



STATUTORY INSTRUMENTS.

S.I. No. 453 of 2021



EDUCATION (LEAVING CERTIFICATE 2021) (ACCREDITED GRADES)
ACT 2021 (WITHHOLDING OF ACCREDITED GRADES AND APPEALS)
REGULATIONS 2021

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I, NORMA FOLEY, Minister of Education in exercise of the powers conferred on me by section 7 of the Education (Leaving Certificate 2021) (Accredited Grades) Act 2021 (No. 8 of 2021), hereby make the following regulations:

1. These Regulations may be cited as the Education (Leaving Certificate 2021) (Accredited Grades) Act 2021 (Withholding of Accredited Grades and Appeals) Regulations 2021.

2. In these Regulations -

“Act of 2021” means the Education (Leaving Certificate 2021) (Accredited Grades) Act 2021 (No. 8 of 2021);

“relevant person” has the same meaning as in section 4 of the Act of 2021.

3. (1)(a) Where the Commission receives information under section 4(2) or (4) of the Act of 2021 relating to a communication referred to in section 4(1) of that Act, the Commission shall, by notice in writing to -

(i) the candidate by whom or for whose benefit the communication concerned was made, and

(ii) the relevant person who provided the information under the said section 4(2),

inform the candidate and the relevant person of the matter and that the Commission intends to carry out a review of the matter.

(b) Where the Commission considers that false or misleading information may have been given in the circumstances provided for in section 5 of the Act of 2021, the Commission shall, by notice in writing to the candidate by or in respect of whom the Commission considers such information may have been given, inform the candidate of the matter and that the Commission intends to carry out a review of the matter.

(2) A notice under paragraph (1) shall include -

(a) in the case of a matter arising under section 4 of the Act of 2021, details of the communication the subject of the information provided under subsection (2) of the said section 4,

(b) in the case of a matter arising under section 5 of the Act of 2021, details of the false or misleading information which it is

considered may have been given in the circumstances provided for in that section,

- (c) a statement that the candidate and, as the case may be, the relevant person may make representations in writing, including by email, to the Commission not later than 14 days after the date of the notice,
- (d) a statement that where no representations are received within the period specified in paragraph (c), the Commission shall, without further notice, proceed to review the matter arising under section 4 or 5, as the case may be, of the Act of 2021,
- (e) the contact details of the Commission, including an email address, for the purposes of making representations, and
- (f) such other information as the Commission considers appropriate to include relating to the conduct of a review referred to in paragraph (d).

4. The Commission may by notice in writing to a candidate or, in the case of a matter arising under section 4 of the Act of 2021, to the relevant person, request the candidate or the relevant person, as the case may be, to provide to the Commission within 7 days of the date of the notice such information as is specified in the notice as the Commission may reasonably require for the purposes of carrying out a review in such form and manner, including by email, as is so specified.

5. (1) A relevant person may withdraw the information, given to the Commission under section 4(2) or (4), as the case may be, of the Act of 2021, by notice in writing to the Commission and signed by the relevant person, before the making of a decision by the Commission under Regulation 6.

(2) Where the Commission has given notice to a candidate under Regulation 3(1), the Commission shall give notice in writing to the candidate concerned of the withdrawal of information under paragraph (1) as soon as practicable after receipt of the notice under that paragraph and no further action shall be taken by the Commission.

6. (1) The Commission shall, not later than the date specified in paragraph (3), make a decision -

- (a) that no further action be taken, or
- (b) to withhold all or any of the accredited grades comprised in the Leaving Certificate 2021.

(2) In making a decision referred to in paragraph (1), the Commission shall take into account -

- (a) the information provided to it under section 4 of the Act of 2021 or available to it under section 5 of that Act, as the case may be,

- (b) any representations made to it under Regulation 3(2), and
- (c) any further information provided to it pursuant to a request under Regulation 4.

(3) The Commission shall make its decision as referred to in paragraph (1) not later than 7 days after the expiration of the later of -

- (a) the period of 14 days referred to in Regulation 3(2)(c) for the making of representations or any extension of that period under Regulation 16, or
- (b) the period of 7 days referred to in Regulation 4 for the provision of information to the Commission or any extension of that period under Regulation 16.

7. (1) The Commission shall give notice in writing to the candidate and, as the case may be, the relevant person, of the decision referred to in Regulation 6.

(2) Where the Commission makes a decision referred to in Regulation 6(1)(b), the notice given under paragraph (1) shall include -

- (a) the reasons for the decision,
 - (b) a statement that -
 - (i) the candidate may appeal the decision not later than 7 days after the date of the notice,
 - (ii) the appeal shall state -
 - (I) the subject matter of the appeal, and
 - (II) the grounds of appeal,
 - (iii) the appeal be accompanied by such information and documents as the candidate considers necessary in support of the appeal, and
 - (iv) the appeal and accompanying information and documents shall be submitted in the form and manner, including by email, provided for in the notice,
- and
- (c) the contact details of the Commission, including an email address, for the purposes of making the appeal.

8. (1) Where an appeal is made under Regulation 7, the Commission shall appoint an appeals officer to consider the appeal.

(2) The Commission shall, by notice in writing, inform the candidate of the name and contact details of the appeals officer.

(3) Within 7 days of receipt of an appeal, the Commission shall give to the appeals officer -

- (a) a copy of the grounds of appeal and all accompanying information and documents,

- (b) copies of all information, records and documents held by the Commission as may be reasonably necessary for the purposes of the appeal, and
 - (c) a statement from the Commission detailing the extent to which it accepts or rejects the reasons for the appeal submitted by the candidate.
- (4)
- (a) The appeals officer shall give a copy of the Commission's statement referred to in paragraph (3)(c) to the candidate as soon as practicable after the statement is received by the appeals officer.
 - (b) The candidate may give to the appeals officer a reply in writing to the Commission's statement not later than 7 days after the date of sending of the statement to the candidate.
 - (c) The candidate's reply shall only address matters addressed in the Commission's statement.
 - (d) A copy of the candidate's reply shall be sent by the appeals officer to the Commission as soon as practicable after receipt of such reply.
- (5)
- (a) Where the appeal relates to a matter arising under section 4 of the Act of 2021, the appeals officer shall give a copy of the grounds of appeal to the relevant person who provided the information concerned under section 4(2) as soon as practicable after receipt of the grounds of appeal under paragraph (3).
 - (b) The relevant person referred to in paragraph (a) may give to the appeals officer a reply in writing to the grounds of appeal not later than 7 days after the date of sending of the grounds of appeal to the relevant person.
 - (c) The relevant person's reply shall only address matters addressed in the grounds of appeal.
 - (d) A copy of the relevant person's reply shall be sent by the appeals officer to the candidate as soon as practicable after receipt of such reply.

9. (1) The appeals officer may by notice in writing to the candidate, the Commission, or the relevant person, as the case may be, request the candidate, the Commission or the relevant person to provide to the appeals officer within 7 days of the date of the notice such information relating to the subject matter of the appeal as is specified in the notice in such form and manner, including by email, as is so specified.

(2) The appeals officer shall give to the candidate, the Commission and, as the case may be, the relevant person any information provided to the appeals officer under paragraph (1) which the appeals officer intends to take into account in making a determination.

10. An appeals officer shall be afforded every facility and cooperation by the candidate, the Commission and, as the case may be, any relevant person, as may reasonably be required by the appeals officer for the purposes of the performance of his or her functions under these Regulations.

11. (1) A candidate who makes an appeal under Regulation 7 may withdraw the appeal by notice in writing to the Commission, signed by the candidate, before the making of a determination by the appeals officer.

(2) The Commission shall notify the appeals officer and, as the case may be, any relevant person, of the withdrawal of an appeal under paragraph (1) as soon as practicable after receipt of the notice under that paragraph.

12. In making a determination in relation to an appeal, an appeals officer shall take into account the grounds of appeal, information, documents, records and statement provided to the appeals officer as referred to in Regulation 8(3), the candidate's reply (if any) to the Commission's statement as referred to in Regulation 8(4), the relevant person's reply (if any) to the grounds of appeal as referred to in Regulation 8(5) and any information provided to the appeals officer under Regulation 9.

13. (1) The appeals officer shall make a determination -

- (a) disallowing the appeal, or
- (b) subject to paragraph (2), allowing the appeal.

(2) A determination may be made to allow the appeal in respect of one or more accredited grades only which have been withheld by the Commission pursuant to the decision referred to in Regulation 6(1)(b).

(3) Where a determination is made to allow the appeal, or to allow the appeal in respect of one or more accredited grades, the Commission shall issue the accredited grade or grades concerned to the candidate as soon as practicable.

14. The appeals officer shall submit the determination made in respect of the appeal to the Commission not later than 21 days after his or her appointment as appeals officer in respect of the appeal concerned and shall, at the same time, provide a copy of the determination to the candidate concerned.

15. A notice required to be given by the Commission or an appeals officer under these Regulations shall be addressed to the person concerned by name and may be given to the person in one of the following ways:

- (a) by sending to the email address of the person concerned which has been provided to the Commission for the purposes of correspondence and in any other case by registered post to the candidate's home address and, as the case may be, the relevant

person's home address, where known or to any other address for correspondence provided to the Commission;

- (b) by delivering it to the person;
- (c) by leaving it at the address at which the person ordinarily resides or, in a case in which any other address for correspondence has been provided to the Commission, at that address;
- (d) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which any other address for correspondence has been provided to the Commission, to that address.

16. (1) Any of the periods referred to in Regulations 3(2)(c), 4, 6(3), 7(2)(b)(i), 8(3), 8(4)(b), 8(5)(b), 9(1) and 14 may be extended by the Commission or an appeals officer, as the case may be, in exceptional circumstances, for such further period as the Commission or the appeals officer considers reasonable in the circumstances concerned.

(2) Where a period specified in paragraph (1) is to be extended, the Commission or the appeals officer, as the case may be, shall give notice in writing to the candidate and, as the case may be, the relevant person, regarding the extension or any further extension and the period of that extension or further extension, as the case may be.

17. The Commission shall appoint a panel of suitable persons to consider appeals made under Regulation 7 on such terms and conditions as the Commission may determine including -

- (a) the period for which they are appointed,
- (b) the payment of fees and expenses (with the consent of the Minister and the Minister for Public Expenditure and Reform),
- (c) the form and manner in which they may resign from the panel,
- (d) revocation of appointment to the panel on stated grounds including but not limited to the following:
 - (i) that the person has become incapable through ill health or otherwise of effectively performing the functions of the office, or
 - (ii) has engaged in serious misconduct,
 and
- (e) the grounds on which a person's appointment shall cease including but not limited to the following:
 - (i) conviction on indictment of an offence;
 - (ii) conviction of an offence involving fraud or dishonesty.



GIVEN under my Official Seal,
7 September, 2021.

NORMA FOLEY,
Minister for Education.

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