



**An Bille um Cháilíochtaí agus Dearbhú Cáilíochta
(Oideachas agus Oiliúint) (Leasú), 2018**
**Qualifications and Quality Assurance (Education and
Training) (Amendment) Bill 2018**

Meabhrán Míitheach agus Airgeadais
Explanatory and Financial Memorandum



**AN BILLE UM CHÁILÍOCHTAÍ AGUS DEARBHÚ CÁILÍOCHTA
(OIDEACHAS AGUS OILIÚINT) (LEASÚ), 2018
QUALIFICATIONS AND QUALITY ASSURANCE (EDUCATION
AND TRAINING) (AMENDMENT) BILL 2018**

EXPLANATORY AND FINANCIAL MEMORANDUM

This Explanatory Memorandum does not form part of the Bill and does not purport to be a legal interpretation.

Purpose of the Bill

The purpose of this Bill is to amend and extend the Qualifications and Quality Assurance (Education and Training) Act 2012. The Bill addresses a number of issues that have been identified as impeding Quality and Qualifications Ireland (QQI) from fulfilling its intended role in relation to the quality assurance of the further and higher education sectors. The main amendments to the Qualifications and Quality Assurance (Education and Training) Act, 2012 provided for are as follows:

- To give QQI the explicit authority to ‘list’ awarding bodies and to include their qualifications in the Framework
- To provide a legal basis for QQI to examine the bona fides and financial capacity of providers
- To facilitate information sharing by QQI with other State bodies
- To strengthen and improve the approval process for quality assurance procedures
- To involve providers more centrally in the application process for recognition of prior learning (RPL)
- To facilitate the introduction of the International Education Mark (IEM)
- To provide for a national scheme for the protection of enrolled learners
- To empower QQI to prosecute ‘essay mills’ and other forms of academic cheating
- To provide a legal basis for QQI to charge ‘relationship fees’ to providers

Provisions of Bill

The Bill has 36 Sections divided into 3 Parts.

Part 1

Preliminary and General

Section 1 - Short Title and Commencement provides for the short title of the Bill and for its commencement on the days or days that the Minister by order appoints.

Section 2 - Definition provides for the definition of “Principal Act” to mean the Qualifications and Quality Assurance (Education and Training) Act 2012 in this Bill.

Part 2

Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012

Section 3 - Amendment of section 2 of Principal Act (Interpretation) provides for the amending of existing definitions and the introduction of newly defined terms within the 2012 Act.

Section 4 - Amendment of section 9 of Principal Act (Functions of Authority) provides for amendments to the functions of QQI including specific statutory functions for the inclusion of awards within the National Framework of Qualifications and the listing of awarding bodies.

Section 5 - Amendment of Principal Act – furnishing of information to other bodies provides for a specific legislative function for QQI to share relevant information with other State bodies including the Higher Education Authority and SOLAS.

Section 6 - Amendment of section 27 of Principal Act (Quality assurance) provides for the periodic review and updating by QQI of quality assurance guidelines and for the issuance of different guidelines for different types of programmes including for the new category of listed awarding bodies.

Section 7 - Amendment of section 28 of Principal Act (Obligation of providers to prepare quality assurance procedures) contains provisions to clarify the scope of quality assurance procedures established by providers having regard to the guidelines issued by QQI.

Section 8 - Condition precedent for provisions of Principal Act to be invoked by relevant providers – criteria specified in regulations must be met provides QQI with statutory powers to evaluate a provider’s corporate fitness. These provisions will enable QQI to examine the bona fides of a provider and also the capacity of a provider in the round to engage with quality assurance processes. The powers are to be extended by means of statutory instrument so as to provide for regulatory responsiveness to innovative modes of provision and forms of provider organisation.

Section 9 - Amendment of section 30 of Principal Act (Quality assurance procedures and relevant providers, other than previously established universities) contains provisions to allow QQI to impose certain conditions on an education and training provider whose quality assurance procedures it has approved.

Section 10 - Amendment of section 34 of Principal Act (Review by Authority of quality assurance procedures of relevant providers) provides for QQI to consult with SOLAS when conducting reviews of the quality assurance procedures of further education and training providers. This parallels existing provisions in the 2012 Act for consultation with the Higher Education Authority in respect of quality assurance reviews of higher education institutions.

Section 11 - Amendment of section 36 of Principal Act (withdrawal by Authority of approval of quality assurance procedures) provides for the occasions when QQI can withdraw approval of quality assurance procedures without conducting a review.

Section 12 - Amendment of section 36 of Principal Act (withdrawal by Authority of approval of quality assurance procedures) provides for QQI to consult with SOLAS when conducting quality reviews of further education and training providers. This parallels existing provisions in the 2012 Act for consultation with the Higher Education Authority in respect of quality assurance reviews of higher education institutions.

Section 13 - Amendment of section 43 of Principal Act (Framework of qualifications) provides a legal basis for the inclusion of awards made by Designated Awarding Bodies (the 7 Universities, the Dublin Institute of Technology and the Royal College of Surgeons in Ireland) in the National Framework of Qualifications. It further provides for QQI to establish policies and criteria for awards to be included within the Framework and for the establishment of different policies and criteria for different awards and different awarding bodies.

Section 14 - New section 43A of Principal Act - offence to provide or advertise cheating services provides QQI with powers to prosecute the provision or advertising of essay mills and other forms of academic cheating.

Section 15 - Amendment of section 44 of Principal Act (Application for validation of programme of education and training) provides necessary amendments to facilitate the extension of the awarding powers of Institutes of Technology to include awards up to level 9 on the National Framework of Qualifications. Institutes of Technology will be required to apply for validation for doctoral degree level awards only.

Section 16 - Amendment of section 45 of Principal Act (Determination of application for validation of programme of education and training) provides that QQI validation for all education and training programmes will be time-limited.

Section 17 - Amendment of section 47 of Principal Act (Withdrawal of programme validation) provides for the occasions when QQI can withdraw programme validation without conducting a review.

Section 18 - Amendment of section 48 of Principal Act (Arrangement between providers and awarding bodies other than the Authority) provides for a transitional period of 5 years for existing arrangement between providers and awarding bodies other than the Authority during which Section 21 will not apply. The transition period will allow Institutes of Technology and Education and Training Boards to continue their arrangements with awarding bodies other than QQI, where the award of that body is not included in the National Framework of Qualifications, for a period of up to five years.

Section 19 - Amendment of section 50 of Principal Act (Making of an award) provides that learners seeking access to Recognition of Prior Learning (RPL) processes should apply in the first instance to an education and training provider rather than to QQI. This is a clarification of existing practice rather than a change in policy.

Section 20 - Amendment of section 52 of Principal Act (Request by provider for delegation of authority to make award) provides for QQI to examine the suitability of a provider's quality assurance procedures in the context of determining a provider's request for delegated authority. It also provides for QQI to define a 'class of programmes' for the purposes

of delegating authority to enable a more focussed approach to delegating authority where it is warranted.

Section 21 - Amendment of section 53 of Principal Act (Determination of request for delegation of authority to make award) is amended to ensure compliance with revised learner protection obligations in section 28 of this Bill.

Section 22 - New sections 55A to 55I of Principal Act - awards included within the Framework (process by which awards acquire such status) contains provisions to authorise QQI to list awarding bodies and to include their qualifications in the National Framework of Qualifications. It establishes that providers associated with listed awarding bodies shall establish and implement quality assurance procedures and other provisions similar other providers with programmes leading to NFQ awards. It also contains provisions for the establishment by QQI of procedures and criteria for the inclusion of awards of listed bodies in the Framework.

Section 23 - Amendment of section 57 of Principal Act (Review by Authority of implementation of procedures for access, transfer and progression) provides for QQI to consult with SOLAS when conducting reviews of the implementation of procedures for access, transfer and progression of further education and training providers. This parallels existing provisions in the 2012 Act for consultation with the Higher Education Authority in respect of quality assurance reviews of higher education institutions.

Section 24 - Amendment of section 60 of Principal Act (Code of Practice for provision of programme to international learners) provides for an extension of the remit of the International Education Mark Code of Practice to include learners outside the State who receive education and training provision leading to Irish awards. This is consistent with international best practice.

Section 25 - Amendment of section 61 of Principal Act (International education mark) contain provisions to facilitate the introduction of the International Education Mark. Provisions are included to ensure that the Mark will only be awarded those education and training providers with relevant quality assurance oversight. The possibility of variants of the International Education Mark including for English Language education and training is also provided for.

Section 26 - Amendment of section 63 of Principal Act (Review by Authority of provider's compliance with code of practice and provider's use of international education mark) provides for the occasions when QQI can withdraw a provider's authorisation to use the International Education Mark without conducting a review.

Section 27 - Amendment of section 64 of Principal Act (Interpretation) provides for the expansion of programmes to which the Protection of Enrolled Learners will apply and defines key terms for use in this Part.

Section 28 - Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners) contains provisions to facilitate the introduction of a new national scheme for the protection of enrolled learners (PEL) – the Learner Protection Fund. This Fund will apply to all education and training providers engaging with the National Framework of Qualifications with the exception of public bodies. The Royal College of Surgeons in Ireland, the Education and Training Boards and the Royal Irish Academy of Music will now be specified in the Act as exempted bodies for the purposes of PEL. Provisions are also included to introduce new protection for enrolled learner arrangements specific to the

Designated Awarding Bodies (the 7 Universities, the Dublin Institute of Technology and the Royal College of Surgeons in Ireland) to cover their linked providers (providers offering programmes that lead to awards from the Designated Awarding Bodies).

Section 29 - New section 66 of Principal Act (Protection of Enrolled Learners Fund) provides for the establishment, governance and operation by QQI of the Protection of Enrolled Learners Fund.

Section 30 - Payment of annual charges into Learner Protection Fund and related matters contains provisions relating to the annual charges payable into the fund by providers. This section further provides for the notification by a provider to QQI where a protected programme default event occurs.

Section 31 – Amendment of section 67 of Principal Act (Obligation on providers to furnish information to enrolled learners) amends the obligations on a provider to inform enrolled learners of recognition of the award within the National Framework of Qualifications (NFQ), to instead refer to ‘inclusion in the Framework’. This would allow for the ‘associated provider’ of a ‘Listed Awarding Body’ to align with these statutory obligations.

Section 32 - Amendment of section 79 of Principal Act (Database) provides for an exemption for the listing of Junior Certificate, Leaving Certificate and other post-primary programmes and awards from QQI’s database of awards. It was not the intention when making provisions for this database in the 2012 Act that these awards would be included.

Section 33 - Amendment of section 80 of Principal Act (Fees) provides a legal basis for QQI to charge fees for certain existing services such as periodic quality reviews and for new function contained in this Bill such as the assessment of applications to become a listed awarding body.

Section 34 - Amendment of section 84 of Principal Act (Transitional and savings provision for Act of 1999) provides for the transitional and savings provisions in the Qualifications and Quality Assurance (Education and Training) Act 2012 to be time bound. Specifically, this means that QQI validation for all education and training programmes will be time-limited.

Part 3

Amendments to other Acts

Section 35 - Amendment of Regional Technical Colleges Act 1992 provides for the granting of award making powers, with the exception of doctoral awards, to all of the Institutes of Technology.

Currently all of the Institutes of Technology (with the exception of the Dublin Institute of Technology) have delegated authority from QQI to make awards from levels 6 to 9 of the National Framework of Qualifications. 7 of the 13 Institutes of Technology currently have delegated authority to make awards at level 10 (doctoral degree level).

In contrast, the Universities (and the Dublin Institute of Technology and the Royal College of Surgeons) are Designated Awarding Bodies, which means that they are self-awarding bodies. There is therefore a legislative difference in the relationship between QQI and the Universities and the Institutes of Technology.

This Section addresses this legislative difference by providing for amendments to the Regional Technical Colleges Act of 1992 to grant award making powers, with the exception of doctoral awards, to all of the Institutes of Technology. This will put the Institutes of Technology on an

equal footing with the Designated Awarding Bodies with which they are expected to establish regional and thematic clusters, as per the goals of the National Strategy for Higher Education to 2030. It will create a single, coherent quality assurance and qualifications space amongst public higher education institutions.

Provisions are also included to strengthen the independent control of the Academic Councils of the Institutes of Technology to bring them into line with those of the Designated Awarding Bodies. The autonomy of the academic decision-making of the Academic Council and its independence from the governing authority is necessary to support its awarding powers.

Section 36 – Construction of references in other enactments to awards recognised within the Framework provides for references to awards ‘recognised within the National Framework of the Qualifications’ to be construed as awards ‘included in the Framework’.

Financial Implications

This Bill is expected to be cost neutral to the Exchequer.

In the longer term it is anticipated that this legislation will be of substantial benefit to the Exchequer as it will safeguard the integrity of the National Framework of Qualifications, and will improve standards in the international education sector.

*An Roinn Oideachais agus Scileanna,
Lúnasa, 2018.*