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An Comhchoiste um Oideachas agus Scileanna

Tuarascáil maidir leis an Achoimre ar na hAighneachtaí -

An Bille um Cháilíochtaí agus Dearbhú Cáilíochta (Oideachas agus Oiliúint) (Leasú), 2018

Samhain 2018

Houses of the Oireachtas

Joint Committee on Education and Skills

Report on the Summary of Submissions -

Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018

November 2018

32/ES/16

Contents

1. Foreword

The Joint Committee on Education and Skills requested submissions on the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 from stakeholders.

The Committee welcomes many parts of the proposed Bill, in particular powers to prosecute 'essay mills' and other forms of academic cheating, the Learner Protection Fund (LPF) and the International Education Mark (IEM). These measures will quality assure the qualifications awarded and will put protections in place to safeguard students so that their education can continue should private colleges get into difficulty.

However the Committee identifies that, of particular concern is the addition of further categories and more clarity is needed on these particular points as well as the others referred to in the in the report.

On behalf of the Committee, I would like to thank the stakeholders for taking the time to make their submissions on the proposed Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018.

Fiona O'Loughlin

Fiona O'Loughlin T.D.
Chairman
November 2018

2. Background

The stated purpose of this Bill is to amend and extend the Qualifications and Quality Assurance (Education and Training) Act 2012. It proposes to address a number of issues that have been identified as impeding Qualifications and Quality Assurance Authority of Ireland from fulfilling its intended role in relation to the quality assurance of the further and higher education sectors.

[References to 'the Authority' can be construed as referring to the Qualifications and Quality Assurance Authority of Ireland unless otherwise stated/implied.]

The key changes being proposed by the Minister for Education and Skills in the *Qualifications and Quality Assurance (Amendment) Bill* include:

- new powers to prosecute 'essay mills' and other forms of academic cheating;
- a Learner Protection Fund, which will support students to complete their studies if their college closes;
- an International Education Mark (IEM), awarded by QQI, will provide international students with confidence that their college or school is reputable;
- provide for the Institutes of Technology to be Designated Awarding Bodies in line with the Universities;
- powers to check a provider's *bona fides* to ensure that it is fully equipped to provide a programme of education and training;
- give QQI the power to 'list' awarding bodies and to include their qualifications in the National Framework of Qualifications to allow awards made by private, professional and non-national awarding bodies, where appropriate, in the Framework;
- information sharing by QQI and other State bodies to ensure a coordinated approach to regulation of the sector;
- to strengthen and improve QQI's approval processes for provider's quality assurance procedures; and;

- to involve education and training providers more centrally in the application process for recognition of prior learning (RPL).[1],[2]

3. Recommendations

Based on the common themes and areas of concern detailed in the submissions by stakeholders, the Committee recommends that:

- consultation with stakeholders be undertaken in relation to all transitional arrangements and processes of development of new policies and procedures by the Authority to ensure business continuity and minimal disruption in the provision and availability of qualifications for learners;

- a sufficient period of time is given for a consultation process on any policies and criteria before the operative date of new legislation to enable Community education providers who may consider becoming an associated provider of a new listed awarding body to make an informed decision;

- that, in relation to Community Education Providers, the Authority give appropriate consideration to the broader external support structures available to individual providers including an evaluation of all internal and external supports available to a provider;

- the Authority ensures that processes for the recognition of other awarding bodies are fit for purpose, proportionate and risk based, taking cognisance of the experience of these awarding bodies and of the recognition process applied in their home jurisdictions;

[1] The Learner Protection Fund will strengthen the existing system of learner protection and ensuring that students are allowed to finish their programmes of education and training in the event that their programme ceases prematurely. This Fund will apply to all education and training providers engaging with the National Framework of Qualifications with the exception of public bodies.
[2] Information Available at :https://www.education.ie/en/Press-Events/Press-Releases/2017-Press-Releases/PR2017-15-05.html, last accessed 19 October, 2018.

- quality assurance and programme validation are proportionate and fit for purpose, particularly in relation to quality assurance for research degrees;

- clarification of the terms, including roles and responsibilities of, "relevant providers" and "linked providers", "listed awarding bodies", "designated awarding bodies" is provided;

- clarification is provided on the implications of the proposed amendment to section 61 (7) (b) for designated awarding bodies and linked providers in terms of anticipated assessment for authority to use the International Education Mark;

- the proposal to provide the Authority with powers to prosecute those advertising/operating essay mills and other forms of academic cheating explicitly includes organisations/corporations as well as individuals, including another enrolled learner in the same institution;

- online learner identity authentication for student completing assessments in online learning environments is sufficiently robust to safeguard online learner identity authentication approaches;

- the criteria for exempting bodies from paying into the Learner Protection Fund (LPF) are transparent and equitable and place the needs of students at the forefront;

- consideration be given to exempting 'not-for-profit community education providers', from payment into the new Leaner Protection Fund, due to their role in providing opportunities for access to education to the disadvantaged, underserved, and most hard to reach learners; and

- clarification is necessary in relation to how a designated awarding body is made aware that a linked provider has not paid into the Learner Protection Fund and how this situation is remedied.

In submissions from two trade Unions [SIPTU and Unite] it was noted that most of the recommendations may be more appropriate to other legislation. However, the Committee requests that the Minister for Education and Skills bring the following recommendations [and the full submissions of the unions] to the attention of his Cabinet colleagues:

the Committee also recommends that:

- additional resources necessary to carry out any additional functions and duties are provided in advance of the implementation of revised legislation and that all hours worked in should be fully paid and contractual; and

- consideration be given to introducing measures to address the casualisation and precarious nature of employment in the ELT sector thereby providing an opportunity for Ireland to emerge as a world leader in the provision of English language teaching by the retention of qualified teachers.

4. Summary of Submissions on the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018

I. Department of Education and Skills

Government approval for the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 (the 2018 Bill) was received on 13th July 2018 and the text of the Bill was published on 1st August 2018.

The Department of Education and Skills (DES) submission states that the Bill contains no new regulatory or policy proposals. The Bill is set out in 3 Parts containing 36 Sections and the legislative amendments contained in the Bill are technical which enables provisions to introduce deferred policies, to clarify, strengthen and make the operation of existing policies more efficient.

The DES outline the main amendments to the *Qualifications and Quality Assurance (Education and Training) Act* 2012 are:

- 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 facilitate the introduction of the International Education Mark (IEM);
- to provide for a national scheme for the protection of enrolled learners;
- to involve providers more centrally in the application process for recognition of prior learning (RPL);
- to provide the power to prosecute 'essay mills' and other forms of academic cheating; and
- to provide a legal basis for QQI to charge 'relationship fees' to providers.

II. Quality and Qualifications Ireland

The Quality and Qualifications Ireland (QQI) state that the amendments to the legislation fall into two broad categories - four substantial amendments and some minor amendments. The four substantial amendments that the QQI identify are summarised below.

Section 8 (Section 29a 2012 Act) To provide a legal basis for QQI to examine the *bona fides* and financial capacity of providers

The proposed Ministerial regulations will provide QQI with powers to evaluate a provider's corporate fitness, including the *bona fides* and financial status of a provider and their capacity to engage with quality assurance processes in the broadest sense. This will be an important element in underpinning and supporting the integrity of the education and training sector in the State. QQI will also have the power to withdraw from its engagement with any provider in circumstances where the provider fails to meet the specified criteria.

Section 22 (Section 55A-55I 2012 Act) Authority to 'list' awarding bodies to include their Qualifications in the Framework

Changes to the Framework under the proposed 2018 Bill

There are many other qualifications offered in the State that are widely used to meet the economic and social needs of learners. These include qualifications made by professional bodies in the areas of law and accountancy, vocational and technical qualifications issued by UK awarding bodies such as City and Guilds, and qualifications made by international organisations or sectoral bodies often linked to specific industries, technologies or occupations. Sections 55A-55I provide for the establishment of a new category of '*Listed Awarding Bodies'* interested in voluntary, regulated access to the Framework.

Section 24, 25, 26 (Section 60, 61, 63 2012 Act) To facilitate the introduction of the International Education Mark (IEM)

To overcome limitations in the 2012 that impeded the introduction of the IEM, a number of amendments have been included in the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018.

The amendments proposed provide that:

- variant forms of the IEM are possible for different groups of providers or classes of programmes, including in the first instance, an IEM for English language education;
- providers can apply for authorisation to use the IEM if all programmes lead to NFQ awards or in respect of each programme which leads to an NFQ award, or in respect of English language provision;
- the Code of Practice, which providers must comply with in order to obtain authorisation to use the IEM, is extended to learners undertaking programmes of higher education and training outside the State (Transnational Education) leading to NFQ awards;
- the possibility of specifying different Codes of Practice for different providers or types of provision is provided for; and
- a provision is included for QQI to withdraw IEM authorisation if a provider no longer wishes to have authorisation to use the IEM, without the need for a review to be conducted.

Section 27-31 (section 64-67 2012 Act) A national scheme for the Protection of Enrolled Learners (PEL)

Revised Approach to PEL in the 2018 Bill

The Bill provides for amendments to Part 6 of the 2012 Act to allow for the introduction of a national scheme for PEL and a Learner Protection Fund (Fund). The new arrangements will apply to all providers engaging with the National Framework of Qualifications, e.g. providers with programmes leading to QQI awards, linked providers, listed awarding bodies and their associated providers, and English language education providers that receive authorisation to use the International Education Mark (IEM). The Bill will therefore result in a significantly expanded provider base to support a national PEL scheme. Publicly funded education

and training providers will continue to be explicitly exempted from these provisions. The Bill provides the Minister, with the consent of the Minister for Public Expenditure and Reform, with powers to prescribe procedures for the establishment, maintenance and operation of the Fund. The Minister will also prescribe the annual charge to be paid into the Learner Protection Fund. Each provider offering a programme of three months duration or longer, leading to an award included in the Framework and accepting monies from or on behalf of learners in respect of that programme, and providers of English language programmes for which authorisation to use the IEM has been received, will pay an annual charge to the Learner Protection Fund.

If a provider ceases to provide a programme, for any reason, the Fund would be used by QQI to:

- fund the teaching out of the original programme where possible;
- fund the payment of fees for the transfer of an enrolled learner onto a similar programme of another provider; or
- in circumstances where the learner considers, with the agreement of QQI, that it is not practicable to complete the programme with another provider, QQI will refund the learner, or the person who paid the moneys on their behalf, the moneys most recently paid in respect of the programme for the current academic year.

The PEL model outlined in the 2018 Bill is designed to give equal protection to all learners enrolled on programmes leading to national awards and with providers that are authorised to use the IEM. It will also support QQI in delivering on its legislative remit to ensure that an alternative programme of education is made available to each learner affected by a programme cessation.

Section 8 will provide for an examination of the capacity of a provider to engage with QQI in all aspects of corporate governance and quality assurance. In addition to an examination of quality assurance processes,

QQI will have the power to examine the corporate fitness and financial robustness of providers.

III. Education and Training Boards Ireland

The Education and Training Boards Ireland (ETBI) made recommendations in relation to the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018.

The recommendations are as follows:

1. It is recommended to the Committee, that the Authority be advised that transitional arrangements and processes of development of new policies and procedures by the Authority, must seek to ensure business continuity and minimal disruption in the provision and availability of qualifications for learners;

2. The Committee is requested to advise the Authority that transitional arrangements should allow for new arrangements with other awarding bodies to be entered during this period;

3. It is recommended to the Committee, that the Authority is advised that processes for the recognition of other awarding bodies must be fit for purpose, proportionate and risk based, taking cognisance of the experience of these awarding bodies and of the recognition process applied in their home jurisdictions;

4. It is recommended to the Committee that the Authority is requested, in consultation with the Education and Training Boards, to ensure the regulatory requirements for quality assurance and programme validation are proportionate and fit for purpose, and that the principle of proportionality should be an underpinning principle;

5. The Committee is requested to seek confirmation from the Authority, SOLAS and the Department of Education and Skills, that the Statutory Review of the 16 Education and Training Boards should not commence until consultation between the Authority and SOLAS has taken place and review procedures established on this basis;

6. It is recommended that such consultation be established on a formal basis and should include representatives from the Education and Training Boards;

7. It is recommended to the Committee that confirmation is sought from relevant funding bodies that sufficient resources are available in the Authority to regulate and enable providers to quality assure their programmes and services outside the state, to implement the legislation provisions related to the Code of Practice and International Education Mark;

8. It is recommended that the Committee request that state enterprise development agencies, engaged in developing the international market for Irish Education and Training would engage with further education and training stakeholders, such as the Education and Training Boards, to explore opportunities for new markets for Irish further education and training abroad;

9. The Committee is requested to advise the Authority to consider mechanisms to expedite the recognition process for qualifications, utilising existing sectoral and professional frameworks; and

10. It requested that the Authority recommend that a working group of key national stakeholders, to include the Department of Education and Skills, SOLAS, the Authority and the Education and Training

Boards, be convened to agree a national approach and roadmap for recognition of prior learning in further education and training.

IV. Higher Education Authority

The Higher Education Authority (HEA) made a brief submission to the Committee and noted its particular support for the amendments proposed in Sections 5, 8, 19, 22 and 24,25 and 26, namely the:

- Facilitation of data sharing between QQI and other state bodies such (Section 5);
- Provision of a legal basis to assess the financial capacity and overall *bona fides* of providers (Section 8);
- Involvement of Providers in Recognition of Prior Learning (Section 19);
- Authority to produce a list of awarding bodies & inclusion of their qualifications in the National Framework of Qualifications (Section 22);
- Introduction of the International Education Mark (Sections 24/25/26); and
- Establishment of Institutes of Technology as awarding bodies (Section 35).

V. Irish University Association

The Irish University Association (IUA) state that they welcome the above Bill, insofar as it proposes to address issues, that have impeded Quality and Qualifications Ireland (QQI) from fulfilling its intended role in relation to the quality assurance of the further and higher education sectors. In particular, they welcome the proposed provisions to facilitate the introduction of the International Education Mark, as well as the establishment of a Learner Protection Fund, in order to ensure the highest

standards in the international education sector and uphold the strong reputation of Irish education.

The IUA had the following comments to make on the below sections of the Bill:

Section 3 – Amendment of Section 2 of Principal Act (Interpretation)

1. The Bill introduces the category of "associated providers" (meaning, see Section 55F, "a provider that enters into an arrangement with a listed awarding body under which arrangement the provider provides a programme of education and training that satisfies all of the prerequisites for an award of the listed awarding body that is included within the Framework"), further to the categories of "relevant providers" and "linked providers". The necessity for this proposed additional category of provider is unclear and should be clarified, particularly when the introduction of additional categories risks obfuscating the relationships between providers which could be confusing. At this time, we have serious concerns that the introduction of the category of associated providers would lead to the unwelcome practice of serial franchising of programmes of education and training. The IUA has also concerns that it appears that the purpose of its introduction is to address issues with Quality and Qualifications Ireland (QQI) powers which could be better addressed through the existing categories of providers.

2. The Bill also introduces "listed awarding bodies" (meaning, see Section 55A(1)(a), "an awarding body whose name, for the time being, appears in the list of awarding bodies"), further to "designated awarding bodies". The criteria for appearing in this proposed list of awarding bodies needs to be made explicit in order to ensure confidence and trust in the system. Moreover, it appears that the proposed list of awarding bodies will not include designated awarding bodies (see Section 55A-55I). This could lead to serious issues, both domestic and international, as regards the

clarity and transparency of the system as a whole. For example, from the perspective of prospective international students searching the QQI website for information on Irish higher education institutions' awards and recognition of these awards, it could be confusing to consult a list of awarding bodies that excludes designated awarding bodies (and therefore the universities). Furthermore, the Bill should better clarify whether, if listed awarding bodies exclude designated awarding bodies, an associated provider enters into an arrangement with a listed awarding body in the same way that a linked provider currently enters into an arrangement with a designated awarding body.

3. A "previously established university"/designated awarding body falls into the category of relevant provider. Multiple Sections of the Bill appear to apply to relevant providers but not to designated awarding bodies as autonomous institutions. Therefore, consideration should be given in the Bill to excluding designated awarding bodies from the category of relevant provider. This would ensure greater clarity as the category would refer only to providers who are subject to the authority of QQI to (a) validate their awards, (b) receive delegated authority to provide awards, (c) validate their application for recognition as a listed awarding body or for their awards to be recognised within the National Qualification Framework. Moreover, clarification is needed where Sections of the Bill relate to linked providers as a category of relevant providers but do not in effect apply as the function is performed by designated awarding bodies which are exempt, for example in regards to the validation of awards.

4. We support the proposed explicit criteria which a programme of education and training must satisfy in order to be validated by QQI. However, Section 2(2) defines: "For the purposes of this Act, a programme of education and training is validated where the Authority confirms under section 45 that the provider of the programme has satisfied the Authority that, in respect of the period for which, by virtue of subsection (1A) or (1B) of section 45, the validation is to have effect: …".

The Bill should clarify that this refers only to QQI awards (validated by the Authority) and not to those of designated awarding bodies with linked providers.

Section 6 - Amendment of section 27 of Principal Act (Quality assurance)

5. The IUA has concerns that the proposed introduction of additional clause Section 27(6)(b) whereby QQI "may issue different quality assurance guidelines for different classes of programmes or different types of provision" could significantly impact current quality assurance arrangements for universities. While this has already happened in relation to QQI Core Statutory Quality Assurance Guidelines, QQI Statutory Sector-Specific Quality Assurance Guidelines for Designated Awarding Bodies and QQI Statutory Quality Assurance Guidelines for Research Degree Programmes, as well as for Blended Learning, the IUA has serious concerns about the potential creeping erosion of university autonomy if additional layers of statutory compliance requirements are imposed.

Section 7 - Amendment of section 28 of Principal Act (Obligation of providers to prepare quality assurance procedures).

6. Section 28 (3) applies to relevant providers including designated awarding bodies. Section 28 (3) (b) (ii) does not appear to recognise that designated awarding bodies are not subject to the direction of the Authority in this respect as they are autonomous institutions and should therefore be amended.

Section 14 - New section 43A of Principal Act - offence to provide or advertise cheating services

7. We strongly support empowering QQI to prosecute 'essay mills' and other forms of academic cheating. However, Section 43A should explicitly include organisations/corporations as well as individuals, including

another enrolled learner in the same institution, in its definition of a "person".

8. Moreover, consideration should be given in the Bill to ensure that providers address the issue of online learner identity authentication for student completing assessments in online learning environments.

Section 25 - Amendment of section 61 of Principal Act (International education mark)

9. The IUA welcomes the proposed provision to introduce "variant forms of the international education mark for different groups of providers or classes of programmes, including an international education mark for English language education and training". However, clarification is needed on the implications of Section 61 (7) (b) for designated awarding bodies and linked providers in terms of anticipated assessment for authority to use the international education mark.

Section 29 - New section 66 of Principal Act (Protection of Enrolled Learners Fund)

10. Clarity is required as to how a designated awarding body is informed should a linked provider not be exempt from the Learner Protection Fund under Section 65 (6) but does not pay the annual charge under Section 66A. The Authority should have the power under Section 14 to inform a designated awarding body in such a situation. Moreover, further clarity is required as to what impact this potential situation would have on the recognition of a linked provider's quality assurance procedures by a designated awarding body.

11. The IUA is unable to comment on Section 29C (6) as the wording requires amending to make the meaning less obscure: "However, the steps that this Act requires be first taken where a withdrawal, under the provision of this Act, of approval, validation or other such matter in respect of the foregoing thing is proposed to be effected shall, also, be

first taken where such a withdrawal under subsection (5) in respect of the thing concerned is proposed to be effected".

VI. National University of Ireland

The National University of Ireland (NUI) has provided the Committee with comments on the sections of the Bill that it considers relevant to the University as a Designated Awarding Body (DAB).

The NUI had the following comments to make on the Bill:

General comment applicable to a number of sections:

NUI wishes to highlight that a number of sections within the Bill do not include references to the University, where such reference is required. Examples include section 13 – Amendment of section 43 of the Principal Act (Framework of Qualifications); and section 28 – Amendment of section 65 of Principal Act (arrangements by providers for protection of enrolled learners).

3.2 Section 3 – Amendment of Section 2 of Principal Act (Interpretation)

NUI acknowledges the expanding number and range of institutions in Ireland that seek to award degrees or other qualifications within the National Framework. The NUI presumes that the introduction of the additional category of "Associated Provider" is intended to address this expansion and is distinguishable from a "Linked Provider" of an existing DAB. Further clarification in the Bill on the criteria and description of "Associated Providers" would be welcome.

3.3 Section 4 – Amendment of section 9 of Principal Act (Functions of the Authority)

NUI welcomes the proposed amendments in broad terms. In relation to the inclusion of the qualifications of Awarding Bodies, NUI wishes to note that the University Senate maintains a protocol on the Usage of Degree

Titles across its constituent universities and recognised colleges. This protocol is periodically refreshed in consultation with the member institutions.

3.3 Section 6 - Amendment of section 27 of Principal Act (Quality Assurance) and section 13 – Amendment of section 43 of Principal Act (Framework of Qualifications)

NUI acknowledges the increasing complexity of the FE & HE qualifications environment in Ireland and globally. In this context, the NUI welcomes welcome the provision for periodic review and updating by QQI of quality assurance guidelines and for the issuance of different guidelines for different classes of programmes or types of provision. This is evidence of growing capacity within the state agency to foresee, identify, understand and translate international, as well as national good practice and learning into useful guidelines for DABs, and for all providers. Notwithstanding, NUI suggests that as the complexity of the sector and of the range of qualifications grows, useful guiding principles for QA guidelines from QQI might include coherence and simplicity. In practical terms, as more supplemental guidelines are developed and published, the periodic review might usefully contain an important "coherence" test across the range of existing published documents, central to which is the Core (and overarching) Statutory Guidelines for Higher Education.

Section 25 - Amendment of section 61 of Principal Act (International education mark)

NUI is not certain from the information provided whether Linked Providers will be able to apply directly for the International Education Mark, or whether the NUI itself, as the DAB, is enabled award the Mark to its Linked Providers, by virtue of approval of LP's Quality Assurance procedures.

Section 28 - Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners)

NUI notes the provision for establishment of a new Learner Protection Fund and understands that this Fund will apply to all education and training providers engaging with the National Framework of Qualifications with the exception of public bodies. NUI notes that 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 and the associated Fund. NUI takes this opportunity to highlight that in view of its status as a publicly-funded, non-commercial state agency, the Institution of Public Administration (IPA) should be listed as exempt from the Learner Protection Fund.

IPA became a Recognised College (and Linked Provider) of the University from 1st September 2018, having transitioned from accreditation by UCD for the period 2011-2018.

VII. University College Cork

The University College Cork (UCC) had the following comments to make on the Bill:

Part 2 – Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012

***Section 3* – Amendment of Section 2 of Principal Act (Interpretation)**

Previous existing Universities /Designated Awarding Bodies fall under the definition of 'relevant provider' in the principal Act (pg. 10), along with other categories of providers such as those with Delegated Awarding Authority or Linked Providers. Many of the sections in the Bill apply to "relevant providers' but do not apply to Designated Awarding Bodies. Therefore the definition of relevant providers should be framed so as to refer to providers other than Designated Awarding Bodies. In addition to the myriad bodies defined in the 2012 Act, including "Awarding Body", "Designated Awarding Body", "Institutes of Higher Learning", "Relevant

Designated Awarding Body", "Provider", "Linked Provider" and "Associated Provider", there will now be an additional category of "Listed Awarding Body." While the definitions in the 2012 are clear, it is not clear what is intended to be covered by this definition of Listed Awarding Body. What type of provider does it refer to? The definition of relevant providers and Listed Awarding Body will need to be clarified further in terms of the new obligations applying from the proposed Bill.

VIII. University of Limerick

The University of Limerick (UL) had the following comments to make on the Bill:

Part 2 -Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012

Section 3 - Amendment of Section 2 of Principle Act {Interpretation) In this Section new categories of providers and bodies respectively are introduced.

- The UL have raised concerns relating to, 'associated provider' being introduced and defined as 'a provider that enters into an arrangement with a listed body under which arrangement the provider provides a programme of education and training that satisfies all of the prerequisites for an award of the listed awarding body that is included within the Framework' (See Section 55F). This is an additional category to the established 'relevant provider' and 'linked provider'. There is a need to further clarify what is meant by 'linked provider' in a Higher Education landscape.

- UL wants clarity as to why 'associated provider' is introduced to the Bill and believes that this additional category, further complicates relationships, between different categories of providers. UL believe that this potentially undermines quality assurance, as the

introduction of this new category of 'associated provider' may open the door to programmes being repeatedly franchised.

- The category of 'listed awarding body' is introduced, meaning 'an awarding body, other than a designated awarding body or provider to whom the QQI as the Authority has delegated authority to make awards, that has been listed by the Authority for the purpose of having its awards included within the Framework.'(See Section 55A(1)(a). UL raises concerns that this is not clear and wants to ascertain what criteria will be applied to determine inclusion, in the list of awarding bodies and also it is unclear what criteria will be applied to determine inclusion in the list of awarding bodies. Furthermore, in the proposed list of awarding bodies the 'designated awarding bodies', i.e. the universities have not been included (see 55A-551). Following on from reference to Section 43 and Section 55 (a) (1) (i) in this section, more information is required on the nature of the relationship formed when an associated provider enters into a relationship with a listed awarding body.

- In Section 2/1/b the definition of 'designated awarding body' has been expanded to include 'a previously established university, the National University of Ireland, an educational institution established as a university under section 9 of the Act of 1997, an institute of technology, the Dublin Institute of Technology and the Royal College of Surgeons in Ireland.' UL wants further consideration, to be given to Section 2/1/b, as it has concerns around quality assurance and particularly in relation to quality assurance for research degrees.

- UL states that the Bill refers widely to relevant providers e.g. Section 28, appears to UL, to mean the inclusion of ‘designated awarding bodies’ into this category. However, potentially this could

give rise to issues regarding the powers of QQI as the Authority and the designated awarding bodies as autonomous third level education institutions. UL want greater clarity as to what the category 'relevant providers' refers to throughout the Bill. UL questions whether it could mean only those providers who are validated by QQI; or receive delegated authority of QQI to validate their awards; validate their application for recognition as a listed awarding body or for their awards to be recognised within the National Qualification Framework. In that case UL believes it would be clearer to explicitly exclude 'designated awarding bodies' from this category and refine the distinction between 'relevant provider' and 'linked provider'.

- The amendments to section 2(2) now states that '[f]or the purpose of this Act, a programme of education and training is validated where the Authority confirms under section 45 that the provider of the programme has satisfied the Authority that, for an interval of time specified by the Authority, during which new learners may be enrolled on that programme. The proposed explication of criteria which a programme of education must satisfy in order to be validated by QQI is very welcome. However UL want further clarity in the Bill that this only applies to awards validated by the Authority, i.e. QQI and does not cover those of designated bodies with linked providers.

Section 6 – Amendment of section 27 of Principal Act (Quality Assurance)

- The addition of the clause Section 27(6)(b) proposes that the Authority, i.e. QQI, 'may issue different quality assurance guidelines for different classes of programmes or different types of provision'. This additional clause could impact further the autonomy of universities, a value of the Irish higher education system that needs to be actively safeguarded in the globalised higher education

landscape. Layers of statutory compliance have increased over recent years with the introduction of Core Statutory Quality Assurance Guidelines, QQI Sector-Specific Quality Assurance Guidelines for Designated Awarding Bodies or Guidelines by the Authority concerning Research Degrees and Blended Learning.

- From a UL perspective, it is important that quality assurance guidelines concerning the delegated authority to award research degrees focus on the proven research culture in the institution, on the existing capacity and capability of its academic staff who provide those programmes, on their active participation and leadership in national and international scholarly communities and peer networks of practice and knowledge. This includes a specified period of time to build up capacities and capabilities where necessary.

Section 7 - Amendment of Section 28 of Principal Act {Obligation of providers to prepare quality assurance procedures)

- Section 28 explicitly applies to 'relevant, linked or associated providers'. UL questions whether the phrasing appears to not take cognisance of the fact that in the current shape of the Bill, relevant providers include designated awarding bodies but that designated awarding bodies are not subject to the direction of the Authority in regard of the establishment of quality procedures, as they are autonomous bodies. Hence an amendment of the term 'relevant bodies' as outlined above.

Section 14 - New Section 43A of Principal Act - 'Offence to provide or advertise cheating services'

- UL welcomes that QQI is being empowered to prosecute 'essay mills/ other forms of academic cheating' However, 'person' (noting the legal phrase) in this section should explicitly refer to include organisations and corporations as well as individuals such as

learners enrolled in the same or another institution. In the context of rapid technological progress it should also refer to cheating services that may be available in future and that would be augmented to the body of the enrolled learner who sits an examination.

- Given the growth in blended and online programmes, UL wants the Bill to put in place safeguards to ensure that education providers, who assess students online or in blended mode, have robust measures to safeguard online learner identity authentication approaches.

Section 25 - Amendment of Section 61 of Principal Act (international Education Mark)

- UL supports the proposed introduction of 'variant forms of the international education mark for different groups of providers or classes of programmes, including an international education mark for English language education and training' in Section 61(7)(b). However, for 'designated awarding bodies' and 'linked providers' it is important that further details are provided as to how '[t]he Authority shall determine an application under subsection 61(3) by assessing the compliance of the provider, particularly in light of the autonomy of designated awarding bodies.

Section 29 - Amendment of Section 66 of Principal Act (Protection of Enrolled Learners Fund)

- UL welcomes the establishment of the Learners Protection Fund by QQI. We note the introduction of new PEL arrangements specific to the Designated Awarding Bodies to cover their linked providers. However, further clarification is required as how designated awarding bodies are informed should a linked provider not be exempt from the Learner Protection Fund as specified under Section 65 but does not make its annual contribution under Section 66A. UL

questions what impact has a potential defaulting situation on the recognition of a linked provider's quality assurance procedures by the designated awarding body and should the QQA be empowered to inform a designated awarding body in the case that such a defaulting situation arises under the provisions of Section 14?

IX. Technological Higher Education Association

The Technological Higher Education Association (THEA) had the following comments to make on the Bill:

Section 5: Amendment of Principal Act - furnishing information to other bodies

Section 5 amends section 14 of the Principal Act, and provides for the sharing of data and information amongst listed state bodies, subject to the Data Protection Act (page 8). THEA supports the sharing of such information in principle in the interests of joined-up government and administration, especially, in the context of higher education, amongst the Department of Education and Skills and its agencies. While it may not be appropriate to put into legislation, THEA hopes that the application of this provision will lead in practice to the same bodies giving consideration to where their functions may overlap; and that they will endeavour, where practicable, to use shared intelligence to avoid duplicating each other's work, especially in exercising their regulatory functions and the manner in which they require higher education providers to report to them. It should be possible for State agencies, through a considered and judicious application of this provision, to endeavour to collect information from providers once rather than on multiple occasions.

Section 6: Amendment of Principal Act - Quality Assurance

This section amends section 27 of the Principal Act and, among other things, replaces the existing subsection 6 with a new text that enables QQI to issue different quality assurance guidelines to different types of

providers; to issue different quality assurance guidelines for different classes of programmes and types of provision; and to establish different effectiveness review procedures for different types of providers (page 9). Again, in principle, THEA would support this approach, as it is necessitated by the differing legal bases upon which different providers or different programmes are established across the different sectors of education and training. However, it will be important that QQI, in applying this provision, makes every effort to operate it in as coherent and intelligible a fashion as possible, so that providers, learners and the general public will understand the system and take comfort in it, rather than perceive it as an unduly complex, or even arcane, activity that seems to bear little relation to the everyday educational experience of learners. In general, common approaches to quality assurance processes and procedures should be the norm rather than the exception. That consideration of the need to ensure broader understanding of what is a complex and technical statute is a theme that recurs in this submission.

Section 8: Condition precedent for provisions of Principal Act to be invoked by relevant providers

Criteria specified in regulations must be met. This section inserts three new sections (sections 29A, 29B, and 29C) into the Principal Act (pp. 11-14), which provide for the establishment of new criteria and regulations concerning the capacity and capability of providers to implement quality assurance procedures and deliver education and training programmes, including the possession of a legal personality, and the possession of adequate financial resources to support the viability of the business and good corporate governance. THEA supports these provisions as it will give QQI a secure basis upon which to regulate the education and training sector, particularly in relation to the corporate fitness of education and training providers, including nationally-based or international providers entering the market for the first time.

Section 13: Amendment of Principal Act - Framework of Qualifications

The concentration here is on providing a secure legal basis for the inclusion of the awards made by designated awarding bodies in the National Framework of Qualifications (NFQ). In the future, following the passage of this bill, and the further designation of technological universities under the Technological Universities Act 2018, all of THEA's members will be designated awarding bodies, like the traditional universities. The provisions in this section (pp. 16-7) for the inclusion of awards in the NFQ are reasonable, being grounded on the experiences and practices gathered to date by QQI (and its predecessor bodies) in operating the NFQ. THEA and its members are committed to working with QQI in implementing the processes outlined in section 22 (pp. 21-32), including the process by which awards acquire the status of being included in the NFQ and the process for the listing of awarding bodies. The process is discussed further under section 22, below pp. 4-5 of this submission.

Section 14: Amendment of Principal Act - offence to provide or advertise cheating services

This section provides for the insertion of an entirely new section in the Principal Act (pp. 17- 8). It gives QQI a legal basis to prosecute the provision of advertising of essay mills and other forms of academic cheating. This is a new and welcome piece of the quality assurance architecture and is welcomed and supported by THEA and its members. This is consistent with moves elsewhere where legislation with a similar intent has already been passed, such as in the United States and New Zealand, or is under consideration.

Section 15: Amendment of Principal Act - application for validation of programme of education and training

THEA notes the amendment of Section 44 of the Principal Act in subsection 9 (p.18). This provides for the fact that, subject to the enactment of this bill, institutes of technology that are not designated as technological universities as part of a consortium, or do not have delegated authority to make awards under sections 52-54 of the Principal Act, will apply for validation to QQI only 'in relation to programmes leading to doctoral degrees included within the Framework'. It is important that QQI, in applying this provision, establishes an appropriate validation process in such instances that reflects the distinctive nature of research degree programmes. It would be inadvisable and inappropriate, in particular, to continue with the current practice whereby the undergraduate taught validation programme template is prescribed in such instances. Consistency in this matter is of key moment to our member institutions and is necessary to ensure the consistent and even development of the sector as a whole.

Section 20 - Request by provider for delegation of authority

THEA notes the amendment in section 52 (2) (a) which sets out that, subsequent to the passage of this Bill, the legislative provisions for delegated authority will only apply to institutes of technology, 'in relation to programmes leading to doctoral degrees included within the Framework'. This is consistent with section 35 of the bill.

Section 22 - Awards included within the [National] Framework [of Qualifications] (process by which award acquires such status)

Section 22 amends section 55 of the Principal Act by inserting nine new sections: sections 55A to 55I. These new sections represent the most detailed and complex changes to the Principal Act and set out the processes whereby awards acquire the status of being included in the NFQ; how bodies, excluding QQI, designated awarding bodies, providers with delegated authority to make awards, or a body that makes an award

under the Education Act 1998, may become a 'listed awarding body'; and the general process by which the different types of awarding body may apply to QQI for a decision to be made whether it is appropriate that particular awards that they make be included in the NFQ. These new sections also provide for the establishment of policies and criteria by QQI to which QQI will have regard in making decisions in relation to the inclusion of awards, the duties of 'listed awarding bodies', the review of 'listed awarding bodies' and the withdrawal or variation of listing of awarding bodies.

THEA is aware that these provisions, which are highly technical and worded very carefully, are necessary as a result of legal challenges to certain provisions in the Principal Act. In this connection, and in the interests of the stability and integrity of the NFQ, THEA is supportive of these provisions in principle. However, they are very complex and will present significant communications' challenges for QQI in explaining them to the broader education and training community. There are also aspects of these provisions that will need to be proceeded with carefully. For example, the policies and criteria for making decisions on the inclusion of awards in the NFQ will be critical in establishing the new regime for inclusion on a sound footing, If the latter are unduly complex or costly, including in relation to the fees that may be charged for an application by an awarding body to have their awards included in the NFQ, there is a potential danger that they may fall into disrepute. THEA would hope that QQI will consult with stakeholders in developing the policies and criteria (pp. 25-6), especially in those areas that require QQI to ensure 'that the number of awards included in the Framework provides a reasonable level of choice for learners'; and 'that the number of awards included in the Framework that are awards with similar learning outcomes is not excessive' (p. 26). These matters will require fine judgements and inputs from stakeholders across the system. The bill provides that QQI should have regard to the 'reasonable requirements' of learners and various sectors including industry, agriculture, tourism and trade; and that it

would consult with bodies responsible for managing the provision of education and training funded by the Exchequer, and bodies that regulate one or more professions. However, there is no specific requirement to consult with providers and awarding bodies, who would have extensive experience of these matters and ordinarily would be consulted on such matters. THEA believes that the bodies listed in section 55B (2) (b)-(d) — designated awarding bodies, providers with delegated authority and bodies that make awards under the Education Act 1998 — should be added to the list of those to whom QQI will consult in section 55E (8).

Section 24 - Code of Practice for provision of programmes to international learners

THEA notes the amendments to section 60 of the Principal Act in relation to the Code of Practice. In particular, THEA notes the provision (p. 33) to allow for the development and publication of different codes of practice for different types of providers. This is a sensible approach and THEA fully supports it.

Section 25 - International Education Mark

THEA notes the amendments to section 61 of the Principal Act in relation to the International Education Mark (pp. 33-4). These amendments allow for the specification of 'variant forms' of the IEM for different types of providers and programmes. Again, these are sensible provisions, and are supported by THEA and its members.

Section 35 - Amendment of Regional Technical Colleges Act

As noted in the introduction to this submission, THEA very much welcomes the amendment of section 5 of the Regional Colleges Act 1992, set out in section 35 of this bill. The provision recognises the institutes' unwavering commitment to delivering high quality taught and research programmes, that are underpinned by, robust quality assurance processes owned by the institutes themselves. It was on this basis that the Higher Education and Training Awards Council (HETAC), and its

successor body, Qualifications and Quality Ireland (QQI), moved to delegate to the institutes more and more of their awarding functions under the 1999 and 2012 Qualifications Acts, following an extensive and rigorous series of external reviews. As a result, the institutes have been self-validating their taught programmes, and making the associated awards, at Levels 6-9 of the National Framework of Qualifications (NFQ) for much of the past fifteen years. Specifically, in the period 2008-18, the sector has made over 200,000 individual awards under delegated authority across these levels. With this experience, it is appropriate that they should obtain full awarding powers. The establishment of the institutes as designated awarding bodies will facilitate the implementation of the National Strategy for Higher Education to 2030 by creating a single, coherent quality assurance and qualifications space amongst public higher education institutions; foster deeper collaboration between those institutions by establishing an awarding and quality assurance environment in which the institutes can participate on an equal footing with their peers amongst the existing designated awarding bodies; and, by presenting a coherent, simplified and more easily communicable picture of the Irish system, enhance the international recognition of the institutes' awards.

X. Marino Institute of Education

The Marino Institute of Education (MIE) had the following remarks to make on the Bill in their submission:

1. MIE requests that it be included in the list of Programme Providers to which Amendment 30 does not apply. The MIE specifically wish to address Amendment 30, Payment of annual charges into Learner Protection Fund and related matters. Within this amendment of Section 65 of the Principal Act (Arrangements by providers for protection of enrolled learners), it is intended that this provision will apply to all education and training providers engaging with the National Framework of Qualifications, with the exception of public bodies. Within the Bill there is an extended list of

providers of education to which the payment to the Learner Protection Fund does not apply (Section 65, subsection 6, p.37) – this extended list includes the Royal College of Surgeons (which is an independent institution, recognised by the NUI), and the Royal Irish Academy of Music (which, like Marino Institute of Education, is a linked provider of TCD).

In the Explanatory and Financial Memorandum, pp 4, 5, the accompanying Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018, it states that:

> "The Royal College of Surgeons in Ireland, the Education and Training Boards and the Royal Irish Academy of Music (RIAM) 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) (emphasis added)."

Marino Institute of Education (MIE) is a linked provider of TCD, and its programmes are accredited by TCD. MIE is widely recognised as institution with a significant tradition and reputation for quality in its provision of education programmes. Given that the Memorandum specifically mentions the RIAM, and suggests that linked providers offering programmes leading to awards validated by their designated awarding bodies should be exempted, it seems most appropriate that Marino Institute of Education should also be included in this list. The MIE suggests that its omission from this list may be an oversight, given that MIE does not have a seat on the IUA or other representative bodies.

2. Marino Institute of Education is funded directly by the Department of Education and Skills, and as all schools that are funded by the DES are

included in the list of bodies to which this amendment of the Act shall not apply, it would seem fitting that MIE should also be considered to be eligible for inclusion in this list.

XI. Aontas

Aontas raised concerns with specific amendment proposals listed below:

Listed Awarding Bodies and Associated Providers (s. 27; 55)

The areas of primary concern for our members exist around the creation of 'listed awarding bodies'; the creation of regulations specifying capacity and capability of providers; and the imposition of even further fees in addition to the existing reengagement and program validation fees for which AONTAS has already been lobbying against for more than 5 years.

Reading the draft Bill AONTAS would like to note that a significant concern at this time arises from a lack of clarity about the implementation of new guidelines for 'listed awarding bodies' and 'associated providers'. As this new policy framework develops, community education providers require clarity about the options that will be available to them as they develop accredited learning with recognition on the National Framework of Qualifications (NFQ). At present several of Aontas members are pursuing reengagement with QQI. However, if new listed awarding bodies are created, new options will become available to them, and it is important they have an understanding of their options before significant monies and time are invested in the status quo system.

While the proposed new section 55E of the draft Bill will require 'as soon as practicable after the operative date of the Act', for QQI as the Authority to establish policies and criteria regarding the criteria for application to join the list of awarding bodies, AONTAS is arguing that for the sake of transparency these policies and criteria should be drafted and discussed during the consultation period before the operative date of new legislation.

Recommendation: Community education providers who may consider becoming an associated provider of a new listed awarding body need to understand their options in full now and not several years from now as might be the case if these policies and criteria are implemented after passage of the Bill. This is important as there are many community education providers seeking QQI reengagement. However, if new listed awarding bodies are created, new options will become available to them, and it is important they have an understanding of their options.

Regulations specifying criteria concerning capacity and capability of providers and related criteria (s. 29B)

Another concern of AONTAS is the creation of regulations after the operative date of new legislation that will specify whether or not a provider of accredited programming has the capacity and capability to provide learning.

Education providers across Ireland are professionally run organisations governed according to relevant laws and receiving funding from various funders (which may include programme or project specific funding, direct grants from public and private institutions, learner fees, and philanthropic funding to name a few).

Part of the reality of these efficiently and effectively run organisations is that they work to support one another, and in turn gain supports from national organisations like AONTAS. As new governance and quality assurance requirements have been implemented over the past several years communities of practice like the AONTAS Community Education Network (CEN) provide supports to providers of independent not-for-profit community education organisations so that they can learn from one another and also access support structures that would otherwise not be available. A contemporary example of this is that as of mid-2018 AONTAS employs a Quality Assurance Officer who is working to help CEN members

who are reengaging with QQI to understand and meet the obligations of a provider of accredited learning.

Therefore AONTAS is requesting that when the Regulations are drafted in order to specify the criteria used to evaluate the capacity and capability of providers; the Regulations clearly state that the evaluation must include an evaluation of all internal, and as importantly, external supports available to a provider.

Recommendation: AONTAS recommends that in the Regulations specifying the criteria used to evaluate the capacity and capability of providers, which will be produced after passage of the Bill, that the Authority be required to look at the broader external support structures available to individual providers including an evaluation of all internal, and as importantly, external supports available to a provider.

Fees (s. 65)

The primary concern of AONTAS is the imposition of even more fees for the not-for profit community education sector as proposed in the draft Bill. In particular we cite fees for the new proposed Learner Protection Fund as concerning.

As stated throughout this submission community education provides opportunities for access to education to the disadvantaged, underserved, and most hard to reach learners. We therefore do not believe that it should be made even more difficult to access education for learners already far from the formal education system.

Recommendation: AONTAS recommends that the draft Bill include 'not-for-profit community education providers' as part of the list of providers to which the exemption for payment to the new Leaner Protection Fund extends (s.65(6)).

XII. Unite

Unite made the following comments in their submission that relate to the Bill:

- Section 25 of the proposed legislation (Amendment of section 61 of Principal Act) (International Education Mark) to include the provision of a Fair Employment Mark; and;

- Section 27 of the proposed legislation (Amendment of section 64 of Principal Act) (Interpretation) to include a 'Teacher Protection Fund'.

Unites submission also covered matters relating to employment matters, while important, these may be more appropriate to other legislation i.e. employment legislation.

XIII. SIPTU

SIPTU welcomes the Bill however its submission raises concerns it has with regards to resources within the QQI agency.

- All of these changes, though welcome, will impact significantly on the resources required for the organisation. In particular they will require a significant number of additional staff. As the functions are technical in nature, the new positions will most likely not be at junior administrative levels. It is important that existing staff are recognised and given opportunities for these 'promotional' opportunities via confined competitions etc.

XIV. Instinctif

Instinctif raised concerns in relation to the following sections:

Bonding Arrangement

Obligation of certain providers to pay annual charge into Learner Protection Fund: Section 65 (1) (a) introduces a bonding arrangement between private colleges, underpinned by a sinking fund, as the only means for colleges to provide learner protection. If this proposal is enshrined in legislation, higher and further education colleges will no longer have the option to secure private sector solutions to providing learner protection for their students and will be dependent on the financial health of other colleges, without having any insight into the financial health or otherwise of those schools. Responsibility for the management of the bonding arrangement and sinking fund will be handed over to QQI – an organisation which has no experience to speak of with respect to underwriting, risk assessment or solvency management. While QQI is without doubt fully qualified with respect to quality assurance of higher education, no assurances have been provided that QQI is equipped to effectively act as an insurance provider to the sector and it is our view that insurance provision falls well outside its area of competence.

Instinctif proposes that the following amendments into the below sections:

Instinctif wish to amend the proposed new section 65 (1) as follows:

"(c) Section 65(1)(b) shall not apply where a relevant provider can present proof of the existence of a valid in-force policy of insurance which provides learner protection insurance over for all students enrolled on a programme of education and training at that provider."

Instinctif wish to amend the proposed 65 (2) by the deletion of: "~~prior to the commencement of provision by the obligated provider of the programme concerned and prior to the acceptance by it of any payments by or on behalf of any learners for enrolment on that programme.~~"

They propose that the text should read as:
"*Subject to subsection (3), the annual charge shall be paid into the Learner Protection Fund* **and** *prescribed at the start of the year and may be paid in quarterly instalments thereafter.*"

Instictif wish for the section 65 (6)* to be amended by the insertion of:

"(p)* a college of education that holds a valid and in-force policy of insurance which provides learner protection of insurance cover for all students enrolled on a programme of education and training at that provider."
*[The Secretariat has amended cross references to ensure their placement in the Bill is in the intended place.]

Instictif wish to include a new section 66A to read as follows:

"66A (1) The Minister, having consulted with obligated providers, shall prescribe the amount of the annual charge to be paid, under subsection (1) of section 65, by each provider referred to in that subsection (in this section referred to as an 'obligated provider')."

Instictif wish to delete paragraph (a) from the proposed section 66(3):

"~~(a) defray the costs that will be incurred in the completion by the enrolled learner of the programme, the subject of that event (the 'relevant programme'), where such completion is possible,~~."

XV. Progressive College Network

Below is a summary of Progressive College Networks (PCN) immediate concerns:

- Implementation of the rules and regulations that are objective, impartial and unilaterally applied to all stakeholders. There can be no "tiered" system differentiating one business from another within the particular industry as currently exists.

- The purposes of the International Education mark is to present an unifying standard to the International education market. All parties achieving the mark should have to achieve it by meeting the necessary standard without preference or favour to any particular class. The current bill in fact grants the capacity of the Minister and or QQI to create such artificial divisions. This must be resisted in full.

- The original attempt to reform this sector in 2014 lead to a successful High Court challenge. To deal with issues of trust and confidence with the relevant agencies, the Bill must protect all invested stakeholders from such a strategy being repeated.

- The implementation of the Interim List of Eligible programme revealed a clear prejudice against colleges outside of a private commercial business network. This must not be repeated, and the bill should not facilitate such behaviour.

- The current regulatory framework is clearly open to challenge under Competition law. The Minister has accepted as appropriate private member arrangements for learner protection (LP) which do not adequately protect the student

body in the event of college closure. These arrangements are not available to colleges outside of this closed private network.

- The additional effect of the LP arrangements is to impose an costs burden on colleges outside of the private members network. The State is therefore supporting a commercial advantage to members of a private body.

- The impact on the State of these LP arrangements if analysed in detail could expose the State to EU sanction for breach of the rules on State Assistance. This Bill is the opportunity to remedy this defect if done correctly.

- The sector has a successful model for learner protection that is acknowledged and approval amongst external parties interested and invested in the Irish education market.

- The practical effect for LP arrangement to a central fund is firstly a veiled taxation on the industry. Secondly a source of real concern to colleges is its implementation and administration by the education governing body.

XVI. RCSI

The RCSI made a submission to the Committee, whilst a number of valid points were made, these relate more to the status of the RCSI, seeking legislative or statutory permission to describe itself, as a University of Medicine and Health Sciences in the State and do not directly relate to the purpose of the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018. The points raised in this submission may need to be considered as part of other legislation.

XVII. Bord Iascaigh Mhara

An Bord Iascaigh Mhara **(**BIM) was very positive about the Bill and had the following observation to make:

- The QQI may need to consider additional staff resources to manage the changes and additional responsibilities that the new legislation will introduce.

4. Appendices

Appendix 1

Committee Membership

Joint Committee on Education and Skills

Deputies: Thomas Byrne (FF)
Kathleen Funchion (SF)
Catherine Martin (GP)
Tony McLoughlin (FG)
Hildegarde Naughton (FG)
Fiona O'Loughlin (FF) [Chair]
Jan O'Sullivan (Lab)

Senators: Maria Byrne (FG)
Robbie Gallagher (FF)
Paul Gavan (SF)
Lynn Ruane (Ind)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 16 June 2016.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 22 July 2016.
3. Deputies Carol Nolan, Ciaran Cannon, Joan Burton, and Jim Daly discharged and Deputies Kathleen Funchion, Tony McLoughlin, Jan O'Sullivan, and Josepha Madigan nominated to serve in their stead by the Twelfth Report of the Dáil Committee of Selection as agreed

by Dáil Éireann on 3 October 2017.

4. Senator Trevor Ó Clochartaigh resigned with effect from 27 February 2018.
5. Senator Paul Gavan nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 8 March 2018.
6. Deputy Josepha Madigan discharged and Deputy Hildegarde Naughton nominated to serve in her stead by the Twentieth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 1 May 2018.

Appendix 2

Orders of Reference

(1) The Select Committee shall consider and report to the Dáil on—

(a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and

(b) European Union matters within the remit of the relevant Department or Departments.

(2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.

(3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—

(a) Bills,

(b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,

(c) Estimates for Public Services, and

(d) other matters as shall be referred to the Select Committee by the Dáil, and

(e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and

(f) such Value for Money and Policy Reviews as the Select Committee may select.

(4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and associated public bodies:

(a) matters of policy and governance for which the Minister is officially responsible,

(b) public affairs administered by the Department,

(c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,

(d) Government policy and governance in respect of bodies under the aegis of the Department,

(e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,

(f) the general scheme or draft heads of any Bill,

(g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,

(h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,

(i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,

(j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (*d*) and (*e*) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and

(k) such other matters as may be referred to it by the Dáil

from time to time.

(5) Without prejudice to the generality of paragraph (1), the Joint Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, and

(d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.

(6) The Chairman of the Joint Committee appointed pursuant to this Standing Order, who shall be a member of Dáil Éireann, shall also be the Chairman of the Select Committee.

(7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:

(a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,

(b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(c) at the invitation of the Committee, other Members of the European Parliament.

b. Scope and Context of Activities of Committees (as derived

from Standing Orders) [DSO 84; SSO 70]

(1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders.

(2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.

(3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993.

(4) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

a) a member of the Government or a Minister of State,

b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:

Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.

(5) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

Appendix 3

List of Stakeholders

Unite the Union

Instinctif

Bord Iascaigh Mhara (BIM)

Department of Education and Skills (DES)

Quality and Qualifications Ireland (QQI)

Higher Education Authority (HEA)

Technological Higher Education Association (THEA)

Marino Institute of Education (MIE)

Irish Universities Association (IUA)

Royal College of Surgeons in Ireland (RCSI)

University College Cork (UCC)

AONTAS

Progressive College Network (PCN)

Education and Training Boards Ireland (ETBI)

National University of Ireland (NUI)

SIPTU

University of Limerick (UL)

Appendix 4

Submissions by Stakeholders

Submission to The Education and Skills Committee on the Qualifications and Quality Assurance (Amendment) Bill by Unite the Union

Unite the Union submission proposing amendments to:

Section 25 of the proposed legislation (Amendment of section 61 of Principal Act) (International Education Mark) to include the provision of a Fair Employment Mark, and

Section 27 of the proposed legislation (Amendment of section 64 of Principal Act) (Interpretation) to include a 'Teacher Protection Fund'

Background

1. Unite the Union have been organising English Language Teachers since late 2016, and currently have over 250 members across approximately 25 schools in Dublin Cork, Limerick and Galway. The Unite English Language Teachers Branch was formally established in 2017. Unite the Union is the only trade union actively organising and campaigning on behalf of English Language Teachers in the Republic of Ireland.

2. The international education sector is currently worth approximately €1.58bn per annum to the Irish economy. Most of the one hundred plus English language schools are highly profitable, with student fees ranging from €2,000 to €4,500 for a six-month part-time course. Some schools are locally owned, while others are foreign-owned or owned by multinational companies. Most operators are members of Marketing English in Ireland. Most students come from Latin America, East Asia and continental Europe. Generally schools conclude agreements with agencies in the students' countries of origin.

3. English Language Teaching has been identified as a growth sector of significant value to the economy. The International Education Strategy 2016-2020 published by Education Minister Richard Bruton seeks to grow the sector by 25% over four years, with the aim of making it worth over €2 billion to the Irish economy by 2020.

4. In all, there are around 120 schools throughout the state, some operating in the summer only while the majority open year around. Teacher numbers vary seasonally but there are approximately 1,000 to 1,200 employed year around. During the summer months this figure can double.

Unite concerns regarding labour issues

5. The English Language Teaching sector is characterised by precarious employment and variable pay rates, with some teachers earning little more than the Living Wage.

6. Unite has become aware of a range of abuses, including:

7. Contracts

- Overuse, misuse and abuse of fixed-term contracts ranging between three months and one year, making it impossible for teachers to engage in financial or other planning beyond the end of their current contract. It is not unusual for a school not to employ a single teacher on a Contract of Indefinite Duration (COID).

- Zero-hour / low-hour contracts are rife: in one school, every one of the approximately 40 teachers is on a zero hour contract. Many schools, including some of the most prominent schools in the sector, continue to utilise zero hour contracts despite the fact that legislation is pending to outlaw these.

- No contracts: It is common for teachers not to be given any contract at all, or to continue working following the expiry of a fixed term contract with no new contract.

- Bogus self-employment: Unite has identified several schools which ask teachers to provide them with invoices for services rather than be paid a wage, notwithstanding this being a clear breach of the rules of the Revenue Commissioners.

8. Wages

- Vast disparities in pay: Although average teacher pay in the sector is approximately €18 an hour, some schools pay as low as €13 an hour – not much above the living wage. The vast majority of teachers only work 30 hours (two three-hour classes a day) or 15 hours, despite many wanting to work a 39-hour week. Due to the truncated working week, many teachers will earn less than the Living Wage of €11.90 which is based on a 39-hour week.

- No payment for non-contact hours: virtually all teachers are paid for classroom hours only. They are not paid for time spent preparing and correcting lessons, which can amount to as much as ten hours a week. A Unite supported survey identified that teachers work an average of eight hours a week unpaid.

- No entitlement to sick pay. A large majority of schools do not have any sick pay scheme. This is a situation Unite is attempting to tackle through our 'Gimme 5 Campaign' which seeks to ensure that all teachers are entitled to at least five days paid sick leave per year.

- Holiday pay: Unite has come across instances where teachers are let go just before Christmas and re-employed in January to avoid paying teachers any holiday pay over the Christmas period.

- Statutory leave: Unite has been informed of instances where contracts have not been renewed if teachers apply for leave such as maternity leave, parental leave etc.

9. Discrimination

- It has been reported to Unite that non-native teachers are paid a lower rate than native speakers in contravention of the Employment Equality Act.

10. A job or a career?

- Many schools do not support continued professional development for teachers, despite the obvious benefits to the school, the students and the quality of English Language Teaching in Ireland.

11. No union here

- Unite has been met with active resistance from employers when trying to organise teachers and achieve union recognition. Unite is pursuing unfair dismissal cases on behalf of teachers who were sacked for union activities. Approaches Unite has made in several schools where the union represents a majority of teachers have been rebuffed.

Current regulation

12. Following a range of scandals in the sector (from schools closing to visa abuses), there is an increased awareness of the need for regulation in the interests of students. Currently, the ELT sector is regulated by ACELS – but this body is underfunded and under-staffed, and carried out just ten inspections in 2016. The Interim List of Eligible Programmes (ILEP) has gone some way towards regulating the ownership and administration of schools, and counteracting the open criminality in the sector which led to the spate of school closures in 2015 with students and teachers being left significantly out of pocket.

Lack of consultation

13. Although the Department of Education has consulted widely with school owners, and to a lesser extent students, in developing the ILEP and the proposed International Education Mark (IEM) (section 25 of proposed legislation), it has not once consulted with the teachers who deliver the service. Several requests to Education Minister Richard Bruton for a meeting to discuss enshrining workers' rights in the IEM have been refused, and instead the Minister has stated that - as these businesses are private and for-profit enterprises - issues around employment rights are not the remit of his department but should be brought to the Workplace Relations Commission. For many workers in precarious employment a case referral to the WRC is not an option.

14. However, Unite understands that the Minister has met with representatives of Marketing English in Ireland (MEI) to obtain their perspective on the International Education Strategy for Ireland 2016-2020 of which the QQA Bill forms a part.

15. It is Unite's view that the QQA Bill as currently drafted will do nothing to address the serious concerns we have regarding employment abuses of teachers.

Proposed regulation

16. The QQA Amendment Bill (section 25) will provide for the establishment of the International Education Mark (IEM). The IEM will be administered by Quality and Qualifications Ireland (QQI) and will see ACELS being phased out. The IEM is expected to continue the process of the ILEP in terms of more stringent regulation and administration, but – like the ILEP – will not include basic employment standards for teachers.

Unite's proposal for a Fair Employment Mark

17. Unite proposes amending Section 25 of the proposed legislation (Amendment of section 61 of Principal Act (international education mark) to include the provision of a Fair Employment Mark as part of the International Education Mark.

18. The IEM as provided for in the QQA Amendment Bill will regulate the ownership and administration of schools; but it is Unite's view that it will not address the unethical and sometimes illegal employment practices which are endemic throughout the sector.

19. The Unite ELT branch wishes to see the Bill amended so that the International Education Mark includes a provision for a Fair Employment Mark to ensure basic employment standards for teachers and administration staff in the sector. With the previous establishment of ACELS and the planned introduction of the IEM, the government has conceded that English language schools require strict regulation. However it cannot regulate some elements of the sector whilst ignoring others.

20. Under the IEM, if schools contravene health and safety legislation or are engaged in financial irregularities, they can be sanctioned. Unite wishes to see the same application for schools who contravene a Fair Employment Mark.

21. A Fair Employment Mark can include provisions to:

- Limit the amount of fixed-term contracts a school can issue at any one time. Whilst Unite appreciates the need for some flexibility, particularly when teachers are required for a short period over summer, most schools are busy all year round and most teachers are employed all year round. These teachers should not be maintained on fixed-term contracts indefinitely. Teachers should be given permanent employment contracts unless there is a specific and legitimate reason why this is not appropriate.

- Legal, written statement of terms and conditions as standard. Under the Terms of Employment (Information) Acts 1994-2014, an employee must be given a written

statement of terms and conditions within two months of starting work. A Fair Employment Mark should ensure that this is done.

- A complete end to the use of zero hour/low hour contracts. Although legislation has been proposed to limit zero hour contracts generally, the IEM should include this provision to require schools to end this practice.

- A complete end to bogus self-employment. Although schools forcing teachers into bogus self-employment are already in contravention of Revenue Commissioner rules, the IEM should make it clear to schools that to continue to do this will impact their ability to operate.

- Recognition and pay for non-contact hours. A teacher's role goes beyond classroom contact hours. All hours worked in planning lessons, marking, prep work and admin should be fully paid and contractual. Unite estimates that teachers work approximately eight hours a week unpaid. In no other sector would this be tolerated.

- Entitlement to holiday and sick pay. Schools should be obliged to provide a sick pay scheme for teachers. Schools should also be required to adhere to the Organisation of Working Time Act 1997 in terms of holiday entitlement for annual leave and public holidays.

- Full entitlement to all leave as guaranteed under employment legislation. Schools should be obliged by the IEM to guarantee maternity, paternity, parental, adoptive, force majeure and carer's leave.

- Equality of pay and opportunity for non-native speakers. The IEM should require schools to adhere to the provisions of the Employment Equality Acts 1998-2015 and cease pay discrimination against non-native speakers.

- Full support from schools for continued professional development. The IEM should require schools to plan for continued professional development for teachers for the long-term benefits of the school and the students.

- Pay progression and salary scales. Schools do not recognise length of service, seniority, qualification levels and loyalty of teachers. Schools should be required to implement clear, transparent and fair salary scales.

- Standardised pay rates across the sector. The massive discrepancy in pay across the sector does teachers a disservice. A standardised pay rate should be introduced with salary scales. In the event of a school experiencing financial hardship as a result, an inability to pay clause can be included.

- Union recognition and representation rights. Schools have continuously refused to engage with trade unions. The IEM should require schools to respect the expressed wish of their employees to be unionised and represented by a union of their choice.

22. Many of the provisions we have outlined that we would wish to see in a Fair Employment Mark are practices that are already covered by other legislation. However generally applicable labour rights legislation is almost impossible to enforce due to the employment precarity prevalent in the sector. Teachers with a six month fixed-term contract will not progress a case to the Workplace Relations Commission because they know that their contract will not be renewed if they do. As a large majority of schools do not and will not recognise trade unions, there is no capacity for free collective bargaining that would address many of the concerns.

23. If however a Fair Employment Mark were introduced as part of the IEM' and a clear direction given that any breach of the Mark would result in a possible exclusion from the IEM, that would go some way towards ensuring that fair employment practices become the norm in the sector.

24. The QQA Bill and the establishment of the IEM can potentially lead to Ireland emerging as a world leader in the provision of English language teaching. However schools' persistence in continuously engaging in unethical and illegal employment practices prevents the ongoing professionalization of the sector. By requiring schools to improve the terms and conditions of teachers, the sector would attract the best candidates for teaching roles.

25. The casualization and precarious nature of an ELT role as it currently stands prevents the best teachers from staying in the sector as they are unable to remain an ELT and do the normal things in life such as get a mortgage, have kids or plan beyond the expiration of their fixed-term contract. The brain drain from the sector will serve to adversely affect schools ability to deliver a quality service to international students and Ireland's reputation as a premier international destination for students wishing to learn English. The introduction of the International Education Mark incorporating a Fair Employment Mark would transform English language teaching into a profession that can and would attract the best candidates.

Unite's proposal for a Teacher Protection Fund

26. Section 27 of the proposed legislation contains a provision for a 'Learner Protection Fund' to ensure that students can be accommodated in other schools if their school closes. This is something that has already been put into practice and has gone some way towards addressing the chaos that resulted when several schools closed within a few weeks of each other in 2016.

27. However, this section does not reflect the fact that teachers were also left out of pocket when those schools closed, not only losing their jobs but being left with unpaid wages of several weeks.

28. As recently as March 2018, this was repeated when a Limerick school, LISC/Lanlearn, closed suddenly. The students in the school were accommodated in other Limerick

schools as per the Learner Protection Fund, but once again the teachers and staff were ignored.

29. The owner of the school absconded to a foreign country and failed to put the school into insolvency. Given that he had bought the school for €100 the previous year, his failure to follow procedure was hardly surprising. The teachers and the staff were left with one month's unpaid wages. As the owner of the school had not followed any procedure, the teachers were unable to make an application to the Insolvency Fund. Unite has been working with the Department of Social Protection and the Revenue Commissioners to try and address this situation but as of the time of writing the teachers and staff have still not received the salaries owed to them.

30. In the event of a similar situation recurring, which given the nature of the ELT sector is a certainty rather than a likelihood, Unite wishes to see a 'Teacher Protection Fund' established through the legislation to ensure that the LISC/Lanlearn situation is not repeated.

Brendan Ogle
Senior Officer – Republic of Ireland

October 2018

2018/319

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Joint Committee on Education and Skills,
Leinster House,
Kildare Street,
Dublin 2

1 October 2018

Please find below a written submission on the Draft Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 for the attention of the Joint Committee on Education and Skills.

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Written submission to the Joint Committee on Education and Skills on the Draft Qualifications and Quality Assurance (Education & Training) (Amendment) Bill

Study & Protect is the largest learner protection provider in Ireland. We and our underwriters Hiscox insure in excess of 10,000 students under our learner protection scheme which was originally provided in response to Section 64-s. 67 of the 2012 Education Act, and is provided directly to higher and further education colleges and English language schools in Ireland.

Executive Summary

Study & Protect wrote to your Committee on 2 August 2017 highlighting our concerns with regard to the General Scheme of Qualifications and Quality Assurance (Amendment) Bill. We provided those comments in good faith and on the basis of our knowledge of our sector. We are therefore deeply disappointed that not one single proposal made by us at that time has been incorporated into the draft Bill.

While we have no issue with bonding arrangements per se we already provide a viable solution to learner protection in Ireland and regard the provisions relating to learner protection set down in this Draft Bill to be superfluous to requirement and to ignore arrangements already in place, and working, to protect students. We also believe that the learner protection provisions set down in the Draft Bill ignore the core competence of the insurance sector, by essentially handing over learner protection to QQI, an organisation which has no demonstrable experience in insurance services and is not equipped to provide any of the normal services provided by an insurer, including risk assessment, underwriting, corporate risk management, handling of claims, reinsurance, management of capital or knowledge of obligations under Solvency II. All of these form the bedrock of insurance provision. Indeed, in its own words, QQI is responsible for promoting quality and accountability in education and training services in Ireland and its role is well defined and does not include underwriting of the entire higher education sector and its students.
We can only assume that QQI, without experience whatsoever in insurance, has lobbied to acquire a new role for itself, which we believe to be highly inappropriate.

We request once again an oral hearing be held by your committee on this matter as despite assurances that our written submission would be considered in 2017, this is evidently not the case. To be clear, we perceive this to be a direct attack on our sector, our customers and students.

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Draft Qualifications and Quality Assurance (Education & Training) (Amendment) Bill : observations

1. Bonding Arrangment

Obligation of certain providers to pay annual charge into Learner Protection Fund: Section 65 (1) (a) introduces a bonding arrangement between private colleges, underpinned by a sinking fund, as the only means for colleges to provide learner protection. If this proposal is enshrined in legislation, higher and further education colleges will no longer have the option to secure private sector solutions to providing learner protection for their students and will be dependent on the financial health of other colleges, without having any insight into the financial health or otherwise of those schools. Responsibility for the management of the bonding arrangement and sinking fund will be handed over to QQI – an organisation which has no experience to speak of with respect to underwriting, risk assessment or solvency management. While QQI is without doubt fully qualified with respect to quality assurance of higher education, no assurances have been provided that QQI is equipped to effectively act as an insurance provider to the sector and it is our view that insurance provision falls well outside its area of competence.

This lack of expertise is particularly evident from confirmation from QQI that they do not intend to put re-insurance arrangements in place for the sinking fund. While QQI and DoES are basing the sinking fund model on the Australian model, they appear to have chosen to ignore the fact that the entire Australian model is underpinned by re-insurance . The Australian Tuition Protection Service, which it should be noted only providers cover for international students has stated in its Annual Reports

> "*Until an adequate reserve of between $20 million and $50 million has been accumulated, the TPS remains vulnerable to a sudden and unexpected increase in claims. The board is well aware of this risk, and consideration of re-insurance over the short term was recommended. Re-insurance arrangements, with support from the board, have been negotiated by the TPS Director and took effect from 1 July 2014*."

It should be noted that **reinsurance** of such risks, ultimately macro-economic in nature, is a delicate task in the insurance market and one likely to add serious cost to the ultimate price paid by the student. QQI's failure to address this at an early stage in the process once again demonstrates their lack of competence in this field.

Moreover, this regime will extend liability to the State which heretofore has been assumed by the private sector. We are aware of at least one large private college having been underwritten by a state university without any publication consultation on such an arrangement. We are at a loss to understand why this particular concern has effectively been ignored in the context of the draft Bill.

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The bonding arrangement envisaged is unnecessary because were the legislation simply to mandate private insurance for all higher education and further education colleges, the insurance sector, most certainly the best qualified to provide such cover, can respond to this. By way of a recent example, LISC/LanLearn, an English language school located in Limerick recently closed its doors affecting approximately 150 international students. The closure was induced by a loss of accreditation following an inspection by the Department of Justice. LISC/LanLearn had Enrolled Learner Protection insurance in place which made it possible for all 150 affected students to be relocated to Limerick City College, approximately 3km from LISC/LanLearn, to continue their studies.

The manner in which this school closure was handled was in stark contrast to the spate of closures which occurred in Ireland between 2013-2015 where approximately 16 Language Schools closed leaving thousands of international students out of pocket – this because LISC/LanLearn had Enrolled Learner Protection insurance. In relation to the closure, Sheila Power, Director of The Irish Council for International Students (ICOS), indicated how critical this was - "*A school closure is inevitably very distressing for students who may be unaware of their rights in the circumstances. Fortunately, since 2015, Learner Protection is a mandatory requirement for all private colleges in Ireland offering courses to non-EEA students. This meant, that in the case of the recent closure of LISC/LanLearn in Limerick, all of the 150 (approx.) displaced students were supported, through insurance arrangements, to continue their studies in another college in Limerick with minimum disruption to their studies. ICOS was very pleased to work with StudyandProtect the insurance provider, to ensure that students affected by the closure got all the support they needed.*

In the context of private insurance being perfectly equipped to deal with such closures, we provide below direction on how we believe the legislation should be written to provide for private insurance solutions, while providing a stop-gap measure available to QQI where a school has failed to provide proof of insurance to QQI.

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Draft Qualifications and Quality Assurance (Education & Training) (Amendment) Bill 2018 Section 65	**Learn & Protect proposed amendment**
Obligation of certain providers to pay annual charge into Learner Protection Fund 65. (1) (a) a relevant provider, an associated provider or a linked provider (each of which is referred to subsequently in this section as an 'obligated provider') offers, for reward, a programme of education and training leading to an award that is an award included within the Framework, or (b) a provider offers, for reward, an English language programme (and such a provider is also referred to subsequently in this section as an 'obligated provider'), it shall, in each year, pay into the Learner Protection Fund, such amount (referred to subsequently in this Part as the 'annual charge') as is prescribed under section 66A(1).	**Obligation of certain providers to pay annual charge into Learner Protection Fund** 65. (1) (a) a relevant provider, an associated provider or a linked provider (each of which is referred to subsequently in this section as an 'obligated provider') offers, for reward, a programme of education and training leading to an award that is an award included within the Framework, or (b) a provider offers, for reward, an English language programme (and such a provider is also referred to subsequently in this section as an 'obligated provider'), it shall, in each year, pay into the Learner Protection Fund, such amount (referred to subsequently in this Part as the 'annual charge') as is prescribed under section 66A(1). **[*insert*] -** **(c) 65(1)(b) shall not apply where a relevant provider can present proof of the existence of a valid in-force policy of insurance which provides learner protection insurance over for all students enrolled on a programme of education and training at that provider.**
(i) the provider does not provide the programme for any reason, including by reason of the insolvency or winding up of the provider, or (ii) enrolled learners have begun but not completed the programme and the provider ceases to provide the programme before that programme is completed for any reason, including by reason of the insolvency or winding up of the provider.	(i) the provider does not provide the programme for any reason, including by reason of the insolvency or winding up of the provider, or (ii) enrolled learners have begun but not completed the programme and the provider ceases to provide the programme before that programme is completed for any reason, including by reason of the insolvency or winding up of the provider.

Note: Consequential amendments would flow from this

The alternative option to providing for this change would be to leave section 65(1) in its current form, and simply amend the categories of exemption which are provided for in the proposed new section 65(3). In other words, simply dis-apply the obligation to contribute to the Sinking Fund where insurance arrangements are already in place i.e.

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Draft Qualifications and Quality Assurance (Education & Training) (Amendment) Bill 2018 Section 65	**Learn & Protect's proposed amendment**
Obligation of certain providers to pay annual charge into Learner Protection Fund 65 (3) Subsection (1) shall not apply to a provider of a programme of education and training if the provider is— (a) a previously established university, (b) an educational institution established as a university under section 9 of the Act of 1997, (c) a technological university, (d) the Dublin Institute of Technology, (e) an Institute of Technology, (f) an educational institution designated under section 5 (inserted by section 52(e) of the Institutes of Technology Act 2006) of the Higher Education Authority Act 1971 as an institution of higher education for the purposes of that Act, (g) Solas, (h) the National Tourism Development Authority, (i) Teagasc, (j) An Bord Iascaigh Mhara, (k) an education and training board or an institution established and maintained by an education and training board, (l) a recognised school, (m) the Royal College of Surgeons in Ireland, (n) the Royal Irish Academy of Music, or (o) a body established— (i) by or under an enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or (ii) under the Companies Act 2014 (or a former enactment relating to companies within the meaning of section 5 of that Act) in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government.	**Obligation of certain providers to pay annual charge into Learner Protection Fund** 65 (3) Subsection (1) shall not apply to a provider of a programme of education and training if the provider is— (a) a previously established university, (b) an educational institution established as a university under section 9 of the Act of 1997, (c) a technological university, (d) the Dublin Institute of Technology, (e) an Institute of Technology, (f) an educational institution designated under section 5 (inserted by section 52(e) of the Institutes of Technology Act 2006) of the Higher Education Authority Act 1971 as an institution of higher education for the purposes of that Act, (g) Solas, (h) the National Tourism Development Authority, (i) Teagasc, (j) An Bord Iascaigh Mhara, (k) an education and training board or an institution established and maintained by an education and training board, (l) a recognised school, (m) the Royal College of Surgeons in Ireland, (n) the Royal Irish Academy of Music, or (o) a body established— (i) by or under an enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or (ii) under the Companies Act 2014 (or a former enactment relating to companies within the meaning of section 5 of that Act) in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government. **[*insert*] – (o) a college of education that holds a valid and in-force policy of insurance which provides learner protection of insurance cover for all students enrolled on a programme of education and training at that provider.**

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Payment scheme (in the event of a bonding arrangement being put in place)

Section 65 (1) (b) of the draft Bill also provides "*the annual charge shall be paid into the Learner Protection Fund prior to the commencement of provision by the obligated provider of the programme concerned and prior to the acceptance by it of any payments by or on behalf of any learners for enrolment on that programme* and provides "*The Minister shall prescribe the amount of the annual charge to be paid, under subsection (1) of section 65, by each provider referred to in that subsection (in this section referred to as an 'obligated provider').".*
With respect, these provisions deny legal and business certainty to higher education and schools policies. No information has been forthcoming with respect to the level of those fees or indeed how they will be calculated, with the added obstacle of requiring full payment at the beginning of the academic year. This is particularly concerning for our clients, who are unable to plan for such a cost, without having any indication of what it may be.

At the very least, the legislation should require meaningful pre-consultation with the sector before a unilateral decision by the Minister as to the level of fee envisaged. This was a point raised by us in 2017 and completely ignored. QQI, who will no doubt be advising the Minister in this regard, has no in-house expertise in insurance provision, no actuaries, no auditors, no risk assessors etc. and all of these gaps will require filling, leading no doubt to an increased cost for the individual school whereas the insurance sector provides these competencies in-house, the cost of which is shared across all customers, regardless of the type of insurance provided. Ultimately, this will lead to increased cost for the student.

Notwithstanding our contention that the private insurance sector is best-equipped to provide insurance protection to all schools, were the Committee to continue to insist that this is not the case and that QQI are best placed to manage a bonding arrangment and sunking fund, on the basis of the above, we would propose the following amendment to Section 65(1)(b) of the draft Bill:
(see next page)

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Draft Qualifications and Quality Assurance (Education & Training) (Amendment) Bill 2018 Sections 65 and 66	**Learn & Protect's proposed amendment**
Obligation of certain providers to pay annual charge into Learner Protection Fund 65(2) Subject to subsection (3), the annual charge shall be paid into the Learner Protection Fund prior to the commencement of provision by the obligated provider of the programme concerned and prior to the acceptance by it of any payments by or on behalf of any learners for enrolment on that programme.	**Obligation of certain providers to pay annual charge into Learner Protection Fund** 65 (2) Subject to subsection (3), the annual charge shall be paid into the Learner Protection Fund [DELETE] ~~prior to the commencement of provision by the obligated provider of the programme concerned and prior to the acceptance by it of any payments by or on behalf of any learners for enrolment on that programme~~ [INSERT] ***and prescribed at the start of the year and may be paid in quarterly instalments thereafter.***
Regulations in relation to payment of annual charges into Learner Protection Fund and related matters 66A.(1) The Minister shall prescribe the amount of the annual charge to be paid, under subsection (1) of section 65, by each provider referred to in that subsection (in this section referred to as an 'obligated provider').	**Regulations in relation to payment of annual charges into Learner Protection Fund and related matters** 66A.(1) The Minister, [INSERT] ***having consulted with obligated providers,*** shall prescribe the amount of the annual charge to be paid, under subsection (1) of section 65, by each provider referred to in that subsection (in this section referred to as an 'obligated provider').

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Managing the Learner Protection Fund

Section 66 provides for the establishment, governance and operation of the Learner Protection Fund. We specifically refer here to 66(3) whereby "*in the case of a protected programme default event, moneys standing to the credit of the Learner Protection Fund may be used by the Authority to—*

> *(a) defray the costs that will be incurred in the completion by the enrolled learner of the programme, the subject of that event (the 'relevant programme'), where such completion is possible,*
> *(b) defray the payment of the fees required for the transfer of an enrolled learner onto a programme of another provider that is similar to the relevant programme,*
> *(c) if the Authority concurs with a submission in writing to it made by the enrolled learner (or another acting on the learner's behalf) to the effect that compliance with paragraph (a) or (b) is not practicable in the particular case, refund to an enrolled learner, or to the person who paid the moneys on behalf of the enrolled learner, the moneys most recently paid in respect of the relevant programme, including, where payment in respect of such a period has been made, in respect of the current academic year.*

This gives primacy to the teaching out of the original programme of an enrolled learner. It is not made clear how this is possible given that companies could have gone into liquidation and any intellectual property would belong to the liquidator.

We, in conjunction with our underwriters Hiscox, considered this aspect when creating our own insurance product. It was apparent to us at that time that, notwithstanding the efficiency of having the original programme taught out by the provider, should an event occur requiring the activation of the enrolled learner protection insurance formally allowing the teaching out of this programme creates a serious moral hazard vis a vis the providers. The owners of the educational provider in question would be able to walk away from a programme with virtually no liability resting with themselves reassured that students would be taught out, teachers would still continue to be paid for teaching the students and suppliers would continue to be paid to ensure the proper functioning of the provider. Fundamentally this incentivises individuals who would enter education, set-up a company and systematically mismanage it for the sole purpose of maximising their own personal profit, all the while knowing that the State is legally bound to step into the void created and deal with their problems once they walk away from them.

It is worth noting that the Draft Bill fails to realise the problems inherent in such an approach and does question once again the competency of QQI to assess and manage financial risk in respect of their support for this draft provision. We would therefore strongly recommend the deletion of 66.3(a).

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Draft Qualifications and Quality Assurance (Education & Training) (Amendment) Bill 2018 Section 66	**Learn & Protect's proposed amendment**
Protection of Enrolled Learners Fund 66(3) In the case of a protected programme default event, moneys standing to the credit of the Learner Protection Fund may be used by the Authority to— (a) defray the costs that will be incurred in the completion by the enrolled learner of the programme, the subject of that event (the 'relevant programme'), where such completion is possible, (b) defray the payment of the fees required for the transfer of an enrolled learner onto a programme of another provider that is similar to the relevant programme, (c) if the Authority concurs with a submission in writing to it made by the enrolled learner (or another acting on the learner's behalf) to the effect that compliance with paragraph (a) or (b) is not practicable in the particular case, refund to an enrolled learner, or to the person who paid the moneys on behalf of the enrolled learner, the moneys most recently paid in respect of the relevant programme, including, where payment in respect of such a period has been made, in respect of the current academic year.	**Protection of Enrolled Learners Fund** 66(3) In the case of a protected programme default event, moneys standing to the credit of the Learner Protection Fund may be used by the Authority to— [DELETE] **~~(a) defray the costs that will be incurred in the completion by the enrolled learner of the programme, the subject of that event (the 'relevant programme'), where such completion is possible,~~** (b) defray the payment of the fees required for the transfer of an enrolled learner onto a programme of another provider that is similar to the relevant programme, (c) if the Authority concurs with a submission in writing to it made by the enrolled learner (or another acting on the learner's behalf) to the effect that compliance with paragraph (a) or (b) is not practicable in the particular case, refund to an enrolled learner, or to the person who paid the moneys on behalf of the enrolled learner, the moneys most recently paid in respect of the relevant programme, including, where payment in respect of such a period has been made, in respect of the current academic year.

Conclusion
It is our hope that these proposals are taken in the spirit in which they are intended i.e. to provide the best protection to students, by the institutions best placed to provide that protection. We do not believe that QQI was established to become an underwriter of further education in Ireland, rather to be the body responsible for quality assurance in the sector. The insurance sector should be permitted to do what it does best, as should QQI which is responsible for promoting quality and accountability in education and training services in Ireland, nothing more.

Should you have any further questions, please contact Jonathan Brown (Senior Underwriter, Study & Protect and Fellow of the Chartered Insurance Institute) at 01-6395804 or JBrown@odon.com.

Kind Regards,

Lucy C. Cronin,
On behalf of Study & Protect

Submission to the Joint Committee on Education and Skills

From: Mr Jim O'Toole, CEO, Bord Iascaigh Mhara (BIM)

Re: Qualifications and Quality Assurance (Education and Training) Amendment) Bill 2018

Paragraph 1: Bord Iascaigh Mhara (BIM) is a QQI-recognised provider, putting learners through for certification by FETAC/QQI since 2006. BIM trains new entrants; upgrades the skills of existing practitioners; operates Graduate and Masters programmes and develops the management capability in the Irish catching, aquaculture and seafood processing sectors.

Paragraph 2: BIM operates training facilities at Dun Laoghaire, Co. Dublin; the National Fisheries College of Ireland, Greencastle, Co. Donegal; the National Fisheries College of Ireland, Castletownbere, Co. Cork and the Seafood Innovation Hub, Clonakilty, Co. Cork. In addition, BIM's two Coastal Training Units are multi-site centres, offering training facilities on-site at a number of coastal locations around the country.

BIM Skills Development Unit Statement of Strategy

Paragraph 3: BIM provides nationally accredited education and training programmes to fishing, aquaculture and processing personnel with a view to developing a profitable and sustainable knowledge-based Irish seafood industry, capable of competing in the global marketplace, through the acquisition of knowledge, skills and competence. It is our ambition to deliver a structured career path through the provision of life long, accredited learning, to create a professional, educated talent pool for the sector. This will be achieved through the following strategic initiatives:

Paragraph 4:

- Creating a structured, lifelong career path in order to attract and retain key talent in the Irish fishing, aquaculture and seafood processing sectors.
- Disseminating knowledge, skills and business leadership using a combination of internal expertise and collaboration with external partners.
- Providing targeted training, access and funding where needed to drive skills development at all levels in the sector.
- Providing business mentoring and leadership to the sector using both BIM experts and access to specialist training.
- Promoting best practice regarding safety and working conditions.
- Protecting the Irish seafood sector's reputation through training, to deliver high standards of seafood safety management.

Paragraph 5: BIM welcomes the Quality Amendment Bill which will enhance Quality & Qualifications Ireland (QQI)'s powers. We look forward to seeing the amended legislation progress through the various stages of approval and to its enactment in the coming months. In general, BIM welcomes the key changes being proposed by the Minister in the Qualifications and Quality Assurance (Amendment) Bill. We believe that the changes which will be brought about by the amendments will help to ensure confidence in a high-quality education and training system, building on the significant progress made since the implementation of the Qualifications and Quality Assurance (Education and Training) Act 2012 in terms of quality assurance and provision. We believe that the proposed legislation will enhance QQI's ability to police and regulate quality and strengthen QQI's key role in ensuring high standards across Ireland's higher and further education sectors. We understand that QQI is studying the proposed legislation in detail and plan to work with their partners in the education sector to develop an implementation plan which will include detailed regulations, codes of practice and quality assurance procedures. We look forward to co-operating with QQI in this task.

Paragraph 6: In light of QQI's enhanced role in improving standards across Ireland's higher and further education sectors, we believe that QQI may need to consider additional staff resources to manage the changes and additional responsibilities that the new legislation will introduce. We know from working with QQI that the workload has already increased significantly with the re-engagement process, which is currently ongoing. These new amendments will require both additional staff and extra expertise.

We wish to comment in particular on the following;

Paragraph 7: **Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners)**

While BIM is one of the providers to which arrangements for the protection of enrolled learners ***does not*** apply, nonetheless we welcome plans to establish a new national Learner Protection Fund into which certain providers will pay an annual charge. Moneys would be paid out from this Fund to enrolled learners in cases of default in delivery of certain programmes, enabling learners to complete the programme concerned or to use the money for certain other purposes. We believe that this Fund will strengthen the existing system of learner protection and ensure that students are allowed to finish their programmes of education and training in the event that their programme ceases prematurely. We believe what is proposed in relation to learner protection is in line with international best practice in this area. We know that the current arrangements for protection for enrolled learners (the preferred option being agreed arrangements with two other providers), often cause difficulties for both providers and students and need to be amended. We believe that the Learner Protection Fund will replace the current systems which, in our opinion, do not always achieve the objective of fully protecting the learner.

Paragraph 8: **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)**

While BIM is not directly involved in the provision of English language education (ELE) programmes, we welcome the proposal to extend QQI's statutory oversight to include ELE providers and support the introduction of the International Education Mark (IEM). We believe that the requirement for providers, operating in an area where Ireland has been experiencing strong growth, to provide this new quality stamp when recruiting international learners, is essential to ensure Ireland's reputation for quality as a destination of choice for learning the English language. This is particularly important in light of the changes and opportunities presented by Brexit and the Government's plans to increase the value of the ELE sector by 33% to €2.1 Billion by 2020.

Paragraph 9: **New section 43A of Principal Act – offence to provide or advertise cheating services**

We also welcome legislation which will provide for the prosecution of "essay mill" companies and others who provide or advertise cheating services (e.g. those who write students' assignments in exchange for money). Like most other providers, we are concerned about the increasing incidence of various forms of academic cheating and are constantly revisiting and enhancing our own quality assurance processes in this area to ensure that we have effective policies and procedures in place to prevent, detect, combat and deter plagiarism. The use of 'essay mill' services is not easily detected, as standard plagiarism-detecting software only detects where students have copied from previously published academic texts. In addition to these services being prosecuted, we would support the Minister for Education's plans to ban these companies from advertising their services. BIM, as a provider recognised by QQI to provide programmes leading to awards on the NFQ, has a responsibility, as has all providers, to contribute to the new guidelines which are to be developed for this area and to work closely with QQI to ensure that all forms of academic cheating is detected and outlawed.

END

Submission to the Joint Oireachtas Committee on Education and Skills

Stakeholder Consultation Process

Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 (Bill No. 95 of 2018)

1. Background - QQI

Quality and Qualifications Ireland (QQI) was established in November 2012 under the *Qualifications and Quality Assurance (Education and Training) Act* 2012. QQI was created by an amalgamation of the Further Education and Training Awards Council (FETAC), the Higher Education and Training Awards Council (HETAC), the National Qualifications Authority of Ireland (NQAI) and the Irish Universities Quality Board (IUQB).

The purpose of the establishment of QQI was to bring greater coherence to the education and training sector, creating a single body to deliver a more efficient and integrated service.

The main statutory functions of QQI can be summarised as follows:

- To maintain the National Framework of Qualifications.
- To agree, and review the effectiveness of the procedures for quality assurance of education and training established by providers.
- To validate programmes of education and training leading to QQI awards.
- To establish and review the standards of knowledge, skill and competence associated with awards.
- To make awards to learners and, where appropriate, delegate authority to providers to make awards.
- To determine and monitor policies and criteria for access, transfer and progression.
- To establish a Code of Practice for the provision of education to international learners and the related International Education Mark and to authorise use of the Mark.

QQI currently provides its services to over 600 providers: 458 further education and training providers, 54 higher education and training providers and 89 English language training providers, leading to awards at every level of the National Framework of Qualifications.

2. Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018

Legislative amendments to the *Qualifications and Quality Assurance (Education and Training) Act* 2012 are necessary to address a number of issues that have been identified as impeding QQI from exercising some of its intended functions in relation to the quality assurance of the further and higher education sectors.

A number of these issues were identified following a comprehensive review by QQI of its powers under the 2012 Act.

The main amendments that are required to the *Qualifications and Quality Assurance (Education and Training) Act*, 2012 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 facilitate the introduction of the International Education Mark (IEM)
- To provide for a national scheme for the protection of enrolled learners
- To involve providers more centrally in the application process for recognition of prior learning (RPL)
- To provide the power to prosecute 'essay mills' and other forms of academic cheating
- To provide a legal basis for QQI to charge 'relationship fees' to providers

Government approval for the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 was received on 18th July 2018 and the text of the Bill was published on 1st August 2018.

It is important to note that the Bill contains no new regulatory or policy proposals. The legislative amendments contained in the Bill are technical and enabling provisions which are designed to facilitate the introduction of deferred policies and to clarify, strengthen and make the operation of existing policies more efficient.

The Bill is set out in 3 Parts containing 36 Sections. Section 3 of this document sets out a section by section overview of the Bill's content. This section focuses on some of the key legislative proposals contained therein:

i) **Section 8:** To provide the legal basis to examine the bona fides and financial capacity of providers.
ii) **Section 14:** The power to prosecute 'essay mills' and other forms of academic cheating
iii) **Section 22:** Listing awarding bodies in the National Framework of Qualifications (NFQ).
iv) **Sections 24, 25, 26:** The International Education Mark (IEM)
v) **Sections 27, 28, 29, 30:** The Protection of Enrolled Learners (PEL) Fund.

Both the Department and QQI are available to provide any further material that the Committee may require and are at the Committee's disposal to answer any questions.

2.1 Section 8: To provide the legal basis to examine the bona fides and financial capacity of providers.

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 in addition to assessing that the provider has the capacity and capability to implement the quality assurance processes and provide programmes of education and training consistent with the requirements of the Act.

These powers are to be extended by means of statutory instrument to provide for regulatory responsiveness to innovative modes of provision and forms of provider organisation. These regulations will set out criteria addressing key issues such as the legal personality, ownership and corporate governance arrangements of providers in addition to examining whether adequate financial resources are in place to ensure the viability of these businesses.

2.2 Section 14: The power to prosecute 'essay mills' and other forms of academic cheating

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.

Essay Mills are services which supply to learners, in whole or in part, assignments that are required to be completed as part of a programme of education and training. These services are principally advertised online and have been a growing phenomenon in recent years.

These services present a challenge to the academic integrity of those programmes and awards under the remit of QQI. The creation of offences for the provision and advertisement of these services will serve to prohibit the practice and make these services more difficult to access.

2.3 Section 22: Listing awarding bodies in the National Framework of Qualifications (NFQ).

The 2012 Act currently limits the range of awards and qualifications that QQI are empowered to include in the National Framework of Qualifications (NFQ). This narrow scope has prevented the inclusion in the NFQ of many qualifications offered by providers in Ireland including those of professional and international awarding bodies.

Section 22 - New sections 55A to 55I of Principal Act - awards included within the Framework (process by which awards acquire such status) contains provisions which will authorise QQI to "list" awarding bodies and to include their qualifications in the NFQ. To facilitate this function, this Section provides for the establishment by QQI of procedures and criteria for the inclusion of awards of these listed bodies in the NFQ.

This section also establishes that providers associated with listed awarding bodies shall implement appropriate quality assurance procedures and meet related requirements to ensure the standards of the NFQ are maintained.

2.3 Sections 24, 25, 26: The International Education Mark (IEM)

The 2012 Act authorises QQI to develop and introduce an International Education Mark (IEM). The IEM is a core component of the Government's policy for the English language sector and will provide a full quality framework for the provision of education to international learners in the future. Only those providers who meet the robust quality assurance procedures of QQI will be allowed to carry the Mark. Once fully implemented, providers must gain authorisation from QQI to use the IEM in order to be eligible to recruit international students.

The IEM is a tool to further enhance and sustain the quality of our education system. It provides an incentive to providers to meet the quality standards expected by the relevant regulator, QQI. It also provides learners, or potential learners, with the necessary confidence that providers with the IEM have been quality assured by QQI.

The development and introduction of the IEM has been deferred due to legislative difficulties with the 2012 Act. The main difficulty relates to a definitional issue. One of the pre-conditions prior to applying for the IEM as specified in the 2012 Act is that a provider must offer programmes that lead to awards that are recognised in the National Framework of Qualifications, where that award is so capable of being recognised. However, the 2012 Act does not grant QQI the express legal power to recognise awards. This means that QQI cannot currently enable or facilitate providers to meet this pre-condition. The Bill contains enabling provisions to address this issue.

The Bill also provides for amendments to the 2012 Act to allow for the introduction of more than one IEM in the future. The current legislation provides for only one version of the IEM. It is proposed that there will be initially two variants of the mark – an IEM for English language training, and an IEM for general higher education provision. This will enable QQI to prepare appropriate Codes of Practice to account for the vast differentiation between these types of educational provision.

The Qualifications and Quality Assurance (Education and Training) (Amendment) Bill does not deal with the operation of the IEM itself, rather the purpose is to authorise QQI to develop and introduce the IEM. Once the new Bill is enacted QQI will then proceed to publish guidelines for the operation of the IEM following consultation with all relevant stakeholders.

The Bill (Section 8) contains provisions to provide QQI with additional statutory powers to assess a provider's corporate fitness and financial robustness in the context of commencing or renewing a quality assurance relationship with QQI with the intention to ensure that a provider is fully equipped in the round to provide a programme of education and training. This will also apply to English language providers seeking to access the International Education Mark.

2.4 Sections 27, 28, 29, 30: The Protection of Enrolled Learners (PEL) Fund

Section 65 of the Qualifications and Quality Assurance (Education and Training) Act 2012 requires providers (with the exception of named public bodies) seeking validation of programmes from QQI to have specific Protection of Enrolled Learners (PEL) arrangements

in place. This applies to providers offering programmes of 3 months' duration or longer, where fees are charged.

Under the 2012 Act (and the predecessor Qualifications Act of 1999), the primary requirement is for 'academic bonding'. Under academic bonding an education and training provider must put in place academic transfer arrangements with at least two other providers to facilitate the transfer of learners to 'similar programmes'. This would allow for a student to have their programme of study 'taught out' at another institution in the event of their original provider ceasing to provide services. This is the preferred solution for students and is best practice internationally.

It is only in instances where academic bonding is not possible, that the 2012 Act allows providers to make financial arrangements for the refund of 'moneys most recently paid' ('financial bonding'). Financial bonding is only permitted with the express approval of QQI. While a refund of most recently paid fees may be welcomed by some students in the event of a provider ceasing to trade, it is less favourable than academic bonding arrangements which provide for students to complete their programme of study. Academic bonding is particularly important in higher education and training as courses of study tend to be longer in duration.

The practical implementation and operation of the provisions relating to PEL has proven problematic. There have been difficulties with the academic bonding requirement for some providers. For example, the PEL academic bonding arrangement requires that two alternative providers be identified who could facilitate the transfer of learners to similar programmes. For providers of niche programmes, it is often impossible to identify one provider offering a similar programme let alone two. The provider with the 'similar programme' must then be willing to enter into an academic bonding arrangement. There is concern that that the legislation in relation to the Transfer of Undertakings may apply to PEL academic bonding arrangements. The legislation on the Transfer of Undertakings includes provisions that are intended to safeguard the rights of employees in the event of a transfer of a business or part of a business to another employer. A number of providers have withdrawn from academic bonding arrangements because of concerns in this regard.

There are also practical difficulties with the alternative option of providers entering into financial bonding arrangements for the refund of fees:

- The options available for financial bonding are limited. There is currently only one insurance product available that satisfies the requirements of the 2012 Act. QQI has experience of a number of providers, in particular smaller providers, who have had to withdraw from the process of programme validation because they are unable to meet the costs involved in securing financial bonding arrangements.
- Providers have queried the transparency of the existing financial products that are available to them.
- It is currently unclear if these financial arrangements will deliver in the event of a programme ceasing as they have not been extensively tested to date.

- It is currently unclear if financial bonding can support options beyond providing for a refund of fees to the learner such as funding the teach-out or completion of a programme which is the principal purpose of PEL policy.

The 2012 Act (as did the predecessor 1999 Act) requires QQI to assist learners in the event of a programme ceasing before completion. QQI may also require other relevant providers, including public providers, to accommodate the learners affected by the cessation of the programme. This is a complex process which is extremely time and resource intensive and it impacts on QQI's ability to undertake its core activities. It can also be a costly course of action specifically when providers, both public and private, are required to step in and accommodate learners without any associated funding. In many cases, public providers (in effect the State) may have to bear the costs arising from failures within the private education market.

For these reasons, the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill provides for amendments to Section 65 of the 2012 Act to allow for the introduction of a national scheme for PEL – the Learner Protection Fund. The intention of these amendments is to facilitate the operation of what was originally intended in 2012, namely to provide for a learner protection system that prioritises 'academic bonding' or programme completion. While the refund of fees paid by students is an important issue, the priority is to ensure that learners who have commenced a programme of education and training can be facilitated in achieving their award in circumstances where their provider ceases to provide their programme prior to them having completed it.

The Fund

The Bill as published provides the Minister for Education and Skills with powers to prescribe procedures for the establishment, governance and management of the Learner Protection Fund by means of a Statutory Instrument. The new arrangements will apply to all providers engaging with the National Framework of Qualifications or authorised to use the International Education Mark (IEM) for the purposes of English Language Education with the exception of those expressly exempted in the legislation (i.e. public bodies).

Each provider that offers a programme leading to an award included in the NFQ of 3 months' duration or longer, or an English Language Programme carrying the IEM, and accepts monies from or on behalf of learners in respect of that programme, would pay an annual charge to the Learner Protection Fund. The annual charge would be paid in advance of the start of the programme or provision in question and prior to accepting any payments by or on behalf of any learners for enrolment during that year or any part of it.

The Fund would be used by QQI to:

i. fund the teaching out of the original programme where possible; or
ii. fund the payment of fees for the transfer of an enrolled learner onto a similar programme of another provider where a provider does not provide the original programme for whatever reason, including the withdrawal of validation by the awarding body; or

iii. in circumstances where the learner considers, with the agreement of QQI, that it is not practicable to complete the programme with another provider, QQI will refund the learner, or the person who paid the moneys on their behalf, the moneys most recently paid in respect of the programme for the current academic year, to include – tuition fees, registration fees, examination fees, library fees, student services fees and any other fees paid on or on behalf of the learner to the provider

iv. cover the costs incurred by QQI in operating the Fund and managing PEL events

PEL Fund Charges

It is expected that the cost to providers arising from the Learner Protection Fund will be comparatively low, and less than the costs associated with current PEL insurance arrangements.

It is proposed that there will be a nominal standing administrative charge payable by all providers and an additional cost based on the following factors:

a) the number of learners enrolled on the programme,
b) the number of international learners enrolled on the programme,
c) the duration of the programmes in respect of the learners at (a) and (b)
d) the level of the fees charged by providers, and
e) any other matter deemed to impact on the protection of the enrolled learner, or the learner protection fund.

It is expected that there will also be a risk-based element to the charge calculation. The risk based element will apply to certain categories of providers and programmes and may include factors such as a provider's track record in delivering education and training programmes, a history of unpaid charges and penalties for late payment of the charge. There will be clear criteria for this purpose which will be developed by QQI in consultation with stakeholders. There is also the potential to reduce the charges paid by providers over time once the Learner Protection Fund has reached a certain threshold.

The Fund being proposed in the Bill is based on the PEL Sinking Fund currently being operated in Australia. The Australian Fund is operating in a very cost effective manner with minimal resource requirements. It has successfully addressed PEL events by placing learners on alternative programmes at a low cost to both providers and learners.

QQI has held extensive engagements with Irish education and training providers and the proposal to introduce the Learner Protection Fund has been generally welcomed. It is seen as a mechanism that will bring stability, simplicity, fairness and certainty to an area which has been fraught with difficulty and uncertainty.

The Learner Protection Fund needs to be universally applicable to all providers in order to provide QQI with sufficient resources to successfully fund the teaching out of a programme or the transfer of learners to a similar programme.

It is considered that the introduction of a national PEL Learner Protection Fund represents a comprehensive, cost-effective, equitable and transparent approach to the protection of

enrolled learners in the State. Most importantly, it will incentivise providers to achieve and maintain the quality of their provision, and it will provide the necessary protection for learners who are enrolling in our education system. The proposals for the Learner Protection Fund and the introduction of the IEM are therefore complementary in many respects, particularly when it comes to attracting international students.

3. Section by section overview of the Bill

The Bill is set out in 3 Parts containing 36 Sections.

Part 1: Preliminary and General – Sections 1 and 2

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 the key terms for use in the Bill.

Part 2: Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012 – Sections 3 to 32

Part 2 deals with the legislative amendments to the 2012 Act.

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 arrangements between providers and awarding bodies other than QQI during which Section 22 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 33

Part 3 deals with amendments to the Regional Technical Colleges Act of 1992.

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'.

2018/322a

SUBMISSION TO THE JOINT COMMITTEE ON EDUCATION & SKILLS

QUALIFICATIONS AND QUALITY ASSURANCE (EDUCATION AND TRAINING) AMENDMENT BILL 2018

2 OCTOBER 2018

QQI
Quality and Qualifications Ireland
Dearbhú Cáilíochta agus Cáilíochtaí Éireann

Adding Value to Qualifications

Contents

Executive Summary

Quality and Qualifications Ireland (QQI) is a State agency established in 2012 under the Qualifications and Quality Assurance Act 2012.

We are responsible for promoting quality and accountability in education and training services in Ireland.

Our mission is to:

- Sustain public confidence in the quality of education and training;
- Promote trust in the National Framework of Qualifications; and
- Drive a culture of continuous improvement by education and training providers.

Further details on the breadth of QQI's activities can be read here.

QQI welcomes the publication of the Qualifications and Quality Assurance (Education and Training) Amendment Bill 2018 (2018 Bill). QQI is confident that the proposed amendments will safeguard the integrity of the National Framework of Qualifications, and the reputation of higher and further education and training in Ireland and simultaneously improve standards in the international education sector.

The amendments to the legislation fall into two broad categories - substantial amendments, (of which there are four) and minor amendments. The rationale for and explanation of the substantial amendments are outlined in detail below. The minor amendments will provide for a more efficient and effective operation of the quality assurance relationship between QQI and its stakeholders.

Background to the 2018 Bill

Following its establishment in 2012, QQI launched a comprehensive policy development programme across all functions as specified in the Qualifications and Quality Assurance (Education and Training) Act 2012 (2012 Act). It became evident very quickly that there were gaps in the 2012 Act which impeded QQI from fulfilling its intended role in relation to the quality assurance of the further and higher education sectors and the English language sector. Engagement with the DES commenced at an early date to discuss the changes necessary to make QQI fully operational. The amendments proposed in the 2018 Bill are intended to enable QQI to discharge its functions as outlined in the 2012 Act. Many of the amendments proposed are informed by consultation with QQI stakeholders.

Proposed Amendments

Substantial Amendments

Section 22 *(Section 55A-551 2012 Act)* - To give QQI explicit authority to 'list' awarding bodies and to include their qualifications in the National Framework of Qualifications (the Framework)

Section 8 *(Section 29A 2012 Act)* **-** To provide a legal basis for QQI to examine the *bona fides* and financial capacity of providers

Section 24, 25, 26 *(Section 60, 61, 63 2012 Act)* - To facilitate the introduction of the International Education Mark (IEM)

Sections 27 – 31 *(Section 64–67 2012 Act)* - To provide for a national scheme for the protection of enrolled learners (PEL)

Minor Amendments

Section 6, 7, 9, 11, 16, 17, 20 *(Section 27, 28, 30, 36, 45, 47, 52 2012 Act)* **-** To strengthen the process for approval of quality assurance procedures and programme validation

Section 19 *(Section 50 2012 Act)* - To involve providers more centrally in the application process for recognition of prior learning (RPL)

Section 5 *(Section 14A 2012 Act)* - To facilitate information sharing by QQI with other State Bodies

Section 14 *(Section 43A 2012 Act)* - To empower QQI to prosecute essay mills and other forms of academic cheating

Section 33 *(Section 80 2012 Act)* - To provide a legal basis for QQI to charge 'relationship fees' to providers

Section 35 *(Amendment of the Regional Technical Colleges Act 1992)* - To establish Institutes of Technology as awarding bodies, and

Section 32 *(Section 79 2012 Act)* - Exempt the listing of post-primary programmes and awards in the database of programmes.

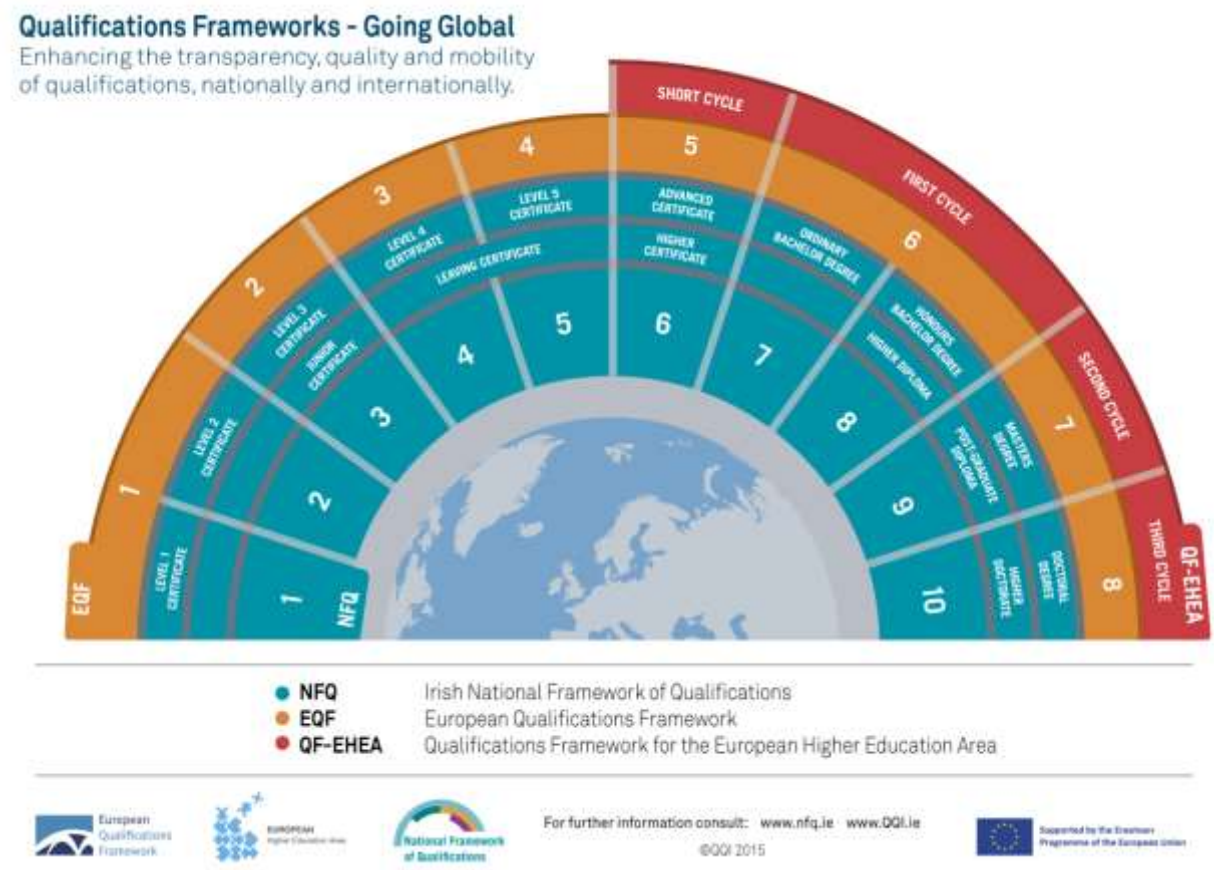
Substantial Amendments

SECTION 22 (SECTION 55A-55I 2012 ACT) AUTHORITY TO 'LIST' AWARDING BODIES TO INCLUDE THEIR QUALIFICATIONS IN THE FRAMEWORK

What is the National Framework of Qualifications?

The Irish National Framework of Qualifications (Framework) is a 10-level system used to classify qualifications in Ireland. For example, bachelor's and master's degrees, the Leaving Certificate and many qualifications in further education and training, have all been assigned a level within the Framework. The Framework was established in law under the 1999 Qualifications (Education and Training) Act, it was launched in 2003 and re-authorised under the 2012 Quality and Qualifications Act. The levelling of qualifications within the Framework has been endorsed by the education and training community in Ireland and by international peers. Qualifications Frameworks are found in over 160 countries worldwide and regional frameworks have also emerged, such as the European Qualifications Framework and the Qualifications Framework for the European Higher Education Area. The alignment of the Irish Framework with these European systems has assisted with the international mobility of learners and promoted the international recognition of qualifications gained in Ireland.

Figure 1: The National Framework of Qualifications



For any qualification to be 'included within the Framework' the standard of knowledge, skill and competence signalled by that qualification must be supported by transparent and effective quality assurance arrangements, in line with good practice internationally. The levels assigned to qualifications included within the Irish Framework are widely accepted. This is important for all users of qualifications and for holders of qualifications, as they seek further study or employment opportunities.

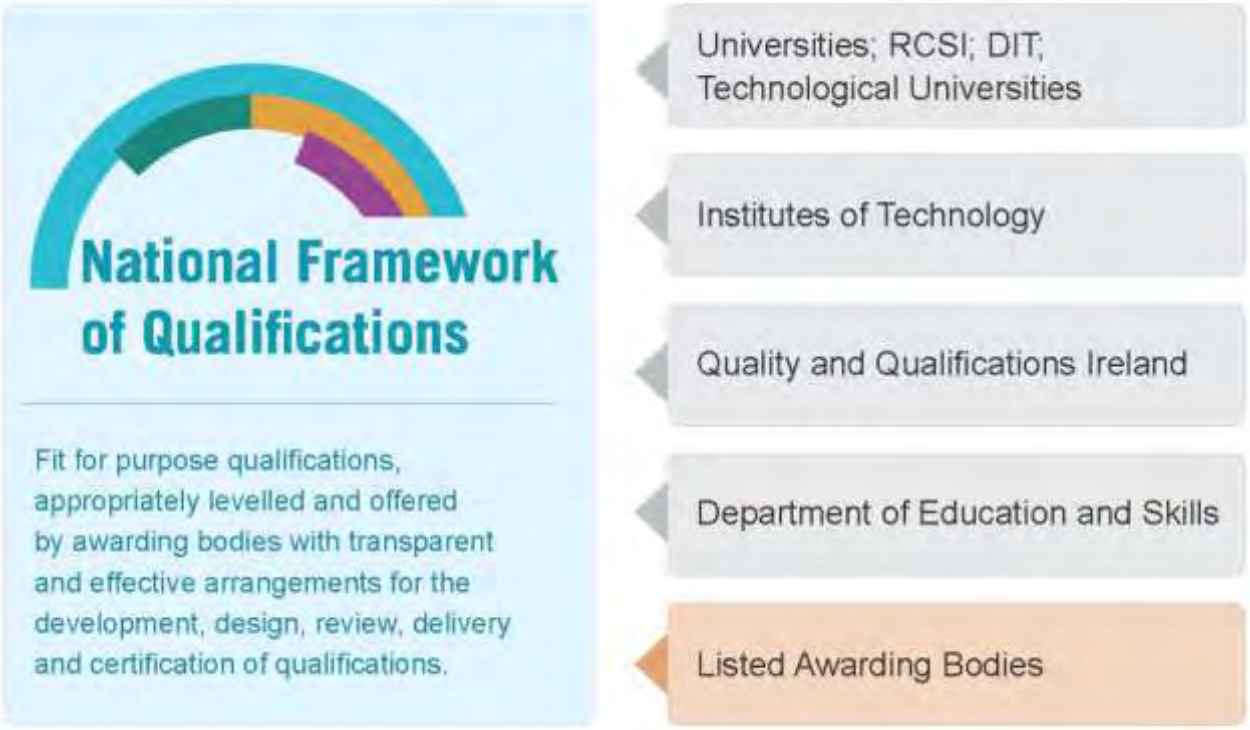
The Framework and the 2012 Act

Currently, only qualifications issued by certain national awarding bodies can be included within the Framework. These are the Irish Universities, the Royal College of Surgeons in Ireland, the Institutes of Technology, Quality and Qualifications Ireland and the Department of Education and Skills.

The Framework and the changes proposed in the 2018 Bill

There are many other qualifications offered in the State that are widely used to meet the economic and social needs of learners. These include qualifications made by professional bodies in the areas of Law and Accountancy, vocational and technical qualifications issued by UK awarding bodies such as City and Guilds, and qualifications made by international organisations or sectoral bodies often linked to specific industries, technologies or occupations. Sections 55A-55I of the Bill provides for the establishment of a new category of '***Listed Awarding Bodies'*** interested in voluntary, regulated access to the Framework. Figure 2 shows the proposed routes into the Framework.

Figure 2: The proposed range of awarding bodies with regulated access to the Framework

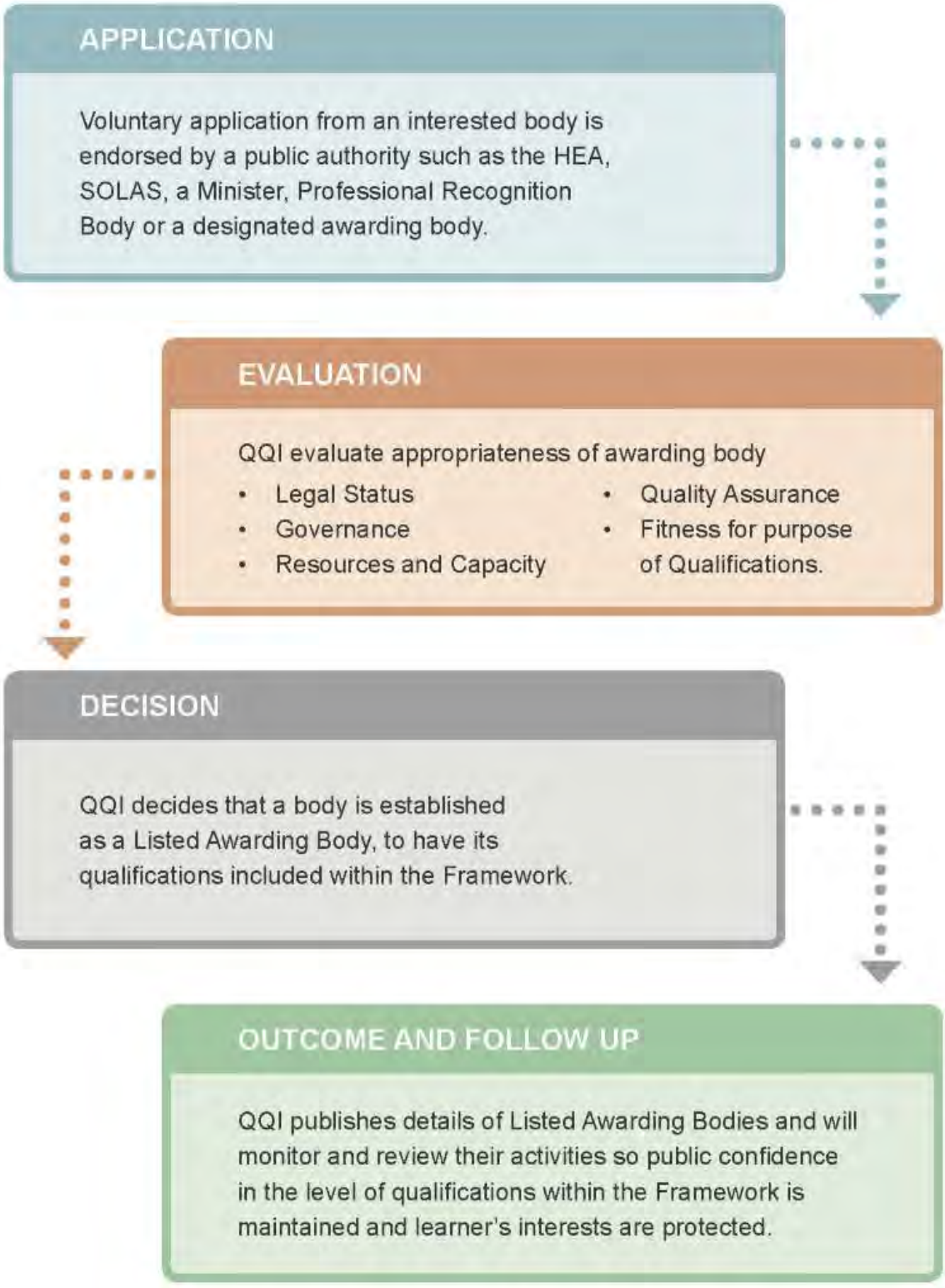


Importantly, the proposed scheme for 'listing awarding bodies' will be voluntary. There is evidence of demand for this new route to the Framework. Listed awarding bodies will have the opportunity to offer their qualifications within the public education and training system. This will facilitate access to the Framework for a broader range of awarding bodies. It is also intended to achieve wider system benefits, by creating more and better qualifications pathways for learners, enhancing learner mobility and progression opportunities and promoting fair recognition of learning achievements. In addition, this

new route will facilitate accredited providers interested in seeking authorisation to use the international education mark.

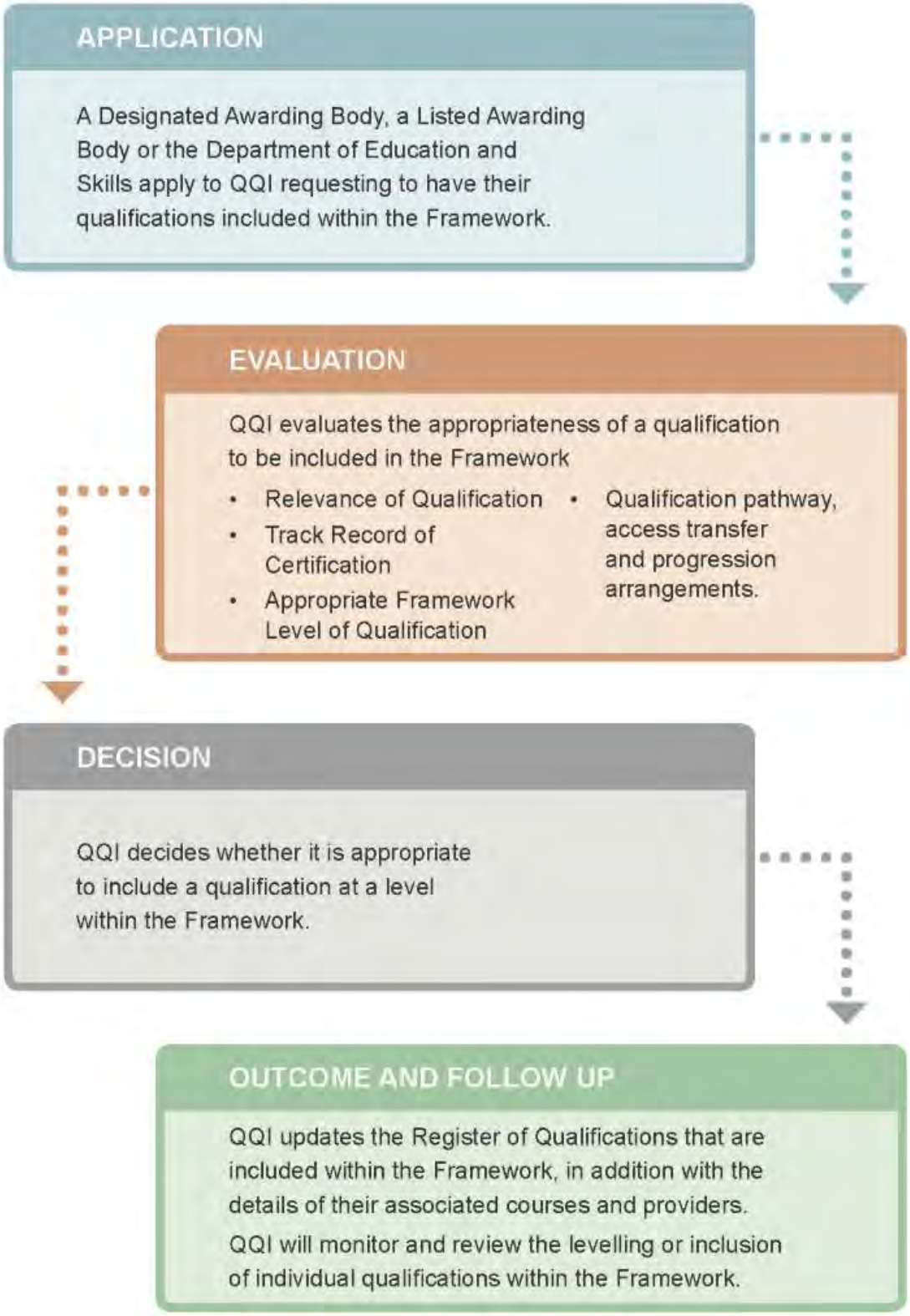
For an applicant body to become a listed awarding body under section 55C of the Bill, QQI will decide whether such a body is eligible to make awards that are included within the Framework. This process is outlined in Figure 3.

Figure 3. How an awarding body will become a listed awarding body under Section 55C



The proposed changes to the Framework set out in Section 55A-55I, are not limited to increasing the number of awarding bodies to be granted regulated access to the Framework. It is also proposed to strengthen the mechanism by which *all* qualifications are to be included within the Framework. Section 55D obliges national awarding bodies, such as Universities and the Department of Education and Skills to make an application to QQI to have their qualifications included within the Framework. This is a significant change and formalises the process by which national qualifications are assigned a level within the Framework. Figure 4 shows how national awarding bodies and listed awarding bodies are to have their qualifications included within the Framework.

Figure 4: Outline Procedure for Including Qualifications within the Framework under Section 55D



Summary

Sections 55A-55I of the Bill are intended to achieve two policy aspirations. Firstly, to facilitate an expansion in the number of awarding bodies having regulated access to the Framework. Secondly, to strengthen the process by which all qualifications, regardless of their awarding body, are deemed to be included within the Framework. Expanding and strengthening the reach of the Framework as a mechanism for classifying quality assured qualifications, is in the interests of learners and other users of qualifications such as funding agencies, employers, regulators and policymakers. The proposed scheme is considered necessary and proportionate, it is consistent with and informed by practice in many other countries. It is anticipated that the scheme will operate on a cost recovery basis.

SECTION 8 (SECTION 29A 2012 ACT) TO PROVIDE A LEGAL BASIS FOR QQI TO EXAMINE THE *BONA FIDES* AND FINANCIAL CAPACITY OF PROVIDERS

QQI is empowered under the 2012 Act to examine the education and training quality assurance infrastructure of a relevant provider and determine if it satisfies the minimum stated requirements. Academic governance does not exist in a vacuum; it exists in the context of corporate governance. QQI has no role in assessing the corporate fitness or financial robustness of any provider with which it engages, except in the most peripheral manner. This means that QQI and by extension the regulated education and training sector is potentially exposed to providers that it might otherwise conclude do not have the capacity to engage with a statutory quality assurance regime. There is a potential reputational risk to such engagement. The proposed Ministerial regulations will provide QQI with powers to evaluate a provider's corporate fitness, including the bona fides and financial status of a provider and their capacity to engage with quality assurance processes in the broadest sense. This will be an important element in underpinning and supporting the integrity of the education and training sector in the State.

Experience of past college closures and difficulties with providers can be linked directly to failures in corporate governance and financial management. These new criteria to be satisfied by all providers will support QQI in its endeavours to ensure that providers engaging with QQI and the NFQ have the capacity to do so. They will also underpin the initial phase of engagement with listed awarding bodies. QQI will also have the power to withdraw from its engagement with any provider in circumstances where the provider fails to meet the specified criteria. The more robust these criteria, the less likely there will be a call on the Protection for Enrolled Learners Fund.

SECTION 24, 25, 26 (SECTION 60, 61, 63 2012 ACT) TO FACILITATE THE INTRODUCTION OF THE INTERNATIONAL EDUCATION MARK (IEM)

What is the International Education Mark (IEM)?

The International Education Mark (IEM) is part of the national strategy[1] to foster and strengthen Ireland's reputation for international education, which will work in tandem with the policies and activities of providers, government departments and agencies implementing the strategy. The IEM will ensure that international learners can expect a high quality educational experience from providers from enrolment to completion of a programme of education and training. In addition, it is envisaged that the IEM will assist as a differentiating quality indicator that will support marketing for providers to attract international learners to their institutions.

IEM as specified under the Qualifications and Quality Assurance (Education and Training) Act 2012

The Qualifications and Quality Assurance (Education and Training) Act 2012 (2012 Act) provided for the introduction of the IEM. Under the 2012 Act, a provider may apply to QQI for authorisation to use the IEM. QQI assesses the compliance of the provider with a Code of Practice and decides regarding whether the provider is authorised to use the IEM. To make an application for the IEM, the provider must have established quality assurance procedures (QA), procedures for access, transfer and progression (ATP) and each programme offered by the provider must lead to an award on the National Framework of Qualifications (NFQ). Providers also must have arrangements in place for the Protection of Enrolled Learners (PEL). The Act also provides for English Language Education (ELE) providers to apply for the IEM once they have established QA and ATP procedures and have PEL arrangements in place.

When QQI moved to implement the IEM as specified under the 2012 Act, the following issues were identified:

- **A single IEM was specified**. As it is necessary that the IEM encompasses Higher Education (HE) and English Language Education (ELE) provision, a single IEM to cover provision in both the HE and ELE sectors is not fit-for-

[1] https://www.education.ie/en/Publications/Policy-Reports/International-Education-Strategy-For-Ireland-2016-2020.pdf

purpose. This is because the two sectors differ significantly in how they organise their provision and how they operate.

- **Providers were eligible to apply for authorisation to use the IEM only when QQI had oversight of the quality assurance of the entirety of the provider's provision and all programmes offered by the provider led to awards included in the NFQ.** Public higher education providers mainly offer programmes leading to NFQ awards. However, this condition had the effect of excluding some independent HE providers which offer a mixture of programmes, some leading to NFQ awards and others leading to non-NFQ awards.
- **Section 61(6) allows ELE providers to apply for the IEM once they have established QA and ATP and have PEL arrangements in place.** This provision was intended to facilitate the application for the IEM by ELE providers, but in practice it also allowed for the application by HE providers offering UK and other awards. The result was that QQI would have (via QA approval under Section 28) QA oversight of programmes leading to awards that are not in the NFQ. This is untenable, as QQI did not have a means to oversee the quality of programmes leading to non-NFQ awards.
- **The IEM could only be authorised at provider level.** The possibility did not exist for providers to obtain IEM authorisation at a programme level, where the providers offered a mix of NFQ and other awards. Either such providers would have to cease offering non-NFQ awards (which may not always be desirable from a provider or national perspective) or choose not to seek the IEM.
- **Transnational education.** The IEM applied only to the provision of education and training to international learners taking programmes leading to NFQ awards in Ireland. International learners taking programmes leading to NFQ awards with Irish higher education institutions overseas were not within the scope of the IEM.
- **Withdrawal of IEM authorisation.** There was no provision for the IEM to be withdrawn from a provider, except as a result of a review of the provider by QQI. In some cases, a provider may wish to have their authorisation for the IEM withdrawn and this could not be facilitated.

The issues listed above impeded the introduction of the IEM.

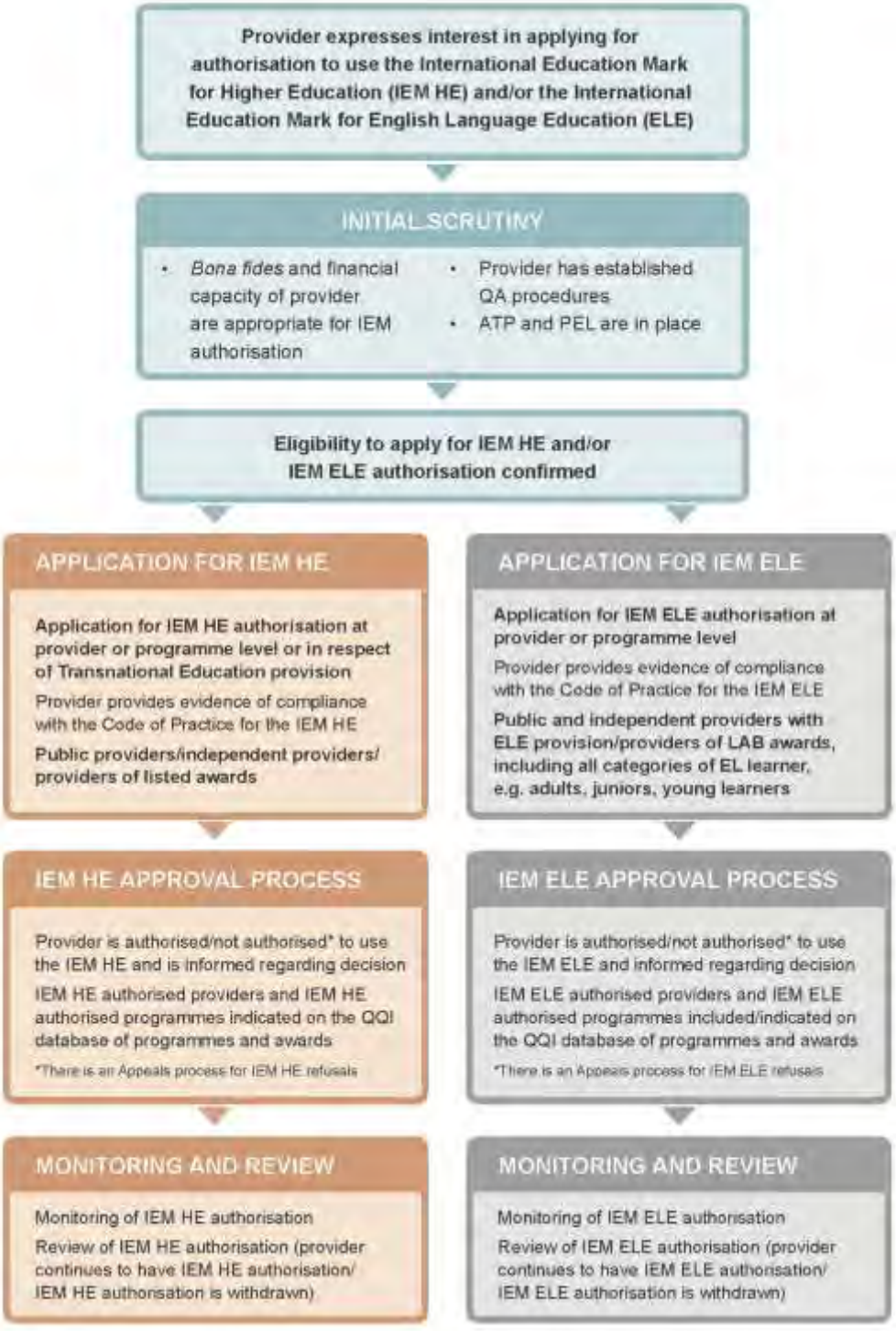
IEM as specified under the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018

To overcome these limitations, a number of amendments relating to the IEM have been included in the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018. The amendments proposed are as follows:

- Variant forms of the IEM are possible for different groups of providers or classes of programmes, including in the first instance, an IEM for English language education.
- Providers can apply for authorisation to use the IEM if all programmes lead to NFQ awards or in respect of each programme which leads to an NFQ award, or in respect of English language provision.
- The Code of Practice, which providers must comply with in order to obtain authorisation to use the IEM, is extended to learners undertaking programmes of higher education and training outside the State (Transnational Education) leading to NFQ awards.
- The possibility of specifying different Codes of Practice for different providers or types of provision is provided for.
- A provision is included for QQI to withdraw IEM authorisation if a provider no longer wishes to have authorisation to use the IEM, without the need for a review to be conducted.

The amendments above will facilitate the introduction of two IEMs; an IEM HE and an IEM ELE. The IEMs will be fit-for-purpose, robust and reflect international good practice in the provision of education and training to international learners. International learners undertaking programmes with IEM-authorised providers will be assured of obtaining a high-quality educational experience for the duration of their studies.

Figure 5: Outline Application Process for International Education Mark (IEM)



SECTION 27-31 (SECTION 64-67 2012 ACT)
A NATIONAL SCHEME FOR THE PROTECTION OF ENROLLED LEARNERS (PEL)

What is Protection of Enrolled Learners?

Protection of Enrolled Learners (PEL) is a mechanism intended to ensure that learners who commence a programme can be confident that they will be facilitated in completing their programme, or as a lesser alternative receiving a refund of fees paid, in circumstances where a provider ceases to offer a programme or ceases to trade.

The Qualifications and Quality Assurance (Education and Training) Act 2012

The arrangements for PEL in the 2012 Act apply to:

- programmes of 3 months' duration or longer, where fees are charged and where the programme leads to a QQI award, and
- providers who apply to make an application to use the International Education Mark.

The arrangements consist of:

- '*academic bonding*' – this is an agreement between a provider (provider 1) and two other providers (alternative providers) with similar programmes, which enables the transfer of enrolled learners in provider 1 to the similar programme in the alternative provider(s) in the event of the programme ceasing to be offered by provider 1; or
- '*financial bonding*' – this is an arrangement which enables the enrolled learners to receive a refund of moneys most recently paid by them in respect of tuition, registration, examination and other fees in the event of the programme ceasing to be provided. Financial bonding may only be provided with the agreement of QQI and in circumstances where the provider considers that it is not practicable to have academic bonding.

The 2012 Act specifically exempts certain public providers of education and training from the requirements of PEL.

The 2012 Act also imposes on QQI an obligation to assist learners affected by a cessation of a programme to find another similar programme which will enable them to complete the education and training which they had commenced. It provides a similar obligation where a programme does not commence and a learner has paid fees. There is no provision to fund QQI for this activity in the event of such a cessation. The cost of QQI involvement in programme cessation and provider closure events in the past has been borne by QQI (the exchequer) and many providers of education and training, both public and private.

Limitations of the current legislative arrangements

The practical implementation and operation of the provisions relating to PEL in the 2012 Act have proven to be problematic. In the first instance, academic bonding has not been achievable by providers. Although the 2012 Act regards financial bonding as a lesser option to academic bonding, the majority of providers obliged to have PEL in place have had to resort to financial bonding. There are a number of financial arrangements currently in place across QQI providers. None of these are entirely satisfactory and QQI is still obliged to assist the learner to find another similar programme which will enable them to complete the education and training which they had commenced. As stated above, there is no provision to fund an intervention by QQI in the event of such a cessation. The cost falls on QQI.

Academic bonding versus financial bonding

It is agreed that academic bonding is the preferable option for learners as a refund of most recently paid fees. However, it is of little use to a learner who cannot complete their programme of study and who may not have evidence of credit achieved to date.

The obligation of QQI to assist learners affected by the cessation of a programme

QQI and its predecessor agencies have had considerable experience in placing learners on affected programmes with alternative providers. The process of finding alternative providers has been complex and lengthy – it is resource intensive. The successful outcomes achieved have relied on the willingness of both public and private higher and further education and training providers to accommodate the learners without any financial support. This is an untenable position and cannot be relied upon indefinitely. In addition, each of these cessation events has had a significant impact on QQI resources.

It is important to note that the transfer arrangements agreed by QQI with higher and further education and training providers were in the context of statutory PEL (i.e.

programmes which led to QQI awards and to which PEL applied); QQI has had no statutory oversight of, or engagement with, college closures which have occurred within the English language sector and these have had significant negative impact on the reputation of the wider education and training sector.

Revised Approach to PEL in the 2018 Bill

The Bill provides for amendments to Part 6 of the 2012 Act to allow for the introduction of a national scheme for PEL and a Learner Protection Fund (Fund). The new arrangements will apply to all providers engaging with the National Framework of Qualifications, e.g. providers with programmes leading to QQI awards, linked providers, listed awarding bodies and their associated providers, and English language education providers that receive authorisation to use the International Education Mark (IEM). The Bill will therefore result in a significantly expanded provider base to support a national PEL scheme. Publicly funded education and training providers will continue to be explicitly exempted from these provisions.

The Bill provides the Minister, with the consent of the Minister for Public Expenditure and Reform, with powers to prescribe procedures for the establishment, maintenance and operation of the Fund. The Minister will also prescribe the annual charge to be paid into the Learner Protection Fund. Each provider offering a programme of three months' duration or longer leading to an award included in the Framework and accepting monies from or on behalf of learners in respect of that programme, and providers of English language programmes for which authorisation to use the IEM has been received, will pay an annual charge to the Learner Protection Fund.

If a provider ceases to provide a programme, for any reason, the Fund would be used by QQI to:

- Fund the teaching out of the original programme where possible;
- Fund the payment of fees for the transfer of an enrolled learner onto a similar programme of another provider; or
- In circumstances where the learner considers, with the agreement of QQI that it is not practicable to complete the programme with another provider, QQI will refund the learner, or the person who paid the moneys on their behalf, the moneys most recently paid in respect of the programme for the current academic year.

The PEL model outlined in the 2018 Bill is designed to give equal protection to all learners enrolled on programmes leading to national awards and with providers that are authorised to use the IEM. It will also support QQI in delivering on its legislative remit to ensure that an alternative programme of education is made available to each learner affected by a programme cessation. It is based on an Australian scheme currently operating in a cost-effective manner without State intervention.

The anticipated provider/learner charge to the fund will be low compared to current PEL arrangements. This will be possible due to a broader provider/learner base. A risk-based element will apply to some categories of providers and some programmes, e.g. a unique programme with a high delivery cost, providers without a track record, etc. The PEL model proposed is designed to ensure that the State will not bear the cost of failure in the non-publicly funded education and training sector which engages with QQI. This should enhance confidence in and the reputation of the wider education and training sector.

Section 8 of the 2018 Bill, and discussed above, which provides for the establishment of criteria to be satisfied by education and training providers and awarding bodies that engage with QQI, will provide an important underpinning for the proposed national PEL scheme. These will provide for an examination of the capacity of a provider to engage with QQI in all aspects of governance, both corporate and quality assurance. In addition, therefore, to an examination of quality assurance processes, QQI will have the power to examine the corporate fitness and financial robustness of providers. The more robust these processes are, the less likely there will be a call on the PEL Fund.

Minor Amendments

SECTION 6, 7, 9, 11, 16, 17, 20 (SECTION 27,28,30,36,45,47,52 2012 ACT)
TO STRENGTHEN THE PROCESS FOR APPROVAL OF QUALITY ASSURANCE PROCEDURES AND PROGRAMME VALIDATION

The 2012 Act restricts QQIs scope to deliver a more robust quality assurance system in a range of areas consistent with best international practice due to gaps and omissions. A number of minor amendments are proposed to address these deficits. Some of these will give statutory effect to current practice. Included amongst these are the following:

- *Section 6 (Section 27 2012 Act)* - Provision to provide 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. The 2012 Act provides for QQI to issue a single set of quality assurance guidelines on a once off basis. QQI requires the ability to review periodically these guidelines and to have multiple guidelines for different purposes – research, online delivery, different categories of providers.
- *Section 7 (Section 28 2012 Act)* - Clarification in relation to the obligation of all providers to prepare quality assurance procedures having regard to the guidelines issued by QQI. A provider's quality assurance procedures are required to be fit-for-purpose, or for the particular programme(s) being submitted for validation. This recognises that quality assurance procedures will vary according to the nature of the programme.
- *Section 9 (Section 30 2012 Act)* - Provision to allow QQI to impose conditions on a provider whose quality assurance procedures it has approved. Such conditions would include a requirement for a provider to inform QQI of any changes to its engagements with third parties and which might impact negatively on the delivery of programmes leading to QQI awards. Failure to comply with these conditions may result in the withdrawal of quality assurance approval.
- *Section 11 (Section 36 2012 Act)* - Withdrawal of approval by QQI of quality assurance procedures without conducting a review in a number of circumstances, including where there is consent from a provider and when a provider has not engaged in programme provision for a number of years.

- *Section 16 (Section 45 2012 Act)* - Provision to time-limit all programme validation.
- *Section 17 (Section 47 2012 Act)* - Withdrawal of programme validation without conducting a review in circumstances where a programme has not been delivered for a two-year period.
- *Section 20 (Section 52 2012 Act)* - Provision for QQI to define a 'class of programmes' for the purposes of facilitating a more focused approach to the delegation of authority to make awards.

SECTION 19 (SECTION 50 2012 ACT) TO INVOLVE PROVIDERS MORE CENTRALLY IN THE APPLICATION PROCESS FOR RECOGNITION OF PRIOR LEARNING

Recognition of prior learning (RPL) measures and certifies competences that an individual may have acquired throughout his or her career. The amendment proposed does not reflect a change of policy. It reaffirms existing practice whereby providers are central to the process for an individual to apply for recognition of their prior learning. Individuals therefore apply directly to education and training providers and not to QQI for recognition/certification of their prior learning. QQI will continue to inform national policy in relation to RPL.

SECTION 5 (SECTION 14 2012 ACT) TO FACILITATE INFORMATION SHARING BY QQI WITH OTHER STATE BODIES

The proposed amendment should eliminate gaps which currently exist in the engagement between specified statutory bodies and the education and training sector.

SECTION 14 (SECTION 43A 2012 ACT) TO EMPOWER QQI TO PROSECUTE ESSAY MILLS AND OTHER FORMS OF ACADEMIC CHEATING

Recent years have seen the rise of contract cheating in higher education, both nationally and internationally. Contract cheating often consists of companies, regularly referred to as “essay mills” selling learners bespoke assignments, essays and theses which learners then submit for assessment as their own work. Companies advertising such services claim that their products are “plagiarism free” in that they are original pieces of work. Risk of detection is low as such products are hard to detect even with the anti-plagiarism software used by colleges.

The facilitation of learner cheating by “essay mills” represents a growing threat to the integrity of Irish higher education. This new provision being introduced in the 2018 Bill is intended to provide QQI with statutory powers to prosecute those who assist learners to cheat by completing, in whole or in part, any piece of work required of the enrolled learner for their programme of study, or who sits an exam or facilitate the sitting of an exam by someone other than the enrolled learner or who provides answers for an exam. It will also be an offence to publish advertisements for any such prohibited service. The Junior and Leaving Certificate examinations are exempted from the legislation.

SECTION 33 (SECTION 80 2012 ACT) TO PROVIDE A LEGAL BASIS FOR QQI TO CHARGE ‘RELATIONSHIP’ FEES TO PROVIDERS

QQI currently charges a ‘relationship’ fee to public higher education providers. This is a composite fee to reflect the multilayered nature of the engagement between QQI and providers. In providing a legal basis for this fee, QQI will be in a position to extend this fee to other categories of providers and more accurately reflect the nature and complexity of the engagement. The scope for QQI to charge fees for services provided is also extended to ensure that they may be charged equitably across all categories of providers.

SECTION 35 (AMENDMENT OF REGIONAL TECHNICAL COLLEGES ACT 1992)
TO ESTABLISH INSTITUTES OF TECHNOLOGY AS AWARDING BODIES

Currently. all Institutes of Technology (except for the Dublin Institute of Technology) have delegated authority from QQI to make awards from levels 6 to 9 of the National Framework of Qualifications. Seven of the 13 Institutes of Technology currently have limited 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 QQI and the Institutes of Technology. The 2018 Bill 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.

The Oireachtas has recently enacted the Technological Universities Act 2018 which sets out a pathway for Institutes of Technology to develop into self-awarding institutions at doctoral level. The remaining Institutes of Technology will become self-awarding at master level. The outcomes of QQI's external quality assurance reviews of Institutes of Technologies in recent years provides evidence that the sector has the maturity for this self-awarding status.

04/10/2018 10:20

Dear Chairperson & Members of the Joint Committee on Education and Skills,

On behalf of the Higher Education Authority (HEA), I wish to thank you for the invitation to make a submission on the Qualification and Quality Assurance (Education and Training)(Amendment) Bill 2018. I note the invitation's request to be concise. I'm aware that the committee receives many voluminous submissions so, in the spirit of Shaw's 'if I had more time I would have written a shorter letter', the HEA would like to inform the committee of its broad support for the bill and its particular support for the amendments proposed in Sections 5, 8, 19, 22 and 24/25/26, namely:

- Facilitation of data sharing between QQI and other state bodies such (Section 5)
- Provision of a legal basis to assess the financial capacity and overall bona fides of providers (Section 8)
- Involvement of Providers in Recognition of Prior Learning (Section 19)
- Authority to produce a list of awarding bodies & inclusion of their qualifications in the National Framework of Qualifications (Section 22)
- Introduction of the International Education Mark (Sections 24/25/26)
- Establishment of Institutes of Technology as awarding bodies (Section 35)

If I can be of any further assistance please do not hesitate to contact me.

Yours sincerely,

Graham Love

Dr Graham Love
Chief Executive

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2018/324

Submission to the Joint Oireachtas Committee on Education and Skills

Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018

5 October 2018

Authors: Dr Joseph Ryan, CEO, Dr Jim Murray, Deputy CEO and Director of Academic Affairs, Technological Higher Education Association

Introduction

The Technological Higher Education Association (THEA) is the representative body for the technological higher education sector in Ireland, which comprises 14 institutes of technology, geographically dispersed across the country. THEA welcomes the invitation by the Joint Committee on Education and Skills to make a written submission on the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018.

From the perspective of THEA and its members, the bill represents a significant legislative development in two respects. First, it holds out the prospect of strengthening the national quality assurance and qualifications systems in education and training by addressing a number of issues that have been identified as impeding Quality and Qualifications Ireland (QQI) in fulfilling its intended statutory role. This is important in terms of guaranteeing a quality experience for all learners across further and higher education and training; clarifying and strengthening aspects of the operation of Ireland's National Framework of Qualifications; and ensuring that Ireland's reputation as a favoured destination for international students is protected and enhanced. Second, the bill provides for the granting of award making powers, excepting doctoral awards, to all of the institutes of technology. In so doing, and together with the recently enacted legislation for the establishment of technological universities, it will put all of the institutes on a more equal footing with the Designated Awarding Bodies, including the universities, and create a more coherent quality assurance and qualifications space amongst all public higher education institutions. This development is something that THEA and its predecessor organisation, Institutes of Technology Ireland (IOTI), has sought over a long period of time, and the inclusion of this provision in the bill (section 35) is very much welcomed by the technological higher education sector.

The following and more detailed comments on particular sections of the bill are reflective of the above considerations, and the technological higher education sector's commitments to the principles that the quality system underpinning further and higher education in Ireland, including the enhancement of the learner experience, should be renewed on a continuing basis; that all reasonable measures should be taken to protect and enhance the international reputation of Ireland's further and higher education and training systems; and that the developmental trajectory of the institutes of technology in Ireland — enunciated in earlier legislation such as the Regional Technical Colleges Act 1992, the Institutes of Technology Act 2006, and the Technological Universities Act 2018 — should be maintained through the establishment of the institutes of technology as self-awarding bodies that occupy the same qualifications and quality assurance space as other public higher education institutions.

Submissions on Specific Sections of the Bill

Section 5: Amendment of Principal Act - furnishing information to other bodies

This section amends section 14 of the Principal Act, and provides for the sharing of data and information amongst listed state bodies, subject to the Data Protection Act (page 8). THEA supports the sharing of such information in principle in the interests of joined-up government and administration, especially, in the context of higher education, amongst the Department of Education and Skills and its agencies. While it may not be appropriate to put into legislation, THEA hopes that the application of this provision will lead in practice to the same bodies giving consideration to where their functions may overlap; and that they will endeavour, where practicable, to use shared intelligence to avoid duplicating each other's work, especially in exercising their regulatory functions and the manner in which they require higher education providers to report to them. It should be possible for State agencies, through a considered and judicious application of this provision, to endeavour to collect information from providers once rather than on multiple occasions

Section 6: Amendment of Principal Act - Quality Assurance

This section amends section 27 of the Principal Act and, among other things, replaces the existing subsection 6 with a new text that enables QQI to issue different quality assurance guidelines to different types of providers; to issue different quality assurance guidelines for different classes of programmes and types of provision; and to establish different effectiveness review procedures for different types of providers (page 9). Again, in principle, THEA would support this approach, as it is necessitated by the differing legal bases upon which different providers or different programmes are established across the different sectors of education and training. However, it will be important that QQI, in applying this provision, makes every effort to operate it in as coherent and intelligible a fashion as possible, so that providers, learners and the general public will understand the system and take comfort in it, rather than perceive it as an unduly complex, or even arcane, activity that seems to bear little relation to the everyday educational experience of learners. In general, common approaches to quality assurance processes and procedures should be the norm rather than the exception. That consideration of the need to ensure broader understanding of what is a complex and technical statute is a theme that recurs in this submission.

Section 8: Condition precedent for provisions of Principal Act to be invoked by relevant providers - criteria specified in regulations must be met

This section inserts three new sections (sections 29A, 29B, and 29C) into the Principal Act (pp. 11-14), which provide for the establishment of new criteria and regulations concerning the capacity and capability of providers to implement quality assurance procedures and deliver education and training programmes, including the possession of a legal personality, and the possession of adequate financial resources to support the viability of the business

and good corporate governance. THEA supports these provisions as it will give QQI a secure basis upon which to regulate the education and training sector, particularly in relation to the corporate fitness of education and training providers, including nationally-based or international providers entering the market for the first time.

Section 13: Amendment of Principal Act - Framework of Qualifications

The concentration here is on providing a secure legal basis for the inclusion of the awards made by designated awarding bodies in the National Framework of Qualifications (NFQ). In the future, following the passage of this bill, and the further designation of technological universities under the Technological Universities Act 2018, all of THEA's members will be designated awarding bodies, like the traditional universities. The provisions in this section (pp. 16-7) for the inclusion of awards in the NFQ are reasonable, being grounded on the experiences and practices gathered to date by QQI (and its predecessor bodies) in operating the NFQ. THEA and its members are committed to working with QQI in implementing the processes outlined in section 22 (pp. 21-32), including the process by which awards acquire the status of being included in the NFQ and the process for the listing of awarding bodies. The process is discussed further under section 22, below pp. 4-5 of this submission.

Section 14: Amendment of Principal Act - offence to provide or advertise cheating services

This section provides for the insertion of an entirely new section in the Principal Act (pp. 17-8). It gives QQI a legal basis to prosecute the provision of advertising of essay mills and other forms of academic cheating. This is a new and welcome piece of the quality assurance architecture and is welcomed and supported by THEA and its members. This is consistent with moves elsewhere where legislation with a similar intent has already been passed, such as in the United States and New Zealand, or is under consideration,

Section 15: Amendment of Principal Act - application for validation of programme of education and training

THEA notes the amendment of Section 44 of the Principal Act in subsection 9 (p.18). This provides for the fact that, subject to the enactment of this bill, institutes of technology that are not designated as technological universities as part of a consortium, or do not have delegated authority to make awards under sections 52-54 of the Principal Act, will apply for validation to QQI only 'in relation to programmes leading to doctoral degrees included within the Framework'. It is important that QQI, in applying this provision, establishes an appropriate validation process in such instances that reflects the distinctive nature of research degree programmes. It would be inadvisable and inappropriate, in particular, to continue with the current practice whereby the undergraduate taught validation programme template is prescribed in such instances. Consistency in this matter is of key

moment to our member institutions and is necessary to ensure the consistent and even development of the sector as a whole

Section 20 - Request by provider for delegation of authority

THEA notes the amendment in section 52 (2) (a) which sets out that, subsequent to the passage of this act, the legislative provisions for delegated authority will only apply to institutes of technology, 'in relation to programmes leading to doctoral degrees included within the Framework'. This is consistent with section 35 of the bill.

Section 22 - Awards included within the [National] Framework [of Qualifications] (process by which award acquires such status)

Section 22 amends section 55 of the Principal Act by inserting nine new sections: sections 55A to 55I. These new sections represent the most detailed and complex changes to the Principal Act and set out the processes whereby awards acquire the status of being included in the NFQ; how bodies, excluding QQI, designated awarding bodies, providers with delegated authority to make awards, or a body that makes an award under the Education Act 1998, may become a 'listed awarding body'; and the general process by which the different types of awarding body may apply to QQI for a decision to be made whether it is appropriate that particular awards that they make be included in the NFQ. These new sections also provide for the establishment of policies and criteria by QQI to which QQI will have regard in making decisions in relation to the inclusion of awards, the duties of 'listed awarding bodies', the review of 'listed awarding bodies' and the withdrawal or variation of listing of awarding bodies.

THEA is aware that these provisions, which are highly technical and worded very carefully, are necessary as a result of legal challenges to certain provisions in the Principal Act. In this connection, and in the interests of the stability and integrity of the NFQ, THEA is supportive of these provisions in principle. However, they are very complex and will present significant communications' challenges for QQI in explaining them to the broader education and training community. There are also aspects of these provisions that will need to be proceeded with carefully. For example, the policies and criteria for making decisions on the inclusion of awards in the NFQ will be critical in establishing the new regime for inclusion on a sound footing, If the latter are unduly complex or costly, including in relation to the fees that may be charged for an application by an awarding body to have their awards included in the NFQ, there is a potential danger that they may fall into disrepute. THEA would hope that QQI will consult with stakeholders in developing the policies and criteria (pp. 25-6), especially in those areas that require QQI to ensure 'that the number of awards included in the Framework provides a reasonable level of choice for learners'; and 'that the number of awards included in the Framework that are awards with similar learning outcomes is not excessive' (p. 26). These matters will require fine judgements and inputs from stakeholders across the system. The bill provides that QQI should have regard to the 'reasonable

requirements' of learners and various sectors including industry, agriculture, tourism and trade; and that it would consult with bodies responsible for managing the provision of education and training funded by the Exchequer, and bodies that regulate one or more professions. However, there is no specific requirement to consult with providers and awarding bodies, who would have extensive experience of these matters and ordinarily would be consulted on such matters. THEA believes that the bodies listed in section 55B (2) (b)-(d) — designated awarding bodies, providers with delegated authority and bodies that make awards under the Education Act 1998 — should be added to the list of those to whom QQI will consult in section 55E (8).

Section 24 - Code of Practice for provision of programmes to international learners

THEA notes the amendments to section 60 of the Principal Act in relation to the Code of Practice. In particular, THEA notes the provision (p. 33) to allow for the development and publication of different codes of practice for different types of providers. This is a sensible approach and THEA fully supports it.

Section 25 - International Education Mark

THEA notes the amendments to section 61 of the Principal Act in relation to the International Education Mark (pp. 33-4). These amendments allow for the specification of 'variant forms' of the IEM for different types of providers and programmes. Again, these are sensible provisions, and are supported by THEA and its members.

Section 35 - Amendment of Regional Technical Colleges Act

As noted in the introduction to this submission, THEA very much welcomes the amendment of section 5 of the Regional Colleges Act 1992, set out in section 35 of this bill. The provision recognises the institutes' unwavering commitment to delivering high quality taught and research programmes, that are underpinned by robust quality assurance processes owned by the institutes themselves. It was on this basis that the Higher Education and Training Awards Council (HETAC), and its successor body, Qualifications and Quality Ireland (QQI), moved to delegate to the institutes more and more of their awarding functions under the 1999 and 2012 Qualifications Acts, following an extensive and rigorous series of external reviews. As a result, the institutes have been self-validating their taught programmes, and making the associated awards, at Levels 6-9 of the National Framework of Qualifications (NFQ) for much of the past fifteen years. Specifically, in the period 2008-18, the sector has made over 200,000 individual awards under delegated authority across these levels. With this experience, it is appropriate that they should obtain full awarding powers. The establishment of the institutes as designated awarding bodies will facilitate the implementation of the *National Strategy for Higher Education to 2030* by creating a single, coherent quality assurance and qualifications space amongst public higher education

institutions; foster deeper collaboration between those institutions by establishing an awarding and quality assurance environment in which the institutes can participate on an equal footing with their peers amongst the existing designated awarding bodies; and, by presenting a coherent, simplified and more easily communicable picture of the Irish system, enhance the international recognition of the institutes' awards.

Submission to the Joint Committee on Education and Skills in relation to the Qualification and Quality Assurance (Education and Training) (Amendment) Bill 2018.

Ms Fiona O'Loughlin, TD,
Chairperson of the Joint Committee on Education and Skills.
4 October, 2018

Dear Deputy O'Loughlin and members of the Joint Committee on Education and Skills,

I wish to make a submission on behalf of Marino Institute of Education, Griffith Avenue, Dublin 9, in relation to Amendments 28 and 30 of the Qualification and Quality Assurance (Education and Training) (Amendment) Bill 2018.

Established in 1904, Marino Institute of Education (MIE) is a Higher Education Institution involved in teaching, learning and research. In addition to being an Associated College of Trinity College, The University of Dublin (TCD), Marino Institute of Education is held in joint trusteeship by both the Congregation of Christian Brothers European Province *and* Trinity College Dublin. This double relationship with TCD is pivotal to the quality assurance processes within Marino Institute of Education, and sets a benchmark for the approaches taken to teaching and learning within our Institute.

It is a matter of concern that Marino Institution of Education is not included in the list of Institutes to which Amendment 30 shall not apply. I am requesting, on behalf of the Governing Body of MIE, that our Institute be included in this list of programme providers exempt from contributing to the Learner Protection Fund. I set out the rationale for this request in the attached memo.

I am happy to provide any additional information required by the Committee.
Yours sincerely,

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Teresa O'Doherty, PhD
President of Marino Institute of Education

Submission to the Joint Committee on Education and Skills in relation to the Qualification and Quality Assurance (Education and Training) (Amendment) Bill 2018.

1. **Request that *Marino Institute of Education* be included in the list of Programme Providers to which Amendment 30 does not apply**.

   I specifically wish to address Amendment 30, ***Payment of annual charges into Learner Protection Fund and related matters***. Within this amendment of Section 65 of the Principal Act (Arrangements by providers for protection of enrolled learners), it is intended that this provision will apply to all education and training providers engaging with the National Framework of Qualifications, with the exception of public bodies. Within the Bill there is an extended list of providers of education to which the payment to the Learner Protection Fund does not apply (Section 65, subsection 6, p.37) – this extended list includes the Royal College of Surgeons (which is an independent institution, recognised by the NUI), and the Royal Irish Academy of Music (which, like Marino Institute of Education, is a linked provider of TCD).

   In the *Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018, Meabhrán Mínitheach agus Airgeadais - Explanatory and Financial Memorandum*, pp 4, 5, it states that

   > 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) (emphasis added).

   Marino Institute of Education (MIE) is a linked provider of TCD, and its programmes are accredited by TCD. MIE is widely recognised as institution with a significant tradition and reputation for quality in its provision of education programmes. Given that the Memorandum specifically mentions the RIAM, and suggests that linked providers offering programmes leading to awards validated by their designated awarding bodies should be exempted, it seems most appropriate that Marino Institute of Education should also be included in this list. I suggest that the omission of MIE

from this list may be an oversight, given that MIE does not have a seat on the IUA or other representative bodies.

2. Marino Institute of Education is funded directly by the Department of Education and Skills, and as all schools that are funded by the DES are included in the list of bodies to which this amendment of the Act shall not apply, it would seem fitting that MIE should also be considered to be eligible for inclusion in this list.

3. Background Information on Marino Institute of Education

   Marino Institute of Education (MIE) is a Higher Education Institution involved in teaching, learning and research. Located on Griffith Avenue, Dublin, it is an Associated College of Trinity College Dublin, The University of Dublin (TCD). With more than 1100 students, Marino Institute of Education (MIE) provides undergraduate and postgraduate programmes in education and related areas. As teacher preparation for primary schools is the core activity of the Institute since its establishment in 1904, MIE enjoys a long and rich reputation for quality of provision, particularly in the area of teacher education.

   MIE's association with Trinity began in 1976, when the first intake of lay students registered for the Bachelor in Education (B.Ed.) course. In July 2011, this relationship was further strengthened with the formalisation of an agreement which places MIE under the joint trusteeship of the Congregation of Christian Brothers European Province and Trinity College Dublin, the University of Dublin. As co-trustees of MIE, TCD nominates six members to sit on Governing Body, one of whom, Professor Linda Hogan, former Vice Provost of Trinity, was appointed Chairperson of the MIE Governing Body in July 2017. Notwithstanding its close relationship with Trinity and unlike most similar institutions, Marino Institute of Education is not funded by the Higher Education Authority but directly by the Department of Education and Skills.

   MIE's mission is focused on promoting 'Inclusion and Excellence in Education'. For more than one hundred years MIE has been involved with education, and specifically with initial teacher education. During the last decade the vision and scope of the Institute's activities have been re-envisioned and extended to incorporate the full continuum of teacher education (initial, in-service and continuing professional

development) as well as the education of specialist practitioners at early years, primary and further education levels. Hence, there are presently approx. 1100 students registered at MIE across the following range of programmes: Bachelor in Education (B.Ed.); Bachelor in Science (B.Sc., Education Studies); Bachelor in Science (B.Sc., Early Childhood Education); Professional Master of Education (Primary Teaching); Master in Education Studies (Intercultural Education); Master in Education Studies (Early Childhood Education); Master in Education Studies (Leadership in Christian Education); Master in Education Studies (Visual Arts); Master in Education Studies (Inquiry-Based Learning); and the Professional Diploma in Education (Further Education). MIE's academic programmes are validated, quality assured and accredited by TCD, and the student cohort for the undergraduate programmes is recruited through the CAO system.

In the last decade, the academic mission and scope of MIE's activity has been re-envisioned to encompass a deeper understanding of education in and beyond the classroom, to incorporate the continuum of teacher education and the education of specialist education practitioners at early years, primary and further education levels. This is allied with a commitment to education studies encompassing non-traditional education settings and the wider education environment in a pluralist context.

4. Provision of the Trinity International Foundation Programme

Reflective of the strong partnership established with TCD, Marino Institute of Education began in 2016 to offer the Trinity International Foundation Programme. This is a one year pre-undergraduate programme with the aim of equipping future undergraduates with the appropriate English language and discipline-specific academic and learning skills to prepare them to undertake fulltime undergraduate studies at Trinity and MIE.

The Trinity International Foundation Programme is a full-time year-long programme designed to allow students to develop the skills required to succeed and excel in a competitive university environment. The Trinity International Foundation Programme is delivered at the Marino Institute of Education campus and students who are accepted to the programme are given a conditional offer to study as an undergraduate at Trinity College Dublin in the following academic year. Students

who successfully complete the Trinity International Foundation Programme and achieve the required grades are guaranteed entry into their chosen degree stream the following academic year.

The programme consists of core modules of English for Academic Purposes and Mathematics as well as subject specific modules in the two main streams namely Engineering & Science and Business, Economics & Social Sciences. The first group of students, from ten different national backgrounds, entered the programme in September 2016 and it is anticipated that an average of 60 students will be recruited each academic year.

While MIE does provide educational programmes to international students, the number of students on this programme is extremely small (less than 5% of our student body), and given the robust financial position of the Institution, aligned to our partnership position with TCD, it is inappropriate to exclude Marino Institute of Education from the list of providers to which Section 30 of the Amended Act shall not apply.

IRISH UNIVERSITIES ASSOCIATION

5 October 2018

Alan Guidon

Clerk to the Joint Oireachtas Committee on Education and Skills

Leinster House, Dublin 2

Email: qqabill@oireachtas.ie

Re: Invitation to make Written Submission

Dear Mr Guidon,

As per your invitation (ref: JCES4/C/1/C/18), the Irish Universities Association (IUA) is delighted to provide below a written submission to the Joint Committee on Education and Skills on the Qualification and Quality Assurance (Education and Training)(Amendment) Bill 2018, prepared on behalf of and with input and agreement from the universities.

The IUA is the representative body for Ireland's seven universities. Through consultation and collaborative projects, we develop strategy and policy to advance third and fourth level education and research. Our shared aim is to ensure that we maximise the universities' contribution to Ireland's social, cultural and economic well-being.

The universities welcome the above Bill insofar as it proposes to address issues that have impeded Quality and Qualifications Ireland (QQI) from fulfilling its intended role in relation to the quality assurance of the further and higher education sectors. We particularly welcome the proposed provisions to facilitate the introduction of the International Education Mark, as well as the establishment of a Learner Protection Fund, in order to ensure the highest standards in the international education sector and uphold the strong reputation of Irish education.

Where there are sectoral issues with the Bill, these have been raised "Section by Section" in the submission below, as requested. Sections not addressed in this submission raised no issues from a university perspective at this time.

We would welcome being kept informed of the progress of the Bill, and the opportunity to comment at the next stage. Should you require any further information, please don't hesitate to contact my colleague Lewis Purser, Director of Learning & Teaching and Academic Affairs (lewis.purser@iua.ie).

Best wishes,

Jim Miley

Director General

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Cumann Ollscoileanna Éireann, 48 Cearnóg Mhuirfean, Baile Átha Cliath, D02PK02.

Part 2 – Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012

Section 3 – Amendment of Section 2 of Principal Act (Interpretation)

1. The Bill introduces the category of "associated providers" (meaning, see Section 55F, "a provider that enters into an arrangement with a listed awarding body under which arrangement the provider provides a programme of education and training that satisfies all of the prerequisites for an award of the listed awarding body that is included within the Framework"), further to the categories of "relevant providers" and "linked providers". The necessity for this proposed additional category of provider is unclear and should be clarified, particularly when the introduction of additional categories risks obfuscating the relationships between providers which could be confusing. At this time, we have serious concerns that the introduction of the category of associated providers would lead to the unwelcome practice of serial franchising of programmes of education and training. We also have concerns that it appears that the purpose of its introduction is to address issues with Quality and Qualifications Ireland (QQI) powers which could be better addressed through the existing categories of providers.

2. The Bill also introduces "listed awarding bodies" (meaning, see Section 55A(1)(a), "an awarding body whose name, for the time being, appears in the list of awarding bodies"), further to "designated awarding bodies". The criteria for appearing in this proposed list of awarding bodies needs to be made explicit in order to ensure confidence and trust in the system. Moreover, it appears that the proposed list of awarding bodies will not include designated awarding bodies (see Section 55A-55I). This could lead to serious issues, both domestic and international, as regards the clarity and transparency of the system as a whole. For example, from the perspective of prospective international students searching the QQI website for information on Irish higher education institutions' awards and recognition of these awards, it could be confusing to consult a list of awarding bodies that excludes designated awarding bodies (and therefore the universities). Furthermore, the Bill should better clarify whether, if listed awarding bodies exclude designated awarding bodies, an associated provider enters into an arrangement with a listed awarding body in the same way that a linked provider currently enters into an arrangement with a designated awarding body.

3. A "previously established university"/designated awarding body falls into the category of relevant provider. Multiple Sections of the Bill appear to apply to relevant providers but not to designated awarding bodies as autonomous institutions. Therefore, consideration should be given in the Bill to excluding designated awarding bodies from the category of relevant provider. This would ensure greater clarity as the category would refer only to providers who are subject to the authority of QQI to (a) validate their awards, (b) receive delegated authority to provide awards, (c) validate their application for recognition as a listed awarding body or for their awards to be recognised within the National Qualification Framework. Moreover, clarification is needed where Sections of the Bill relate to linked providers as a category of

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Cumann Ollscoileanna Éireann, 48 Cearnóg Mhuirfean, Baile Átha Cliath, D02PK02.

relevant providers but do not in effect apply as the function is performed by designated awarding bodies which are exempt, for example in regards to the validation of awards.

4. We support the proposed explicit criteria which a programme of education and training must satisfy in order to be validated by QQI. However, Section 2(2) defines: "For the purposes of this Act, a programme of education and training is validated where the Authority confirms under section 45 that the provider of the programme has satisfied the Authority that, in respect of the period for which, by virtue of subsection (1A) or (1B) of section 45, the validation is to have effect: …". The Bill should clarify that this refers only to QQI awards (validated by the Authority) and not to those of designated awarding bodies with linked providers.

Section 6 - Amendment of section 27 of Principal Act (Quality assurance)

5. We have concerns that the proposed introduction of additional clause Section 27(6)(b) whereby QQI "may issue different quality assurance guidelines for different classes of programmes or different types of provision" could significantly impact current quality assurance arrangements for universities. While this has already happened in relation to QQI Core Statutory Quality Assurance Guidelines, QQI Statutory Sector-Specific Quality Assurance Guidelines for Designated Awarding Bodies and QQI Statutory Quality Assurance Guidelines for Research Degree Programmes, as well as for Blended Learning, we have serious concerns about the potential creeping erosion of university autonomy if additional layers of statutory compliance requirements are imposed.

Section 7 - Amendment of section 28 of Principal Act (Obligation of providers to prepare quality assurance procedures)

6. Section 28 (3) applies to relevant providers including designated awarding bodies. Section 28 (3) (b) (ii) does not appear to recognise that designated awarding bodies are not subject to the direction of the Authority in this respect as they are autonomous institutions and should therefore be amended.

Section 14 - New section 43A of Principal Act - offence to provide or advertise cheating services

7. We strongly support empowering QQI to prosecute 'essay mills' and other forms of academic cheating. However, Section 43A should explicitly include organisations/corporations as well as individuals, including another enrolled learner in the same institution, in its definition of a "person".

8. Moreover, consideration should be given in the Bill to ensure that providers address the issue of online learner identity authentication for student completing assessments in online learning environments.

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Section 25 - Amendment of section 61 of Principal Act (International education mark)

9. We welcome the proposed provision to introduce "variant forms of the international education mark for different groups of providers or classes of programmes, including an international education mark for English language education and training". However, clarification is needed on the implications of Section 61 (7) (b) for designated awarding bodies and linked providers in terms of anticipated assessment for authority to use the international education mark.

Section 29 - New section 66 of Principal Act (Protection of Enrolled Learners Fund)

10. Clarity is required as to how a designated awarding body is informed should a linked provider not be exempt from the Learner Protection Fund under Section 65 (6) but does not pay the annual charge under Section 66A. The Authority should have the power under Section 14 to inform a designated awarding body in such a situation. Moreover, further clarity is required as to what impact this potential situation would have on the recognition of a linked provider's quality assurance procedures by a designated awarding body.

11. We are unable to comment on Section 29C (6) as the wording requires amending to make the meaning less obscure: "However, the steps that this Act requires be first taken where a withdrawal, under the provision of this Act, of approval, validation or other such matter in respect of the foregoing thing is proposed to be effected shall, also, be first taken where such a withdrawal under subsection (5) in respect of the thing concerned is proposed to be effected".

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RCSI

Qualifications and Quality Assurance (Education and Training) Amendment Bill 2018

Submission to the Oireachtas Joint Committee on Education and Skills

1. Introduction

1.1 RCSI is a higher education, professional training and research institution focused on medicine and health sciences. It was founded by Charter in 1784 to set and support professional standards for surgical training and practice in Ireland. The RCSI School of Medicine, the second oldest in Ireland, was founded in 1886. We remain committed to service, academic freedom, diversity and humanitarian concerns.

1.2 Today, RCSI is an innovative, world leading international health sciences institution with undergraduate and postgraduate schools and faculties across the health sciences spectrum. We are home to a number of healthcare institutes and leading research centres driving pioneering breakthroughs in human health.

1.3 Located in the heart of Dublin, with four international campuses and a student community of over sixty nationalities, we have an international perspective on how we train tomorrow's clinical professionals today.

1.4 RCSI is a statutory body (founded by a Charter, which has subsequently been amended by the Houses of the Oireachtas (1965 and 2003)). Its statutory status in that respect is analogous to that of TCD – also founded by Charter. It is a degree awarding institution under statute as well as being a Recognised College of the National University of Ireland.

1.5 RCSI is an Irish institution with an extensive national and international outreach. RCSI reinvests all surplus income in education, research and service.

1.6 The enclosed document 'RCSI, Contribution to Ireland' describes our contribution to Irish higher education and research, and the broader development of Ireland. This document also outlines how RCSI is forging a leadership role in health education and healthcare across the world.

2. Our Request

2.1 RCSI is seeking legislative or statutory permission to describe itself as a University of Medicine and Health Sciences in the State. We are also engaging with Government Ministers and Officials on this issue.

2.2 In 2015, the Education (Miscellaneous Provisions) Act 2015 was enacted which enables the Minister for Education and Skills to confer "university authorisation"[1] on RCSI and the legal authority to use the description *University of Medicine and Health Sciences* – but only outside of the State. The Minister has conferred authorisation.

2.3 Statutory acknowledgement of RCSI status as a university is welcome and positive. However, the restriction to usage outside the State is difficult to explain to potential students, their families and sponsors, to potential staff and to potential partners. More seriously, using it overseas opens RCSI to the risk of reputational damage and accusations of misrepresentation.

2.4 This submission proposes that the Qualifications and Quality Assurance Amendment Bill 2018 include a provision, which would allow RCSI to describe itself as a University of Medicine and Health Sciences in Ireland.

3. Rationale for providing statutory permission to allows RCSI describe itself as a University of Medicine and Health Sciences

3.1 While RCSI's development differs from that of other Irish university level institutions, it has been on a strategic path consistent with university authorisation and description. Over the last 40 years, RCSI has expanded beyond undergraduate medicine, beyond undergraduate programmes, and beyond education to research and knowledge translation. Key components of university eligibility are outlined below:

3.1.1 **Level of degrees offered:** RCSI provides a range of National Framework of Qualifications programmes from Level 7 to 10. RCSI has operated at a graduate level since 1886 - conferring licentiates on successful graduates. RCSI became a recognised college of the National University of Ireland in 1977. In 2010, it received degree-awarding status from the Minister for Education and Skills.

3.1.2 **CAO access and commitment to accessibility**: Our three Level 8 degrees (medicine, pharmacy and physiotherapy) are accessible through the CAO system for EU students. RCSI also participates in national DARE and HEAR schemes[2] and the Traveller Access Programme. RCSI established the first Graduate Entry Medicine course in Ireland (now one of 4 – RCSI, UCC, UCD, and UL) which provides an alternative access route to the Leaving Certificate, thereby opening medicine to a wider range of students.

3.1.3 **NFQ level 10 degrees:** Doctoral degrees are seen as a hallmark of universities – both in terms of the academics required to deliver them and the degrees awarded to students. RCSI offers a range of postgraduate taught and research degrees - up to level 10 – the highest level in the national framework of qualifications.

[1] This is the term used in the 2015 Act. Source: Electronic Irish Statute Book at http://www.irishstatutebook.ie/eli/2015/act/11/enacted/en/html

[2] HEAR - Higher Education Access Route; DARE - Disability Access Route to Education.

3.1.4 Research capability: Over the last 40 years, RCSI has moved strategically from a primarily education-focused institution to one whose mission clearly includes research. RCSI built Ireland's first clinical research centre on a hospital site at Beaumont Hospital in 2000. In terms of impact, for the second year running, RCSI research papers have the highest normalised citations rate (a measure of research influence) in Ireland. RCSI papers are cited at twice the world average. Similarly, funding success by RCSI researchers in the highly competitive EU Horizon 2020 programme (at 28%) is notably higher than the Irish and EU average (both at 15%).

3.1.5 International reputation and university rankings: In the widely used Times Higher World University Rankings, RCSI ranks in the top 2% of world institutions. In the 2018 and 2019 reports[3], our position is joint second of nine institutions in the Republic of Ireland (i.e. next after TCD). Only three of nine Irish institutions, including RCSI, feature in the top 250 for 2019.

3.1.6 Status of Graduates: In respect of professional qualifications, the position of RCSI graduates is identical to those of graduates of the Irish universities. In terms of student performance, 95% of our graduates are in postgraduate career and/or training within nine months of graduation. All medical graduates who wish to work in the United States must complete a standard US Medical Licensing Exam. RCSI medical students, who participate, perform strongly with a 90% pass rate, indicating highly transferrable educational achievements.

3.1.7 External accreditation: RCSI is accountable to, and subject to the oversight of, the QQI for the overall delivery of its education programmes in Ireland. It is also accountable to, and overseen by a range of professional regulatory bodies (e.g. Medical Council of Ireland; Pharmaceutical Society of Ireland; Irish Society of Chartered Physiotherapists; CORU - Ireland's multi-profession health regulator; Nursing and Midwifery Board of Ireland). Similar national higher education and professional body accreditations are required in our overseas campuses. For example, our core medicine programme has four separate and independent accreditation inspections in Ireland, Bahrain, Kuala Lumpur and Penang.

3.1.8 Internal governance processes: Whilst we have a unique dual status within Irish legislation[4], we contend RCSI has all the characteristics necessary to warrant authorisation to describe ourselves as a 'University of Medicine and Health Sciences' nationally, as is already agreed internationally. Our governance model mirrors, in so far as possible, the structures in the publically funded universities. We established a Medicine and Health Sciences Board as the governing authority for all degree awarding activities, with delegated authority from the RCSI Council.

[3] The latter was released on 26th September 2018.
[4] RCSI is the professional training body for surgery by virtue of the Medical Practitioners Act 2007 and an independent degree awarding body by virtue of both the Qualifications and Quality Assurance (Education and Training) Act 2012 and the Royal College of Surgeons in Ireland (Charters Amendment) Act 2003.

4. Legislative Change is Urgent

4.1 A lack of authorisation to describe ourselves as a University of Medicine and Health Science within the State has a negative impact on our ability to fund and develop the institution and to grow our contribution to Ireland. RCSI requires the legislative authority to describe itself as a medicine and health sciences university in order to:

4.2 Attract high quality students:

4.2.1 Statutory acknowledgement of RCSI's status as a university is welcome and positive. However, restriction to usage outside the State is difficult to explain to potential students, families and sponsors. Using it overseas opens RCSI to the risk of reputational damage and accusations of misrepresentation.

4.2.2 RCSI is self-funding organisation. Unlike publicly funded universities and institutes of technology, it does not receive or seek 'core' funding from the Exchequer. As such, RCSI must compete for students against a wide and increasing range of national and international competitors. Brexit and related developments is increasing competition from the UK.

4.2.3 The international "market" for healthcare education is becoming more and more competitive. Countries, such as Malaysia, which have traditionally sent students overseas for medical education, are moving towards self-sufficiency. They have declared ambitions to become centres of international education. Students in these countries are particularly conscious of the status of the title 'university'. The title 'college' conveys a lower status meaning.

4.3 Recruit high achieving academic and research staff:

4.3.1 The most important asset in a successful knowledge economy and the higher education sector is staff. There is an increasing international 'war for talent' – and RCSI needs to be able to attract the best research, academic and clinical academic staff. In staff recruitment for instance, where roles will be jointly advertised in Ireland and internationally to optimise our workforce, it is not possible to make clear RCSI's university credentials.

4.4 Build partnerships with healthcare leaders in Ireland and overseas:

4.4.1 RCSI also needs to cooperate in a range of partnerships to achieve its goals. Prestige partnerships are a greater challenge with ambiguous university identity.

4.4.2 Ongoing and significant challenges regarding our equivalence and scholarly reputation arise on an ongoing basis. For example, as the academic partner to the RCSI Hospital Group (former North Eastern Health Board region), we cannot confer the title of 'University Hospital' on any hospital in the region. Key teaching hospitals in other Hospital Groups have adopted this designation, which supports

their mission to serve patients, educate the next generation of healthcare professionals and undertake research.

4.5 Support our economic model and contribution to Ireland:

4.5.1 Our status has the potential to affect our broader contribution to Ireland over time. As a registered charity, RCSI re-invests its entire financial surplus in education, research and service. For example, RCSI funded its new state-of-the-art healthcare education building at 26 York Street at a cost of €80m. RCSI has also invested in a range of facilities in hospital sites.

4.5.2 RCSI's broader economic contribution is already considerable. It employs about 1,100 staff and generates an estimated €120 million of export earnings annually - making it one of Ireland's largest indigenous exporters. The estimated total annual contribution of RCSI to the Irish economy is of the order of €200 million annually.

4.6 Each year that legislative change is delayed means the loss of valuable time for RCSI in strengthening its position and reputation as a leading medicine and health sciences education institution at world level.

5. Implications of Action

5.1 While authorisation to describe RCSI as a University of Medicine and Health Science within the State would address an anomaly within the current system, we do not believe it creates an undesirable precedent. RCSI is an Irish educational institution in law – originally under Charter in 1784 and later in Irish legislation. RCSI's independent degree awarding capacity was statutorily established in 2003[5].

5.2 RCSI has, in addition to being under the regulatory oversight of the medical and health science regulatory bodies, been subject to two institution wide external reviews. The first was a review on behalf of the then Minister for Education and Science before RCSI was given independent degree awarding status, the second was part of the national programme of reviews of HEIs by QQI in accordance with the Qualifications and Quality Assurance (Education and Training) Act 2012.

5.3 With the forthcoming incorporation of Dublin Institute of Technology into a new technological university, RCSI is now the only Designated Awarding Body in Ireland that does not have university status.

5.4 The proposed legal provision would not add to public expenditure. RCSI does not receive or seek core grant–in-aid funding from the Exchequer. It receives about 2% of its income from the Exchequer in the form of payments for services rendered such as a contribution to medicine, pharmacy and physiotherapy education of EU (in reality mostly Irish) students. Additional public funding comes to RCSI from competitively secured

[5] Under the Royal College of Surgeons in Ireland (Charters Amendment) Act 2003.

research grants through research funders. The value of these payments is exceeded by the payments RCSI makes annually to the Exchequer in taxes. The implementation of this provision would enhance our ability to re-invest in education, research and service.

6. Summary and Conclusions

6.1 In 2015, RCSI received authorisation to describe itself as a University – with the title '**Royal College of Surgeons in Ireland (RCSI): University of Medicine and Health Sciences**'. The anomaly is that this title is not usable within the State. While the authorisation is welcome, in practice, it is challenging to use this title internationally but not in our home country. This anomaly critically constrains RCSI's development, and in tandem inhibits its contribution to Ireland's educational objectives, as specified in the National Strategy for Higher Education to 2030.

6.2 We seek to address what we believe is currently an anomaly regarding our status in higher education in Ireland. RCSI is a not-for-profit, independent, degree awarding body and with an exclusive focus on medicine and health sciences. It is a 234 year old organisation that employs over 1,100 highly qualified academic and professional staff; provides a range of widely accredited degrees up to Level 10 NFQ in a scholarly setting; supports an active and competitive research funded environment whose output metrics are at the top of the Irish university sector; and delivers uniquely on Ireland's ambitions to be a centre for international higher education through its decades-long education of Irish and international students in Ireland and in its four overseas campuses. Finally, it ranks joint second in Ireland (in the 201-250 category with UCD) in the 2019 Times Higher University rankings.

6.3 The proposed enactment of the Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018 and its passage through the Houses of the Oireachtas provides an opportunity to redress this situation. Each year that legislative change is delayed means the loss of valuable time for RCSI in strengthening its position and reputation as a leading medicine and health sciences education institution at world level.

6.4 We are proposing that that the Bill should include a provision, which would allow RCSI to describe itself in Ireland as a University of Medicine and Health Sciences – mirroring existing legislative authority to use this description outside of the State.

6.5 We would be grateful if the Committee would consider this urgent matter and would be delighted to meet with the Committee to discuss it.

2018/327b

RCSI Contribution to Ireland

September 2018

RCSI

Leading the world to better health

RCSI in numbers

WORLD RANKINGS

Top **2%**

Times Higher Education World University Rankings 2019

CONTRIBUTION TO THE IRISH ECONOMY

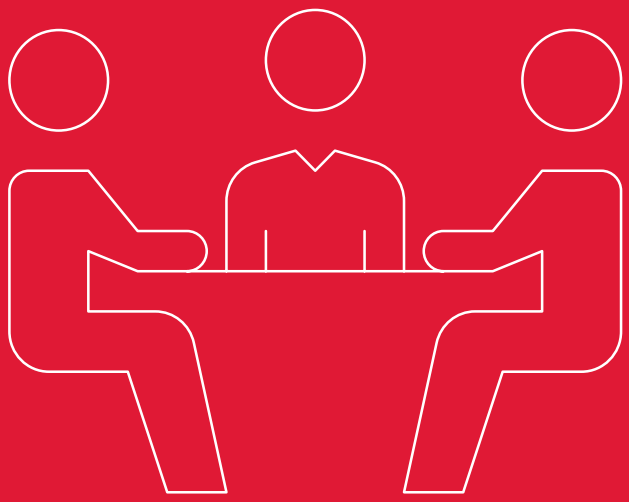
- Number of additional jobs created across the Irish economy as a results of the expenditure of RCSI, our staff and students: 1,750
- Contribution to Irish exports: €120m p.a.

INTERNATIONAL OUTLOOK

International student profile:
Students from over **60** countries

4 International campuses:
Bahrain, Dubai and Malaysia (2)

Alumni:
17,000 in 97 countries



STUDENTS IN IRELAND

3,781 Registered students

2,259 Undergraduate students
(Medicine, Physiotherapy and Pharmacy)

1,041 Postgraduate students
(Masters, MD, PhD)

457 Surgical and emergency medicine trainees

STAFF IN IRELAND

1,129

INVESTMENT

€80m

Invested in RCSI's 26 York Street, home to Europe's most advanced clinical simulation facility

€11m

Invested in extension of RCSI's Smurfit Building at Beaumont Hospital

Introduction

RCSI is a higher education, professional training and research institution focused on health sciences. The College was founded by Royal Charter in 1784 to set and support professional standards for surgical training and practice in Ireland. This surgical heritage continues to shape our approach to education, research and service. The RCSI School of Medicine, the largest in Ireland, was founded in 1886.

Today we are an innovative, world leading international health sciences institution with undergraduate and postgraduate schools and faculties across the health sciences spectrum. We are home to a number of healthcare institutes and leading research centres driving pioneering breakthroughs in human health. Located in the heart of Dublin, with four international campuses and a student community of over sixty nationalities, we have an international perspective on how we train tomorrow's clinical professionals today. We remain committed to service, academic freedom, diversity and humanitarian concern.

A deep professional responsibility to enhance human health through endeavour, innovation and collaboration in education, research and service informs all that we do. We welcome students and researchers into programmes of academic excellence and a lifelong community of colleagues that is clinically led, nurturing and supportive to enable them to realise their potential to serve our global patient community.

Through the RCSI Hospital Group, our national role in surgery and local initiatives to support our community in inner city Dublin, RCSI engages in a range of activities to enhance the delivery of healthcare, to improve public health and support access to education.

RCSI is a statutory, independent, and not for profit body. Its foundation charter was subsequently amended by Oireachtas Acts in 1965 and in 2003. It is one of the nine statutory degree awarding institutions in the State provided for in the Qualifications and Quality Assurance (Education) Act, 2012.

In 2015, RCSI was awarded "university authorisation" by the Minister for Education and Skills under the terms of the Education (Miscellaneous Provisions) Act 2015 and can now describe itself as a University of Medicine and Health Sciences – but only outside the State.

Financially, RCSI is self-funding organisation. Unlike publicly funded universities and institutes of technology it does not get 'core' funding from the Exchequer. It receives about 2% of its Irish income from the State in the form of payments for education services rendered (for EU medical, pharmacy and physiotherapy students). These payments are below economic cost.

Additional funds come from competitively secured research grants from research funders such as SFI, Health Research Board and Irish Research Council. The value of all these payments is more than exceeded by the payments RCSI makes annually to the Exchequer in taxes.

RCSI's broader economic contribution is very considerable. It employs more than 1,100 staff and generates an estimated €120 million of export earnings annually - making it one of Ireland's largest indigenous exporters. The estimated total annual contribution of RCSI to the Irish economy is of the order of €200 million annually.

RCSI's Strategic Plan (2018–2022) 'Transforming Healthcare Education, Research and Service' can be found at www.rcsi.ie/strategy2018.

This paper summarises our contribution to Ireland. It is organised using a Department of Education and Skills framework* (link here), which sets six key objectives for Irish higher education institutions.

*https://www.education.ie/en/Publications/Education-Reports/higher-education-system-performance-framework-2018-2020.pdf

Objective 1

Providing a strong talent pipeline combining knowledge, skills and employability which responds effectively to the needs of our enterprise, public service and community sectors, both nationally and regionally, and maintains Irish leadership in Europe for skill availability

- With a sole focus in healthcare, we offer a range of courses including medicine, nursing, pharmacy, physiotherapy, surgery and healthcare leadership to meet the needs of the healthcare sector in Ireland and overseas.

- We support the continuum of healthcare education and training with the patient always as the focal point. We offer a wide range of healthcare courses from undergraduate to postgraduate qualifications (69 accredited programmes - NFQ level 8 and above) to supporting lifelong learning. Our core education and training entities are captured in figure 1.

- Informed by leading research, we seek to support healthcare professionals throughout their working lives. As healthcare courses require a very specific range of knowledge, skills and attitudes, our courses are continuously framed by patient and industry needs (healthcare sector), and indeed, co-delivered by industry. Many of our educators are active clinically, mainly in hospitals.

- Our new education building at 26 York Street provides an excellent educational experience for students and surgeons alike. It facilitates the development of core technical and non-technical skills in a safe environment. Trainees are able to learn safe surgical practice and develop operative skills, reinforcing the importance of surgical training to patient safety. 26 York Street was self-funded by RCSI at a total cost of €80m.

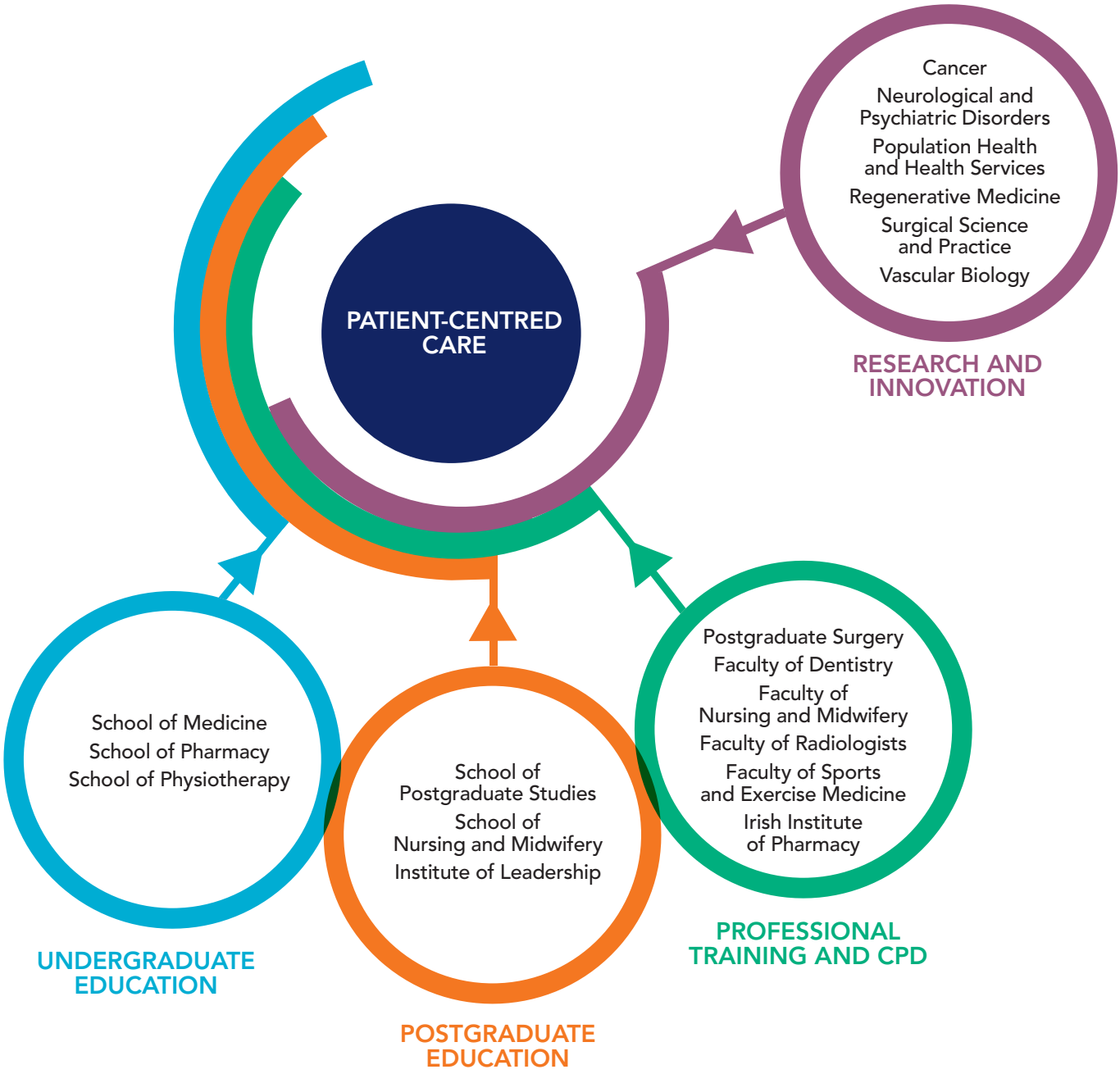
- Unlike typical higher education providers, RCSI provides an extensive range of offering to support the lifelong development of healthcare professionals. For example, supported by the State, we manage the Irish Institute of Pharmacy whose role includes the development and implementation of a CPD system for all pharmacists in Ireland and the development of pharmacy practice in line with international best practice and evolving healthcare needs.

- We house a number of professional member-driven Faculties who support the ongoing development of their professions including surgery, nursing and midwifery, sports and exercise medicine, radiology and dentistry. These faculties provide education and training programmes to meet the needs of their profession who work in clinical, management and research roles.

- As an independent body, the College must generate sufficient financial resources to cover both operating costs and capital funding requirements. Ensuring that our education and training programmes are relevant and competitive – both in Ireland and internationally - is central to our ongoing sustainability. As a registered charity, all surpluses earned are reinvested in fulfilling our strategic objectives for education, research and service.

- We continuously strive to drive innovation in course offerings and delivery:
  - We launched the first Graduate Entry Medicine course in Ireland (2006) – opening up medicine to a wider range of students than the CAO entry route allows for.
  - We launched the first Nurse Midwife Prescribing course (2007) – expanding the range of practice of nurses.
  - We launched the first (and only) Physician Associates programme in Ireland (2016) – creating a new profession in Ireland that has the potential to significantly enhance the quality of healthcare while lowering costs.

Figure 1
Healthcare practice requires a lifelong commitment to learning. We support the continuum of healthcare education and training with the patient always as the focal point. Informed by leading research, we seek to support healthcare professionals throughout their working lives. Our core education and training bodies are outlined below.



Objective 2

Creating rich opportunities for national and international engagement which enhances the learning environment and delivers a strong bridge to enterprise and the wider community.

- In 2000, RCSI was the first higher education institution to develop a clinical research centre on a hospital site in Ireland (Smurfit Building at Beaumont Hospital). In 2018, RCSI opened an €11 million extension to the centre. In recent years, we have also invested in research and education facilities in University Hospital, Waterford, St. Luke's General Hospital, Kilkenny, Our Lady of Lourdes Hospital, Drogheda, and Connolly Hospital, Dublin. Further investments are planned.

- The RCSI campus has formed part of the streetscape of Dublin for over 230 years. The opening of 26 York Street in 2017 marks the transformation of RCSI's Medical Quarter in the heart of Dublin city. We aspire to make further investments in the city centre campus.

  RCSI's state-of-the-art healthcare education building at 26 York Street allows early clinical education to be delivered away from the patient's bedside, enabling students and trainees to learn in a simulated, feedback-rich environment. The building accommodates a new surgical training suite with a mock operating theatre, clinical training wards, 540-seat auditorium, library and sports complex.

  This building provides students, surgical trainees and staff with the most modern facilities that promote the development of the RCSI community at the heart of the city. RCSI's €80m investment represents our vision for a world-class educational facility that will put RCSI at the global forefront of innovation in healthcare education and training. Speaking at the official opening, Michael Bloomberg noted that 26 York Street would "help raise the bar for teaching institutions around the world."

- RCSI has successfully shaped and led the training of surgeons since its foundation. This is executed through a wide range of programmes and activities in the National Surgical Training Centre for those wishing to pursue a career in surgery. As part our work, the National Clinical Programme in Surgery provides a framework to design and implement change initiatives to improve and standardise the quality of care and access for patients in a cost effective manner.

- As the primary academic partner, RCSI through the Hospitals Group is playing a key role in enhancing the provision of healthcare to over 800,000 people in Dublin (north) and the Northeast, Ireland's fastest growing region. The Group comprises Beaumont, Connolly, The Rotunda, Louth County Hospital, Our Lady of Lourdes Hospital Drogheda and Cavan and Monaghan Hospitals.

  We are committed to the success of the group. The scope of RCSI activities cover areas such as Health Outcomes Research, Lean/Process Improvement, Population Health research, and Project Echo (knowledge sharing networks, led by expert teams who use multi-point videoconferencing to conduct virtual clinics with community providers). We also host the group HQ on our St. Stephens Green campus.

- The International Medical Commencement Programme (a pre-entry programme) is jointly delivered by the RCSI and the Institute of Technology Tralee. Based in Kerry, the programme is designed to enhance the scientific and communication skills of those international students whose first language is not English to prepare them for entry into RCSI undergraduate programmes in medicine, pharmacy and physiotherapy. Over 120 students participate annually, contributing to the success of ITT and to the economy of Tralee and the South West region.

- The Institute of Leadership provides opportunities for health professionals to develop as leaders capable of displaying a wide range of management and supervisory skills in their clinical or administrative roles. We achieve our mission through a combination of academic rigour, a practical focus on improving healthcare delivery and helping professionals understand and develop themselves.

- We house a number of member-driven Faculties who support the ongoing development of their professions including surgery, nursing and midwifery, sports and exercise medicine, radiology and dentistry. These faculties provide education programmes to meet the needs of their profession who work in clinical, management and research roles. Likewise, the Irish Institute of Pharmacy, based at RCSI, is responsible for the management and operation of a CPD system for pharmacists in

Ireland and the development of pharmacy practice in line with international best practice and evolving healthcare needs.

- We run a wide range of public health events to improve public understanding of health and healthcare. For example, the RCSI 'MyHealth' Lecture series is for people who want to learn more about common illnesses and health related topics, and how we can improve our personal health and well-being.

- We run a programme (REACH - Recreation Education and Community Health) to support community engagement and access. Established in 2007, REACH facilitates the participation of groups traditionally underrepresented in further and higher education, and to promote lifelong health in our local community in South Inner City Dublin. The programme, driven by staff and students, has forged community partnerships with local primary and post primary schools and local youth, community and sports groups.

- In 1990, RCSI opened a GP practice, the Mercer's Medical Centre, on the site of the old Mercer's Hospital. It is now the largest GP practice in Dublin city centre. In addition to the core activities of general medical practice in an inner city site, the centre participates in the education and training of student doctors and in the specialist training of future GPs. It provides free GP services to RCSI students and is also involved in health promotion activities in the local community.

- RCSI is also committed to advancing the health and wellbeing of people in the developing world. The COSECSA programme represents a unique collaboration between RCSI and a College of Surgical Educators across 10 countries in East, Central and Southern Africa (COSECSA). By sharing our intellectual property and the expertise of our staff, we have grown the capacity of COSECSA's faculty and administration staff to train surgeons in Africa. With our support, COSECSA has delivered exponential growth in surgical training and accreditation in Africa. As of June 2017, COSECSA has 443 surgical trainees and 99 accredited training hospitals. 206 surgeons have graduated from the COSECSA Fellowship training programme and COSECSA aims to produce 300 more surgeons over the next four years.

- In addition to our contribution to healthcare, RCSI makes a significant contribution to Ireland's broader historical, social, and economic development. Our headquarters in 123 St. Stephen's Green has been witness to numerous historic events, including the 1916 rising. Today, our buildings and staff play host – both to historic tours – and conferences and events on the frontiers of health sciences and health policy. For example, in July over 4,000 delegates from nearly 70 countries congregated in the Convention Centre, Dublin for the World Congress of Biomechanics, which was co-hosted by RCSI and Trinity College Dublin in partnership with AMBER, the Science Foundation Ireland-funded materials science group. More than 600 members of the public visited our historic building at 123 St Stephen's Green for Culture Night 2018.

Objective 3

Excellent research, development and innovation that has relevance, growing engagement with external partners and impact for the economy and society and strengthens our standing to become an innovation leader in Europe.

- The mission of RCSI's research strategy is to improve human health through translational research: clinical, laboratory- based and health service research informed by bedside problems, and societal and global health challenges.

- As an exclusively health sciences-focused educational and research institution with strong links to acute hospitals and other institutions that reflect the wide diversity of healthcare facilities and needs, locally and nationally, RCSI is uniquely placed to develop and enhance translational research for the benefit of patients and to improve the health of the community. In 2000, RCSI was the first higher education institution to develop a clinical research centre on a hospital site in Ireland (Smurfit Building at Beaumont Hospital). In 2018, RCSI opened an €11 million extension to the Centre at Beaumont Hospital.

- RCSI academic staff, many of whom have joint appointments with hospitals, bring clinical expertise and resources to RCSI that are essential to deliver truly translational research, from bench to bedside to population and vice-versa.

- RCSI has significantly enhanced its research capability, competitiveness and impact. An indicator of the growing impact of RCSI researchers on the international health sciences research landscape can be seen in how frequently our research is cited by other researchers. RCSI's field-weighted citation impact is the highest in Ireland and twice the world average.

- We are building world-class research teams in key areas that significantly affect human health. Our research programmes drive scientific breakthroughs, innovations and insights that allow us to understand and respond to changing healthcare needs and contribute to the development of new therapeutics, diagnostics, devices and healthcare system change that will enhance patient treatment and care in the future. The following table sets out a number of examples where our research is achieving tangible impact for patients.

Key Metrics

>200%

Increase in inventions identified by RCSI researchers since 2016

A range of important scientific discoveries that improve human health

No.1

Highest research paper impact (citation rate) in Ireland

DOUBLE
RCSI field-weighted citation compared to world average

Grant Income

€35m

Science Foundation Ireland sfi For what's next

Founding Partner in four SFI funded research Centres

400%

increase in research agreements with Industry since 2014

No.1 for H2020

Highest overall success rate for Horizon 2020 grants awarded to Irish Institutions

Examples of excellent research, development and innovation that has relevance, growing engagement with external partners and impact for the economy and society and strengthens our standing to become an Innovation Leader in Europe.

Research Examples	Example of Outcomes
Example 1: Perinatal - supporting mothers and babies	
Unfavourable pregnancy and birth outcomes can have devastating effects and lifelong consequences for infants and their families. Headquartered at RCSI and based at the Rotunda Hospital campus, Perinatal Ireland is focused on improving women and children's health. It is a collaborative research network that links the seven largest obstetric maternity hospitals on the island of Ireland. As these hospitals manage 50,000 of the 70,000 births p.a. in Ireland, it is ideally placed to perform large-scale ground-breaking clinical research studies in pregnancy together with long-term paediatric outcome studies. There are only a handful of such networks globally.	• The research network has completed some of the world's largest clinical studies of twin pregnancies, pregnancies complicated by fetal growth restriction, and complicated labour. These studies have been used to change how care is delivered (through changes in national clinical guidelines) to patients in Ireland and internationally. • In addition to its clinical research activities, the network is also active in educational activities and methods of advancing clinical care including an annual teaching conference for practitioners and the development of new technology systems that underpin obstetric care.
Example 2: Respiratory disease - breathing easier	
During a normal day, we breathe nearly 25,000 times. If all types of lung disease are considered together, it is one of the leading causes of death in Ireland. In particular, Ireland has the highest incidence of cystic fibrosis (CF) in the world. Based in the RCSI (Beaumont Hospital campus), our main research areas are on inflammatory lung diseases such as CF and alpha-1 antitrypsin deficiency (AATD). These diseases have particular significance to the Irish population and our global diaspora, and are highly debilitating illnesses. For example, over 2,000 Irish individuals have severe Alpha-1 deficiency and over 200,000 people are genetic carriers.	• Our Research Group houses a detection program for AATD, which is the first national screening programme in the world, with over 15,000 people screened to date. The resulting database has defined the extent of this condition in Ireland and has served as a template for other countries. Early detection allows for medical follow-up and lifestyle changes that can help prevent or at least postpone the development of AATD-related lung and liver disease. • The Group is the only Irish centre in the European CF therapeutic network. RCSI research shows the effects of gender hormones on infections and has major implications for conditions beyond cystic fibrosis including other respiratory diseases such as asthma. • The group was also centrally involved in the first major paper published on the efficacy of the drug 'ivacaftor' - the first drug that treats the underlying cause rather than the symptoms of the disease, which is now the standard of care for CF patients with the G551D mutation. • Clinically the unit cares for 160 patients.

Research Examples	Example of Outcomes
Example 3: Neurological and psychiatric diseases - protecting minds	
Over 50 million people across the world suffer from epilepsy, making it the most common serious neurological disorder for which there is no cure. There are 37,000 people with epilepsy in Ireland, including an estimated 12,000 to 15,000 people who have regular seizures. There are an estimated 130 epilepsy-related deaths each year in Ireland. The Experimental Epilepsy Group at RCSI comprises over 20 scientists focused on understanding epilepsy and developing new treatments.	• For every two out of three people with epilepsy their seizures are controlled by medication, but one in three patients continues to have seizures despite being prescribed medication. Thus, there is a major unmet need for improved understanding of the cause(s) of epilepsy and the identification of new treatments. • This group is recognised internationally for discoveries on the molecular mechanisms of epilepsy and for discoveries on non-coding RNAs (called microRNA) and their therapeutic targeting. The group was the first to elucidate a role for microRNA in epilepsy and to develop a potential therapy based on managing the molecules.
Example 4: Regenerative medicine - mending broken bodies	
Every day thousands of surgical procedures are performed to replace or repair tissue that has been damaged through disease or trauma. The developing field of tissue engineering aims to regenerate damaged tissues by combining cells from the body with highly porous scaffold biomaterials, which act as templates for tissue regeneration, to guide the growth of new tissue. RCSI hosts the Tissue Engineering Research group, which is a cluster of over 60 interdisciplinary researchers.	• RCSI researchers are focused on how advanced therapeutics (consisting of biomaterials that may incorporate stem cells or drugs) can promote the regeneration of tissues. Researchers are currently focusing on restoring human tissue (e.g., heart, eye, airway, nerve bone, cartilage, blood vessels, pancreas, etc.) to its original function following disease and injury. • The group collaborates with a range of Irish and international partners. For example, Mending Broken Hearts is a translational research program funded by the EU and coordinated by RCSI. The international team of scientists and engineers focus on developing advanced regenerative therapies that treat the damage caused by heart attacks. • Likewise, DRIVE against Diabetes is an EU funded research programme led by RCSI, which seeks to enable patients with diabetes to be freed from daily insulin injections with the help of long-lasting gel injections loaded with insulin-producing cells.

• RCSI has partnered with a wide range of companies to address a number of healthcare challenges. We have driven a 400% increase in research agreements with industry since 2014. Models of engagement vary and are tailored to meet the company's requirements. Industry partners include - Integra Lifesciences, Fleming Medical, Almac, Athena Diagnostics, Wellman International and Aerogen.

Objective 4

Significantly improves the equality of opportunity through education and training and recruits a student body that reflects the diversity and social mix of Ireland's population

- RCSI's founders included both nationalists and unionists. It was founded to provide surgical education on a non-sectarian basis. In 1893 the first female fellow, Emily Dickson was appointed, and in 1885 Agnes Shannon was the first female medical student registered in a British or Irish Medical School. Today, 61% of our staff are female, as are 62% of our student population.

- RCSI has achieved Athena Swan Bronze Award. The award recognises RCSI's advancement of gender equality in higher education and research.

- RCSI operates across five international campuses and has 70 countries represented in Dublin. RCSI has a long tradition of celebrating cultural diversity. Data from the ISSE indicates that our students are comfortable studying in a highly multi-cultural environment. It places them well to work in multi-cultural healthcare teams and to support diverse patient groups. RCSI welcomes the increasing ethnic and national diversity of our community, and is committed to equal treatment of all regardless of race.

- We are part of the CAO process which centrally processes our allowed quota of EU applications to our first year undergraduate courses based on merit. As noted earlier, RCSI launched the first Graduate Entry Medicine course in Ireland. Providing an alternative access mechanism to the Leaving Certificate, graduate entry opens up medicine to a wider range of students.

- To support a diverse student body, RCSI offers a range of scholarships and programmes including:
  - RCSI participates in the Higher Education Admissions Route (HEAR) which supports socio-economically disadvantaged students. In addition to the 6% HEAR places, we provide three Access Scholarships for CAO school leaver applicants.
  - Established in 2007, the REACH RCSI Programme is a community outreach and access programme, promoting recreation education and community health. The initiative is aimed at encouraging and facilitating third level participation and enhancing life chances for those traditionally underrepresented at third level, particularly those from Dublin's south inner city.
  - REACH RCSI works in partnership with DEIS primary and post primary schools, youth and community groups together with the local community on the design and delivery of educational initiatives including Junior and Leaving Certificate Grinds Club, science workshops, sports and health programmes and an education information service.
  - RCSI provides a Traveller Community Access Programme which aims to increase the participation and success rates of members of the Traveller community in third level educational programmes.

Objective 5

Demonstrates consistent improvement in the quality of the learning environment with a close eye to international best practice through a strong focus on quality & academic excellence

- RCSI's St Stephen's Green campus has formed part of the streetscape of Dublin for over 230 years. Our new state-of-the-art healthcare education building at 26 York Street allows early clinical education to be delivered away from the patient's bedside, enabling students and trainees to learn in a simulated, feedback-rich environment. The building accommodates a new surgical training suite with a mock operating theatre, clinical training wards, 540-seat auditorium, library and sports complex.

  RCSI's €80m investment represents our vision for a world-class educational facility that puts RCSI at the global forefront of innovation in healthcare education and training.

- RCSI has significantly improved its international ranking in recent years. For example, in the Times Higher World University Rankings, RCSI ranks in the top 2% in the world. This has been driven by our continued investment in education and research activities. RCSI's Strategic Academic Recruitment (StAR) programme is an ambitious initiative which commenced in 2015 to accelerate the delivery of innovative, impactful research in the health sciences by recruiting world class researchers and educators. A key focus of our strategic plan 2018-2022 is to enhance RCSI's international reputation amongst academic communities, university peers and collaborators, ensuring RCSI and Irish education and research is renowned for excellence amongst all stakeholder groups.

- From a student perspective:
  - o Our students rank RCSI highly in the Irish Student Engagement Survey (ISSE). For example, when asked 'If you could start over again, would you go to the same institution you are now attending?, the following percentages respond 'Definitely yes' (ISSE, 2017), see below table 1. A majority of other responses are 'probably yes'.
  - o 95% of all graduates go on to postgraduate career and/or training (RCSI - first destination data, August-September, 2017).
  - o Our medical students perform strongly in the US Medical Licensing Examination (USMLE). All international medical graduates who wish to work in the US must complete these as registration exams. RCSI's performance is circa 90%, indicating that in regard to US medical licensing and against vigorous international competition, our student educational attainment is outstanding.

- As part of our commitment to our student's holistic development, we have established the Centre of Mastery: Personal, Professional and Academic Success (CoMPPAS). The unit comprises of a multi-disciplinary team of specialists working collaboratively to facilitate and empower students to achieve their personal, academic and professional goals. The hub broadens access to, and further enhances, our existing student advisory and development services, including academic development, student wellbeing, language and communications, career development and learning access and facilitation.

Table 1 (ISSE, 2017)

Institutions	All Students	Undergrad - Year 1	Undergrad - Final Yr	Postgrad taught
RCSI	48.1%	48.5%	41.4%	57.6%
All HEIs	42.8%	46.1%	37.0%	45.5%

Objective 6

Demonstrates consistent improvement in governance, leadership and operational excellence.

- RCSI is an independent, not-for-profit, health sciences institution. It operates under Royal Charter, granted in 1784 to the College for the governance of surgical training in Ireland. Its charter was subsequently amended by Oireachtas Acts in 1965 and in 2003.

- It is one of the nine statutory degree awarding institutions in the State provided for in the Qualifications and Quality Assurance (Education) Act, 2012. In 2015, RCSI was awarded "university authorisation" by the Minister for Education and Skills under the terms of the Education (Miscellaneous Provisions) Act 2015 and can now describe itself as a University of Medicine and Health Sciences – but only outside the State.

- The college has a range of governance structures to ensure consistent improvements in governance, leadership and operational excellence. In 2011, RCSI established the Medicine and Health Sciences Board (MHSB) as the governing body responsible for all degree-awarding educational activities of RCSI. It role and responsibilities parallel those of the governing bodies of the publicly funded HEIs.

- RCSI's Quality Enhancement Office (QEO) was established in 2010. The role of the QEO, as the executive arm of the RCSI Quality Committee, is to support the implementation of the RCSI quality assurance/quality improvement (QA/QI) strategy by coordinating all relevant activities and by collecting the data needed to allow the College to continually assure and develop the quality of all aspects of programme delivery.

- Key external oversight mechanisms include:
  - RCSI's charitable purpose is to further its education and research objectives of driving positive change in all areas of human health. We are regulated by the Charities regulator in this regard. As a registered charity, all surpluses earned are reinvested for the furtherance of its education and research mission.
  - RCSI academic awards, processes and procedures are subject by law to oversight, inspection and review by Quality and Qualifications Ireland (QQI) – identical to the situation of the 7 publicly funded universities.
  - RCSI awards and curricula are subject to scrutiny, oversight and licensing by a number of regulatory bodies - including the Irish Medical Council, the Pharmaceutical Society of Ireland, the Nursing and Midwifery Board of Ireland, and the Health and Social Care Professionals regulatory body - CORU.
  - RCSI is subject to the Ombudsman legislation. RCSI students have access to an Independent Appeals Commissioner - a position which since its inception has been filled by a retired High Court judge.
  - RCSI is subject to Freedom of Information legislation.

- The College operates primarily a self-funding model as the majority of its revenue comes from private rather than public funding sources. Funds generated must be sufficient to cover both current and capital requirements. Its main source of revenue is from student fees. Significant capital expenditure projects are funded through an appropriate balance of debt and ring-fenced reserves. There is a strong focus on generating annually a positive net cash in-flow to ensure its commitments in respect of its day-today expenses, working capital, debt servicing and infrastructural investment requirements can be met.

- Evolving competencies, beyond core clinical training and aptitude, will have a determining influence on the effectiveness of clinical care in the decades to come. Healthcare leaders of the future must excel in these critical, extra-clinical dimensions of care to ensure that the optimal benefits of their clinical capabilities are realised for the benefit of the patient. Driven by these imperatives, the initial fostering of the healthcare management capability is founded in three core areas – leadership education, healthcare system research and service improvement – and delivered by three dedicated RCSI units:
  - RCSI's Institute of Leadership;
  - a new Health Outcomes Research Centre; and,
  - A new Quality and Process Improvement Centre.

Notes

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05/10/2018 11:25

Dear Sir/Madam,

University College Cork is pleased to provide a written submission to the Committee on the proposed amendments. In particular it would wish to highlight as detailed below that definitions of "relevant providers" and "Listed Awarding Body" will require clarification.

Part 2 – Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012
Section 3 – Amendment of Section 2 of Principal Act (Interpretation)

Previous existing Universities /Designated Awarding Bodies fall under the definition of 'relevant provider' in the principal Act (pg. 10), along with other categories of providers such as those with Delegated Awarding Authority or Linked Providers. Many of the sections in the Amendments Act apply to "relevant providers' but do not apply to Designated Awarding Bodies. Therefore the definition of relevant providers should be framed so as to refer to providers other than Designated Awarding Bodies.

In addition to the myriad bodies defined in the 2012 Act, including "Awarding Body", "Designated Awarding Body", "Institutes of Higher Learning", "Relevant Designated Awarding Body", "Provider", "Linked Provider" and "Associated Provider", there will now be an additional category of "Listed Awarding Body." While the definitions in the 2012 are clear, it is not clear what is intended to be covered by this definition of Listed Awarding Body? What type of provider does it refer to?

The definitions of relevant providers and Listed Awarding Body will need to be clarified further in terms of the new obligations applying from the proposed Bill amendments.

Yours sincerely,

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Independent Thinking, Shared Ambition: UCC Strategic Plan 2017-2022
Watch University College Cork: River of Life

Machnamh Neamhspleách, Comh-Mhian: Coláiste na hOllscoile Corcaigh Plean Straitéiseach 2017-2022
Féach Coláiste na hOllscoile Corcaigh: Abha na Beatha

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Submission to the Joint Committee on Education and Skills

Qualification and Quality Assurance (Education and Training) (Amendment) Bill 2018

Brief outline of submission: This submission is being made on behalf of AONTAS, the National Adult Learning Organisation, and our membership. The submission is being made in order to highlight for the Joint Committee on Education and Skills what AONTAS expects will be undesirable and harmful impacts that some of the suggested legislative changes (and expected corresponding policy changes) will have on providers of community education around the country.

The focus of this submission is on proposed amendments that create 'listed awarding bodies'; new regulations specifying criteria concerning capacity and capability of providers; and amendments that will introduce additional new fees on independent not-for-profit community education providers across the country.

Organisation: AONTAS, The National Adult Learning Organisation

Names and Roles in the organisation: Niamh O'Reilly (CEO) and Benjamin Hendriksen (Advocacy Lead)

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Web-address: www.aontas.com

Date of emailing response: Friday 5 October 2018

Willingness to appear in public session: Both Niamh O'Reilly (CEO) and Benjamin Hendriksen (Advocacy Lead) are willing to appear in public session at a committee hearing. AONTAS would also be willing to assist the attendance of AONTAS member and Board Member Tara Farrell of Longford Women's Link whose organisation is directly affected by the *Qualification and Quality Assurance (Education and Training) Act* and proposed amendments.

Disclosure: AONTAS would like to note for members of the Joint Committee on Education and Skills that AONTAS CEO Niamh O'Reilly is a Learner Representative on the Board of Directors of Quality and Qualifications Ireland (QQI).

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Outline of Submission

- Introduction to AONTAS, The National Adult Learning Organisation
- Introduction to the submission on the *Qualification and Quality Assurance (Education and Training) (Amendment) Bill 2018*
    - Unique space of community education
    - AONTAS Community Education Network (CEN)
    - Quality assurance at expense of learner access to education
    - One size policy does not fit all
- Concerns with specific amendment proposals
    - Listed Awarding Bodies and Associate Provider
    - Regulations specifying criteria concerning capacity and capability of providers
    - New fees for providers

Introduction to AONTAS, the National Adult Learning Organisation

AONTAS, The National Adult Learning Organisation exists to promote the development of a lifelong learning society through the provision of a quality and comprehensive system of adult learning and education that is accessible and inclusive.

AONTAS is a highly respected non-governmental membership organisation established in 1969. Currently it represents approximately 400 members from across the lifelong learning spectrum. The work of AONTAS centres on: Advocating and lobbying for the development of a quality service for adult learners; promoting the value and benefits of adult learning; and building organisational capacity. With particular emphasis on those who did not benefit from education initially or who are under-represented in learning. AONTAS' seeks to:

- widen participation in lifelong learning;
- ensure community education supports quality learning opportunities for the most educationally disadvantaged;
- ensure adult learners are central to local, regional, national, European and International adult learning policy; and
- promote quality adult learning

Drawing on the strength of our members, including through the 100+ strong membership of the AONTAS Community Education Network (CEN) and meaningful relationships with adult learners, we advocate for the rights of all adults to quality learning through their lives based on a grassroots, authentic understanding of lifelong learning that benefits the social, personal and skills development of adults, their family and community. In addition, we promote the value and benefits of lifelong learning. We have a specific focus on the most educationally disadvantaged and our work seeks to ensure that all adults have the right to participate in adult learning that exhibits the following elements: inclusion, learner supports, progression, positive learning outcomes, is learner focussed, offers learner choice, a positive learning experience and is transformative.

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Introduction to the submission on the *Qualification and Quality Assurance (Education and Training) (Amendment) Bill 2018*

AONTAS would like to start by thanking the Joint Committee on Education and Skills for taking the time to engage with wider civic society about the proposed amendments in the *Qualification and Quality Assurance (Education and Training) (Amendment) Bill 2018*.

Unique space of Community Education

As background information for members of the Joint Committee who may be unfamiliar with community education, community education is adult learning which takes place in local community settings across Ireland. It is learner-centred and responds to the needs of the local community. The holistic, non-threatening and supportive environment in which community education takes place has the effect of increasing the engagement of socially excluded adult learners and those who have had previous negative experiences of education. Adult learners who participate in community education include but are not limited to people living in areas with high levels of social deprivation, Travellers, migrants and people affected by drug addiction, mental health issues, homelessness and high and/or persistent unemployment. People who identify or are identified with these groups may not have the confidence, or social and financial supports needed to access formal adult education opportunities in local institutions and so community education acts for them as a first step back to education.

The variety of community education courses, from non-accredited to accredited, up to QQI Level 6, meets diverse needs within local communities. Many community education providers are quality assured by QQI, and so, are in a position to provide the opportunity for adults, from the most disadvantaged communities in Ireland, to access accredited courses recognised on the National Framework of Qualifications (NFQ). Community education therefore is a particularly effective way of reaching those who are most distant from education and the labour market, and can act as a stepping stone for many towards further learning, qualifications and labour market engagement.

It is because of the important role that community education plays in supporting the most hard to reach members of our country to engage with education that AONTAS makes this submission on behalf of our membership.

Community Education in national policy

At the time of this submission community education is being recognised for, and being promoted by the Department of Education and Skills for its important role in national adult education policy.

In 2016 the European Commission reported that close to 70 million Europeans struggle with basic reading and writing; calculation; and using digital tools in everyday life. Without these skills they are at higher risk of unemployment, poverty and social exclusion. In June 2016, the Commission proposed the setting up of a ''Skills Guarantee'' to address this challenge. The resulting initiative, now called "Upskilling Pathways" was adopted by the European Council on 19 December 2016.

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At the national level each of the member states was to develop an action plan for implementing Upskilling Pathways in their jurisdiction. As part of the Irish response, the Department of Education and Skills is including the community education sector as an important component of the Irish Upskilling Pathways action plan. The Department of Education and Skills recognises the unique position that community education providers have in reaching the most vulnerable and hard to reach members of our society. With this important role of community education as a support to the implementation of national policy in mind, it is difficult for AONTAS and our membership to accept the ongoing funding and resource challenges that community education is placed under, without any corresponding assistance or relief from governmental institutions.

AONTAS Community Education Network (CEN)

The Community Education Network (CEN) was established in 2007 by AONTAS. It is a network of over 100 independently managed community education providers who work collaboratively, sharing information and resources, engaging in professional development and working to ensure that community education is valued and resourced. Approximately 1/3 of community education providers within the CEN have recognition by QQI as legacy FETAC providers and offer courses leading to awards on the National Framework of Qualifications (NFQ). Such providers work collaboratively through the CEN, to support one another in the maintenance of robust quality assurance requirements necessary for the delivery of a high standard in accredited programmes. The network has developed a collaborative working relationship with QQI staff over the past several years through ongoing engagement on numerous policy issues, and through QQIs regular inputs and question and answer sessions during CEN meetings.

The community education sector has in recent years been affected by significant and disproportionate funding cuts. In spite of this, the sector has continued to prioritise the provision of high quality, accredited learning opportunities within their local communities. For adult learners the opportunity to participate in an accredited programme leading to a nationally recognised award on the NFQ, within a holistic, non-threatening, community environment, creates an accessibility and provides the motivation for people furthest removed from the education system to take the first step back to lifelong learning. Therefore the importance of community providers continuing to offer accredited learning opportunities cannot be overestimated.

Quality assurance at the expense of learner access to education

Since the creation of QQI in 2012 and its ongoing efforts to sustain and highlight quality education provision, AONTAS and CEN members, have continuously engaged with QQI. Engagement occurs so that AONTAS and our members can ensure that community education providers continue to provide a quality offering to learners across Ireland. Based on feedback that CEN members have received as part of the pilot reengagement process CEN members have shown time and again that their offering meets and in many cases surpasses the quality sought by QQI. Where there are challenges to the provision of quality as defined by QQI in the reengagement pilot it is because community education groups remain severely under-resourced by government and depend on a small number of staff for management and provision.

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It is because community education shows time and again its capacity to meet the quality requirements laid down by QQI, while at the same time being financially penalised by existing QQI fees because they are small, independent, and efficiently run organisations, that CEN members are concerned about their future ability to provide accredited education. Even as they continue to do everything right in terms of providing quality education offerings efficiently and effectively, they continue to be squeezed financially by fees and increased resource needs.

This submission highlights additional new fees and resource requirements for providers of community education that will further squeeze community education providers. We therefore ask the Joint Committee members to engage with AONTAS and our membership to understand that approval of these new QQI fees and resource requirements for community education providers will impact the access learners have to education across the country.

One-size policy does not fit all

Since the establishment of QQI following passage of the original *Qualifications and Quality Assurance (Education and Training) Act 2012* (Act) there has been an administrative culture to treat all providers of accredited learning in the same way despite major structural differences; including whether an organisation is an independent not-for-profit community education provider, or for-profit private provider.

Though the current Act allows for policy flexibility in several areas such as fees (Section 80); QQI has opted for a one-size fits all policy approach. This approach which AONTAS has been lobbying against for more than 5 years has led to community education groups that are further and further stretched, and in some cases unable to continue provision of accredited programming. While for-profit providers are able to charge large learner fees that cover the costs of QQI reengagement and program validation costs, independent not-for-profit community education providers are left to struggle on.

Since the discussions about fees began, AONTAS has made several submissions and developed policy analyses concerning the impact of fees on the community education sector. AONTAS made several submissions to QQI (2013, 2014, 2015) clearly highlighting the QQI reengagement fee issue. AONTAS produced two detailed policy papers on the issue of fees (2014) and the scenarios of reengagement (2015) in advance of meeting DES officials and QQI (2015). AONTAS and CEN members participated in all 7 Joint QQI / Community and Voluntary Sector Working Group meetings in 2015. Additionally, the issue was raised in our submission to the National Skills Strategy (2015), Pre-Budget Submission in 2016 and 2017, and letters to former Minister Jan O'Sullivan (2015/6) and Minister Bruton and Minister of State Halligan (2017), and Ministers Bruton, and Donohoe (2018).[1]

[1] Links to AONTAS public submissions on the implementation of existing QQI fees are available at the end of this submission.

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Concerns with specific amendment proposals

The remainder of this submission speaks to the specific concerns that AONTAS has regarding the draft *Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018* (Bill).

The areas of primary concern for our members exist around the creation of 'listed awarding bodies'; the creation of regulations specifying capacity and capability of providers; and the imposition of even further fees in addition to the existing reengagement and program validation fees for which AONTAS has already been lobbying against for more than 5 years.

Listed Awarding Bodies and Associated Providers (s. 27; 55)

Reading the draft Bill AONTAS would like to note that a significant concern at this time arises from a lack of clarity about the implementation of new guidelines for 'listed awarding bodies' and 'associated providers'. As this new policy framework develops, community education providers require clarity about the options that will be available to them as they develop accredited learning with recognition on the National Framework of Qualifications (NFQ). At present several of our members are pursuing reengagement with QQI. However, if new listed awarding bodies are created, new options will become available to them, and it is important they have an understanding of their options before significant monies and time are invested in the status quo system.

While the proposed new section 55E of the draft Bill will require 'as soon as practicable after the operative date of the Act', for QQI as the Authority to establish policies and criteria regarding the criteria for application to join the list of awarding bodies, AONTAS is arguing that for the sake of transparency these policies and criteria should be drafted and discussed during the consultation period before the operative date of new legislation.

Recommendation: Community education providers who may consider becoming an associated provider of a new listed awarding body need to understand their options in full now, and not several years from now as might be the case if these policies and criteria are implemented after passage of the Bill. This is important as there are many community education providers seeking QQI reengagement. However, if new listed awarding bodies are created, new options will become available to them, and it is important they have an understanding of their options.

Regulations specifying criteria concerning capacity and capability of providers and related criteria (s. 29B)

Another concern of AONTAS is the creation of regulations after the operative date of new legislation that will specify whether or not a provider of accredited programming has the capacity and capability to provide learning.

As members of the Joint Committee are aware community education providers across Ireland are professionally run organisations governed according to relevant laws and receiving funding from various funders (which may include programme or project specific funding, direct grants from public and private institutions, learner fees, and philanthropic funding to name a few).[2]

[2] Research conducted by AONTAS in 2017 as part of an EU funded project FinAL€, examined the various funding models of community education providers in Ireland. https://eaea.org/wp-content/uploads/2018/01/FinALE-Where-to-invest-Final.pdf (accessed 4 October 2018)

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Part of the reality of these efficiently and effectively run organisations is that they work to support one another, and in turn gain supports from national organisations like AONTAS. As new governance and quality assurance requirements have been implemented over the past several years communities of practice like the AONTAS Community Education Network (CEN) provide supports to providers of independent not-for-profit community education organisations so that they can learn from one another and also access support structures that would otherwise not be available. A contemporary example of this is that as of mid-2018 AONTAS employs a Quality Assurance Officer who is working to help CEN members who are reengaging with QQI to understand and meet the obligations of a provider of accredited learning.

Therefore AONTAS is requesting that when the Regulations are drafted in order to specify the criteria used to evaluate the capacity and capability of providers; the Regulations clearly state that the evaluation must include an evaluation of all internal, and as importantly, external supports available to a provider.

Recommendation: AONTAS recommends that in the Regulations specifying the criteria used to evaluate the capacity and capability of providers, which will be produced after passage of the Bill, that the Authority be required to look at the broader external support structures available to individual providers including an evaluation of all internal, and as importantly, external supports available to a provider.

Fees (s. 65)

The primary concern of AONTAS is the imposition of even more fees for the not-for profit community education sector as proposed in the draft Bill. In particular we cite fees for the new proposed Learner Protection Fund as concerning.

As stated throughout this submission community education provides opportunities for access to education to the disadvantaged, underserved, and most hard to reach learners. We therefore do not believe that it should be made even more difficult to access education for learners already far from the formal education system.

Recommendation: AONTAS recommends that the draft Bill include ‘not-for-profit community education providers’ as part of the list of providers to which the exemption for payment to the new Leaner Protection Fund extends (s.65(6)).

Conclusion

AONTAS and our membership want to thank you for your time in considering this submission to the Joint Committee on Education and Skills. While AONTAS appreciates the work of QQI to ensure the strength of the National Framework of Qualifications, the policy actions taken by QQI over the past several years have been damaging to the provision of accredited education provided by independent not-for-profit community education providers. The new fees and additional resources necessary for reengagement, without corresponding increases to budgets provided by public funders such as ETBs and SOLAS has created a difficult situation for community education providers. Even as the Government acknowledges the important role community education providers have in reaching national Upskilling Pathway targets, more than a decade of funding cuts and additional requirements placed on reduced resources means the sector isn’t able to provide the accredited learning that is demanded by the communities in which they exist across Ireland.

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An important point to remember when considering this submission is that community education providers across Ireland exist because there is an unmet demand for holistic learner-centred education that responds to the needs of your local communities. While ETBs around the country are noting an undersubscription in their courses, community education providers are often unable to meet the demands for learning that exist in their communities.

Kind Regards,

Niamh O'Reilly
CEO
AONTAS

Benjamin Hendriksen
Advocacy Lead
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AONTAS public submissions which include concerns regarding QQI Fees

- Submission to Quality and Qualifications Ireland Policy Consultation Process on Green Papers [2013]
-
- AONTAS Community Education Network Submission to the Quality and Qualifications Ireland (QQI) [2014]
-
- AONTAS Community Education Network Submission to Quality And Qualifications Ireland (QQI) [2017]
-
- Pre-Budget Submission 2017
-
- Pre-Budget Submission 2018
-
- Pre-Budget Submission 2019

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Progressive College Network

Advancement Through Excellence

RE: Qualifications and Quality Assurance (Education and Training) (Amendment) Bill 2018

SUBMISSION

I would like to start by expressing my gratitude to the Joint Committee on Education and Skills; including its Chairperson, Members and Clerk for extending the invitation to me to make this submission.

As a long-standing stakeholder in the EFL sector in Ireland and as chairman of the *Progressive College Network* (PCN) (http://pcn.ie/) I call for pre-legislative consultation of the *Qualifications & Quality (Education & Training) (Amendment) Bill 2018*.

This proposed bill is supposedly designed to bring stability to the Further education and EFL (English Foreign Language) sectors in Ireland. I have read with great interest the aforementioned document. Our particular focus in the Bill are **sections 24 to 31** of the Bill, in particular as same apply to the English language

There are however a number of areas which require urgent clarification from the Minister.

Summary of immediate concerns:

- Implementation of the rules and regulations that are objective, impartial and unilaterally applied to all stakeholders. There can be no "tiered" system differentiating one business from another within the particular industry as currently exists.
-
- The purposes of the International Education mark is to present an unifying standard to the International education market. All parties achieving the mark should have to achieve it by meeting the necessary standard without preference or favour to any particular class. The current bill in fact grants the capacity of the Minister and or QQI to create such artificial divisions. This must be resisted in full.
-
- The original attempt to reform this sector in 2014 lead to a successful High Court challenge. To deal with issues of trust and confidence with the relevant agencies, the Bill must protect all invested stakeholders from such a strategy being repeated.

- The implementation of the Interim List of Eligible programme revealed a clear prejudice against colleges outside of a private commercial business network. This must not be repeated, and the bill should not facilitate such behaviour.

- The current regulatory framework is clearly open to challenge under Competition law. The Minister has accepted as appropriate private member arrangements for learner protection (LP) which do not adequately protect the student body in the event of college closure. These arrangements are not available to colleges outside of this closed private network.

- The additional effect of the LP arrangements is to impose an costs burden on colleges outside of the private members network. The State is therefore supporting a commercial advantage to members of a private body.

- The impact on the State of these LP arrangements if analysed in detail could expose the State to EU sanction for breach of the rules on State Assistance. This Bill is the opportunity to remedy this defect if done correctly.

- The sector has a successful model for learner protection that is acknowledged and approval amongst external parties interested and invested in the Irish education market.

- The practical effect for LP arrangement to a central fund is firstly a veiled taxation on the industry. Secondly a source of real concern to colleges is its implementation and administration by the education governing body.

Annex Documents Attached -

Annex 1. Copy of submission made to the Joint committee on Education & Skills dated June8th, 2107

Annex 2. Copy of High Court Proceedings - Judicial Review, 2014

About PCN - The *Progressive College Network* represents a number of privately-owned English language schools in Ireland. The PCN was formed in 2015, arising form the prior attempt by Government to change the industry and to meet the demand for an alternate representative body for the private college community in Ireland. Currently the PCN represents over 300 staff members and is responsible for teaching in excess of 3500 international students annually. All PCN institutions are ILEP (Interim List of Eligible Programmes) listed, are fully compliant with any and all regulations and operate to the very highest of standards.

Across the EFL sector in Ireland, the expectation is that this bill will provide clear, fair and transparent information as to how the long awaited IEM (International Education Mark) system will operate. The proposed bill falls well short of the aforementioned goals.

Key Areas of Concern -

(A) Implantation of Rules and Regulations

(B). Anti-Competitive Practices

(C) Protection of Enrolled Learners

(D) General Lack of Clarity

(A). Implementation of the rules and regulations **-** For the creation of the Interim List of Eligible Programmes the vast majority of ACELS/QQI, as well as MEI schools, did not receive an ILEP inspection. ACELS/QQI's own inspections and oversight were deemed sufficient to satisfy ILEP requirements. ACELS/QQI do not and have never inspected ACELS/QQI/MEI schools on a regular basis. ACELS/QQI inspections are only triggered if there is a change of Director of Studies within an ACELS/QQI/MEI school, if the school moves premises or changes owners. This means that potentially, an ACELS/QQI/MEI institution can go years without any real scrutiny. This cannot be the case with the implementation of the IEM. The prior this equates to schools operating to the highest of standards, despite being widely referred to by QQI as "recognised schools".

In the Act *Section 28, (New section 68(6)(l)* makes reference to "recognised schools" in the context of learner protection. The language of "recognised school" echoes references to the current ACELS accreditation rules and regulations.

There can only be one methodology resulting the presentation to the international market of the IEM as the unifying standard. All schools meet the necessary criteria to obtain it, all school undertake the same process of investigation to obtain it and all schools must observe the same identical rules and regulations to maintain it.

In short currently ACELS accredited schools should not get preferential treatment on application, fees, costs of learner protection (if this is pursued in the Act). ACELS closed to new applicants in 2012 and the fact that an institution happened to be part of ACELS' or MEI's limited, voluntary scheme should mean absolutely nothing in relation to receiving IEM accreditation.

References in the Bill therefore that concern the PCN are as follows:

Section 4 - Amendment of section 9 of Principal Act (Functions of Authority -

(2) Section 9(2) of the Principal Act is amended:

(c) by the insertion of the following paragraphs after paragraph (e):

"(f) conduct any investigations that it considers necessary and expedient for the performance of its functions

Whilst the scope is accepted as being necessary for legislation purposes, the very real concern is the implementation and conduct of such investigative processes. It is important to note that another PCN was compelled to challenge a decision of QQI as result of a questionable internal decision-making framework within QQI. This matter was compromised by agreement. A decision was made to remove the accreditation resulting an internal appeal. The grounds for challenge of the decision were based around an abject failure of due process rendering the decision fundamentally flawed i.e. essentially points of Irish law concerning the process itself. The appeal was nonetheless referred by QQI to a linguistics professor based in Newcastle in the UK. Unsurprisingly the matter ended up in expensive Judicial Review proceedings in the High Court.

Section 25 (1), new section 65(1A) – This is simply far too broad. This enables the current anti-competitive environment to continue. This vests far too much discretion in the Authority.

(B). Anti-Competitive Practices currently operating **-** The English language sector in Ireland has taken a beating over the past number of years. The introduction of the ILEP (Interim List of Eligible Programmes) went a long way to affecting a stabilising influence. The ILEP, introduced by the *Department of Justice & Equality*, in conjunction with the *Department of Education & Skills* had clear, concise guidelines, as well as a rigorously detailed drop-in inspection by *Department of Justice & Equality* and *Department of Education & Skills* officials, along with the submission of comprehensive documentation. Nationwide, 10 ILEP inspections were carried out, with all institutions within the PCN receiving an inspection thankfully passing with flying colours. The same could not be said for members of Marketing English in Ireland of other ACELS accredited colleges.

The key point of concern is around the regulations for Learner Protection. This is essentially a system either through the purchase of an insurance policy or other arrangement within a collective body that ensure if a college closes that the student can continue their studies in another school or be compensated for their lost education. There are currently two methods:

1. The purchase of a student specific commercial insurance policies for each enrolment
2. The exchange of letters of commitment and undertaking between colleges to take in students from a participating college that closes.

In real terms this means that colleges outside Marketing English in Ireland (a private commercial members organisation), even ACELS accredited colleges must purchase insurance. Members of MEI do not.

The commercial realities of course sales mean students choose colleges by varying criteria, but are price conscious. If two colleges, one from MEI and one from outside MEI are selling the same course at the same price, the college outside of MEI must reduce its return by the purchase of the insurance policy. The MEI member school profits to a greater extent. This is happening in practice and is simply unsustainable from a legal point of view. This is nonetheless the position supported by the government.

The current version of the bill is geared towards allowing QQI to facilitate anti-competitive practises. This would be legally problematic and most detrimental to the Irish Education sector as a whole.

I speak on behalf of the entire sector when I say that the palpable fear amongst language schools is that the IEM will simply be an extension of ACELS and nothing will change. This would be most detrimental to the sector as a whole, as the times demand change, adaptation and improvement from all stakeholders involved, including QQI; who are to be tasked with the administration and governance of the new IEM scheme.

Continued Anti-Competitive Practises and numerous fees – Historically, ACELS/QQI have a notorious reputation of being a difficult organisation to deal with. Greater oversight from the *Department of Education & Skills* and the Minister is required to assure QQI is operating the IEM transparently and fairly for all EFL institutions in Ireland.

The phrase; *"conduct any investigations that it considers necessary"* seems a little open-ended. This wording coupled with the fact that QQI have enlisted the services of IEM inspectors from within the EFL sector is worrying. IEM inspectors, who hold day-jobs within English language schools, will be tasked with inspecting competitor institutions. I hardly need to point out the potential issues which may arise from this proposed process.

If the IEM scheme is to hold water, each institution must be dealt with on their own merit. Each and every institution wishing to receive the IEM quality mark, must be afforded an unbiased, impartial inspection. Failure to offer this most basic requirement would in my mind call into question the entire scheme.

It is imperative that QQI treat all IEM applicant institutions in exactly the same manner and with an even hand. The fact that any school or institution was previously part of ACELS or MEI's limited voluntary scheme, should mean absolutely nothing moving forward.

If indeed QQI are to be empowered to *"conduct any investigations that it considers necessary"*: what mechanism would be in place to assure each institution applying for the IEM, is treated uniformly? How can we be sure an institution will not be discriminated

against? Indeed, how also can we be sure that an institution will not receive special concessions?

Transparency and fairness have to be the cornerstones of the International Education Mark. If these most basic of requirements are lacking, then the validity of the IEM is in serious jeopardy.

> ***QQA Bill 2018 - <u>Amendment of section 27 of Principal Act (Quality assurance) -</u>***
>
> *(c) by the substitution of the following subsection for subsection (6):*
>
> *"(6) The Authority may –*
>
> *(a) issue different quality assurance guidelines for different relevant, linked or associated providers, or groups of relevant, linked or associated providers,*
>
> *(b) issue different quality assurance guidelines for different classes of programmes or different types of provision, and*
>
> *(c) establish different effectiveness review procedures for different relevant, linked or associated providers or groups of relevant, linked or associated providers".*

Commentary - The information provided above seems to pave the way for QQI to treat different providers in a different manner. Again, the lack of clarity is worrying.

> ***QQA Bill 2018 - <u>Regulations specifying criteria concerning capacity and capability of providers and related criteria -</u>***
>
> *(3) A relevant provider may request, in writing, the Authority to make a determination as to whether or not, at the date of the request, the provider meets the relevant criteria and a request under this subsection shall be accompanied by the payment by the requester of such fee (if any) as may be determined by the Authority under section 80.*

Commentary - In relation to fees: QQI have stated on numerous occasions that the IEM process will entail fees to be paid on behalf of certain providers. From the snippets of information currently available; certain providers will be expected to pay fees for IEM application, fees for IEM inspection and also fees for requesting information from QQI. The information provided above, seems to point to the fact that certain providers will have to pay QQI to find out if QQI think a provider has sufficient capacity and capability to offer courses. Additionally, the proposed bill proposes a Protection of Enrolled Learners Fund. Again, this would entail fees for certain providers.

> ***QQA Bill 2018 - <u>Amendment of section 30 of Principal Act (Quality assurance procedures and relevant providers, other than previously established universities) -</u>***

"(1) Before establishing procedures under section 28 (being the first occasion of the relevant provider establishing such procedures) a relevant provider shall submit a draft of the proposed procedures to the Authority for approval, accompanied by such fee (if any) as may be determined by the Authority under section 80, but this subsection does not apply to a previously established university.

Commentary - Again, reference is made here to the fact that certain providers will be expected to pay fees to QQI.

I would be most curious as to how much money these aforementioned, numerous fees would actually entail? I would point out that not all providers will be expected to pay these fees.

I feel it is imperative to bear in mind that in relation to any fees to be paid to QQI; consideration should be made of the fact that the institutions involved are private businesses, offering not only education, but also employment. Any QQI fees should not be excessive. The providers in question are after all running businesses and offering employment.

(C) Protection of Enrolled Learners (PEL) – This was introduced as a mandatory requirement in 2014. An insurance policy (Learner Protection Insurance) became available which offered absolute protection to vulnerable students, while some institutions had no option but to offer this policy, others merely exchanged "letters of comfort"; a system which has proven to be ineffectual. Incidentally, the institutions allowed by QQI to offer these ineffective letters; were and still are described by QQI as "recognised schools." This is despite the fact that the ILEP is now the sector standard; a fact that is recognised by the *Department of Justice & Equality* and the *Department of Foreign Affairs & Trade*.

The *Qualifications and Quality Assurance 2012 Act*: proposed mandatory protection of enrolled learners (PEL) measures. The PCN spearheaded a drive to introduce an insurance policy which assured students and their fees were comprehensively protected. *O'Driscoll/O'Neill Insurance Ltd*., were (at the time) the only insurer in the Irish Market, who recognised a need and came up with a product. From the 24th of this month another major player in Ireland's insurance market is poised to introduce a new PEL insurance policy, with more insurers to follow.

While QQI and the *Department of Justice & Equality* accepted that the aforementioned ODON insurance product, offered protection to students, at the same time; a bond introduced and administered by *ORCA Financial*, acting on behalf of *ION Insurance Group* (one for the world's largest insurers)was deemed unacceptable and was scrapped. Now it would appear that the insurance option is also to be scrapped.

From a best practise point of view; an insurance policy is a far superior means of offering protection to students.

QQA Bill 2018 - <u>Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners) -</u>

28. The Principal Act is amended by the substitution of the following section for section 65: "Obligation of certain providers to pay annual charge into Learner Protection Fund

65. (1) Subject to subsections (6) and (7), if—

(a) a relevant provider, an associated provider or a linked provider (each of which is referred to subsequently in this section as an 'obligated provider') offers, for reward, a programme of education and training leading to an award that is an award included within the Framework, or

(b) a provider offers, for reward, an English language programme (and such a provider is also referred to subsequently in this section as an 'obligated provider'),

it shall, in each year, pay into the Learner Protection Fund, such amount (referred to subsequently in this Part as the 'annual charge') as is prescribed under section 66A(1).

(2) Subject to subsection (3), the annual charge shall be paid into the Learner Protection Fund prior to the commencement of provision by the obligated provider of the programme concerned and prior to the acceptance by it of any payments by or on behalf of any learners for enrolment on that programme.

(3) The Authority may, in its discretion, determine that the annual charge, to be paid into the Learner Protection Fund by a class of obligated provider specified in the determination, shall be so paid by such a provider not later than a time that is specified by the Authority in the determination, being a time that falls after either event referred to in subsection (2), and such a provider shall, accordingly, pay the annual charge into the foregoing Fund no later than the time so specified.

(4) References in this section and subsequent provisions of this Part to the payment into the Learner Protection Fund of the annual charge shall be construed as references to the payment of that charge to the Authority for the purpose of the Authority remitting the charge to that Fund (and any such charge so paid to the Authority shall be remitted by it to that Fund accordingly).

(5) The Authority may require an obligated provider who is liable to pay the annual charge to provide any information that is relevant to determining the amount of the charge.

Commentary - The newly proposed bill and its amendments, make reference to a *"Protection of Enrolled Learners Fund"*. This proposed fund, which essentially amounts to a bond, is to be managed and administered by QQI; who are to have authority as to (A) who is expected to pay into the fund and (B) how much different institutions are to pay annually. I hardly need to point out the anti-competitive practises which seem to be coming to the fore, if this questionable PEL fund is allowed to be introduced. This is mentioning nothing of the fact that QQI are not a financial management agency or indeed financial service

provider, how can they possibly be expected to manage this properly? The other issue which arises is; under the proposed scheme, wouldn't QQI and/or the state automatically become liable for any and all debt connected to an educational provider which closes? This would mean that the students would be the last in line to receive reimbursement.

QQA Bill 2018 - Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners) Continued…

(6) Subsection (1) shall not apply to a provider of a programme of education and training if the provider is—

(a) a previously established university,

(b) an educational institution established as a university under section 9 of the Act of 1997,

(c) a technological university,

(d) the Dublin Institute of Technology,

(e) an Institute of Technology,

(f) an educational institution designated under section 5 (inserted by section 52(e) of the Institutes of Technology Act 2006) of the Higher Education Authority Act 1971 as an institution of higher education for the purposes of that Act,

(g) Solas,

(h) the National Tourism Development Authority,

(i) Teagasc,

(j) An Bord Iascaigh Mhara,

(k) an education and training board or an institution established and maintained by an education and training board,

(l) a recognised school,

(m) the Royal College of Surgeons in Ireland,

(n) the Royal Irish Academy of Music, or

(o) a body established—

(i) by or under an enactment (other than the Companies Act 2014 or a former enactment relating to companies within the meaning of section 5 of that Act), or

(ii) under the Companies Act 2014 (or a former enactment relating to companies within the meaning of section 5 of that Act) in pursuance of powers conferred by or under another enactment, and financed wholly or partly by means of money

provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held by or on behalf of a Minister of the Government.

Commentary - Clear reference is made in the section above as to who would not be expected to contribute to the proposed PEL fund. Among those not expected to contribute, are organisations described as *"recognised schools"*. It is unclear from the document who or what *"recognised schools"* are. If, however this is reference to ACELS/MEI institutions – then this is a clear and blatant attempt to enshrine anti-competitive practises in law. If the aforementioned is true, this is a move which I would deem questionable.

The proposed bill makes reference of the fact that any money remaining in the proposed Learner Protection fund, would be passed by QQI to the exchequer at the end of each year – this means that the fees charged to those institutions expected to pay into the fund, is tantamount to a "tax" of sorts. A burdensome "tax" to be paid annually, only by certain providers.

The idea of learner protection is to protect potentially vulnerable students; in the event of a school closure, students will receive the remainder of their fees back or be accommodated in another institution. A Learner Protection Insurance policy is a far superior method of assuring learner protection. It offers absolute protection to each individual student, while not asking private institutions to back commercial competitors and their potential short fallings. From the point of view of running a business, a central fund is hardly best practise.

With the proposed model of the Learner Protection fund; how can we know if the money in the fund is sufficient to cover the potential costs involved in the closure of a school? What if 2 or more schools were to close at or around the same time? Do we really want to create a situation where Ireland's taxpayers would be liable? I think not.

QQA Bill 2018 - Payment of annual charges into Learner Protection Fund and related matters

30.(4) The Minister, with the consent of the Minister of Public Expenditure & Reform, may pay into the Learner Protection Fund, out of moneys provided by the Oireachtas, such sums as the Minister thinks appropriate."

Commentary - It is clear from the information provided above, that the Irish taxpayer will ultimately, be directly liable if the proposed Learner Protection Fund is allowed to proceed.

We do not want to allow for a situation where Ireland's reputation could be negatively affected? An insurance policy held individually by each student, is obviously a far superior method of offering protection to students.

(D) General Lack of Transparency – There is no clear information available as yet as to how the proposed IEM system would operate. Any quality assurance system, including the thus far elusive IEM needs to have clear, concise guidelines and an open, fair and transparent

inspection regime. If the aforementioned are not absolutely assured, it calls into question the validity of the entire scheme proposed.

The Bill has many areas which are unclear and wide open to interpretation. It is imperative that any proposed bill is for the benefit of the sector as a whole. For too long in Ireland, vested interests have received favourable treatment from the powers that be. This situation needs to end and not be allowed to continue. Unfortunately, the proposed bill seems to be for the benefit of a certain cohort of institutions over another. Legally operating Irish businesses need to be supported, encouraged and allowed to thrive. Unfortunately, this proposed bill does not seem to do that.

Any bill designed to bring stability to the sector has to provide clear, concise and transparent information as to how the administration of the IEM will proceed. QQI can under no circumstances be given free rein to do as they wish. If they are allowed to proceed on their current trajectory, the outcome will be a climate which is most detrimental for Irish businesses operating in the EFL sector.

Summary –

This proposed bill will allow QQI to introduce the IEM. There is a distinct lack of transparency as to how regulations and procedures would operate. The IEM must be fair and transparent. All Irish businesses need to be treated equally, in an open and fair manner. Failure to provide the aforementioned basic requirements would render the IEM scheme invalid.

In the EFL sector in Ireland, protection of enrolled learners is an integral part of quality assurance in 2018. This fact is disputed by no-one. However; the insurance policy currently available is a far superior form of protection for students. The proposed fund is a deeply flawed model. All institutions should be expected to offer this insurance policy. MEI and their ineffective “letters of comfort” should be scrapped with immediate effect.

The IEM; if and when it sees light, must entail an open, fair and transparent process. No concessions can be afforded to institutions finding themselves within ACELS’ limited, voluntary scheme or part of MEI.

The focus here has to be allowing Irish businesses to thrive and grow. The English language teaching sector in Ireland is in a great position to reap the rewards of offering top quality English language tuition. Ireland is in a prime location, on the doorstep of Europe and unlike our closest neighbours, within the EU.

Any legislation must be for the benefit of the sector as a whole.

National Employee Development Training Centre

Mr Alan Guidon – Clerk to the Committee,

Joint Committee on Education and Skills,

Leinster House, Dublin 2

08th June, 2017

Dear Mr Guidon,

Allow me to start by taking this opportunity to thank the *Joint Committee on Education and Skills* and its Chairman, Ms Fiona O'Loughlin TD, for inviting me to make this written submission.

The following submission is in relation to the recently published proposals - General Scheme of a *Qualifications and Quality Assurance (Amendment) Act 2017*. These proposals are regarding the *Qualifications and Quality Assurance (Education and Training) Act 2012*.

Should the *Joint Committee on Education and Skills* or any of its members have questions, queries or require any additional information, please do not hesitate to contact me.

Yours sincerely,

David Russell
Managing Director

N.E.D. Training Centre (NEDTC) (www.ned.ie)

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Written Submission for Pre-Legislative Scrutiny of the General Scheme of a *Qualifications and Quality Assurance (Amendment) Act 2017*

I am grateful to the Chair of *Joint Committee on Education and Skills* for affording me the opportunity to provide my views to the committee, on the General Scheme of a *Qualifications and Quality Assurance (Amendment) Act 2017*.

N.E.D. Training Centre (NEDTC) is a private English Language school located in Dublin city centre. Our school opened in 2008. We currently cater for 500 international students daily and employ 50 staff members. Our institution is Interim List of Eligible Programmes (ILEP) listed, fully tax compliant and is in good legal standing. N.E.D. Training Centre was one of the founding members of the Progressive College Network (PCN) – See Annex I.

Stakeholders in the Irish Education sector have offered letters demonstrating their support to this submission – See Annexes 2 and 3.

Executive Summary

1. The proposal in the General Scheme relating to the **protection of enrolled learners** is unnecessary and undermines schools that already have insurance policies in place which protect their students. As a school with such a policy I strongly object to the proposal of being bonded to other schools, the financial health of which I am not sighted on. While we fully support learner protection, it is not the place of the State to mandate how that protection is secured. NEDTC would not have secured insurance were it not financially sound and as such there is no justification to extend liability to either our business or to the State for schools who cannot secure cover. While we appreciate that the Minister may have valid reason to propose a bonded system, we respectfully suggest that schools should be given the opportunity to either enter the bonded system ("sinking fund") or secure private insurance protection for their students.

2. The General Scheme does not make provision for a **national accreditation scheme**, relying rather on two separate schemes, namely; the Interim List of Eligible Programmes (ILEP) and ACELS/QQI accreditation which has been officially closed to new applicants since 2012. Eventually, Ireland's national accreditation will be the International Education Mark (IEM), which will reportedly be opened in 2019. Until the IEM is introduced, the current system leads to discrimination between ACELS/QQI accredited schools and other schools. This situation undermines the international reputation of our sector, causes great confusion to students and should be replaced by a provision in the General Scheme which provides for

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one accreditation scheme for all schools. Until the International Education Mark (IEM) is introduced, ILEP listed institutions should be presented alongside ACELS/QQI accredited schools and be promoted by *Enterprise Ireland*, *Education In Ireland*, *Tourism Ireland* and indeed the *Department of Foreign Affairs*.

3. There is a general point to be considered in terms of the **mounting cost associated with these regulatory provisions**. QQI have announced that there will be fees to be paid at the various steps towards receiving IEM accreditation, this process will cost each applicant school in the region of 15,000 euro, including ourselves. The sinking fund being proposed by the Minister will – according to QQI – be levied at c. 2% of annual revenue of each school. This is a significant sum, which coupled with the 15,000 euro licence fee, will no doubt put a number of schools under extreme pressure. A holistic approach needs to be taken to ensure that the provisions in the General Scheme, added to those already in existence, are not financially punitive.

Introduction

The objective of the General Scheme and Interim List of Eligible Programmes (ILEP) is to ensure that Ireland has an excellent international reputation as a quality education destination. In this way, students from abroad will be encouraged to come to Ireland for their educational needs. Ireland is in a wonderful position as we are on the doorstep of Europe and within the European Union. Ireland has such a great deal to offer in relation to culture, history, the arts as well as internationally renowned, top quality education provision.

Each and every language school operating in Ireland today has felt the pressure over the last few years. This is without mentioning the language schools in Ireland who have closed their doors in the recent past, leaving students high and dry. As we all eagerly await the introduction of the much anticipated and long overdue International Education Mark (IEM), the English language sector in Ireland continues to find itself in a most uneasy state. The English language sector has experienced turbulent times over the past number of years. The *Qualifications and Quality Assurance Act 2012*, was designed to help bring stability and allow the introduction of the International Education Mark (IEM). Yet in 2017, QQI is reporting that the IEM will "hopefully" see light in 2019. In the meantime Ireland's "national accreditation" - ACELS/QQI - are closed to new members, as they have been since 2012. As you can appreciate, this situation is far from ideal and does nothing to steady the ship.

In light of the above, we have read with great interest the General Scheme. There are

however, various points which require urgent clarification. It is imperative that the eventual Bill is of benefit to the sector as a whole, not least the students, and does not give one group an advantage over another.

Protection of Enrolled Learners (PEL) – There is no doubt that students and their fees need to be protected. The *Qualifications and Quality Assurance 2012 Act*, proposed mandatory Protection of enrolled learners (PEL) measures. The *Progressive College Network* (PCN) spearheaded a drive to introduce an insurance policy or bond, which assured students and their fees were comprehensively protected. *O'Driscoll/O'Neill Insurance Ltd*. were, and still are the only insurer on the Irish market who recognised the need and came up with a product. This product was accepted by QQI and the *Department of Justice & Equality* as offering comprehensive learner protection. At the same time, QQI and the *Department of Justice & Equality* deemed a learner protection bond, introduced and administered by Irish company, *ORCA Financial*, acting on behalf of *ION Insurance Group* (one of the largest insurers in the world) as unacceptable. Proposed amendments to the 2012 Act, published on 15/05/2017, outline a proposed, "Protection of Enrolled Learners Sinking Fund".

The aforementioned "sinking fund", which essentially amounts to a bond - upon implementation, would be administered and run by QQI. However, there is no information as to how this fund would operate or how contributions would be calculated. Is this for all EU and non EU students? Will this fund be regulated by the central bank? If learner protection is indeed the goal, no differentiation should be made between visa-required students and EU students. At the end of the day, they are all paying customers, contributing to the Irish economy.

If the proposed "sinking fund" is not sufficient to cover the cost of potential school closures, will the Irish Tax payer be asked to foot the remainder of the bill? Surely an insurance policy held by each student, is a far superior way of offering protection to these students? Anecdotal information abounds in relation to how contributions to this "sinking fund" would be calculated – 2% of projected annual earnings, to be paid to QQI before the enrolment of any students. It is unclear however if this is in relation to all students, or only visa required students. Either way this presents a major challenge to any organisation.

If the Irish Government does not want to have the situation where one insurer has a monopoly on the market, then other insurance providers should be encouraged to develop and implement a product and there are indications that this is already happening.

The proposed "Protection of Enrolled Learners Sinking Fund" is designed to offer protection

to students; in the event of a school closure, students will receive the remainder of their fees back or be accommodated in another institution. Learner Protection insurance offers exactly the same protection and is individual to each student. Is this proposed "Protection of Enrolled Learners Sinking Fund" not asking private institutions to financially back commercial competitors and their short fallings? From the point of view of running a business, this is hardly best practice.

Private institutions cannot be expected to financially back other private institutions. The historical context, is that of the 18 language schools closed down over that last number of years, at least 8 had previously held accreditation with ACELS/QQI and were members of MEI. Questionably and inexplicably, members of ACELS/MEI were and still are able to exchange letters in order to comply with learner protection requirements of the 2012 Act, and were/are not obliged to offer the aforementioned learner protection insurance as others were/are. Now, with these proposed amendments, we hear that that these schools will still not have to offer an insurance policy, but that each and every language school in the country will be asked to offer backing in case of insolvency. I fail to see the wisdom of this move.

While we appreciate that the Minister may have valid reason to propose a bonded system, we respectfully suggest that schools should be given the opportunity to either enter the bonded system ("sinking fund") or secure private insurance protection for their students and on that basis would suggest the following amendment to Section 65 of the General Scheme -

Current wording	**Proposed amendment**
Section 65 of the Principal Act is amended as follows: (a) by deleting the sub-heading and replacing it with "**Arrangements for the protection of enrolled learners**" (b) by deleting the paragraphs at Section 65 (1) - 65 (5) and replacing them with the following: "65 (1) (a) A provider, or linked provider that offers a programme of education and training leading to an award which is included within the Framework, and accepts monies from or on behalf of learners in respect of that programme, shall on an annual basis be liable to pay a charge to the Protection of Enrolled Learners Sinking Fund, (in this act referred to as the "Learner Protection Fund") in accordance with subsection 6, for the protection of those learners where -	Section 65 of the Principal Act is amended as follows: (a) by deleting the sub-heading and replacing it with "**Arrangements for the protection of enrolled learners**" (b) by deleting the paragraphs at Section 65 (1) - 65 (5) and replacing them with the following: "65 (1) (a) A provider, or linked provider that offers a programme of education and training leading to an award which is included within the Framework, and accepts monies from or on behalf of learners in respect of that programme, shall on an annual basis *either secure learner protection insurance for each enrolled student or* be liable to pay a charge to the Protection of Enrolled Learners Sinking Fund, (in this act referred to as the "Learner Protection Fund") in accordance with subsection 6, for the protection of those learners where -

National Accreditation – Certain stakeholders in the Education sector in Ireland have successfully built up excellent international reputations. This has been achieved via the delivery of quality services, hard work, successful marketing and professional merit and without the aid and backing of semi-state bodies like *Enterprise Ireland*, *Education In Ireland*, *Tourism Ireland* or indeed the *Department of Foreign Affairs*. The aforementioned bodies and Governmental department could by their own admission, only promote institutions holding "national accreditation". This so called "national accreditation" – ACELS/QQI, is closed to new members as it essentially has been since 2012. So the situation exists that one group of schools in Ireland are being blatantly and openly promoted over another group. What makes this situation even worse, is that today it is impossible to achieve "national accreditation" as they are closed to new members.

Allow me reiterate at this stage, that of the 18 language schools that closed down over that last number of years, at least 8 had previously held accreditation with ACELS/QQI and were members of MEI – and were therefore holders of "national accreditation".

On the subject of the thus far elusive, International Education Mark (IEM) – our assumption and hope is that all language institutions operating in Ireland will be on a level playing field and dealt with equally, in an open, transparent and fair manner. Confirmation of this would be most appreciated. The fact that an institution happened to hold "national accreditation"; were part of ACELS/QQI limited, voluntary scheme should mean absolutely nothing in relation to receiving IEM accreditation. I speak on behalf of the entire sector when I say that the palpable fear amongst language schools is that the IEM will simply be an extension of ACELS/QQI and nothing will change. This would be most detrimental to the sector as a whole, as the times demand change, adaptation and improvement from all stakeholders involved, including QQI.

In summary, the General Scheme does not make provision for a national accreditation scheme, relying rather on two separate schemes, namely Interim List of Eligible Programmes (ILEP) (INSERT REFERENCE) and ACELS/QQI accreditation. This system, which ultimately leads to discrimination between ACELS/QQI accredited schools and other schools undermines the international reputation of our sector, causes great confusion to students and should be replaced by a provision in the General Scheme which provides for one accreditation scheme for all schools. This provision should be provided for until the long overdue introduction of the International Education Mark (IEM).

The International Education Mark (IEM) when it eventually sees light, will be Ireland's new "national accreditation". Up until that point the situation exists where one group of schools is being openly promoted over another. Until the IEM is introduced, Interim List of Eligible

Programmes (ILEP) listed institutions should be presented alongside ACELS/QQI accredited schools and be promoted by *Enterprise Ireland*, *Education In Ireland*, *Tourism Ireland* and indeed the *Department of Foreign Affairs*.

The introduction of the International Education Mark (IEM) and oversight by QQI – The ILEP was introduced and launched to boost oversight of schools and their processes. The application process included a detailed drop-in inspection by Department of Justice and Department of Education officials, along with the submission of comprehensive documentation. 10 ILEP inspections were carried out nationwide, with all members within the PCN being inspected and passing with flying colours. Allow me to point out at this juncture that the vast majority of ACELS/QQI, as well as MEI schools, did not receive an ILEP inspection. ACELS/QQI's own inspections and oversight were deemed sufficient to satisfy ILEP requirements. ACELS/QQI do not and have never inspected ACELS/MEI schools on a regular basis. ACELS/QQI inspections are only triggered in three specific instances; if there is a change of Director of Studies within an ACELS/MEI school, if the school moves premises or changes owners. This means that potentially, an ACELS/MEI institution can go years without scrutiny. I hardly feel this equates to schools operating to the highest of standards. Please remember at this point, that these are holders of "national accreditation".

QQI have already confirmed that when, the IEM is introduced, the ILEP and ACELS will cease to exist. QQI will then be tasked with the granting of accreditation and administration of the IEM. It is imperative that the remit of QQI and the Qualifications and Quality Assurance Act 2017 be transparent, clear and fair, and that the costs for schools is not prohibitive.

We would be most grateful for the opportunity to appear before the Joint Committee on Education and Skills to discuss this matter further.

Annex I

The *Progressive College Network* (PCN)(http://pcn.ie/) was formed in 2015 to meet the demand in Ireland for an alternate representative body for the college community. The PCN provides a forum, where quality institutions can set themselves apart from the crowd.

The objectives of the organisation were and are:

*To promote Ireland as a high quality education destination for both EU and Non EU/EEA students.

*To promote the pursuit of continual improvement and quality assurance for colleges within the PCN and the English language sector as a whole.

*To ensure the protection of students and their fees by the inclusion of a comprehensive insurance policy covering every programme delivered by member colleges for the benefit of the students themselves.

*To supply reliable and objective information for the benefit of students and the international market on all issues concerning the education sector in Ireland.

Annex 2

TO: The Joint Committee on Education and Skills

RE: General Scheme of a Qualifications Quality Assurance (Amendment) Act 2017

Dear Ms O'Loughlin,

On behalf of SEDA College I would like to make the following submission regarding the above mentioned proposed legislation.

SEDA is a private English language school in Dublin 1 and we currently have over 600 international students on full time courses employing over 70 staff. We have grown steadily since our foundation in 2009 and have been accredited to ACELS/QQI since 2012 and Equals since 2014.

Our principle concern is the proposal in Section 65 of the General Scheme which would create a Protection of Enrolled Learners (PEL) "Sinking Fund". It is our understanding that this would be a compulsory mechanism which we believe is unfair and unnecessary.

With respect to SEDA this proposal would in effect replace the existing PEL framework which is based on individual insurance policies taken out by all enrolled students. SEDA in conjunction with the Progressive College Network (PCN) were at the forefront of the introduction of a product designed by O'Driscoll & O'Neil Insurance Ltd which ensured that students and their fees were comprehensively protected. We would point out that a similar scheme has been operated successfully in New Zealand for a number of years.

To be considered suitable to offer this product to students SEDA had to undergo a process of due diligence which necessitates that schools partaking in the scheme are financially robust, fully tax compliant and in good legal standing. It seems unreasonable that our institution should be obliged to pay an undetermined amount, annually in advance, into a fund which could in effect be used to bail out commercial competitors who have come up short. Furthermore, given the historical context of sudden school closures in the sector it is likely that the sinking fund will not be sufficient to cover the cost of potential closures unless schools are contributing punitive amounts on an annual basis. This surely is a less than prudent approach to the issue on hand.

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Annex 3

Academic Bridge
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To : The Joint Committee on Education and Skills

Re : Proposed Amendment to General Scheme of a Qualifications Quality Assurance Act (2017)

Dear Ms O' Laughlin,

I am writing on behalf of Academic Bridge English School to make a submission regarding the proposed amendment to the General Scheme of a Qualifications Quality Assurance Act (2017), in particular regarding the proposed move towards a Protection of Enrolled Learners "sinking fund".

Academic Bridge is an ILEP accredited college, in operation since 2013. We currently employ 30 staff members and have 430 students enrolled on full-time English language courses. In line with ILEP guidelines, Academic Bridge operates a Protection of Enrolled Learners framework, insuring all non-EEA learners privately under O'Driscoll & O'Neill's Learner Protection scheme, which ensures that all fees paid by students are protected in the event of the closure of the school.

We at Academic Bridge are in agreement with the proposal being put forward by David Russell of NEDTC and the Progressive College Network (PCN) that schools should be given the choice either to continue providing private learner protection insurance, as we are currently doing, or to opt in to the proposed "sinking fund". Should that option be provided, we would then fully support the proposed amendment to the General Scheme of a Qualifications Quality Assurance Act (2017).

Yours sincerely,

Ricardo Kindler

Managing Director

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THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 665 J.R.]

BETWEEN

NATIONAL EMPLOYEE DEVELOPMENT TRAINING CENTRE LTD

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY AND QUALIFICATIONS AND QUALITY ASSURANCE AUTHORITY OF IRELAND

RESPONDENTS

THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 666 J.R.]

ACADEMIC BRIDGE LTD

APPLICANT

AND

MINISTER FOR JUSTICE AND EQUALITY AND QUALIFICATIONS AND QUALITY ASSURANCE AUTHORITY OF IRELAND

RESPONDENTS

JUDGMENT of Ms. Justice Baker delivered on the 13th day of January, 2015

Facts

1. Both applicants are limited liability companies incorporated in Ireland and both of them carry on the business of providers of educational services, primarily the

teaching of English as a foreign language to international students. The companies have been engaged as educational providers for three years in the case of the first applicant, and four years and in the case of the second applicant.

2. The first respondent is sued as a Minister of Government and the second respondent as a statutory authority established pursuant to s. 8 of the Qualifications and Quality Assurance (Education and Training) Act, 2012.

3. Each of the applicants has enrolled a large number of foreign students in its language programmes. The numbers of students enrolled at any one time of course will differ, but in each case there are hundreds of students enrolled, and the majority, if not all of the students, are from non EU/EEA countries. The companies are not associated companies and there is no overlap in directorships or shareholdings. Each of them employs teachers and non teaching staff. The two cases before me, while they involve separate institutes of education, raise the same questions of law, and substantially the same questions of fact, and the cases were run together.

4. In 2014 a number of high profile closures of schools offering diploma type education to international students came to be of concern and a number of schools shut down at short notice leaving some 3,000 students unable to complete their programmes. Some of those students, having paid substantial fees for a course which was discontinued, found themselves stranded without their course and where they had no funds to take up an alternative course in another college.

5. Allied to these immediate and very public closures there has been growing in Government a concern regarding the proper control and management of these schools, and a view had evolved that a more robust regulatory framework was required. In particular it was perceived that some schools operating in the international education sector were thought to offer courses of an inferior quality in order to be in a position

to facilitate non EU/EEA students in obtaining immigration permission as a student. The permission obtained by students attending some of these courses was seen as particularly favourable in that a student could obtain a special type of visa, a so-called "Stamp 2" visa, enabling him or her to remain in the State for twelve months, to study part time for six months and during that period to be permitted to work also part-time for a maximum of twenty weeks, and for a further six months to work full time. Some of these students were perceived by the relevant Minister as more interested in being in the Sate for the purpose of working rather than for study, and some colleges were seen more as visa processing centres than education centres.

6. In practical terms non EU/EEA nationals who wish to come to study English in Ireland will often do so through the services provided by English language schools but it came to be perceived that some educational providers were offering courses which were not of a high quality in education standards, and that the high profile failure of some of these institutions had a negative effect on the sector as a whole, a sector which Government was anxious to protect.

7. Particular concern was expressed with regard to schools which offered English language courses and it was thought that some of these colleges offered courses at fees which were unsustainably low given sectoral norms, and which did not offer Irish accredited programmes. It was also noted with some concern that attendance records of students in certain institutions were less than satisfactory and that the majority of students in some institutions did not sit any exams and showed no move through levels of competence in their subject. It is said that the courses that are offered by many colleges, including many of those offered by the two applicants, may ideally be availed of with the benefit of a three month holiday visa, but that the programme of study is "stretched out" so that what is in essence a short course is

taken over a long period in order to give students the benefit of a particularly generous immigration regime.

The ACELS Recognition Scheme

8. For upwards of forty years a voluntary scheme for the inspection and recognition of English language schools in the State, the control of standards in teacher training, and the promotion of English language courses in Ireland was operated under the Advisory Counsel for English Schools ("ACELS"), initially established in 1969 under the auspices of the Department of Education and Science and those functions were transferred to a company limited by guarantee in 1995. That company was dissolved on or about the 1st June, 2012. After the dissolution of the company limited by guarantee ACELS was operated for a short period of time from the 30th June 2009 to the 6th November 2012 (the date of the establishment of the second respondent), through a statutory body the National Qualifications Authority of Ireland ("NQAI").

9. ACELS accreditation was not a requirement for a college to carry on the business of English language teaching in the State, nor was it until the matters herein complained of, necessary that a student be registered with an ACELS course to obtain a Stamp 2 visa. Neither of the applicants had ACELS accreditation, and each of them was accredited by a UK provider. It is asserted that EDI/Pearson, the UK accrediting body which oversees the Irish operations of the applicants, does not in fact recognise the courses operated by them but that the registration which the applicants have with EDI/Pearsons is as accredited exam centres.

The Qualification and Quality Assurance (Education and Training) Act, 2012

10. The second respondent was established on the 6th November, 2012 pursuant to the provisions of the Act 2012, with the principal objectives of devising the

institutions and operating a system of quality assurance for educational service providers generally. The role of the second respondent is not confined to English language schools and the system of quality assurance is intended to cover all education service providers. As part of its function the Qualifications and Quality Assurance Authority of Ireland (the "QQI") has signalled an intention to establish an International Education Mark, (the "IEM"), and in time it is intended that only those service providers who can demonstrate compliance with the code of practice of, and who use, the international mark will be accredited.

11. The ACELS brand was closed on the dissolution of the company limited by guarantee on the 1st June, 2012, but, presumably because of a perceived lacuna and as an interim measure, the ACELS accreditation system was reopened during a short window between October 2013 and January 2014, and that accreditation system was operated by the second respondent.

The Internationalisation Register

12. The first respondent has for many years maintained what was called the Internationalisation Register on which was entered particulars of courses which met certain criteria, and students who enrolled on one of these programmes of study were almost invariably granted permission to be in the State for 12 months and to obtain through the Garda National Immigration Bureau a Stamp 2 visa.

13. Certain guidelines for colleges offering courses to full time non EU/EEA students were issued by the Department of Justice and Law Reform in August 2011. These set out *inter alia* the conditions for colleges regarding permission to recruit international students and one of those conditions that a college would be allowed to bring full time students into Ireland to attend only those courses listed on the Internationalisation Register. Both applicants are registered on this Register.

2014 reform: Irish accreditation a requirement

14. The Department of Education and Skills issued a policy statement on 2nd September, 2014, entitled "Regulatory Reform of the International Education Sector and the Student Immigration Regime", which sought to impose a new and more regulated regime for the accreditation of English language schools in the State. The scheme involved the establishment on an interim basis by that Department of an Interim List of Eligible Programmes (the "Interim List") which was intended to come into operation on the 1st January, 2015, but which has been delayed for three weeks pending the determination of these proceedings. Eligibility for inclusion in the Interim List depends on accreditation or recognition by Irish awarding bodies. The Minister explains her wish that colleges be Irish accredited as a wish that the courses offered by those colleges would have to undergo an Irish accreditation process described as "more rigorous and hands on" than an overseas accreditation process which would not be expected to conduct regular inspections of the teaching facilities and/or of the courses.

15. One aspect of the criteria for eligibility for inclusion on the Interim List has given rise to these proceedings, namely that colleges, other than established third level institutions not relevant to the matters herein, be ACELS or QQI accredited. As a result of this policy ACELS accreditation is for the first time required before a college can hope to be placed on the Interim List, and to give an assurance to its prospective students that they will obtain a Stamp 2 type visa. Further, ACELS accreditation is the sole means identified by which the necessary accreditation can be obtained.

16. The National Employee Development Training Centre ("NEDTC") has already applied for and failed to obtain ACELS accreditation and equally failed on

appeal. Academic Bridge is awaiting a decision on its application for ACELS accreditation.

These proceedings

17. By order of Noonan J made on the 10th November, 2014, the applicants were given leave to challenge by way of judicial review the decision of the Minister to impose what were described as "fixed preconditions" to the grant of a visa to a non EU/EEA student who wished to pursue a course of English language study in the State, namely that the student pursue a course accredited by ACELS and in failing to have regard to any other accreditation, experience or track record of the college where the student intends to study. The applicants impugn the decision contained in the document of 2nd September, 2014 as *ultra vires* the Minister and amounting to a fettering by her of her discretion. Leave was also granted to seek a declaration that the second respondent had no power to operate the ACELS scheme.

18. Before turning to the arguments I note that the document of September 2nd expresses the requirement that the relevant programme be "ACELS/QQI-recognised English language provision", and I take the view that what was intended by this somewhat terse phrase was that the college have historic ACELS accreditation *or* ACELS accreditation granted by QQI as the case may be, and an assumption is made in the document that QQI operates ACELS, presumably on an interim basis pending the operation of the IEM anticipated to be in mid 2016. I do not understand the requirement to be that all colleges obtain ACELS through QQI, but clearly the two applicant companies, not having the benefit of ACELS accreditation under the old schemes, could satisfy the new requirements only if they could obtain ACELS through the only body purporting to offer the brand, and in that context they challenge the *vires* of the QQI.

The Arguments

19. The applicant argues that the second respondent has no statutory power to operate the ACELS accreditation system, and that its only statutory power is to operate and manage the IEM, the new accreditation system which has not yet come into operation. It is argued that the Minister by imposing the requirement of ACELS accreditation has fettered her discretion to grant an entry visa to prospective students, and that she may not lawfully impose a requirement of ACELS accreditation as the brand is now closed, and may not be operated by the second respondent.

20. Counsel for the Minister argues that what is in essence in issue in this case is not the conduct of English language schools but the immigration policy of the State. It is pointed out that most international students in Ireland in fact come from either the EU or the EEA and the applicants are somewhat unusual in that the bulk, if not all, of their students are non EU/EEA nationals. Government identified what it views to be widespread abuse of the schools accreditation system and came to the conclusion that this was undermining the executive function and duty to control immigration, as well as posing a risk to the *bona fide* sector and to international students generally.

21. The Minister argues that the policy document of September 2nd is not amenable to judicial review as it expressed a policy reflecting the decision of Government and made pursuant to an inherent power of Government to fix policy in the State. The decision by the Minister to issue the policy document on the 2nd September, 2014 was not the exercise of a statutory function by the Minister but was an executive decision of Government and expressed Government policy

Judicial review of executive function?

22. Certain decisions made by the executive do not lend themselves to judicial review as they are concerned with matters of policy and this is clear from a long

number of cases, including the judgment of *McGimpsey v. Ireland* [1988] IR 567. The nonjusticiable nature of such decisions is too well established to require comment and such decisions are not amenable to review in particular because of the separation of powers.

23. The control of immigration is an executive function and the courts have long recognised the power of the State to regulate immigration and to establish its boundaries, described by Hardiman J in *A.O. and. D.L. v. Minister for Justice* [2003] 1IR 1 as "*an antecedent and inherent power*" of State and one that has existed throughout history. The policy document issued on the 2nd September, 2014 is a statement of Government policy and one squarely within the executive power in this regard. That power is of a dual nature. The executive has an inherent function to control immigration, and the Oireachtas through various legislative actions makes laws to control immigration. The court has a limited role and in general it could be said that the role of the court is limited in immigration matters to a challenge to a decision by the Minister in an individual case to refuse permission to be in the State.

24. The State can change underlining policies as factors affecting the exigencies of the common good themselves change. The publication by the Minister on the 2nd September, 2014, of the new policy document was an action precisely of the nature envisaged by the Supreme Court in *A.O. and D.L. v. Minister for Justice* and the Minister's policy was identified as arising from a perceived difficulty with immigration control and the operation of certain sectors in the education sphere.

25. As the policy document issued by the Minister on the 2nd September, 2014 is a policy document and not a document made in the exercise of the statutory power, the applicants cannot challenge the change in policy and the importation of a more

rigorous and Irish based regulatory regime and the Minister is entitled to adopt new policies having regard to current views of the common good.

Decisions amenable to review

26. The Minister has a clear interest in ensuring that the courses taken by so many foreign students who are seeking to benefit from immigration permission are genuine courses, and with that in mind she has now required that those programmes meet standards and are accredited in accordance with domestic accreditation procedures and standards. That general statement of policy contained in the document of September 2nd is not in my view open to review by me in these proceedings, but the first question I must decide is whether the challenge by the applicants is a challenge to the policy.

27. The Statement grounding the application for leave to bring judicial review expressly by its language focuses on the decision of the Minister and not the decision of Government and this distinction was the subject of some argument before me. Counsel for the Minister argues that her decision was the decision of Government and not amenable to review. Counsel for the applicants points to the fact that the matter is pleaded in a narrow way and that the challenge is a challenge to a decision of the Minister, and points me to the fact that the Statement of Opposition of the first respondent takes up this description and nowhere asserts that the decision was one of Government. In this regard he makes the point that the decision sought to be impugned is not the policy of the Government to control immigration but rather the decision of the Minister contained in that document that she would deem eligible for inclusion on the Interim List only those colleges that had ACELS accreditation.

28. I accept the argument that the criteria proposed for inclusion on the Interim List may give rise to review, and this could be so if these criteria impact on the

decision making process to such an extent that the criteria themselves preordain the result or involve a fettering of discretionary decision making. The 2nd September document is a statement of government policy, not open to review, but the document also contains within it the means of regulation or implementation of that policy which may be reviewed by the courts.

Has the Minister fettered her discretion under s. 4?

29. By virtue of s. 4 of the Immigration Act 2004 the Minister has a wide discretion to grant visas to non-Irish persons wishing to come into the State. The Minister has no power to regulate immigration outside the power vested in her pursuant to s. 4 of the Immigration Act 2004, and this is clear from the judgment of Denham J in *Bode v. Minister for Justice and Equality* [2008] 3 IR 663 but more especially from the express terms of s. 5 of that Act which provides that a person may not be present in the State save under permission granted by the Minister under her powers contained in s. 4. This power is a very broad power and the Minister has very broad discretion but it has a statutory origin.

30. Section 4 of the 2004 Act provides, in the relevant part, as follows:

> *"(1) Subject to the provisions of this Act, an immigration officer may, on behalf of the Minister, give to a non-national a document, or place on his or her passport or other equivalent document an inscription, authorising the non-national to land or be in the State (referred to in this Act as "a permission").*
>
> ...
>
> *(6) An immigration officer may, on behalf of the Minister, by a notice in writing to a non-national, or an inscription placed on his or her passport or other equivalent document, attach to a permission under this section such conditions as to duration of stay and engagement in employment, business or*

a profession in the State as he or she may think fit, and may by such a notice or inscription at any time amend such conditions as aforesaid in such manner as he or she may think fit, and the non-national shall comply with any such conditions.

...

(7) A permission under this section may be renewed or varied by the Minister, or by an immigration officer on his or her behalf, on application therefore by the non-national concerned."

31. Section 5 of the 2004 Act provides, in the relevant part, that:

"*(1) No non-national may be in the State other than in accordance with the terms of any permission given to him or her before the passing of this Act, or a permission given under this Act after such passing, by or on behalf of the Minister.*

(2) A non-national who is in the State in contravention of subsection (1) is for all purposes unlawfully present in the State."

32. It is argued by the applicants that the Minister has by adopting the policy contained in the 2nd September document precluded herself from fully considering an application by a prospective student, or from considering the quality and nature of the individual programme of study offered to such student, that the rigid adherence to a requirement of ACELS accreditation is a fettering of her discretion to give permission to a prospective student, and that she has foreclosed the consideration of applications by determining in advance that students intending to pursue a programme in certain colleges be refused entry to the State. That a deciding body must not close it eyes to the factors operating in an individual application is well established and a decision is only properly characterised as having been made if it did engage with these particular

factors and merits in an application, and did not slavishly follow an inflexible rule. As described by Keane J in *Carrigaline Community Television Broadcasting Company Limited v. The Minister for Transport (No. 2)* [1997] 1 ILRM 241 at pp. 252 and 253:

> *"[The Minister's] paramount duty remained to consider all the proposals before him for the use of the airwaves in a fair and impartial manner. He was not entitled effectively to foreclose such a consideration of any of the applications, including that of the plaintiffs, by determining in advance, as he did, that one form of retransmission alone would be permitted and that franchises would be granted for it to the exclusion of any other system. That would not be a valid exercise of the power vested in the Minister."*

33. Equally in *O'Neill v Minister for Agriculture* [1998] 1 I.R. 539 Keane J in considering the exclusivity scheme adopted for artificial insemination centres by the relevant Minister said at p. 556:

> *"It is not that there is any reason to doubt that the scheme ultimately devised by the first respondent was desirable, and may well have operated in the national interest, it is simply that such a scheme is so radical in qualifying limited number of persons and disqualifying all others who may be equally competent from engaging in the business. It may be that such a far reaching power could not be delegated by the national parliament at all. Certainly I would be unwilling to accept that in using general words the Oireachtas contemplated such a far reaching intrusion on the rights of citizens."*

34. A policy can guide the exercise of a discretion providing the deciding body does not breach constitutional justice or provided the decision is not pre-ordained or the policy is not slavishly followed. A policy or even a set of rules or requirements,

may guide, but a policy which is stated in the general may not be applied without considering the individual facts and factors in an individual application. This is clear from the judgment of Kelly J in *Mishra v. Minister for Justice* [1996] 1 1IR 189, at pp. 204 to 205:

> *"[The affidavit] demonstrates the general policy of the Minister not to naturalise people who would be unemployable in their chosen profession and who, by reason of such, would immigrate on or subsequent to obtaining their Irish citizenship here and thereby would not fulfill condition (d) of s. 15, sub-s. 1 of the Act of 1956. It is clear from the affidavit that this policy emerged from past experience...*
>
> *In my view, there is nothing in law which forbids the Minister upon whom the discretionary power under s. 15 is conferred to guide the implementation of that discretion by means of a policy or set of rules. However, care must be taken to ensure that the application of this policy or rules does not disable the Minister from exercising her discretion in individual cases. In other words, the use of a policy or a set of fixed rules must not fetter the discretion which is conferred by the Act. Neither, in my view, must the application of those rules produce a result which is fundamentally at variance with the evidence placed before the Minister by an applicant."*

35. In *Robert and Mursean v. Minister for Justice, Equality and Law Reform* [2004] 11 JIC 0202, Peart J made it clear that a rigid adherence to a policy could of itself amount to a denial of fair procedures.

36. In *O'Neill v. Minister of Agriculture* the effect of the impugned decision was that the number of eligible applicants for the licence for the practice of artificial insemination was limited by the exclusivity scheme put in place by the Minister.

While the policy document of the Minister of the 2nd September 2014 does not of itself limit the number of schools, the practical effect of her decision to limit eligibility for entry on the Interim List to schools with ACELS recognition has been to limit the number of schools, the type of programmes or the manner of the delivery of such programmes. Were ACELS to be a functioning brand, application for which could still be made under a valid system, no coherent argument could be made that the Minister had fettered her discretion or prejudged the applications by imposing a limit on the number of potential applicants, but ACELS is closed and accordingly the class of potential applicants is also closed.

37. I adopt these general statements of the law, and consider that the requirement contained in the document of September 2nd was a statement by the Minister by which she did unduly fetter her discretion, or more accurately by which she indicated in advance of determining any application by a prospective student that she would not consider eligible a course of study which did not have ACELS accreditation, and in doing so she predetermined that enrolment on the courses offered by the NECDT at least, which has failed on appeal to obtain ACELS, cannot qualify a prospective student. The Minister may well in an individual case decide that the student intending to take a course with either of the applicants be permitted to obtain a Stamp 2 visa, but the policy and criteria clearly stated by her in the document suggest otherwise.

38. In my view the decision of the Minister in this case is broadly akin to that successfully challenged in *Carrigline Co Limited v. Minister for Transport* [1997] 1 ILRM 241 where Keane J held that the Minister's decision was unlawful because he had determined in advance *"that one form of retransmission alone would be permitted and that franchises would be granted for it to the exclusion of any other system"*. The

court in that case held that the Minister by this exclusion had failed to consider all the proposals for licences for the use of the broadcasting waves in a fair and impartial manner.

39. It is undoubtedly the case that the Minister intended Irish accreditation to be in place for any programme to be placed on the Interim List. There is no other domestic body which provides this accreditation and indeed the document published by the Minister suggests that only ACELS accredited bodies or programmes are eligible for inclusion. Because the phraseology in the document with regard to ACELS accreditation is, as I have already said, somewhat terse and unclear it is not obvious whether the Minister meant also to include as eligible programmes those accredited by QQI, but having regard to the limited purpose of the Interim List, which was to be in place only until the IEM was established, my view is that as the Minister did not intend the Interim List to continue once the IEM was in place, and she did not have in mind that QQI would operate another form of accreditation other than ACELS. While the phraseology in the document is less than clear the Minister did intend to confine inclusion on the list to those programmes which were ACELS accredited either under the historic system or through QQI, and did not intend any other form of domestic accreditation to be eligible.

40. Whilst there is no other domestic body which accredits English language schools, the Minister herself through her officials may, and in my view must in the absence of a proper statutory scheme, consider each programme on its merits, albeit she may introduce or apply a set of principles and rules for that purpose. She may not however in my view confine herself to ACELS recognised programmes primarily, or for the purposes of this application, because the scheme is closed, and these applicants may not reapply for ACELS accreditation even were they to improve their

programmes to meet the Minister's concerns. I accept that the Minister retains a discretion to grant a visa to a student who is registered to study on a programme other than one on the Interim List, but has given herself little or probably no scope to do so, and has entirely and probably unwittingly closed the Interim List to NEDTC by the importation of the requirement of ACELS accreditation which it cannot now achieve.

41. There are now only eight pending applications under ACELS, one of which is the application of Academic Bridge. After these eight pending applications, all lodged during the short window that was opened between December 2013 and January 2014, are determined the brand will close. ACELS, in other words, is almost at the end of its life. It is and has been closed for new applications since January 2014, and the number and identity of bodies or persons who can still be accredited is an identified and a closed set. The Minister may not now impose a requirement that limits the qualifying bodies to members of this closed set.

The *vires* argument

42. It is undoubtedly the case that the ACELS accreditation system was a voluntary, and to a large extent ad hoc, system with no statutory basis, although the existence of an accreditation mark or brand was of benefit to all education providers in the sector and to prospective students. It was only in 2012 with the enactment of the Act of 2012 and the establishment of the QQI that the Oireachtas for the first time put in place an accreditation system for education providers, and it is intended that the statutory quality mark, the IEM, will be rolled out from early in 2015, and be issued from 2016.

43. Counsel for the applicants argues that QQI is not mandated by the Act to operate the ACELS, or indeed any other type of accreditation other than the IEM itself.

44. Section 9 of the Act sets out a long list of the powers and functions of QQI and includes a general provision that it shall have all powers "*necessary or expedient for the performance of its functions*".

45. Undoubtedly there will be a delay in the introduction of the IEM and counsel for the second respondent argues that there is as a result a lacuna or interregnum during which time the Oireachtas must have intended that some implicit or implied power would exist for ongoing accreditation of education providers, that as it is in the interests of all persons using or providing the service that such a scheme be in place, a power to manage a voluntary scheme must be vested by implication in QQI. It is further suggested that all of the relevant stakeholders did as a matter of fact adopt or contract into this voluntary structure and that QQI had a power incidental to its broad statutory function in the area of quality control and education to manage this voluntary process.

46. QQI is a statutory body with no inherent powers, its powers being those vested in it by its enabling legislation, whether expressly or by implication. The law is well established and was explained by Kelly J. in *Director of Consumer Affairs v. Bank of Ireland* [2003] 2 I.R. 217 when in considering the powers of the Director of Consumer Affairs pursuant to s. 149 of the Consumer Credit Act 1995 at pp. 237 to 238 he stated:-

> *"The plaintiff is a statutory officer and is therefore strictly confined to the functions and powers conferred upon her under the Act. She has no inherent power. But she may have powers which, although not expressly conferred, may be regarded as incidental to or consequential upon those which the legislature has expressly authorised."*

A similar view was taken in *Keane v. An Bord Pleanála* [1997] 1 I.R. 184 where

Hamilton C.J., in considering the powers conferred on the Commissioners of Irish Lights under the Merchant Shipping Act 1894, stated at p. 212:-

> *"The powers of the Commissioners, being a body created by statute, are limited by the statute which created it and extend no further than is expressly stated therein or is reasonably necessarily and properly required for carrying into effect the purposes of incorporation or may fairly be regarded as incidental to or consequential upon those things which the legislature has authorised."*

47. The second respondent relies in particular on the statutory power contained in s. 9(1) (c) of the Act to "*review and monitor the effectiveness of providers' quality assurance procedures*". That exact phrase, "*quality assurance procedures" is* found also in s. 27(2)

48. I must attempt as far as possible to give a harmonious interpretation to the provisions of the Act, and the phrase "*quality assurance procedures*" must be read as having similar meanings and intent in each part of the Act, and for the purpose of s 9(1) (c) must be understood to refer to s. 27(2). Thus I consider that the QQI does not have a general power to review and monitor quality assurance, but has one within the confines of the express statutory power vested in it under s. 27(2), not the more general one that would enable it to operate the ACELS scheme as presently constituted. Further as stated by Finlay Geoghegan J in *Gama Construction Ireland Ltd v. Minister for Enterprise Trade and Employment* [2007] 3 IR 472 any implicit power must be construed in the context of the purpose for which the powers were given.

49. The second respondent also argues that under s. 9(3), QQI has vested in it all power to "*all powers necessary or expedient for the performance of its functions*", and

that this includes a power in furtherance or in *"performance of its function"* to manage or operate the voluntary ACELS type scheme. Thus it is argued that whilst its function is to set up the IEM it must equally have been envisaged by the Oireachtas that QQI had a role in the period of transition until the IEM procedures were fully operational. I accept the argument by the applicants that this mischaracterises the statutory scheme, and in particular the historical context of that scheme. The Act of 2012 was the first time that the Oireachtas legislated in this area and to that extent it seems to me that there was neither an interregnum nor the need for the legislation to provide transitional provisions. The ACELS scheme was indeed a voluntary scheme and was discontinued some months before the QQI was established. There is no logical link between the previous voluntary scheme and the now mandatory statutory scheme and no basis on which I can construe the legislation as requiring for its proper operation some form of transitional provisions. There is in essence no transition between one statutory regime or another, and in that context the argument that there is an interregnum is incorrect.

50. Further the Act does contain transitional provisions, for example in s. 21 with regard to the continuation of employment contracts, s. 72 with regard to the preservation of claims for loss or injury, s. 73 for the vesting of land and other property, s. 74 for the transfer of contractual rights and obligations. Section 75 permits QQI to carry on and complete "*[a]nything commenced and not completed before the establishment day by or under the authority of a dissolved body*", but this transitional provision is relevant only where a function has been transferred by the Act of 2012 to QQI, and has no application without such an express statutory transfer of identified functions. The absence of an express transitional provision in regard to quality assurance functions formerly carried out by the now dissolved NQAI is

significant and I cannot imply that one was intended where other express transitional or transferring provisions are clear in the Act.

51. NQAI was dissolved by Part 8 of the Act of 2012 and s. 71 (2) of that Act provided that reference to any of it and other identified bodies in any enactment, instrument under an enactment, in the Memorandum or Articles of Association of any company or in any other legal document are to be construed as a reference to QQI. It is argued by the second respondent that by virtue of this provision QQI is the statutory successor to NQAI and accordingly has all of the powers that NQAI had to administer the ACELS scheme. I cannot accept this argument and the transitional provision, and in particular s. 71(2), while it expressly provides for the substitution of QQI in enactments and instruments for NQAI, does not and cannot by virtue of such substitution confer on the new body the statutory powers vested in the old body, and such transfer of statutory powers, or creation of the succession of powers, can only be created expressly or by necessary and limited implication as outlined above.

52. In my view the operation of the ACELS system is neither necessary nor expedient for the performance of the functions of QQI, and therefore s. 9(3) does not confer power upon QQI to operate the scheme. Indeed one of the purposes for which the 2012 Act was enacted, and the primary purpose for which QQI was established by that Act, was to establish and operate an entirely different and more rigorous and recognisable quality mark for all education providers, the IEM, which will take over the quality assurance function in respect of all education providers sometime in 2016. While the Act of 2012 does provide for the transfer of rights, entitlements, obligations and liabilities from NQAI to QQI it does not expressly, and cannot be said to implicitly, transfer the powers of NQAI to the new party.

53. I am fortified in this view by the provisions of Part 3 of the Act of 2012 which identifies the means by which the QQI must carry out its statutory functions, and by the fact that not only are these procedures not followed or even purported to be followed by QQI in its current operation of the ACELS system, but such procedures and regulations are specifically referable to the express statutory powers conferred by the 2012 Act, including in particular to administer and issue the IEM, and not any other scheme.

54. Finally the second respondent argues relying in particular on the decision of the Supreme Court in *Gama v. Minister for Justice Equality and Law Reform* that insofar as the QQI is not expressly prohibited from managing the ACELS process the court should not intervene and in this they rely on the dicta in *A.G. v. Grace Eastern Railway Co* (1880) 5 App. Cas. 473 *per* Shelburne L.J. that:-

> *"Whatever may fairly be regarded as incidental to or consequential upon, those things which the legislature has authorised, ought not, unless expressly prohibited, to be held by judicial construction to be ultra vires."*

55. This decision was cited with approval and applied by the courts on a number of occasions and most recently by Birmingham J in *Magee v. Murray* [2008] IEHC 371 where he accepted the submission that an implied power could only exist:-

> *"...where (1) that is justified by the statutory context; (2) the power contended for is not of such a nature that one would expect to see set out specifically and (3) the power contended for is consistent with the statutory scheme."*

56. Counsel for the applicants argues an inherent illogicality in the position contended for and in particular he points to the fact that the QQI opened ACELS for a short period between October 2013 and January 2014. He suggests in that context that either there was a need to fill a lacuna or to deal with the interregnum or there was

not, and if QQI closed the gate it implicitly accepted that no transitional need arose, or that if it did arise it could be satisfied by a very short opening of the window.

57. More fundamentally it seems to me that, adopting the test as described by Birmingham J in *Magee v. Murray,* I can find that there exists an ancillary power only if such is justified in the statutory context, and is such that one would not expect to see set out specifically, and is one consistent with the statutory scheme. I cannot accept that the ACELS scheme, which is entirely different both in form and procedure from the complex and nuanced scheme set up under the statute for the granting of IEM status, is consistent with or implicitly part of the IEM scheme. A clear structure is contained in the Act of 2012 and what the second respondent wants me to do is to imply from the fact that such a clear structure is given a power to operate an entirely different structure.

58. I am fortified in this view by the decision of Kelly J in *An Blascaod Mòr Teoranta v. Commissioner of Public Works* [1996] IEHC 45 where he held that an implied statutory power existed in the particular circumstances of that case where on a true reading of the legislation it gave power to the Minister to *"prescribe"* certain matters and the court found that this implied a right to make regulations for such prescription. Kelly J made it clear that the power of the court to infer a power not expressed in legislation must be limited and indeed, in his judgment in that case, set quite clear parameters in the context of his view of the meaning of the legislation.

59. Thus I am of the view that the QQI does not have a power to operate the ACELS accreditation system and that one cannot be implied as an incidental or consequential power from its express quality assurance powers in the Act of 2012. QQI is a statutory body and must be understood as a creature of statute to have vested in it only those powers expressly or on a true interpretation of its statutory powers,

impliedly vested in it, and cannot be said to have a residual power to operate what was never any more than a voluntary accreditation scheme within different procedures and requirements.

60. Up to the publication of the 2nd September document QQI was operating ACELS, albeit within a short window, for the mutual benefit of participants who sought the brand benefit and it could be said that its operation arose from what was a conditional nexus between QQI and these bodies. However, the criterion introduced by the Minister on 2nd September has an exclusionary and mandatory effect and the power to operate the scheme described as ACELS/QQI cannot arise by agreement as it is neither contractual, informal nor ad hoc. Thus, QQI can in my view operate a mandatory scheme only if it is doing so within its express or implied statutory power.

Discretion to grant judicial review

61. Both respondents have suggested that the applicants are not *bona fide* providers of education services and that each of them operates an outmoded business model. There is no plea in the statements of opposition that the claims of the applicants are not brought *bona fide* but it was asserted in the course of argument that both colleges were "colleges of concern" or linked to colleges which had closed in controversial circumstances, and the argument is made that judicial review should be refused and the court has a discretion to do so.

62. The Minister points to the fact that there is no evidence before me that the applicants are in reality of good standing or that they offer quality assured courses. The deponents of the various affidavits on behalf of the applicants are newly or relatively newly appointed directors or owners of the companies and an overlap has been shown to me between the persons who are now operating the schools or who are

directors or shareholders of the applicant schools and some of the schools which closed in controversial circumstances in the summer of 2014.

63. Counsel for the second respondent argues that this case centres on the ability of the applicants to give or assure their students that they will obtain a Stamp 2 visa and the *vires* argument against the second respondent is a collateral attack on Government policy. It is argued that the court must not adopt a blinkered approach to the *vires* question and must look in its discretion in deciding whether to grant judicial review to the reality behind the application, as this particular way of living and working in Ireland is contrary to now stated Government policy.

64. It is not my function in an application for judicial review to determine issues of fact, nor does it seem to me helpful to consider in the context of this case whether the applicants do or do not operate *bona fide* language schools, whether their actions have been in conformity with the established requirements of such schools that they, for example, liaise with the Garda Immigration body, or whether their business model is outdated or their businesses operate as *de facto* immigration facilitators. The discretion of the court to refuse judicial review is well identified in the case law but this discretion is limited by O. 84 which requires that it be "just and convenient" that the court grant review. This phrase must be seen in the context of the procedural reasons why judicial review is a more suitable remedy than plenary proceedings or on appeal, and equally there is a discretion of the court to refuse judicial review if there has been delay but delay is not pleaded as a ground of opposition in this case.

65. Hardiman J in *O'Keeffe v. Connellan* [2009] 3 I.R. 643 rejected the argument that there was a broad discretion in the court to refuse the remedy of judicial review if the person making the claim had a direct interest in the matter challenged. I have no doubt that the applicants in this case have a direct interest in the decision of

the Minister to link her decision on entry to the Interim List to ACELS accreditation. The decision on immigration status is one that must be made by the Minister in each individual case on the making of an application by a prospective student, that Minister has by virtue of the document of 2nd September, 2014 identified specific and entirely clear criteria which she indicated would have in the case of schools such as the applicant always be an element in her discretion.

66. The application before me is primarily focused on the new requirement imposed by the document of 2nd September and the applicants seek an order for that purpose that the second respondent has no power to operate the ACELS scheme. The relief claimed against the second respondent must therefore be seen as ancillary to the primary relief and I take the view that the second respondent was joined, and had to be joined in the proceedings, for the purpose of binding it to a declaratory order that might be made, and not for the primary purpose of preventing it from hearing or determining the applications for accreditation or to quash the refusal of accreditation to other parties.

67. I reject the submissions of the respondents that I ought not to make an order against the second respondent as such an order might impact on certain persons or bodies not before the court and whose applications have yet to be determined, and I take the view that the relief sought against the second respondent is secondary to the primary relief sought against the Minister, and that the effect of any order will be limited to the power of QQI to operate ACELS for the purpose of the Interim List and will have no impact on any body or person who has voluntarily submitted to QQI an application for the benefit of ACELS accreditation outside the narrow purpose for which it may be require for the purpose of the Interim List

Waiver, estoppel or acquiescence

68. Both respondents argue that the applicants have waived any right to challenge the *vires* of the QQI as they engaged with the ACELS application process in the short window that was opened by the QQI between October 2013 and January 2014, and that the applicants are estopped from bringing the claim as a result of this engagement with the ACELS process which they now seek to impugn.

69. If the QQI did lack the power to operate the ACELS system it is asserted that this absence of *vires* has existed since the coming into operation of the Act in 2012. As both applicants engaged with the ACELS process and both of them made application in the window when ACELS was reopened between October 2013 and January 2014, they approbated the operation by QQI of the scheme, and indeed Academic Bridge still continues to process an application under ACELS and its application remains live. At any stage in the course of the ACELS process either applicant could have withdrawn from the process and brought judicial review. Indeed NEDTC having failed to obtain ACELS accreditation at first instance appealed that decision and the result of the appeal was communicated to it only in the last month or so. It is argued that what the applicants wish to have in reality by bringing this judicial review is a fall back position should they not obtain ACELS recognition, but they were perfectly content to engage with the ACELS process in the hope that they would meet the bar that that set.

70. It cannot be doubted, and is not being argued by the second respondent, that an estoppel or acquiescence may not confer jurisdiction but the second respondent argues and particular in reliance on the judgment of Henchy J in *Corrigan v. Irish Land Commission* [1977] 1 IR 317 at 326 as follows:-

> *"The rule that a litigant will be held estopped from raising a complaint as to bias when, with knowledge of all the relevant circumstances, he expressly or impliedly abandoned it at the hearing, is founded, I believe, on public policy. It would be obviously inconsistent with the due administration of justice if a litigant were to be allowed to conceal a complaint of that nature in the hope that the tribunal will decide in his favour, while reserving to himself the right, if the tribunal gives an adverse decision, to raise the complaint of disqualification. That is something the law will not and should not allow. The complainant cannot blow hot and blow cold; he cannot approbate and then reprobate; he cannot have it both ways."*

71. This extract from the judgment of Henchy J undoubtedly states the law of estoppel both in public and in private law, but one essential element as identified by Henchy J in that case is missing in this case, and that is that an estoppel, acquiescence or approbation can be said to exist only if the person alleged to be so estopped or to have so approbated must have done so with knowledge of all the relevant circumstances. To that extent I cannot accept the argument that the applicants are estopped or have acquiesced in the operation by QQI of the ACELS scheme on account of the fact that they made application for accreditation through that body, and continue, in the case of Academic Bridge at least, to hope for a positive response. The missing element or circumstance, knowledge of which would be essential in my view to raise an estoppel or to found an argument of acquiescence, is knowledge of the importance of ACELS accreditation, and at all times during the process engaged in by the applicants they were operating in what they believed to be a voluntary system for the conferring of them of accreditation by a recognised brand. They did not know,

and could not have known, that ACELS accreditation would take on the degree of importance it did, and that without it they could not hope to satisfy the new criteria for their non EA/EEA students. Accordingly I am of the view that there has been no estoppel, nor any approbation, such as to disentitle the applicants from seeking the declaratory relief they seek. Such might have existed had the application been for *certiorari* to quash a refusal by QQI to accept an application, or for mandamus to grant the accreditation, or deal with the application in a particular way. That is not the basis of these proceedings and estoppel might well be validly raised had that been the context.

72. I accept the argument made by counsel for the applicants that their applications made for ACELS accreditation was made in complete ignorance of the future importance that ACELS accreditation would come to have for the Minister's decision on a visa application by prospective students, and the applications were made in the short window which closed in January 2014, some eight months before the Minister's decision now challenged. At no point before the applications were lodged, or indeed in the case of one of the applicants before the application was fully completed and rejected, was it apparent that ACELS accreditation would become a *sine qua non* for the exercise by the Minister of her discretion to grant a visa to students attending a school with such accreditation. Accordingly I reject the argument that an estoppel or waiver exists in regard to the application for declaratory relief, as such grounds of defence might have been relevant had the applicants sought to challenge the decisions in or processing of their ACELS applications, and not the role the accreditation status has now come to play in the visa applications of their prospective students.

Locus standi

73. It is argued, correctly in my view, that the only person who can challenge the exercise of the Minister's decision under s. 4 of the Immigration Act 2004 is a person who has applied for and been refused immigration permission. It is argued in that context that the applicants have no *locus standi* insofar as they cannot seek to now challenge any decision of the Minister under that Act when they themselves are not and cannot be an applicant for immigration status, the application being one that is capable of being made by a natural person only, and one made in the context of a myriad of factors which the Minister may take into account. It seems to me to be quite clear that the applicants could not have *locus standi* to challenge any decision made under s. 4, and indeed no decision has been made under s. 4 that might have arisen as a result of the Minister's publication of the policy document of 2nd September 2014.

74. However, the first respondent argues that the applicants have no *locus standi* to seek the reliefs sought in the proceedings primarily because it is said that neither company is in good standing, neither can hope to obtain through the Minister or any other body that she may nominate, an Irish accreditation such as to satisfy the requirements of the policy document of 2nd September 2014. It is argued that the applicants cannot then hope to benefit from any order that may be made by this court, and the default position will not be that the applicants will be deemed to have satisfied the criteria for eligibility, or that the Internationalisation Register will be restored.

75. It is not my function to assess the suitability of the applicants as education providers nor to look in any sense to the merits of any application they or their prospective students might make to the Minister that an individual programme offered to the students satisfies that requirements of the 2nd September document. It is clear,

and cannot be doubted, that were the Minister to meet an application by either applicants for accreditation or approval of one or several of its programmes, the application would have to be dealt with on the individual merits of the course being offered within the programme and the applicants would be afforded natural justice in the various ways this is recognised by the courts. The Minister has not received an application from either applicant for accreditation or approval of any their education programmes, and this is because she has already indicated by means of the policy document of 2nd September 2014 that the programmes will be approved only if they have satisfied the ACELS process. Indeed the Minister by publishing the policy document has made this clear and it is an inevitable conclusion from the requirement of ACELS accreditation that the class of programmes or colleges which will be placed on the Interim List is now closed. This is because ACELS has or is about to reach the end of its life, and an identified and finite number of applicants remain in the system and no new applications may be made. It is possible even from this vantage point and without the conclusion of the ACELS process in respect of those applicants to identify precisely the number of new programmes that will be admitted to the Interim List and this has to be fewer than either eight, the number of applications in the system that not yet determined, or a number less than eight. The class is closed, no new applications may be made, and the applicants in the case of NEDTC know, and in the case of Academic Bridge, suspect, that neither of them will be successful in obtaining ACELS accreditation and neither of them therefore will be successful in obtaining a place on the Interim List. They both find themselves in a position where the Interim List is effectively closed to them by a process which commenced when they lodged their application for ACELS accreditation in early 2014, and at a time when they did not and could not have known that the accreditation would take on the importance it

now has. It is a matter of significance that no other means by which the Minister can be satisfied with regard to the quality of an education programme is available to prospective applicants for those wishing to be placed on the Interim List and the policy of the Minister, while she was entitled to impose a more rigorous structure and criteria, is such that it cannot in itself ever be satisfied by these two companies. No alterative Irish accreditation system is offered, no alternative means by which the Minister might consider the quality or performance of an individual course or college is available, and the structure within which the school had to fit is now closed to new applicants.

76. The Minister's discretion is founded primarily in the Immigration Act but the State generally has an inherent power to regulate immigration into the State, the presence of non-nationals in the State and whether they have permission to work and on what basis. The Minister was entitled to have a policy and the reasons stated for this policy are laudable. There is however implicit in the requirement of ACELS accreditation a limit on the number of programmes that can be included on the Interim List as there is no means by which a new programme can be accredited, and this is so because the ACELS window has now been closed, the Minister purports to operate ACELS through QQI which she may not do having regard to the view that I take that it has no statutory power to operate the scheme, and no other fall back or ad hoc position is offered either to the English language schools in general or to an individual applicant who wishes to satisfy the Minister of the quality and nature of the course that it wishes to offer.

77. The applicant can in my view hope to benefit from a declaration that the Minister may not impose the strict requirements notified in the 2nd September document that ACELS accreditation is essential for inclusion in the Interim List, in

that were such a requirement to be struck down by me, the Minister would pending the introduction of the IEM be required to individually consider the applications of prospective students, to adopt other criteria for accreditation, or other accreditation criteria for inclusion on the List or establish by lawful means an interim accreditation body or structure. To that extent I reject the argument of the respondents that the applicants have no interest to protect, or no advantage to be gained from an order quashing the impugned elements of the 2nd September document.

Summary

78. In summary, then I hold that the Minister has unduly fettered her discretion in limiting the set of bodies or persons who may be eligible for inclusion on the Interim List, and that QQI has no power to operate or manage the ACELS system of accreditation for the purpose of admission onto that List, although it may have a contractual power to do so for a more limited and voluntary scheme of recognition.

etbi
Education & Training Boards Ireland
Boird Oideachais & Oiliúna Éireann

General Scheme of Quality and Qualifications (Amendment) Bill Submission to the Oireachtas Committee on Education and Skills

This response is submitted by Education and Training Boards Ireland (ETBI) on behalf of the 16 Education and Training Boards.

Joint Committee on Education & Skills
Leinster House
Dublin 2

5th October 2018

1. Introduction

The Education and Training Boards (Education and Training Boards) welcome this opportunity to make a submission to the Oireachtas Committee on Education and Skills, on the Heads of Bill and proposed amendments to the Quality and Qualifications (Education and Training) Act (2012). Education and Training Boards are statutory providers established under the Education and Training Boards Act 2013. The Education and Training Boards are obligatory providers subject to the regulatory authority of Quality and Qualifications Ireland and statutory requirements of the current legislation.

2. Executive Summary

2.1. The Education and Training Boards Act 2013, which established the Education and Training Boards, was preceded by the Quality and Qualifications Act 2012. The Education and Training Boards now welcome the amendment in Head 2, the insertion of the statutory definition for Education and Training Boards, and the establishment of Education and Training Boards (EDUCATION AND TRAINING BOARDS) as relevant providers on a statutory basis in the amended legislation.

2.2. The Education and Training Boards note and welcome the amended functions and extension of the powers of Quality and Qualifications Ireland (QQI), herein referred to as the Authority. Specifically welcomed is the new statutory function for inclusion and listing of other awarding bodies within the National Framework of Qualifications.

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The specified transition period of 5 years, enabling the continuance of existing arrangement is essential to ensure continuity and stability for learners in further education and training, in the Education and Training Boards

The assurance of business continuity for the Education and Training Boards, and the continued capacity to be responsive to learner and employer needs is the most critical and important aspect from the ET sector in the process of implementing finalising and implementing the new legislation, and the associated policies and regulations.

It is recommended to the Committee, that the Authority be advised that transitional arrangements and processes of development of new policies and procedures by the Authority to implement and exercise this new statutory function, must ensure business continuity and minimal disruption in the provision and availability of qualifications for learners

The Committee is further requested to advise the Authority that these transitional arrangements should also allow for new arrangements with other awarding bodies to be entered during this period. Any restrictions on accessing new awards of other awarding bodies for a 5-year period could be detrimental for the Education and Training Boards.

2.3. The proposed amendment to section 27 of the principal act is an important legislative change in enabling the Authority to establish the regulatory framework for recognition of other awarding bodies within the framework. It is important that the Guidelines for establishment of procedures by listed awarding bodies, ensure the integrity of the National Framework of Qualifications, whilst enabling and providing for responsive recognition process for other awarding bodies.

2.4. The ETB have agreements and accreditation arrangements in place with a number of long established and internationally recognised awarding bodies, that are quality assured through recognised external QA agencies in other jurisdictions, i.e. Ofqual and Scottish Qualifications Authority (SQA). Many of these awarding bodies offer industry specific recognised skills qualifications, and provide and responsive mechanism to meet local, regional and national skill needs.

The integrity of the National Framework of Qualifications must be maintained and ensured in any new guidelines and procedures established. Policies and processes will need to be established to enable the Authority to confidently determine the suitability of other award bodies for recognition on the framework.

To ensure continued confidence and integrity of the framework, the Education and Training Boards understanding that such processes will need to consider, legal status, governance arrangements, sustainability and financial standing. It is recommended to the

Committee, that the Authority is advised that such processes must be fit for purpose, proportionate and risk based, taking cognisance of the experience of other awarding bodies and of the recognition process applied in their home jurisdictions.

2.5. The extension of the range and type of guidelines which can be issued by the Authority for different classes of programmes and types of provision is welcomed. The extension of the range and types of guidelines, and proportionality of same for different programmes is important in ensure a more proportion and fit for purpose regulatory system. Education and Training Boards provided a diverse range of programmes in a diverse range of settings, in response to different and diverse learner needs.

It is recommended to the Committee that the Authority is requested, in consultation with the Education and Training Boards, to ensure the regulatory requirements for quality assurance and programme validation are proportionate and fit for purpose.

It is requested that the Committee recommend to the Authority that the principle of proportionality should be a key principle underpinning the development of such guidelines, to ensure a fit for purpose regulatory framework. It is recommended that the Authority consider and embed this principle within current policies, i.e. Programme Validation, in advance of the establishment of new guidelines and policies.

2.6. Education and Training Boards as relevant providers of further education and training are subject to the external regulatory functions of the Authority, in both quality assurance and qualifications, and have a funding and policy accountability to SOLAS. The proposed inclusion of a statutory requirement on the Authority to consult directly with SOLAS on the development of its policies will assist in enhancement of synergies in the further education and training policy landscape and is welcomed.

Statutory provision and requirement to consult with SOLAS is important, specifically in the establishment of Statutory Quality Assurance Review Procedures and conducting Quality Reviews, and in the establishment of review procedures and conducting review for Access, Transfer and Progression.

It is recommended to the Committee, that the Committee request to the Authority, SOLAS and the Department of Education and Skills, that the Statutory Review of the 16 Education and Training Boards should not commence until such consultation has taken place and such procedures are established.

Is it is further recommended that the Committee request that such consultation be established on a formal basis, through a consultative working group, and such a group should include representatives from the Education and Training Boards.

2.7. Education and Training Boards have agreed their quality assurance procedures and reengage with QQI under the 2012 Act. The scope of regulatory authority of QQI with regards to the Education and Training Boards statutory responsibility for education and training was not explicit in the 2012 Act. The clarification that the Quality Assurance remit of the Authority does not extend to general education within the school sector is a necessary amendment, which removes the ambiguity in the current legislation. This provides greater clarity for Education and Training Boards in developing their quality assurance and review procedures, in respect of the requirements of the Authority, and is important in the scope of the statutory evaluation and review process.

2.8. The extension of the remit of the Code of Practice, and of the Authority to include learners who receive education and training provision outside the state, leading to Irish awards is significant, in ensuring the quality and integrity of the Irish award and National Framework, whether provision is inside or outside the jurisdiction.

2.9. Strengthening the International Education Mark and the National Award brand, whether offered inside or outside the jurisdiction is an important development for ensuring the recognition and confidence in Irish Education and Training, the enhanced powers of the Authority in this regard are important.

2.10. Ensuring the quality and integrity of all education and training provision offered within the State is critical for Ireland Inc as an international education brand. The strengthening of the Authority's remit through statutory instruments and regulations, and establishment of a more robust regulatory framework for private education and training providers, underpinning the international education mark, is necessary to give confidence, assurance and protection to students coming within the state, and international students.

It potentially offers enhanced opportunity to market not just the Irish award brand delivered within the state, but Irish awards and programmes which could be delivered abroad.

It is recommended to the Committee that clarification and confirmation is sought from relevant funding bodies that sufficient resources are available to the Authority to regulate and enable providers to quality assure their programmes and services outside the

jurisdiction. Additional national resources and investments may be needed to implement this detailed and robust legislation provisions related to the Code of Practice and International Education Mark.

It is further recommended that the Committee request that state enterprise development agencies, engaged in developing the international market for Irish Education and Training would engage with further education and training stakeholders, and key FET providers, such as the Education and Training Boards, to explore opportunities for new markets for Irish further education and training abroad.

2.11. The provision for the establishment by the Authority of policies and procedures for the recognition of awards within the framework, i.e. determining the appropriateness of qualifications for inclusion in the NFQ, is critical.

It is recommended to the Committee, to ensure a responsive Framework, whilst maintaining credibility and robustness of the qualifications included, that robust criteria are established to ensure the credibility, demand for and recognition of qualifications through the NFQ, that the Authority is advised to consider other mechanisms, frameworks, and established and recognised certification processes in determining the policies and procedures for recognition of awards.

There are a range of long standing well recognised qualifications, endorsed within specific industry and professional sectors. The recognition of these qualifications could be expedited in collaboration with industry bodies, professional bodies and governance agencies. The Committee is requested to advise the Authority to consider mechanisms to expedite the recognition process.

2.12. The establishment of the Protection for Learner fund provides structured and enhanced protection for learners.

Education and Training Boards are exempt from this requirement; the Committee is requested to confirm there will be no cost implications for Education and Training Boards in creation of such a fund.

2.13. The Education and Training Boards note the proposed amendment which places the responsibility on the relevant provider to establish procedures for the recognition of prior learning, a learner must apply first to a provider for recognition of prior learning.
There are implications for the Education and Training Boards as to how such applications for RPL are reviewed and processed, and how Education and Training Boards enable the learner to demonstrate required standards

of knowledge, skill and competence, in the absence of a national policy direction and roadmap.

It requested that the Authority recommend that a working group of key national stakeholders, the Department of Education and Skills, SOLAS, the Authority and the Education and Training Boards be convened to agree a national approach and roadmap for recognition of prior learning.

2.14. The amendment to enable the Authority to take a more focussed and tailored approach to 'delegated authority' is welcomed and of interest to the Education and Training Boards. The establishment of procedures for the delegation of authority for programmes or classes of programmes does provide future opportunities for the Education and Training Boards to engage with the Authority and explore the systematic and learner benefits of delegation of authority in specific programmes or classes of programmes.

3. Recommendations

1) *It is recommended to the Committee, that the Authority be advised that transitional arrangements and processes of development of new policies and procedures by the Authority, must seek to ensure business continuity and minimal disruption in the provision and availability of qualifications for learners.*
2) *The Committee is requested to advise the Authority that transitional arrangements should allow for new arrangements with other awarding bodies to be entered during this period.*
3) *It is recommended to the Committee, that the Authority is advised that processes for the recognition of other awarding bodies must be fit for purpose, proportionate and risk based, taking cognisance of the experience of these awarding bodies and of the recognition process applied in their home jurisdictions.*
4) *It is recommended to the Committee that the Authority is requested, in consultation with the Education and Training Boards, to ensure the regulatory requirements for quality assurance and programme validation are proportionate and fit for purpose, and that the principle of proportionality should be an underpinning principle.*
5) *The Committee is requested to seek confirmation from the Authority, SOLAS and the Department of Education and Skills, that the Statutory Review of the 16 Education and Training Boards should not commence until consultation between the Authority and SOLAS has taken place and review procedures established on this basis.*
6) *It is recommended that such consultation be established on a formal basis and should include representatives from the Education and Training Boards.*
7) *It is recommended to the Committee that confirmation is sought from relevant funding bodies that sufficient resources are available in the Authority to regulate and enable providers to quality assure their programmes and services outside the state, to implement the legislation provisions related to the Code of Practice and International Education Mark.*
8) *It is recommended that the Committee request that state enterprise development agencies, engaged in developing the international market for Irish Education and Training would engage with further education and training stakeholders, such as the Education and Training Boards, to explore opportunities for new markets for Irish further education and training abroad.*
9) *The Committee is requested to advise the Authority to consider mechanisms to expedite the recognition process for qualifications, utilising existing sectoral and professional frameworks.*
10) *It requested that the Authority recommend that a working group of key national stakeholders, to include the Department of Education and Skills, SOLAS, the Authority and the Education and Training Boards, be*

convened to agree a national approach and roadmap for recognition of prior learning in further education and training.

The Education and Training Boards wish to thank the Committee for the opportunity to submit this response and representatives are happy to meet with the Committee to clarify any aspect of the submission.

Ends

Ollscoil na hÉireann
National University of Ireland

QUALIFICATIONS AND QUALITY ASSURANCE (EDUCATION AND TRAINING) (AMENDMENT) BILL 2018 – submission by National University of Ireland (NUI).

1. Introduction

NUI is pleased to make a short submission to the consultation on the proposed amendments to the Qualifications and Quality Assurance (Education and Training) Act, 2012.

The National University of Ireland (NUI) makes a submission to this consultation in the context of our unique status in Irish higher education as a federal, non-provider University, and with specific reference to our status as a Designated Awarding Body (DAB).

In summary, NUI welcomes the proposed amendments as providing greater clarity for the sector, now that some time has passed since the publication of the 2012 Act. This submission provides a number of comments in relation to the small number of sections that are relevant to NUI in line with the status outlined above and elaborated on in section 2, below.

It should be noted that this submission is not a representative submission on the part of NUI's constituent universities, UCD, UCC, Maynooth University and NUI Galway.

2. Context: The National University of Ireland

Established under the Irish Universities Act 1908 and restructured under the Universities Act 1997, NUI is a federal university comprising four autonomous constituent universities. In addition, NUI is empowered statutorily under its charter to recognise other higher education institutions and award university degrees and other qualifications in those recognised colleges. IN line with the relevant statute, NUI currently recognises three such institutions, namely the Royal College of Surgeons in Ireland (RCSI), the Institute of Public Administration (IPA) and Uversity.

The 2012 Quality and Qualifications (Education and Training) Act confirmed NUI as a designated awarding body (D.A.B.). Under the terms of this Act, NUI awards qualifications in "Linked Provider" institutions and is responsible for oversight of Quality Assurance and its effectiveness in these Linked Providers. NUI also awards qualifications jointly with the Royal College of Surgeons in Ireland, a Designated Awarding Body in its own right.

3. NUI comments on relevant sections of the Bill

NUI wishes to provide comments only on those sections of the Amendment Bill that it considers relevant to the University as a DAB. We do not provide comments on any other sections of the Bill.

3.1 General comment applicable to a number of sections:

NUI wishes to highlight that a number of sections within the Bill do not include references to the University, where such reference is required. Examples include section 13 – Amendment of section 43 of the Principal Act (Framework of Qualifications); and section 28 – Amendment of section 65 of Principal Act (arrangements by providers for protection of enrolled learners).

3.2 Section 3 – Amendment of Section 2 of Principal Act (Interpretation)

NUI acknowledges the expanding number and range of institutions in Ireland that seek to award degrees or other qualifications within the National Framework. We presume that the introduction of the additional category of "Associated Provider" is intended to address this expansion and is distinguishable from a "Linked Provider" of an existing DAB. Further clarification in the Bill on the criteria and description of "Associated Providers" would be welcome.

3.3 Section 4 – Amendment of section 9 of Principal Act (Functions of the Authority)

NUI welcomes the proposed amendments in broad terms. In relation to the inclusion of the qualifications of Awarding Bodies, NUI wishes to note that the University Senate maintains a protocol on the Usage of Degree Titles across its constituent universities and recognised colleges. This protocol is periodically refreshed in consultation with the member institutions.

3.3 Section 6 - Amendment of section 27 of Principal Act (Quality Assurance) and section 13 – Amendment of section 43 of Principal Act (Framework of Qualifications).

NUI acknowledges the increasing complexity of the FE & HE qualifications environment in Ireland and globally. In this context, we welcome the provision for periodic review and updating by QQI of quality assurance guidelines and for the issuance of different guidelines for different classes of programmes or types of provision. This is evidence of growing capacity within the state agency to foresee, identify, understand and translate international, as well as national good practice and learning into useful guidelines for DABs, and for all providers.

Notwithstanding, NUI suggests that as the complexity of the sector and of the range of qualifications grows, useful guiding principles for QA guidelines from QQI might include coherence and simplicity. In practical terms, as more supplemental guidelines are developed and published, the periodic review might usefully contain an important "coherence" test across the range of existing published documents, central to which is the Core (and overarching) Statutory Guidelines for Higher Education.

3.4 Section 25 - Amendment of section 61 of Principal Act (International education mark)

NUI is not certain from the information provided whether Linked Providers will be able to apply directly for the International Education Mark, or whether the NUI itself, as the DAB, is enabled award the Mark to its Linked Providers, by virtue of approval of LP's Quality Assurance procedures.

3.5 Section 28 - Amendment of section 65 of Principal Act (Arrangements by providers for protection of enrolled learners)

NUI notes the provision for establishment of a new Learner Protection Fund and understands that this Fund will apply to all education and training providers engaging with the National Framework of Qualifications with the exception of public bodies.

NUI notes that 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 and the associated Fund. NUI takes this opportunity to highlight that in view of its status as a publicly-funded, non-commercial state agency, the Institution of Public Administration (IPA), should be listed as exempt from the Learner Protection Fund.

IPA became a Recognised College (and Linked Provider) of the University from 1st September 2018, having transitioned from accreditation by UCD for the period 2011-2018.

SIPTU Submission

Qualification and Quality Assurance (Education and Training)(Amendment) Bill 2018.

The 2018 amendment Bill is intended to empower QQI to carry out the entire range of functions as provided under the 2012 Act.

Due to deficits in the 2012 Act, e.g. the International Education Mark (IEM) inter alia, the legislation could not be implemented. The amendment Bill will provide for the inclusion of the awards of 'new' awarding bodies in the National Framework of Qualifications. This will include awards of bodies such as City & Guilds. It also will provide for the launch of the International Education Mark and a new National Scheme for the Protection of Enrolled Learners.

All of these changes, though welcome, will impact significantly on the resources required for the organisation. In particular they will require a significant number of additional staff. As the functions are technical in nature, the new positions will most likely not be at junior administrative levels. It is important that existing staff are recognised and given opportunities for these 'promotional' opportunities via confined competitions etc.

QQI was established in the middle of the economic crisis and the staff have borne a significant burden in delivering the change required in a new organisation; adapting to new roles, responsibilities, structures etc. As a result of the staff moratorium, all of this change happened without any opportunity for advancement/promotion or recognition for existing staff. The proposed legislation provides an opportunity to rectify this situation.

QQI has had a poor record in industrial relations, the Clarion Report commissioned by the DES identified a number of organisational and IR issues. It is incumbent on the organisation and its parent department, Department of Education and Skills, to ensure that any outstanding industrial relations issues are resolved and that additional resources required by QQI to carry out additional functions and duties are put in place in advance of the implementation of revised legislation. Upskilling of existing staff and consideration of suitability of existing premises to facilitate additional staff are of paramount importance.

2018/335a

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SUBMISSION

The following submission deals with those sections only that have raised issues.

Part 2 – Amendment of Qualifications and Quality Assurance (Education and Training) Act 2012

Section 3 - Amendment of Section 2 of Principle Act (Interpretation)

In this Section new categories of providers and bodies respectively are introduced.

1.0
First, 'associated provider' is introduced and defined as 'a provider that enters into an arrangement with a listed body under which arrangement the provider provides a programme of education and training that satisfies all of the prerequisites for an award of the listed awarding body that is included within the Framework' (See Section 55F). This is an additional category to the established 'relevant provider' and 'linked provider'. There is already a need to further clarify what is meant by 'linked provider' in an HE landscape that is marked by diversification and internationalisation '(please see paragraph 3 below). The purpose of introducing 'associated provider' is not entirely clear. It poses a real risk that this additional category further complicates and may obscure the relationships between and powers of different categories of providers. It potentially undermines quality assurance, the very issue that stands at the centre of this Amendment Bill, as the introduction of this new category of 'associated provider' may open the door to programmes being repeatedly franchised.

2.0
Second, the category of 'listed awarding body' is introduced, meaning 'an awarding body, other than a designated awarding body or provider to whom the QQI as the Authority has delegated authority to make awards, that has been listed by the Authority for the purpose of having its awards included within the Framework.'(See Section 55A(1)(a). It is not clear what criteria will be applied to determine inclusion in the list of awarding bodies. The established Framework, based on affirmed quality assurance, has played an essential role in underpinning the trust and confidence in the Irish education system. Expanding the Framework should therefore be based on clear and transparent criteria. Furthermore, in the proposed list of awarding bodies the 'designated awarding bodies', i.e. the universities have not been included (see 55A-55I). Following on from reference to Section 43 and Section 55 (a) (1) (i) in this section, more information is required on the nature of the relationship formed when an associated provider enters into a relationship with a listed awarding body. Does the principle of equivalency apply in regard to the relationship between linked provider and designated awarding body?

3.0
In Section 2/1/b the definition of 'designated awarding body' has been expanded to include to mean 'a previously established university, the National University of Ireland, an educational institution established as a university under section 9 of the Act of 1997, **an institute of technology**, the Dublin Institute of Technology and the Royal College of Surgeons in Ireland.' This reflects the evolution of the national higher education system but requires further consideration with regard to quality assurance and enhancement particularly with regard to research degrees. Please see paragraph 7 below.

4.0
The Bill refers widely to relevant providers for instance in Section 28, it appears to mean the inclusion of designated awarding bodies into this category. However, therein potentially arise issues regarding the powers of QQI as the Authority and the designated awarding bodies as autonomous third level education institutions. Greater clarity is required as to what the category relevant providers refers to throughout the Bill. Could it mean only those providers who are validated by QQI; or receive delegated authority of QQI to validate their awards; validate their application for recognition as a listed awarding body or for their awards to be recognised within the National Qualification Framework. In that case, it would be clearer to explicitly exclude 'designated awarding bodies' from this category and refine the distinction between relevant provider and linked provider.

5.0
The amendments to section 2(2) now states that '[f]or the purpose of this Act, a programme of education and training is validated where the Authority confirms under section 45 that the provider of the programme has satisfied the Authority that, for an interval of time specified by the Authority, during which new learners may be enrolled on that programme. The proposed explication of criteria which a programme of education must satisfy in order to be validated by QQI is very welcome. However, further clarity is needed in the Bill that this only applied to awards validated by the Authority, i.e. QQI and does not cover those of designated bodies with linked providers.

Section 6 - Amendment of section 27 of Principal Act (Quality Assurance)

6.0
The addition of the clause Section 27(6)(b) proposes that the Authority, i.e. QQI, 'may issue different quality assurance guidelines for different classes of programmes or different types of provision'. This additional clause could impact further the autonomy of universities, a value of the Irish higher education system that needs to be actively safeguarded in the globalised higher education landscape. Layers of statutory compliance have increased over recent years with the introduction of *Core Statutory Quality Assurance Guidelines, QQI Sector-Specific Quality*

Assurance Guidelines for Designated Awarding Bodies or Guidelines by the Authority concerning Research Degrees and Blended Learning.

7.0

From a UL perspective it is important that quality assurance guidelines concerning the delegated authority to award research degrees focus on the proven research culture in the institution, on the existing capacity and capability of its academic staff who provide those programmes, on their active participation and leadership in national and international scholarly communities and peer networks of practice and knowledge. This includes a specified period of time to build up capacities and capabilities where necessary.

Section 7 - Amendment of Section 28 of Principal Act (Obligation of providers to prepare quality assurance procedures)

8.0

Section 28 explicitly applies to 'relevant, linked or associated' providers. The phrasing appears not to take cognisance of the fact that in the current shape of the Bill, relevant providers include designated awarding bodies but that designated awarding bodies are not subject to the direction of the Authority in regard of the establishment of quality procedures, as they are autonomous bodies. Hence an amendment of the term 'relevant bodies' as outlined in paragraph 4 above.

Section 14 - New Section 43A of Principal Act – 'Offence to provide or advertise cheating services'

9.0

We welcome that QQI is being empowered to prosecute 'essay mills / other forms of academic cheating' (See Head 12 Explanatory note). However, 'person' (noting the legal phrase) in this section should explicitly refer to include organisations and corporations as well as individuals such as learners enrolled in the same or another institution. In the context of rapid technological progress it should also refer to cheating services that may be available in future and that would be augmented to the body of the enrolled learner who sits an examination.

10.0

Given the desired and real growth in blended and online programme provision the Bill should safeguard that education providers assessing students online or in blended mode put in place robust measures to safeguard online learner identity authentication approaches.

Section 25 - Amendment of Section 61 of Principal Act (international Education Mark)

11.0
UL supports the proposed introduction of 'variant forms of the international education mark for different groups of providers or classes of programmes, including an international education mark for English language education and training' in Section 61(7)(b). However, for designated awarding bodies and linked providers it is important that further details are provided as to how '[t]he Authority shall determine an application under subsection 61(3) by assessing the compliance of the provider, particularly in light of the autonomy of designated awarding bodies (see also paragraph 6.0 above).

Section 29 - Amendment of Section 66 of Principal Act (Protection of Enrolled Learners Fund)

12.0
In light of making provision for the diversification and internationalization of the Irish higher education system, UL welcomes the establishment of the Learners Protection Fund by QQI. We note the introduction of new PEL arrangements specific to the Designated Awarding Bodies to cover their linked providers. However, further clarification is required as how designated awarding bodies are informed should a linked provider not be exempt from the Learner Protection Fund as specified under Section 65 but does not make its annual contribution under Section 66A. What impact has a potential defaulting situation on the recognition of a linked provider's quality assurance procedures by the designated awarding body? Should the QQA be empowered to inform a designated awarding body in the case that such a defaulting situation arises under the provisions of Section 14?