direction in writing to An tSeirbhís requiring it to prepare, and submit to him or her—

- (a) not later than the expiration of such period as is specified in the direction, and
- (b) in respect of such period as is so specified, 35

a strategy under this section.

(3) An tSeirbhís shall, in the preparation of a strategy under this section have regard to—

- (a) any policy directions given by the Minister under *section 19*, and 40
- (b) the likely cost of implementing any such strategy if approved by the Minister under this section.

- (4) An tSeirbhís shall, in the course of preparing a strategy under this section, consult with the Minister for Education and Skills, the Minister for Social Protection and the Minister for Jobs, Enterprise and Innovation.
- 5 (5) An tSeirbhís may, in the course of preparing a strategy under this section, consult with training bodies, other providers of further education and training programmes, An tÚdarás um Ard-Oideachas, Enterprise Ireland, Teagasc, Quality and Qualifications Ireland, employers or any other person as it considers appropriate.
- 10 (6) The Minister shall, as soon as practicable after the submission to him or her of a strategy under this section—
- (a) approve the strategy with or without modifications, or
 - (b) refuse to approve the strategy and give a direction to An tSeirbhís under *subsection (2)*.
- 15 (7) An tSeirbhís shall, as soon as practicable after the approval by the Minister of a strategy prepared and submitted under this section, cause the strategy to be published in such manner as An tSeirbhís considers appropriate.
- 20 **10.—(1)** An tSeirbhís shall consist of the following members that is to say— Membership of An tSeirbhís.
- (a) a chairperson, and
 - (b) 10 ordinary members (including the person to whom *subsection (8) of section 23* applies).
- 25 (2) The chairperson of An tSeirbhís shall be appointed by the Minister from among persons who in the Minister’s opinion have experience of, and expertise in relation to—
- (a) matters connected with the functions of An tSeirbhís, or
 - (b) matters connected with finance, trade, commerce, corporate governance or public administration.
- 30 (3) Of the ordinary members of An tSeirbhís (other than the person to whom *subsection (8) of section 23* applies), 9 shall be appointed by the Minister, following consultation by him or her with the Minister for Jobs, Enterprise and Innovation and the Minister for Social Protection, from among persons who in the Minister’s
- 35 opinion have experience of, and expertise in relation to—
- (a) matters connected with the functions of An tSeirbhís, or
 - (b) matters connected with finance, trade, commerce, corporate governance or public administration.
- 40 (4) One person shall be appointed by the Minister to be an ordinary member of An tSeirbhís following the person’s nomination by the Minister for Social Protection.
- (5) The chairperson of An tSeirbhís shall hold office for such period not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.

(6) Each ordinary member of An tSeirbhís (other than the person to whom *subsection (8) of section 23* applies) shall hold office for such period not exceeding 5 years from the date of his or her appointment, as the Minister shall determine.

(7) Subject to *subsection (8)*, a member of An tSeirbhís whose term of office expires by the effluxion of time shall be eligible for reappointment to An tSeirbhís. 5

(8) A member of An tSeirbhís who has served 2 terms of office shall not be eligible for reappointment to An tSeirbhís, and any period during which a person serves as a member of An tSeirbhís pursuant to an appointment under *section 12* shall be deemed for the purposes of this subsection to be a term of office. 10

Conditions of office of members of An tSeirbhís.

11.—(1) The Minister may at any time remove from office a member of An tSeirbhís if—

(a) in the opinion of the Minister, the member has become incapable through ill-health of performing his or her functions, or has committed stated misbehaviour, 15

(b) the member's removal appears to the Minister to be necessary in order to ensure the effective performance by An tSeirbhís of its functions, or 20

(c) the Minister is satisfied that the member has contravened the Act of 1995.

(2) A member of An tSeirbhís may resign from office by notice in writing given to the Minister and the resignation shall take effect on the day on which the Minister receives the notice. 25

(3) A member of An tSeirbhís shall cease to be qualified for office and shall cease to hold office if he or she—

(a) is adjudicated bankrupt,

(b) makes a composition or arrangement with creditors,

(c) is convicted of any indictable offence in relation to a company, 30

(d) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not,

(e) is the subject of an order under section 160 of the Companies Act 1990, or 35

(f) is sentenced to a term of imprisonment by a court of competent jurisdiction.

(4) A member of An tSeirbhís shall, subject to the provisions of this Act, hold office upon such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Minister, with the consent of the Minister for Public Expenditure and Reform. 40

Casual vacancies among members of An tSeirbhís.

12.—(1) If a member of An tSeirbhís dies, resigns, ceases to be qualified for office and ceases to hold office or is removed from office, the Minister may appoint a person to be a member of An 45

tSeirbhís to fill the casual vacancy so occasioned in the same manner as the member of An tSeirbhís who occasioned the casual vacancy was appointed.

5 (2) A person appointed to be a member of An tSeirbhís pursuant to this section shall hold office for that period of the term of office of the member who occasioned the casual vacancy concerned that remains unexpired at the date of his or her appointment and shall, subject to *subsection (6) of section 10*, be eligible for reappointment as a member of An tSeirbhís on the expiry of the said period.

10 **13.**—The chairperson and ordinary members of An tSeirbhís shall be paid by An tSeirbhís such remuneration (if any) and such allowances for expenses as the Minister, with the approval of the Minister for Public Expenditure and Reform, may determine. Remuneration of members of An tSeirbhís.

15 **14.**—(1) An tSeirbhís shall hold such and so many meetings as may be necessary for the due fulfilment of its functions but in each year shall hold not less than one meeting in each period of 3 months. Meetings and procedure.

(2) At a meeting of An tSeirbhís—

(a) the chairperson of An tSeirbhís shall, if present, be the chairperson of the meeting, or

20 (b) if and so long as the chairperson of An tSeirbhís is not present, or if that office is vacant, the members of An tSeirbhís who are present shall choose one of their number to be chairperson of the meeting.

25 (3) Every question at a meeting shall be determined by a majority of the votes of the members of An tSeirbhís present and voting on the question and, in the case of an equal division of votes, the chairperson of the meeting shall have a second or casting vote.

(4) Subject to *subsection (6)*, An tSeirbhís may act notwithstanding one or more vacancies among its members.

30 (5) Subject to the provisions of this Act, An tSeirbhís shall regulate its procedure by rules or otherwise.

(6) The quorum for a meeting of An tSeirbhís shall, unless the Minister otherwise directs, be 7.

35 (7) The Minister shall fix the date of the first meeting of An tSeirbhís first constituted pursuant to *section 10*, and shall specify the time and place at which it shall take place.

15.—(1) Where a member of An tSeirbhís is—

(a) nominated as a member of Seanad Éireann,

40 (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or

(c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament,

Membership of either House of Oireachtas or European Parliament.

he or she shall thereupon cease to be a member of An tSeirbhís.

- (2) Where a member of the staff of An tSeirbhís is—
- (a) nominated as a member of Seanad Éireann,
 - (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
 - (c) regarded pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to that Parliament,

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

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

(4) A period mentioned in *subsection (2)* shall not, for the purposes of any superannuation benefit, be reckoned as service with An tSeirbhís.

(5) In this section “Act of 1997” means the European Parliament Elections Act 1997.

Disclosure by members of An tSeirbhís of certain interests.

16.—(1) Where at a meeting of An tSeirbhís any of the following matters arises, namely—

- (a) an arrangement to which An tSeirbhís is a party or a proposed such arrangement, or
- (b) a contract or other agreement with An tSeirbhís or a proposed such contract or other agreement,

then, any member of An tSeirbhís present at the meeting who otherwise than in his or her capacity as such a member has a material interest in the matter shall—

- (i) at the meeting, disclose to An tSeirbhís the fact of such interest and the nature thereof,
- (ii) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
- (iii) take no part in any deliberation of An tSeirbhís relating to the matter, and
- (iv) not vote on a decision relating to the matter.

(2) A member of An tSeirbhís who, otherwise than in his or her capacity as such a member has a material interest in—

- (a) an arrangement or proposed arrangement to which *paragraph (a)* of *subsection (1)* applies, or

(b) a contract or other agreement or a proposed contract or other agreement to which *paragraph (b)* of that subsection applies,

5 shall neither influence nor seek to influence any decision to be made by An tSeirbhís in relation thereto.

(3) Where a material interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the member by whom the disclosure is made shall not be counted in the quorum for the meeting.

(4) Where at a meeting of An tSeirbhís a question arises as to whether or not a course of conduct, if pursued by a member of An tSeirbhís, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may, subject to *subsection (5)*, be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(5) Where at a meeting of An tSeirbhís, the chairperson of the meeting is the member in respect of which a question to which *subsection (4)* applies falls to be determined, then the other members of An tSeirbhís attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.

(6) Where the Minister is satisfied that a member of An tSeirbhís has contravened *subsection (1)* or *(2)*, the Minister may, if he or she thinks fit, remove that member from office and, where a person is removed from office pursuant to this subsection, he or she shall thenceforth be disqualified for membership of An tSeirbhís.

30 **17.—(1)** Where a member of the staff of An tSeirbhís has a material interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which An tSeirbhís is a party, that person shall—

Disclosure by members of staff of An tSeirbhís of certain interests.

(a) disclose to An tSeirbhís his or her interest and the nature thereof,

(b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by An tSeirbhís or members of the staff of An tSeirbhís in relation thereto, and

(c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subsection (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of An tSeirbhís with An tSeirbhís.

(3) Where a person contravenes this section, An tSeirbhís may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's employment.

Prohibition on unauthorised disclosure of confidential information.

18.—(1) Subject to *sections 34 and 35*, a person shall not disclose confidential information obtained by him or her while performing functions as a member or member of the staff of, or an adviser or consultant to, An tSeirbhís, or a member of the staff of such adviser or consultant, unless he or she is duly authorised by An tSeirbhís to so do. 5

(2) In this section “confidential information” includes—

- (a) information that is expressed by An tSeirbhís to be confidential either as regards particular information or as regards information of a particular class or description, and 10
- (b) proposals of a commercial nature or tenders submitted to An tSeirbhís by contractors, consultants or any other person.

Directions of Minister.

19.—(1) The Minister may, in relation to the performance by An tSeirbhís of its functions, give a direction in writing to An tSeirbhís requiring it to comply with such policies of the Government as are specified in the direction. 15

(2) The Minister may, in relation to the performance by An tSeirbhís of its functions, give a direction in writing to An tSeirbhís requiring it to comply with such matters specified in the direction relating to— 20

- (a) the provision of services or the carrying on of activities specified in the direction, or
- (b) expenditure by An tSeirbhís. 25

(3) The Minister may, by direction in writing, amend or revoke a direction under this section (including a direction under this subsection).

(4) An tSeirbhís shall comply with a direction under this section.

Grants to An tSeirbhís.

20.—(1) In each financial year, the Minister may, after consultation with An tSeirbhís, advance to An tSeirbhís out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure and Reform, determine. 30

(2) Section 7 of the National Training Fund Act 2000 is amended by the insertion of the following subsection: 35

“(2A) The Minister may, for any purpose specified in subsection (1) and with the consent of the Minister for Public Expenditure and Reform, make payments to An tSeirbhís, and any payments so made shall be expended by An tSeirbhís for that purpose only.”. 40

Grants by An tSeirbhís.

21.—(1) An tSeirbhís may, for the purposes of any further education or training programme, advance such sum or sums as it considers appropriate to a training body that provides that programme. 45

(2) An tSeirbhís may, for the purposes of any further education or training programme, advance such sum or sums as it considers appropriate to a body (other than a training body) that provides that programme.

5 (3) An tSeirbhís may—

(a) for the purposes of ensuring the implementation of the further education and training strategy attach such conditions as it considers appropriate to any advance made in accordance with this section, and

10 (b) attach such other conditions (if any) as it considers appropriate to any such advance.

(4) A body to whom moneys are advanced under this section shall provide such information to An tSeirbhís in relation to the performance of its functions or the expenditure of those moneys as An tSeirbhís may reasonably require.

(5) If a training body contravenes a condition attaching to an advance under this section or fails to comply with a requirement under *subsection (4)*, An tSeirbhís shall so inform the Minister.

20 **22.—**(1) An tSeirbhís may, with the consent of the Minister and the Minister for Public Expenditure and Reform and subject to such conditions (if any) as they may specify, from time to time, borrow money (whether on the security of the assets of An tSeirbhís or not). Borrowings by An tSeirbhís.

(2) The aggregate standing borrowed under this section at any one time shall not exceed such amount as the Minister may, with the consent of the Minister for Public Expenditure and Reform determine.

23.—(1) There shall be a chief executive officer of An tSeirbhís (in this Act referred to as the “chief executive”). Chief executive.

(2) Subject to *subsections (4) and (5)*, the chief executive shall be appointed by An tSeirbhís with the consent of the Minister.

(3) The chief executive may be removed from office by An tSeirbhís for stated reasons.

(4) The Minister may, before the establishment day, designate a person to be appointed to be the first chief executive of An tSeirbhís.

35 (5) If, immediately before the establishment day, a person stands designated by the Minister under *subsection (4)*, An tSeirbhís shall appoint that person to be the first chief executive.

(6) The chief executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances and superannuation) as may be determined by An tSeirbhís with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform.

(7) The chief executive shall not hold any other office or employment or carry on any business without the consent of An tSeirbhís.

45 (8) The chief executive shall, *ex officio*, be an ordinary member of An tSeirbhís.

Functions of chief executive.

24.—(1) The chief executive shall carry on and manage, and control generally, the administration of An tSeirbhís and perform such other functions (if any) as may be determined by An tSeirbhís.

(2) The chief executive shall perform his or her functions subject to such policies as may be determined from time to time by An tSeirbhís, and shall be accountable to An tSeirbhís for the efficient and effective management of An tSeirbhís and for the due performance of his or her functions. 5

(3) The chief executive may make proposals to An tSeirbhís on any matter relating to its functions. 10

(4) An tSeirbhís may designate a member of the staff of An tSeirbhís to perform the functions of chief executive in the absence of the chief executive or where the position of chief executive is vacant, and a member so designated shall in such absence or upon such position being vacant perform those functions. 15

Accountability of chief executive to Public Accounts Committee.

25.—(1) The chief executive shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General (in this section referred to as the “Committee”), give evidence to that Committee in relation to— 20

(a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General that An tSeirbhís is required by this Act to prepare, 25

(b) the economy and efficiency of An tSeirbhís in the use of its resources,

(c) the systems, procedures and practices employed by An tSeirbhís for the purpose of evaluating the effectiveness of its operations, and 30

(d) any matter affecting An tSeirbhís referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann. 35

(2) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy. 40

Accountability of chief executive to other Oireachtas Committees.

26.—(1) In this section “Committee” means a Committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 25* or the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann) or a subcommittee of such a Committee. 45

(2) Subject to *subsection (3)*, the chief executive shall, at the request in writing of a Committee, attend before it to give account for the general administration of An tSeirbhís.

5 (3) The chief executive shall not be required to give account before a Committee for any matter which is or has been or may at a future time be the subject of proceedings before a court or tribunal in the State.

10 (4) Where the chief executive is of the opinion that a matter in respect of which he or she is requested to give an account before a Committee is a matter to which *subsection (3)* applies, he or she shall inform the Committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Committee at a time when the chief executive is before it, the information shall be so conveyed in writing.

15 (5) Where the chief executive has informed a Committee of his or her opinion in accordance with *subsection (4)* and the Committee does not withdraw the request referred to in *subsection (2)* in so far as it relates to a matter the subject of that opinion—

20 (a) the chief executive may, not later than 21 days after being informed by the Committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question whether the matter is one to which *subsection (3)* applies, or

25 (b) the Chairperson of the Committee may, on behalf of the Committee, make such an application,

and the High Court shall determine the matter.

(6) Pending the determination of an application under *subsection (5)*, the chief executive shall not attend before the Committee to give account for the matter the subject of the application.

30 (7) If the High Court determines that the matter concerned is one to which *subsection (3)* applies, the Committee shall withdraw the request referred to in *subsection (2)*, but if the High Court determines that *subsection (3)* does not apply, the chief executive shall attend before the Committee to give account for the matter.

35 (8) In the performance of his or her duties under this section, the chief executive shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

40 **27.—**(1) An tSeirbhís shall, with the consent of the Minister given Staff. with the approval of the Minister for Public Expenditure and Reform, appoint such and so many persons to be members of the staff of An tSeirbhís as it may from time to time determine.

45 (2) The terms and conditions of service of a member of the staff of An tSeirbhís shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, be such as may be determined from time to time by An tSeirbhís.

50 (3) There shall be paid by An tSeirbhís to the members of its staff such remuneration and allowances as, from time to time, An tSeirbhís, with the consent of the Minister given with the approval of the Minister for Public Expenditure and Reform, determines.

Transfer of staff to
An tSeirbhís.

28.—(1) Every person who immediately before the establishment day was a member of the staff of the dissolved body shall, on the establishment day, become and be a member of the staff of An tSeirbhís.

(2) Save in accordance with any enactment (whether enacted 5
before or after the passing of this Act) or a collective agreement
negotiated with any recognised trade union or staff association con-
cerned, a person transferred to the staff of An tSeirbhís under *sub-*
section (1) shall not, while in the service of An tSeirbhís, be subject 10
to less beneficial conditions of service (including conditions in
relation to tenure of office) or of remuneration than the conditions
of service (including conditions in relation to tenure of office) or
remuneration to which he or she was subject immediately before the
establishment day.

(3) In relation to persons transferred to the staff of An tSeirbhís 15
under *subsection (1)*, previous service with the dissolved body shall
be reckonable for the purposes of, but subject to any exceptions or
exclusions in, the Redundancy Payments Acts 1967 to 2007, the Pro-
tection of Employees (Part-Time Work) Act 2001, the Organisation
of Working Time Act 1997, the Minimum Notice and Terms of 20
Employment Acts 1973 to 2005 and the Unfair Dismissals Acts 1977
to 2007.

Superannuation.

29.—The entitlement of a person who was transferred to the staff
of An tSeirbhís under *section 28* to a superannuation benefit shall be 25
determined, and the benefit shall be calculated, by An tSeirbhís in
accordance with such scheme, arrangements or enactments in
relation to superannuation, as applied to the person immediately
before the establishment day and, for that purpose, the person's pen-
sionable service with An tSeirbhís shall be aggregated with his or her
previous pensionable service and the said benefit shall be paid by 30
An tSeirbhís.

Strategy statement.

30.—(1) An tSeirbhís shall—

(a) not later than 6 months after the commencement of this
section, prepare and submit to the Minister a strategy
statement in respect of the period of 3 years immediately 35
following the year in which the strategy statement is so
submitted, and

(b) not later than 3 months before each third anniversary of
the submission to the Minister in accordance with this
subsection of the strategy statement for the time being 40
in effect, prepare and submit to the Minister a strategy
statement in respect of the period of 3 years immediately
following the year in which the strategy statement is so
submitted.

(2) The Minister shall, as soon as practicable after a strategy state- 45
ment has been submitted to him or her under *subsection (1)*, cause
a copy of it to be laid before each House of the Oireachtas.

(3) An tSeirbhís shall ensure that, as soon as practicable after cop-
ies of a strategy statement are laid before both Houses of the
Oireachtas in accordance with *subsection (2)*, the strategy statement 50
is published on the internet.

(4) In this section “strategy statement” means a statement that—

(a) specifies the key objectives, outputs and related strategies, including use of resources, of An tSeirbhís, and

5 (b) is prepared in a form and manner that is in accordance with any directions issued from time to time by the Minister.

31.—(1) An tSeirbhís shall keep in such form as may be approved Accounts of An tSeirbhís. by the Minister with the consent of the Minister for Public Expenditure and Reform all proper and usual accounts of all money received or expended by it and, in particular, shall keep in such form as afore- 10 said all such special accounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time direct.

(2) Accounts kept in accordance with this section shall be submit- 15 ted, not later than 1 March in the year immediately following the financial year to which they relate or on such earlier date as the Minister may, from time to time, specify, to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, and of such other (if any) accounts as the Minister, 20 after consultation with the Minister for Public Expenditure and Reform, may direct and a copy of the Comptroller and Auditor General’s report on the accounts shall be presented to the Minister who shall, as soon as may be after they are so presented, cause copies thereof to be laid before each House of the Oireachtas.

25 32.—(1) An tSeirbhís shall not later than 31 May, or such other Annual report. date as the Minister may specify in writing, in each year prepare and submit to the Minister a report on its activities in the immediately preceding year, and the Minister shall, as soon as may be after receiving the report, cause copies of the report to be laid before each 30 House of the Oireachtas.

(2) An tSeirbhís shall arrange for a report laid before both Houses of the Oireachtas in accordance with *subsection (1)* to be published on the internet as soon as practicable after copies of the report are so laid.

35 33.—(1) An tSeirbhís may, with the consent of the Minister and Gifts. the Minister for Public Expenditure and Reform, accept gifts of money, land or other property upon such trusts or conditions (if any) as may be specified by the donor.

(2) An tSeirbhís shall not accept a gift if the trusts or conditions 40 attaching to it would be inconsistent with its functions.

34.—(1) Where a person communicates his opinion, whether in Protection of persons who report certain matters. writing or otherwise, to a member of the Garda Síochána, the Minister or a member of An tSeirbhís that—

45 (a) an offence under this Act has been or is being committed or any provision of this Act has been or is being contravened,

(b) an offence under any other enactment has been or is being committed, or any other enactment or rule of law has been or is being contravened, in relation to An tSeirbhís,

(c) there has been other serious wrongdoing in relation to An tSeirbhís,

5

then, unless the person acts in bad faith, he or she shall not be regarded as having committed any breach of duty towards any other person, and no person shall have a cause of action against the first-mentioned person in respect of that communication.

(2) Where a person communicates his opinion, whether in writing or otherwise, to the Minister that a direction given by the Minister under this Act has been or is being contravened then, unless the person acts in bad faith, he or she shall not be regarded as having committed any breach of duty towards any other person, and no person shall have a cause of action against the first-mentioned person in respect of that communication.

10

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(3) This section applies to a communication—

(a) that would, but for this section, constitute a breach of duty by the person who made it, or

(b) in respect of which, another person would, but for this section, have a cause of action against the person who made it.

20

Prohibition on penalisation.

35.—(1) An employer shall not penalise or threaten penalisation against an employee for—

(a) making a complaint to a member of the Garda Síochána or a member of An tSeirbhís that a provision of this Act, or any enactment or other rule of law, has been or is being contravened,

25

(b) making a complaint to the Minister that a direction given by him under this Act has been or is being contravened,

30

(c) making a complaint to a member of An tSeirbhís that there has been serious wrongdoing in relation to An tSeirbhís,

(d) giving evidence in any proceedings under this Act or any other enactment, or

35

(e) giving notice of his intention to do any of the things referred to in the preceding paragraphs.

(2) The *Schedule* shall have effect for the purposes of *subsection (1)*.

(3) If the penalisation of an employee, in contravention of *subsection (1)*, constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2007, relief may not be granted to the employee in respect of that penalisation both under the *Schedule* and under those Acts.

40

(4) In this section—

45

“employee” means, in relation to An tSeirbhís, a member of the staff of An tSeirbhís;

“employer” means An tSeirbhís;

5 “penalisation” means any act or omission by an employer or a person acting on behalf of an employer that affects an employee to his detriment with respect to any term or condition of his employment, and, without prejudice to the generality of the foregoing, includes—

10 (a) suspension, lay-off or dismissal including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007, or the threat of suspension, lay-off or dismissal,

(b) demotion or loss of opportunity for promotion,

(c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,

15 (d) imposition or administration of any discipline, reprimand or other penalty (including a financial penalty), and

(e) coercion or intimidation.

36.—(1) A person who states to a member of the Garda Síochána or a member of An tSeirbhís that— False statements.

20 (a) an offence under this Act or any other enactment has been or is being committed,

(b) a provision of this Act, a provision of any other enactment or any rule of law has been or is being contravened, or

(c) there has been serious wrongdoing by any person in relation to An tSeirbhís,

25 knowing the statement to be false shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

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

(b) on conviction on indictment, to a fine not exceeding €100,000 or imprisonment for a term not exceeding 3 years or both.

PART 3

35 DISSOLUTION OF AN FORAS ÁISEANNA SAOTHAIR

37.—(1) An Foras Áiseanna Saothair (in this Act referred to as the “dissolved body”) is dissolved. Dissolution of An Foras Áiseanna Saothair.

40 (2) *Section 25* shall apply to the person who immediately before the establishment day performed the functions of accounting officer of the dissolved body subject to the modifications that—

(a) references in that section to the chief executive shall be construed as references to that person, and

(b) references to An tSeirbhís shall be construed as references to the dissolved body.

(3) This section shall come into operation on the establishment day. 5

Transfer of functions to An tSeirbhís.

38.—(1) (a) All functions (other than functions under the Act of 1987) that, immediately before the establishment day, were vested in the dissolved body are transferred to An tSeirbhís. 10

(b) The functions conferred on the dissolved body by virtue of subsection (2) of section 4 of the Act of 1987 are transferred to An tSeirbhís.

(c) References in any enactment or instrument under an enactment to An Foras Áiseanna Saothair in so far as they relate to a function transferred by this subsection shall be construed as references to An tSeirbhís. 15

(2) This section shall come into operation on the establishment day.

Transfer of land and other property.

39.—(1) On the establishment day, all lands that, immediately before that day, were vested in the dissolved body and all rights, powers and privileges relating to or connected with such lands shall, without any conveyance or assignment, stand vested in An tSeirbhís for all the estate or interest therein that, immediately before the establishment day, was vested in the dissolved body, but subject to all trusts and equities affecting the lands continuing to subsist and being capable of being performed. 20 25

(2) On the establishment day all property (other than land), including choses-in-action, that immediately before that day, was vested in the dissolved body shall stand vested in An tSeirbhís without any assignment. 30

(3) Every chose-in-action vested in An tSeirbhís by virtue of *subsection (2)* may, on and from the establishment day, be sued on, recovered or enforced by An tSeirbhís in its own name, and it shall not be necessary for An tSeirbhís, or the dissolved body, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection. 35

Transfer of rights and liabilities, and continuation of leases, licences and permissions granted by dissolved body.

40.—(1) All rights and liabilities of the dissolved body subsisting immediately before the establishment day and arising by virtue of any contract or commitment (expressed or implied) shall on that day stand transferred to An tSeirbhís. 40

(2) Every right and liability transferred by *subsection (1)* to An tSeirbhís may, on and after the establishment day, be sued on, recovered or enforced by or against An tSeirbhís in its own name, and it shall not be necessary for An tSeirbhís, or the dissolved body, to give notice to the person whose right or liability is transferred by that subsection of such transfer. 45

5 (3) Every lease, licence, wayleave or permission granted by the dissolved body in relation to land or other property vested in An tSeirbhís by or under this Act, and in force immediately before the establishment day, shall continue in force as if granted by An tSeirbhís.

10 **41.**—(1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the establishment day of any of the functions of the dissolved body shall after that day, lie against An tSeirbhís and not against the dissolved body. Liability for loss occurring before establishment day.

(2) Any legal proceedings pending immediately before the establishment day to which the dissolved body is a party, shall be continued, with the substitution in the proceedings of An tSeirbhís, in so far as they so relate, for the dissolved body.

15 (3) Where, before the establishment day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the dissolved body, be enforceable against An tSeirbhís and not the dissolved body.

20 (4) Any claim made or proper to be made by the dissolved body in respect of any loss or injury arising from the act or default of any person before the establishment day shall be regarded as having been made by or proper to be made by An tSeirbhís and may be pursued and sued for by An tSeirbhís as if the loss or injury had been suffered by An tSeirbhís.

25 **42.**—(1) Anything commenced and not completed before the establishment day by or under An tSeirbhís of the dissolved body may, in so far as it relates to a function transferred to An tSeirbhís under *section 38*, be carried on or completed on or after the establishment day by An tSeirbhís. Provisions consequent upon transfer of functions, assets and liabilities to An tSeirbhís.

30 (2) Every instrument made under an enactment and every document (including any certificate) granted or made, in the performance of a function transferred by *section 38*, shall, if and in so far as it was operative immediately before the establishment day, have effect on and after that day as if it had been granted or made by An tSeirbhís.

35 (3) References to An Foras Áiseanna Saothair in the memorandum or articles of associations of any company (except where they relate to a function transferred to the Minister for Social Protection under the Social Welfare and Pensions Act 2010) shall, on and after the establishment day, be construed as references to An tSeirbhís.

40 (4) Any money, stocks, shares or securities transferred by *section 39* that immediately before the establishment day were standing in the name of the dissolved body shall, on the request of An tSeirbhís be transferred into its name.

45 (5) A certificate signed by the Minister that any property, right or liability has or, as the case may be, has not vested in An tSeirbhís under *section 38* or *39* shall be sufficient evidence, unless the contrary is shown, of the fact so certified for all purposes.

Final accounts and final annual report of dissolved body.

43.—(1) An tSeirbhís shall, in respect of the period specified under *subsection (3)*, prepare final accounts of the dissolved body.

(2) An tSeirbhís shall submit the final accounts to the Comptroller and Auditor General for audit not later than 3 months after the establishment day. 5

(3) For the purposes of *subsection (1)*, the Minister may specify a period that is longer or shorter than a financial year of the dissolved body.

(4) An tSeirbhís shall prepare the final annual report for the dissolved body and submit the report to the Minister not later than 5 10 months after the establishment day.

(5) *Section 32* shall apply with the necessary modifications in relation to an annual report prepared under this section.

Saver in respect of certain schemes.

44.—(1) A scheme prepared under any enactment by the dissolved body that was in force immediately before the establishment 15 day shall continue in force on and after that day.

(2) A scheme under any enactment that was altered by the dissolved body and that was in force immediately before the establishment day, shall continue in force on and after that day as so altered.

(3) For the avoidance of doubt, An tSeirbhís may amend or 20 revoke a scheme to which this section applies under and in accordance with the enactment under which the scheme was prepared.

PART 4

MISCELLANEOUS

Transfer of staff from An tSeirbhís to training body.

45.—(1) The Minister may designate for employment by a training 25 body specified by him or her a person who immediately before the transfer day is a member of the staff of An tSeirbhís.

(2) The Minister may designate for employment by a training body specified by him or her a person who immediately before the transfer day is a fixed-term employee (within the meaning of the 30 Protection of Employees (Fixed-Term Work) Act 2003) of An tSeirbhís.

(3) A training body shall accept into its employment on the transfer day in accordance with this section any person who immediately before that day is a member of the staff of An tSeirbhís and is 35 designated by the Minister for employment by that training body.

(4) Save in accordance with any enactment (whether enacted before or after the passing of this Act) or a collective agreement negotiated with any recognised trade union or staff association concerned, a person accepted into the employment of a training body 40 under this section shall not, while in the service of the training body, be subject to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or of remuneration to which he or she was subject immedi- 45 ately before the transfer day.

5 (5) The entitlement to any superannuation benefit of a person
who was transferred to the staff of An tSeirbhís under *section 28* and
was subsequently designated under this section and accepted into the
employment of a training body shall be determined, and the benefit
shall be calculated, by the training body in accordance with such
10 scheme, arrangements or enactments in relation to superannuation,
as applied to the person immediately before the transfer day and, for
that purpose, his or her pensionable service with An tSeirbhís and
his or her pensionable service with the training body shall be aggregated
with his or her previous pensionable service and the said
benefit shall be paid by the training body.

15 (6) In relation to persons transferred to the staff of a training
body under this section, previous service with the dissolved body and
previous service with An tSeirbhís shall be reckonable for the purposes
of, but subject to any exceptions or exclusions in, the Redundancy
Payments Acts 1967 to 2007, the Protection of Employees
(Part-Time Work) Act 2001, the Organisation of Working Time Act
1997, the Minimum Notice and Terms of Employment Acts 1973 to
2005 and the Unfair Dismissals Acts 1977 to 2007.

20 (7) In this section “transfer day” means, in relation to—

(a) a training body specified by the Minister, and

(b) a member of the staff of An tSeirbhís to whom a designation
under this section applies as respects that training
body,

25 such date as may be specified in writing by the Minister.

46.—Paragraph 1 of the First Schedule to the Freedom of Information Act 1997 is amended, in subparagraph (2), by the insertion of “An tSeirbhís Oideachais Leanúnaigh Agus Scileanna”.

Amendment of
First Schedule to
Freedom of
Information Act
1997.

SCHEDULE

REDRESS FOR CONTRAVENTION OF *section 35*

Complaints to rights commissioner.

1. (1) An employee or any trade union of which the employee is a member, with the consent of the employee, may present a complaint to a rights commissioner that the employee's employer has contravened *subsection (1) of section 35* in relation to the employee. 5

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall—

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint, 10

(b) give a decision in writing in relation to the complaint, and

(c) communicate the decision to the parties.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following: 15

(a) declare that the complaint was or, as the case may be, was not well founded,

(b) require the employer to take a specified course of action,

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances but not exceeding 2 years remuneration in respect of the employee's employment. 20

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates. 25

(5) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him after the expiration of the period referred to in *subparagraph (4)* (but not later than 12 months after such expiration) if he is satisfied that the failure to present the complaint within that period was due to reasonable cause. 30

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister. 35

(7) A copy of a notice under *subparagraph (6)* shall be given to the other party concerned by the rights commissioner concerned. 40

(8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

(9) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subparagraph (2)*.

Appeal from decision of rights commissioner.

5 2. (1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *paragraph 1* and, if the party does so, the Labour Court shall—

(a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,

10 (b) make a determination in writing in relation to the appeal affirming, varying or setting aside the decision, and

(c) communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned, giving, within 6 weeks (or such greater period as the Labour Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Labour Court containing such particulars as are determined by the Labour Court under *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

15 20 (3) A copy of a notice under *subparagraph (2)* shall be given by the Labour Court to any other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, and the procedures to be followed in relation to them, shall be determined by the Labour Court, namely:

(a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this paragraph;

(b) the times and places of hearings of such appeals;

30 (c) the representation of the parties to such appeals;

(d) the publication and notification of determinations of the Labour Court;

(e) the particulars to be contained in a notice under *subparagraph (2)*; and

35 (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Minister may, at the request of the Labour Court, refer a question of law arising in proceedings before it under this paragraph to the High Court for its determination and the determination of the High Court shall be final and conclusive.

40 (6) A party to proceedings before the Labour Court under this paragraph may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

45 (7) Section 39(17) of the Redundancy Payments Act 1967 shall apply in relation to proceedings before the Labour Court under this

Part as it applies to matters referred to the Employment Appeals Tribunal under that section with—

- (a) the substitution in that provision of references to the Labour Court for references to the Tribunal, and
- (b) the deletion in paragraph (d) of that provision of “registered”. 5

Paragraphs 1 and 2: supplemental provisions.

3. (1) Where a decision of a rights commissioner in relation to a complaint under this Schedule has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision. 10 15

(2) The bringing of a complaint before the Labour Court under *subparagraph (1)* shall be effected by giving to the Labour Court a written notice containing such particulars (if any) as may be determined by the Labour Court. 20

(3) The Labour Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under *subparagraph (4)(a), (b), (c), (e) and (f) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph) and *subparagraph (2)*. 25

Enforcement of determinations of Labour Court.

4. (1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under *paragraph 1* within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by— 30

- (a) the employee concerned, or
- (b) with the consent of the employee, any trade union of which the employee is a member,

without hearing the employer or any evidence (other than in relation to the matters aforesaid), make an order directing the employer to carry out the determination in accordance with its terms. 35

(2) The reference in *subparagraph (1)* to a determination of the Labour Court is a reference to a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought or, if such an appeal has been brought, it has been abandoned and the references to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be construed as references to the date of such abandonment. 40 45

(3) In an order under this paragraph providing for the payment of compensation, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981, in respect of 50

the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order.

- 5 (4) An application under this paragraph shall be made to the Circuit Court sitting in the Circuit in which is situated the place of work (within the meaning of the Safety, Health and Welfare at Work Act 2005) at which the employee is normally employed by the employer.



**AN BILLE BREISOIDEACHAIS AGUS OILIÚNA, 2013
FURTHER EDUCATION AND TRAINING BILL 2013**

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of the Bill is to give effect to the Government decision to establish an education and training authority called An tSeirbhís Oideachais Leanúnaigh agus Scileanna (SOLAS) under the aegis of the Department of Education and Skills. The main provisions of the Bill are to provide for the establishment of SOLAS, the dissolution of FÁS and the transfer of the staff and property of the FÁS training division to the newly formed Education and Training Boards. SOLAS will facilitate more coherent integrated national and regional planning across the further education and training sector.

Provisions of Bill

The Bill is divided into four parts and one schedule.

Part 1

Preliminary and General

Part 1 deals with technical matters such as the short title and commencement; definitions of frequently used terms, expenses in the administration of the Act and the repeal of FÁS legislation.

Section 1 deals with the short title and commencement of the Act.

Section 2 deals with the definitions of frequently used terms.

Section 3 provides that any expenses incurred by the Minister in the administration of this Act be paid out of moneys provided by the Oireachtas.

Section 4 provides for the repeal of the Labour Services Act 1987.

Part 2

An tSeirbhís Oideachais Leanúnaigh agus Scileanna

Part 2 provides for the establishment of An tSeirbhís Oideachais Leanúnaigh agus Scileanna (SOLAS), defines the functions of

SOLAS, provides for the membership of SOLAS and the conditions attached thereto, it also includes provisions in relation to funding, general matters relating to the chief executive officer and the staff of SOLAS and other standard housekeeping matters relating to the establishment and operations of the agency.

Section 5 allows the Minister to set the establishment day of SOLAS.

Section 6 provides for the formal establishment of SOLAS.

Section 7 sets out the functions of SOLAS as follows:

- (a) to develop and implement a national strategy for the delivery of further education and training in accordance with *Section 9*;
- (b) to consult the Department of Social Protection and employers to determine the types of education and training programmes to be funded by the Authority and delivered by public and other bodies in accordance with *Section 21*;
- (c) to advance funding to training bodies and other bodies for the provision of further education and training programmes as determined in accordance with *subsection (b)*;
- (d) to provide, or arrange for, the provision of training for employment and to assist in and coordinate the provision of such training by persons other than SOLAS;
- (e) to assess whether or not training boards, and other bodies engaged in the provision of further education and training programmes, to whom moneys have been advanced under *Section 21* perform their functions in an economic, efficient and effective manner;
- (f) in consultation with the Minister for Social Protection, to promote, encourage and facilitate the placement of persons who are in receipt of jobseeker's allowance or jobseeker's benefit in further education and training programmes that are funded, in whole or in part, out of public moneys;
- (g) to promote cooperation between training bodies and other bodies involved in the provision of further education programmes;
- (h) to develop, and facilitate the development, of new and existing further education and training programmes including the establishment of systems designed to monitor the quality of the education and training concerned for the purpose of ensuring that those programmes serve their purpose;
- (i) to provide or assist in the provision of training to persons charged with the delivery of further education and training programmes for the purposes of which moneys have been advanced by SOLAS under *Section 21*;
- (j) conduct, or arrange for the conduct of, research as respects any matters relating to the functions of SOLAS; and

(k) advise the Minister in relation to any matter connected with the functions of SOLAS.

Section 8 provides that the Minister may confer additional functions on the SOLAS with the consent of the Minister for Public Expenditure and Reform.

Section 9 provides that SOLAS shall prepare and submit to the Minister for approval a five year national strategy for the provision of further education and training. SOLAS shall prepare this plan having regard to directions of the Minister, the likely cost of implementing the plan and consultations with the Minister, the Minister for Jobs, Enterprise and Innovation, and the Minister for Social Protection. SOLAS may also consult with appropriate stakeholders including training bodies other providers of further education and training programmes, An tÚdarás um Ard-Oideachas, Enterprise Ireland, Teagasc, Quality and Qualifications Ireland and employers.

Section 10 provides that the membership of the Board of SOLAS shall comprise of eleven members including the chairperson. Nine persons shall be appointed by the Minister, following consultation with the Minister for Social Protection and the Minister for Jobs Enterprise and Innovation, who in the opinion of the Minister have experience and expertise in the following areas:

- (a) matters connected with the functions of SOLAS, or
- (b) matters connected with finance, trade, commerce, corporate governance or public administration.

One person will be a nominated by the Minister for Social Protection and appointed by the Minister.

The chief executive officer of SOLAS will be ex officio a member of the Board of SOLAS.

The chairperson shall be appointed by the Minister from among the members of the Board.

Section 11 sets out the conditions of office of members of the Board of SOLAS and empowers the Minister to remove a member if they contravene this section. This section also provides that a member shall cease to be qualified and shall cease to hold office if they are adjudicated bankrupt, makes a composition or arrangement with creditors, is convicted of any indictable offence in relation to a company, is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, is the subject of an order under section 160 of the Companies Act 1990, or is sentenced to a term of imprisonment by a court of competent jurisdiction.

Section 12 provides for the Minister to fill casual vacancies on the Board of SOLAS.

Section 13 provides for remuneration and allowances to be paid to the members of the Board of SOLAS and for the levels of remuneration to be approved by the Minister with the consent of the Minister for Public Expenditure and Reform.

Section 14 sets out the procedures for the meetings of the Board of SOLAS.

Section 15 provides that where a member of the Board of SOLAS is nominated as a member of Seanad Éireann, elected as a member of either House of the Oireachtas or elected to be a member of the European Parliament, that person shall cease to be a member of the Board. It also provides that where a member of staff is nominated as a member of Seanad Éireann, elected as a member of either House of the Oireachtas or elected to be a member of the European Parliament that staff member shall stand seconded from SOLAS and will not be paid by SOLAS.

Section 16 provides that where a member of the Board has a material interest in matters being discussed, that person shall disclose their interest, absent themselves from the meeting and not be involved in the decision making process relating to that matter.

Section 17 provides that where a member of staff of SOLAS has a material interest in any contracts under consideration that person shall disclose their interest and not be involved in the decision making process relating to that matter.

Section 18 prohibits the unauthorised disclosure of confidential information.

Section 19 allows the Minister to give a direction in writing to SOLAS in relation to the performance of its functions.

Section 20 provides for the Minister to advance moneys provided by the Oireachtas and the National Training Fund to SOLAS with the consent of the Minister for Public Expenditure and Reform. This section includes an amendment to Section 7 of the National Training Fund Act 2000.

Section 21 provides that SOLAS may provide grants subject to terms and conditions to public and private training bodies with the consent of the Minister. SOLAS shall inform the Minister where a training body contravenes these terms and conditions.

Section 22 permits SOLAS to borrow money subject to the approval of the Minister with the consent of the Minister for Public Expenditure and Reform.

Section 23 provides for the appointment of a chief executive officer by SOLAS with the consent of the Minister. This section also provides that the Minister may designate a person to be the first chief executive officer of SOLAS. The chief executive officer will be ex-officio a member of the Board.

Section 24 sets out the functions of the chief executive officer of SOLAS.

Section 25 provides that the chief executive officer of SOLAS shall be accountable to the Public Accounts Committee.

Section 26 provides that the chief executive officer of SOLAS shall be accountable to other Committees established by either House of the Oireachtas.

Section 27 provides that SOLAS may appoint staff whose numbers and conditions of employment are subject to the approval of the Minister with the consent of the Minister for Public Expenditure and Reform.

Section 28 provides for the transfer of staff from FÁS to SOLAS on the establishment day and these staff shall not be subject to less beneficial conditions of service, remuneration or employment than they enjoyed in FÁS.

Section 29 provides that a transferred person's superannuation benefit shall be calculated in accordance with such schemes as applied before the establishment day and the person's pensionable service with SOLAS shall be aggregated with his or her pensionable service and the benefit shall be paid by SOLAS.

Section 30 provides that SOLAS shall submit a three year strategy statement in respect of the organisation not later than 6 months after the establishment of SOLAS and the Minister shall have a copy of the strategy laid before each house of the Oireachtas.

Section 31 requires SOLAS to keep accounts in a format approved by the Minister with the consent of the Minister for Public Expenditure and Reform. The section also requires the accounts for the previous year to be submitted for audit to the Comptroller and Auditor General not later than 1st March each year.

Section 32 requires SOLAS to submit an annual report to the Minister by 31st May each year setting out its activities for the previous year and the Minister shall arrange for the report to be laid before each House of the Oireachtas.

Section 33 allows SOLAS to accept gifts with the consent of the Minister and the Minister for Public Expenditure and Reform.

Section 34 provides protection to a "whistleblower" who in good faith reports an offence under this Act or any other enactment that has been or is being committed, any provision of this Act or any other enactment or rule of law has been or is being contravened, or there has been other serious wrongdoing in relation to SOLAS.

Section 35 prohibits the penalisation of SOLAS employees for making a complaint to a member of the Garda Síochána or a member of the SOLAS Board that a provision of this Act, or any enactment or other rule of law, has been or is being contravened, for making a complaint to the Minister that a direction given by him under this Act has been or is being contravened, for making a complaint to a member of the SOLAS Board that there has been serious wrongdoing in relation to SOLAS, for giving evidence in any proceedings under this Act or any other enactment.

Section 36 provides that any person making a false statement in the context of Section 33 shall be guilty of an offence.

Part 3

Dissolution of An Foras Áiseanna Saothair

Part 3 deals with the dissolution of FÁS, the transfer of property, rights and liabilities from FÁS to SOLAS and the completion of a final set of accounts and annual report in respect of FÁS activities to be laid before each House of the Oireachtas by the Minister.

Section 37 provides for the dissolution of FÁS and also provides that the Director General of FÁS immediately before the establishment of SOLAS shall be accountable to the Public Accounts Committee in respect of matters relating to the dissolved body.

Section 38 transfers certain functions of FÁS to SOLAS including those relating to apprenticeship.

Section 39 transfers land and property from FÁS to SOLAS.

Section 40 transfers rights and liabilities, leases and licences from FÁS to SOLAS.

Section 41 provides that any claim for loss suffered by a person arising out of the performance of any FÁS functions may be pursued against SOLAS. It also provides that any pending legal proceeding against FÁS before the establishment day shall be continued by FÁS.

Section 42 provides that anything commenced by FÁS relating to its functions and not completed prior to the establishment of SOLAS shall be completed by SOLAS.

Section 43 provides that SOLAS shall complete a final set of accounts in respect of the activities of FÁS and submit these accounts to the Comptroller and Auditor General not later than three months after the establishment of SOLAS. SOLAS shall also prepare a final annual report in respect FÁS and submit it to the Minister who will arrange for it to be laid before both Houses of the Oireachtas.

Section 44 provides that any scheme prepared by FÁS shall continue in force following the establishment of SOLAS.

Part 4

Miscellaneous

Part 4 deals with miscellaneous issues such as the transfer of SOLAS staff to the proposed training boards and the inclusion of SOLAS under the Freedom of Information Acts.

Section 45 provides the Minister with the power to designate staff for transfer on a transfer day from SOLAS to the proposed training boards under no less beneficial terms and conditions of service, remuneration and superannuation which they enjoyed immediately prior to the transfer day.

Section 46 — provides that the Freedom of Information Act 1997 shall apply to SOLAS on its establishment.

Schedule

Redress for contravention of section 34

This Schedule provides for the process of obtaining redress where an employee of SOLAS is penalised by SOLAS for making a complaint to a member of the Garda Síochána or a member of the SOLAS Board that a provision of this Act, or any enactment or other rule of law, has been or is being contravened, for making a complaint to the Minister that a direction given by him under this Act has been or is being contravened, for making a complaint to a member of the SOLAS Board that there has been serious wrongdoing in relation to SOLAS, for giving evidence in any proceedings under this Act or any other enactment.

*Department of Education and Skills,
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